



Merchant Services  
Merchant Terms  
and Conditions

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**Terms and Conditions**  
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## PREFACE

Thank you for selecting First Data Loan Company, Canada (to be known as First Data Canada Ltd. ("First Data")) for your payment processing needs along with our sponsor bank Wells Fargo Financial Corporation Canada (the "Bank") (collectively the "Servicers"). In these terms and conditions, unless otherwise specified, the terms "we," "us," or "our" refer to the Servicers, and the terms "you" or "your" refers to you, the merchant, the entity that executed the card acceptance form (the "Form"). First Data offers a comprehensive suite of services allowing merchants to: (1) select the types of payment cards they wish to accept; (2) choose from several point-of-sale (or POS) equipment and financing options; and (3) add telephone/mail order, Internet and other emerging payment choices. Upon accepting the services that we have agreed to provide, you agree to be bound by these terms and conditions of this Agreement.

## INTRODUCTION

The Bank has relationships with Visa Canada Corporation and its affiliate Visa U.S.A. Inc. (collectively "Visa"), and MasterCard, International Inc. ("MasterCard"). First Data, through its affiliate First Data Canada Merchant Solutions, ULC ("FDCMS") has the relationship with Interac ("Interac") and other applicable companies, which enables First Data to offer merchants a suite of payment services in one, comprehensive agreement. First Data continues to develop and enhance our payment services and marketing channels. You may, from time to time, be contacted by independent companies who have contracted with us to market the payment services set forth in your Agreement.

The Bank, as a wholly-owned operating subsidiary of a member of Visa and MasterCard, is a licensee of the Card Organizations permitting it to acquire Visa and MasterCard transactions and has sponsored First Data with the Card Organizations as a "Member Services Provider" (as defined in the Card Organization Rules). Accordingly, First Data shall perform certain functions in connection with authorization, processing and settlement for you hereunder. As between themselves, the respective rights and obligations of First Data and Bank shall be governed by the agreements between them and/or their parent entities and the Card Organization Rules. You acknowledge that, notwithstanding anything contained in any or all of this Agreement (which includes the Annex(es), Operating Guide, attachment(s), schedule(s) or supplement(s) referred to herein or amendments to any of the aforesaid) to the contrary, the Bank's obligations hereunder shall be limited to the sponsorship and settlement of certain Card transactions submitted in accordance with the terms and conditions of this Agreement and the Card Organization Rules, and the Bank shall not have any obligation or liability of any nature in connection with any related services or any services of any kind provided by First Data or its affiliates provided hereunder or pursuant hereto.

## ARTICLE I. Relationship Administration

**1. Exclusive Provider.** You agree that during the initial and any subsequent renewal terms of your Agreement, you will use First Data as your exclusive provider for authorization, processing and settlement of card transactions undertaken in all of your location(s) in Canada, and all other activities necessary for us to perform the functions specified in the Agreement (collectively, the "Services"). Subject to the Card Organization Rules (as defined in section 3), the Services may be performed by our affiliates and/or service providers. In addition, one or more of our affiliates and/or service providers will assist in providing terminals or other equipment, terminal financing and local support functions in connection with the Agreement.

**2. Payment Account Requirements.** You agree to establish three accounts to enable us to provide the Services to you: (i) your Current Account, as defined in section 2.1, will be where we

transfer your Settlement Funds, as defined in section 2.7; (ii) your Settlement Fund Account, as defined in section 2.7, will be where we maintain your Settlement Funds, prior to transferring them to your Current Account; and (iii) your Reserve Account, which you agree to fund, all as described below in section 2.10.

**2.1. Current Account.** You agree to establish an account at a financial institution of your choosing, to be debited and credited by us for: (i) provisional funding of your card transactions; (ii) your Merchant Processing Rate, as defined in section 21; (iii) your Chargebacks, as defined in section 11; and (iv) any other charges, fines, fees, penalties, payment of current or past due amounts for equipment lease, rental or purchase, Card Organizations fees, costs arising from replacement or damage to equipment, and other amounts due in connection with an Event of Default, as defined in section 26.3, or other charges assessed by us, the Card Organizations, network operators and others as pertains to this Agreement (your "Current Account"). Establishing your Current Account requires that you provide us with a cancelled cheque (or letter from your financial institution) and take all steps required by your financial institution to allow us to debit/credit your Current Account on a recurring basis, for the purposes set forth below (the "Authorization"), including consenting to the disclosure of any relevant information contained in your Agreement for purposes of obtaining the Authorization.

**2.2. Pre-Authorization.** Your financial institution's treatment of each debit shall be the same as if you had issued a cheque authorizing it to pay as indicated and to debit the amount specified to your Current Account. You confirm that this means, your financial institution is not required to verify that a pre-authorized debit has been issued in accordance with your instructions or that some pre-condition to payment has been met or satisfied.

**2.3. Card Organizations.** You agree that if any payment is dishonoured by your financial institution, for any reason, we shall issue another debit in substitution for the dishonoured debit until such debit is honoured. You acknowledge that this authorization to debit/credit your Current Account is provided for our benefit and your financial institution and is provided in consideration of your financial institution agreeing to process debits against your Current Account in accordance with the rules of the Card Organizations. You will be charged a fee for each credit and debit, which cannot be processed (an "NSF Fee" as described on your Form), and all subsequent funding may be suspended until you notify First Data that credits and debits can be processed or you provide a new Authorization (from your then current financial institution). Your financial institution must be able to process and accept credits and debits electronically.

**2.4. Notice For Non-recurring Debits.** You waive the right to receive any notice, written or otherwise, from us of the amount to be debited and the date(s) on which such debits are to be processed, as well as notice of any and all future changes to the amounts or payment dates for regular recurring debits. However, for debits other than regular recurring debits and/or one-time payments owing in connection with this Agreement, we will obtain your authorization prior to initiating any such debit.

**2.5. Authorization Revocation.** You may cancel your Authorization at any time by providing written notice to First Data, which shall be effective five business days [a day, other than Saturday or Sunday, on which banks in Ontario are generally open for business (a "Business Day")] after receipt. To obtain a sample cancellation form, or for more information on the right to cancel this Authorization, you understand that you may contact your financial institution or visit [www.cdnpay.ca](http://www.cdnpay.ca). This Authorization applies only to the method of payment, however you agree that revocation of this Authorization is considered an Event of Default as set forth in section 26.3. This Authorization may be discontinued by us at any time and without notice to you. You confirm that the debits authorized hereunder are for business purposes.

**2.6. Merchant Recourse.** You can contact us at the address or phone number below, to make inquiries, obtain information or seek any recourse rights. You understand that you have recourse rights if any debit does not comply with this Authorization. For example, you have the right to receive reimbursement for any debit that is not authorized or is not consistent with this Authorization. To obtain more information on your recourse rights, contact your financial institution or visit [www.cdnpay.ca](http://www.cdnpay.ca).

**2.7. Settlement Funds.** Subject to our rights under this Agreement, all settlement funds received from Card Organizations and owing to you pursuant to this Agreement (the "Settlement Funds") will be held by us until transferred to your Current Account in accordance with Section 10 (the "Settlement Funds Account"). Such funds will not constitute a deposit with us, will bear no interest, charges or fees, nor will be eligible for insurance with Canada Deposit Insurance Corporation.

**2.8 Entitlement to Funds.** You are entitled to funds in your Settlement Funds Account, once we transfer them to your Current Account. As permitted by law, we may, from time to time combine, consolidate or merge any or all of your funds and other accounts; and set off, apply or transfer any and all such sums standing to satisfy any debt or liability that you owe us, including any debt or liability incurred to effect any required currency conversions.

**2.9. Settlement Funds Information and Service Providers.** The Servicers may record or store information related to your Settlement Funds and Settlement Funds Account in any form or by any means as we see fit and are under no obligation to retain original documents, instruments or vouchers other than those belonging to you, which you have entrusted to us pursuant to the provisions of the Services contemplated in your Agreement. We may use services provided by an electronic data processing service bureau/organization in connection with keeping any Settlement Funds Account or Reserve Account.

**2.10. Reserve Account.** You understand that we may require you to establish a reserve account based upon you committing an Event of Default or upon receipt of your notice of termination of this Agreement (the "Reserve Account"). You understand that the amount you will be required to fund in this Reserve Account will be determined based on factors such as: (i) the amounts of previous settlements, Chargebacks, assessments and fines/penalties; (ii) the frequency and amounts of credits and adjustments; (iii) the value of any goods and/or services billed in advance of fulfillment; and (iv) the amount of any fees or discounts due along with any current or anticipated Card Organizations fees or fines. Upon receipt of notice from us, you agree to fund the Reserve Account as set forth in your notice; except, in instances of an Event of Default, you agree to fully fund said Reserve Account immediately. You agree to fund the Reserve Account through any combination of: (i) debits to your Settlement Funds Account and Current Account (and any other accounts held by us or our affiliates); (ii) deductions or off sets to any payments otherwise due to you; or (iii) your delivery to us of a letter of credit, issued or established by a financial institution acceptable to us. In the event you fail to fund the Reserve Account, we may fund it as set forth in subsections (i) and (ii) above. If funds in your Reserve Account are not sufficient to cover Chargebacks, adjustments, Merchant Processing Rate and other charges due from you, or if we have released funds in your Reserve Account, you agree to promptly pay us such sums upon request. In the event of termination of this Agreement, you agree to immediately establish a Reserve Account which will be held by the Bank for the greater of 10 months after termination of your Agreement or for such longer period of time consistent with our liability for card transactions in accordance with the Card Organization Rules, defined in section 3. Amounts maintained in the Reserve Account may bear interest. We may, to the extent

permitted by law and without notice, from time to time, set off, apply or transfer any and all sums standing to the credit of the Reserve Account in or towards the satisfaction of any indebtedness or liability you may incur to us under your Agreement.

**2.11. Reserve Account Security.** You irrevocably grant us a lien and security in and to any of your funds in the Reserve Account that we may require that you establish and fund as otherwise set forth in your Agreement. To this end, in addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, we are hereby authorized by you, at any time, and from time to time, without demand, but upon written notice to you, or to any other person (any such demand being hereby expressly waived), to set off and to appropriate and to apply any and all such funds against and on account of your obligations to us and our affiliates under your Agreement, whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured.

**2.12. Special Reserve Account Levels.** You agree that upon notice of your intent to terminate your Agreement, from the date of your termination notice through the actual date of termination and thereafter, you will maintain at a minimum, an amount equal to the sum of: (i) the total dollar amount of your Chargebacks; (ii) any reserves or letters of credit that you have on deposit with us; and (iii) our Merchant Processing Rate during the previous six months of the date of your termination notice, with such amounts to be held in your Reserve Account in accordance with your Agreement.

**3. Card Organization Rules.** The parties to this Agreement acknowledge that they agree to be bound by all applicable operating rules and regulations (the "Card Organization Rules") of Visa

([http://usa.visa.com/merchants/operations/op\\_regulations.html](http://usa.visa.com/merchants/operations/op_regulations.html)), MasterCard (<http://www.mastercard.us/merchants/support/rules.html>), Discover Rules and Regulations (see ARTICLE VII), Interac ([www.interac.ca](http://www.interac.ca)), any other payment card organization that is applicable to this Agreement (collectively, the "Card Organizations") and including the Payment Card Industry Data Security Standards ("PCI DSS") ([www.pcisecuritystandards.org/](http://www.pcisecuritystandards.org/)) and any Card Organizations, network, or government agency rules related to the protection of consumer and transaction information security. The parties also acknowledge that the Card Organizations publish and make available their Card Organization Rules, bulletins, alerts and directives and agree that it is each party's sole responsibility to review and comply with any such publications as may be applicable to them for compliance with the Card Organization Rules and this Agreement.

**3.1. Merchant Use of Card Organizations and Our Marks.** You acknowledge that you are familiar with the names, logos, symbols and trademarks (collectively, the "Marks") as published by us and the Card Organizations and agree that you will prominently display standard decals, signs, service marks and other promotional materials as required by us and the Card Organizations. You agree not to alter any Marks, display one Card Organizations' Mark more prominently, indicate that any Card Organization endorses your products or services or violate any other Rule or our requirements related to the use and display of any Mark.

**3.2. Cardholder Documentation.** You agree that you will only process (including imprinting, transmitting or depositing proceeds from) transactions for your own goods and services. You will ensure that every transaction receipt (or other evidence of Cardholder indebtedness) accurately describes the goods or services sold and delivered.

**3.3. Delivery of Goods and Services.** You agree that you will not process transactions related to your goods and services

that you do not provide to the Cardholder at the point-of-sale ("Prepayment Transactions") unless we have provided you with written consent to process such transactions. You agree to formally notify First Data (via the channels identified in section 25) and request approval from us, at least 60 days in advance of your intention to conduct Prepayment Transactions.

**4. Confidentiality.** The parties agree that, unless they obtain consent from the other party, each applicable Card Organization, the Cardholder and the issuer of the Cardholder's payment card, they will not use, disclose, sell, or disseminate any payment card information obtained in connection with a payment card transaction except for purposes of authorizing, completing and settling card transactions and resolving Chargebacks, retrieval requests or similar issues involving card transactions, other than as may be required for a court or governmental agency request, subpoena or order. Neither party will obtain ownership rights in any information relating to and derived from card transactions except as set forth in the Card Organizations Rules. The parties also agree not to hold each other liable for any disclosure of confidential information made pursuant to the terms of this Agreement.

**4.1. Protecting Cardholder Information.** Personal information means information about an identifiable individual as defined and limited by the Personal Information Protection and Electronic Documents Act ("PIPEDA" Canada) or similar, applicable provincial privacy regulation ("Personal Information"). Payment card information is considered Personal Information. You agree that you will not compile lists of payment card information or transaction information. You also agree to secure all Personal Information, including transaction receipts, contracts, rental/lease agreements and warranty information. The parties agree that securing Personal Information includes limiting access to select personnel (required for compliance with your obligations under this Agreement) and destroying such Personal Information in a manner that ensures that it is not readable, when no longer required for purposes of compliance with your Agreement.

**4.2. Collection, Use and Disclosure of Personal Information.** You (and if necessary, each principal, guarantor or other individuals that have signed your Form) agree and consent to the fact that we may, from time to time, use your credit, financial and related Personal Information provided in connection with this Agreement and any update, renewal or extension of same for the following purposes: (i) evaluate current and ongoing credit worthiness; (ii) evaluate your eligibility for the Services and establish, administer, service, and collect in respect of the Services and enforce provisions of your Agreement; (iii) to share personal and credit information with and collect such information from our affiliates, agents, representatives, credit reporting agencies, businesses and financial institutions pursuant to the provision of the Services contemplated in your Agreement; (iv) to verify your identity including matching records or credit information; (v) to share Personal Information in connection with your Authorization, POS equipment (the "Equipment") sale/rental/lease, automatic debit process and with third parties to register a security interest as contemplated in your Agreement; (vi) for detecting and preventing fraud and complying with anti-money laundering and terrorist financing regulations, including checking your identity against watch lists established by regulatory agencies or similar bodies in Canada and foreign countries; (vii) for evaluating the performance of our merchant portfolio; (viii) to allow our service providers to collect, use, store or process Personal Information on our behalf; (ix) to meet legal, regulatory, audit, processing and security requirements; or (x) from time to time, to determine your eligibility for and occasionally to communicate with you regarding additional products, services or business opportunities (you may withdraw consent for this purpose by contacting us at 1-888-263-1938). We may otherwise collect, use and disclose Personal Information as permitted or

required by law. You also authorize us to obtain financial and credit information relating to you, from credit reporting agencies, businesses and financial institutions with which you make arrangements with, and references you have provided, in connection with our decision to provide the Services and monitor your financial and credit status. Additionally, you agree to authorize us to share information concerning your business with any of our agents and/or affiliates and applicable Card Organization, Card Organization members and credit reporting and debt recovery agencies in connection with the performance of the Services set forth in your Agreement. You understand that some of our affiliates or service providers may be located outside Canada, and your Personal Information may be transferred or processed outside of Canada, subject to legal requirements applicable to us and our service providers or affiliates, including those requirements set forth by foreign jurisdictions. We may also use your (and each principal guarantor or other individuals that have signed your Form) business and Personal Information and disclose such information to parties connected with or involved in the proposed or actual financing, insuring, securitization, sale, assignment or other disposal of all or part of our respective businesses or assets (including, for example, your Agreement, accounts or amounts owing to us) for the purposes relating to the evaluation and/or performance of these transactions. Successors and assignees of our business or assets may collect, use and disclose your business or Personal Information as described in this section.

**4.3. Authorization to Obtain Personal Information.** You warrant that you have the necessary consent of your principals, guarantors and other individuals whose Personal Information we have obtained in connection with this Agreement for the purposes described above. For further information about First Data's Personal Information practices, you may obtain a copy of First Data's "Privacy Principles" available at the website address [www.firstdata.com/canada](http://www.firstdata.com/canada) and/or toll-free at 1-888-263-1938. The consents contained in your Agreement will be valid for so long as required to fulfill the purposes described above. Authorized employees and agents of ours, that require access to your Personal Information will have access to your file, which will be accessible through our affiliates' merchant services facilities in the United States. If you wish to access or make corrections to your Personal Information in our possession, you may notify First Data as set forth in section 25.

**4.4. Third Party Arrangements.** Subject to the Card Organization Rules, the parties agree that if they make arrangements with a third party to collect, process or store Personal Information (including names, account numbers, Social Insurance Numbers, addresses, telephone numbers or birthdays), each party is solely responsible for ensuring such third party complies with Card Organizations, PCI DSS, network and our requirements related to Personal Information, including payment card and transaction information, confidentiality and security. The parties also agree that any third party arrangement will be documented with a written and executed contract, which includes obligations substantially similar to the ones in your Agreement regarding confidentiality, information security and PCI DSS. You further agree to provide our representatives reasonable access to your facilities and records for the purpose of performing any reasonable inspection and/or copying of your books and records.

**5. Facility and Infrastructure.** You acknowledge and agree that you are solely responsible for the implementation, maintenance and security of your locations, the Equipment used in processing transactions under this Agreement, communication lines, power supply services and all other facility and infrastructure costs.

**6. Merchant Employee Responsibilities.** You agree to ensure that all Equipment is monitored during and closed/turned off after business hours to minimize the risk of unauthorized use. You

agree to develop security procedures and train your employees on them. Security procedures will include your use of employee shift logs (maintained for a minimum of 12 months), and directions/conditions for contacting us in the event your employees suspect that your Equipment has been lost, stolen or tampered with.

## ARTICLE II. Card Transactions

The following sections summarize the procedures required for you to accept credit and debit cards issued by Visa, MasterCard, Interac, and any other Card Organization payment cards that you accept for payment of your goods and services.

**7. Card Identification.** Legitimate Card Organizations payment cards have unique visual characteristics, account numbers and anti-fraud/counterfeit measures that you agree to become familiar with. You agree to train all your employees on procedures for examining and identifying questionable payment cards. You are responsible for reviewing Card Organizations' materials published for merchants and familiarizing your employees on characteristics of legitimate cards and strategies used when presenting fraudulent or counterfeit cards. The following are general guidelines for identifying each Card Organizations' cards. We do not warrant the accuracy or completeness of these guidelines and you agree that the Card Organizations materials are the only current and comprehensive guide.

**7.1. MasterCard Credit and Debit.** MasterCard cards will display the MasterCard logo (two interlocking circles) on the front of the card. The 3-dimensional hologram of the globe will appear on the front or back of all MasterCard cards. MasterCard account numbers may be sixteen digits long and always begin with the number five (5). Where Diners Club cards have been reissued with the MasterCard mark, they must be processed as MasterCard transactions.

**7.2. Visa Credit and Debit.** Visa cards have the Visa brand mark on the top left, top right or bottom right side of the card. The 3-dimensional hologram of the Visa Dove can appear anywhere on the front of the card. Visa account numbers may be sixteen digits long and always begin with the number four (4). The first four digits of the account number must be identical to and printed on the card directly below the embossed number.

**7.3. Debit.** Interac (and other) Card Organizations debit cards are cards issued by Canadian financial institutions enabling customers to pay for goods and services by debiting money directly from their account(s) using the Equipment with personal identification number ("PIN") verification. To complete debit transactions, you agree to: (i) enter transaction information into the Equipment; (ii) verify the amount of the transaction and ask the Cardholder to enter his/her PIN (without assistance), using a PIN pad; (iii) act on the instructions displayed by the terminal (an authorization number, a decline, a message to "try again" or similar instructions); and (iv) provide Cardholder with a transaction record, regardless of whether the transaction was approved or declined.

**8. Card Acceptance and Authorization.** You agree to accept credit and debit cards issued by members of the Card Organizations identified on your Form. When a Cardholder or authorized user presents a credit or debit card for payment, you agree that you will perform the following tasks:

**8.1. Fair Acceptance.** You agree to: (i) sell your goods and/or services at the ticketed or posted price; (ii) not impose fees or special conditions not required or allowed by the Card Organizations Rules (including minimum or maximum transaction amounts); and (iii) not offer a discount unless clearly disclosed as a discount from the price available for all other means of payment.

**8.2. Card Examination.** You agree to swipe or imprint the card, or where applicable, insert the chip card into a chip card reader, only to allow Cardholders to purchase your goods and/or

services. You agree to: (i) inspect the card signature panel for signs of tampering or alteration (not applicable to chip card transactions); (ii) verify that the signature on the card matches the transaction record (not applicable to chip card transactions); (iii) not require Cardholders to supply Personal Information (e.g., home/business address or driver license number) as a condition for completing the transaction, unless instructed during the authorization process; (iv) not allow an individual, who is not the Cardholder, to use the card for purchases; and (v) not allow the use of a card to submit a transaction to refinance or transfer a previous debt or to pay for a dishonoured cheque.

**8.3. Transaction Authorization.** You agree to obtain an authorization approval code ("AA Code") for all transactions. You agree that failure to obtain an AA Code for a sales transaction may result in a Chargeback and/or the termination of your Agreement. AA Codes can be obtained through your Equipment, the voice response unit ("VRU") or the interactive voice response ("IVR") system. Any fees that may be related to authorizations will be charged as a "Request for Authorization Approval Code," whether or not the transaction is approved. You understand that an AA Code only indicates the availability of credit on an account at the time the authorization is requested and does not warrant that the person presenting the card is the rightful Cardholder, nor is it a promise or guarantee that you will not be subject to a Chargeback or debit.

**8.4. Transaction Referral.** You agree that if you receive a referral response to an attempted authorization, you will not attempt another authorization on the same card through your Equipment. You further agree that you are responsible for all Card Organizations assessed fines, fees or termination of your Agreement for actions related (but not limited) to: (i) failure to obtain an AA Code; (ii) submitting a transaction after receiving a decline (even if a subsequent Authorization attempt results in an AA Code); or (iii) attempting to submit multiple/partial transactions or multiple-authorizations and transaction(s).

**8.5. Manual Card Acceptance.** If accepting card transactions manually or your Equipment is unable to read a card that you swipe or you do not have chip card enabled Equipment, you agree that you will obtain authorization from us for every purchase that exceeds your merchant floor limit (which we will provide you from time to time), using transaction forms supplied or approved by us. You understand that unembossed cards cannot be authorized manually and if accepted for payment, expose you to a higher risk of Chargeback liability. You agree that, if you choose to process card transactions manually, you must: (i) imprint the embossed information from the card and the merchant plate (your name and merchant number) onto the transaction record; (ii) verify that the signature on the transaction record matches the signature on the back of the card; (iii) provide a transaction record to the Cardholder; (iv) keep a copy of the transaction record for a minimum of 18 months (longer if required by local regulations); and (v) issue credit vouchers for refunds (if Cardholder is entitled) where the original purchase was made with a card.

**8.6. Issuing Credit Vouchers.** You agree that you are responsible for issuing credit vouchers to cover any refund, price adjustment or other money adjustment due to the Cardholder (other than any involuntary refund required by applicable law). You further agree that you: (i) will not return cash if a card was used in the original purchase; (ii) will process each refund or adjustment as specified in the applicable Card Organization Rules; (iii) may establish a policy limiting refunds or acceptance of returned goods, provided that it follows the refund /return procedures established by each Card Organization including the proper disclosure of such policy; and (iv) will not accept money from a Cardholder to effect a deposit to the Cardholder's account.

**8.7. Suspect Transactions.** If the appearance of the card being presented or the behaviour of the person presenting it is

suspicious in nature, you agree to immediately call the voice authorization centre (1-800-370-0466) and ask to speak to a code 10 operator for a "Code 10 Authorization." You agree to answer all questions and follow operator's instructions. If you swipe cards, you agree to confirm that the account number displayed on the Equipment and transaction record matches the number on the card. You agree that if the numbers do not match, you will not accept the Card for payment, EVEN THOUGH AN AUTHORIZATION CODE FOR THE MAGNETICALLY SWIPED CARD NUMBER MAY BE RECEIVED.

**9. Submission/Deposit of Card Transactions.** You agree that you shall present for payment only valid charges that arise from transactions between you and bona fide Cardholders. You agree to enter each sales transaction into your Equipment (unless your Equipment is not working), conduct, at least once a day, an end-of-day balance of the sales transactions for each piece of Equipment and electronically deliver transaction records for all Card transactions, to be processed and settled, prior to the deadlines which you will be advised of from time to time.

**10. Transaction Settlement.** You understand that we will only settle your transactions as specified in your operating procedures guide (the "Operating Guide"), which is provided as part of your First Data welcome kit. After presentation of your transactions, we will initiate an electronic funds transfer of applicable Settlement Funds from your Settlement Funds Account, to your Current Account. You understand and agree that while settlement will generally occur within two to three Business Days after the Business Day that you presented the transaction, we will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, including any Card Organization or financial institution, but excluding our service providers and affiliates.

**10.1. Settlement Calculation.** You agree that we will generally settle card transactions based on gross sales, less credits/refunds, adjustments, the applicable Merchant Processing Rate when due, Chargebacks and any other amounts that you owe us.

**10.2. Provisional Debit/Credit.** You agree that all deposits, credits (and other payments) to your Settlement Funds Account and to your Current Account are subject to our final audit, Chargebacks and Card Organizations imposed assessments, fees and fines. You agree that we may debit/credit your Settlement Funds Account, Current Account and/or Reserve Accounts for any deficiencies, overages, fees, Merchant Processing Rate and pending Chargebacks and any pending Card Organizations assessments, fees and fines, including any pending PCI related fees, fines and/or assessments. We may elect to invoice you for any such amounts, net due 30 days after the invoice date or on such earlier date as may be specified.

**10.3. Merchant Receivables.** Upon our payment of all amounts owed to you, in connection with the processing of a card transaction, you agree to assign to us (and grant us a security interest in) all of your rights, title and interest in and to the amounts or receivables owed from the applicable Card Organizations or network organization, and further agree that we have the sole right to receive payment under such receivables. You agree to represent and warrant that you have the only claim, demand, defence or set off against such receivable except as authorized in writing by us. You further represent and warrant that you have no knowledge, nor have received any information that would affect the collection of the amount involved from the Cardholder.

**11. Transaction Chargebacks.** A Chargeback is a disputed card transaction that is returned to us by a card issuer. Upon notice of a dispute, you agree that it is your responsibility to resolve it directly with the Cardholder. If we receive a Chargeback notice, we will debit your Settlement Funds Account, Current

Account, or Reserve Account for the amount of the Chargeback. In some cases, a card issuer may request a copy of the transaction record prior to initiating a Chargeback. We will forward these requests to you and deliver your response to the card issuer. You understand that you must respond to these requests within the time frames and manner stated. Due to the short time requirements imposed by the Card Organizations, your failure to timely respond will be communicated to the card issuer and may result in a Chargeback(s) as well as Card Organizations related costs or fees. You agree that comprehensive Chargeback procedures are published by each Card Organization and the following is intended to serve only as a general guideline for compliance:

**11.1. Document Request Procedures.** To address a card issuer's transaction record request, you should: (i) make a legible copy of the transaction record, centered on a letter size sheet of paper (one transaction record per page); (ii) write the case number on the copy; (iii) include copies of hotel folios, car rental agreements etc. that may be applicable to the disputed transaction; (iv) include a copy of the credit voucher, if applicable; and (v) fax or mail the copies to the number/address on the request. You understand that letters are not acceptable substitutes for transaction records. If the information you provide is both timely and, in our sole discretion, sufficient to warrant representment and/or reversal of the Chargeback, we will do so on your behalf. You understand that representment and/or reversal are contingent upon card issuer/Cardholder acceptance under the applicable Card Organization Rules.

**11.2. Chargeback Reasons.** You understand that at the time of a transaction, if you do not follow proper procedures, the transaction may be subject to Chargeback. The following outlines the most common types of Chargebacks, categorized into seven broad groups: (i) "Card Authorization Issues" including no account number verification, full authorization not obtained, expired card; (ii) "Cancellations and Returns" including credit not processed and cancellation of a recurring transaction; (iii) "Fraud" including counterfeit transaction, unauthorized or fictitious account number; (iv) "Non-Receipt of Goods and Services"; (v) "Processing Errors" including late presentation of a transaction record, incorrect account number, code or amount; (vi) "Quality of Goods and Services" including defective goods; and (vii) "Non-Receipt of Information" including the codes: "transaction document not received" or "document was illegible."

**11.3. Europay/MasterCard/Visa ("EMV") Chip Card Compliance.** You agree that if you choose not to upgrade to Equipment that has been certified EMV chip card compliant and enabled, you may be liable for payment of any transactions, submitted for Chargeback, by the applicable EMV chip card issuer(s), due to lost, stolen and never-received-issue fraud claims.

### ARTICLE III. Additional Services

**12. Mail, Telephone and Internet ("e-Commerce") Order Services.** You agree that you will obtain prior express consent (including any requests to accept payment in currency other than Canadian dollars from us before providing telephone, mail and e-Commerce (collectively, "Card Not Present" or "CNP") services to Cardholders. We will review your request on your Form, and notify you of our decision. You may only engage in CNP orders provided they do not exceed the percentage of your CNP transaction volume as set forth on your Form. You agree that failure to adhere to this requirement may result in termination of your Agreement. You agree that you must register as a merchant conducting Internet transactions and obtain special "Electronic Commerce Indicator" code, to be added to your authorization and settlement records, before conducting e-Commerce transactions. You understand that failure to complete this registration can result in Card Organizations imposed fines and penalties.

**12.1. CNP Chargeback Risk.** You understand that CNP transactions have substantially higher risk of Chargeback, since there is no electronic/imprinted card presentment record or signed transaction record, and you assume all risk associated with accepting CNP transactions.

**12.2. CNP Order Best Practices.** To reduce the likelihood of Chargebacks related to CNP orders, we recommend that you: (i) obtain the card expiration date; (ii) clearly print Cardholder's account number, effective and expiration dates, date of transaction, description of goods and services, amount of transaction (including shipping, handling, insurance etc.), Cardholder's name, billing address and shipping address, AA Code, your name and address (city and province required); (iii) write "MO" for mail and "TO" for telephone orders on the transaction record signature line; (iv) maintain a signed Cardholder authorization to submit mail orders; and (v) obtain written transaction verification on telephone orders.

**12.3. Prior Notice of Internet Payment Services.** In addition to the notice and approval required during the acceptance process, you agree to provide First Data 60 days prior written notice of your intent to convert all or part of your business to Internet payment services. You agree to wait until you receive written approval from us before offering Internet payment services. You understand and agree that the sale or disclosure of Personal Information, or other card transaction information to third parties is prohibited, the violation of which may result in Card Organizations and regulatory sanctions and termination of your Agreement.

**12.4. Internet Notice Requirements.** You agree to review and abide by all Card Organization Rules and requirements for the acceptance of payment, display of Marks, retention of records, dispute processing, information security and any other requirements set forth in any guideline, bulletin, alert or other Card Organization publication related to Internet payment services, notices and disclosures. We require that the following (if applicable) be included/displayed in any Internet website that advertises acceptance of Card Organizations cards applicable to this Agreement: (i) a complete description of the goods or services offered, including technical requirements, if any; (ii) your customer service telephone number or email address; (iii) any applicable export or legal restrictions or conditions; (iv) your consumer data privacy and transmission of Personal Information policies; (v) a description of your transaction security processes; (vi) an itemized list of prices including taxes, shipping charges and the method of shipping; (vii) a description and estimated amount of any additional charge(s) (e.g., delivery charges, customs fees) that applies or may apply; (viii) the total amount payable and the amount and frequency of any periodic payments; (ix) a description of any trade-in arrangement and allowances; (x) service related information (e.g., where will services be performed, for whom, third-party providers etc.); disclosure of the country where the merchant outlet is located; (xi) all required Card Organizations trade and service marks; and (xii) your physical address. You further acknowledge and agree that the Servicers are not responsible for the security of the Cardholder data or information stored on our or any Internet service provider's computers, systems or Web Site(s) and that you will be solely responsible for any liability, fines, or penalties arising from its use, storage, or dissemination of cardholder data.

**13. Switched Transactions.** You agree that under no circumstances will we be liable for any settlement amounts pertaining to switched transactions. You understand that your sole recourse shall be to the applicable card issuer or Card Organizations.

**14. Dynamic Currency Conversion ("DCC").** In some instances, we may offer you DCC services. If DCC is available and you wish to offer it to Cardholders, you agree to: (i) obtain our prior written approval to offer DCC; (ii) inform Cardholders that

DCC is optional; (iii) not impose any additional requirements on the Cardholder to have the transaction processed in local currency; (iv) not misrepresent that DCC is a service provided by Card Organizations or network organizations; and (v) comply with all transaction, receipt and DCC requirements communicated by us, the Card Organizations and network organizations.

**15. New Products and Services.** From time to time, First Data may notify you about new products and services that may be available and the terms and conditions under which you can obtain them. If your Equipment is capable of supporting these new products and services and you submit a transaction that engages them, you are deemed to have accepted any terms and conditions related to such new products and services.

#### ARTICLE IV. Equipment

**16. General.** First Data may offer you an Equipment rental plan, or through our affiliate, FDCMS, Equipment purchase or lease plans, all as described in your Agreement. You understand that while any Equipment lease or purchase agreement that you have is between you and FDCMS, we will, from time to time, perform services related to your Equipment on FDCMS' behalf, and therefore, with respect to Equipment, references to "we," "us," and "our" in this article IV and in sections 26.3 and 28, include both First Data and FDCMS. Equipment plans, signup and pricing information are provided on your Form. You agree that, regardless of the Equipment plan, you shall not assign your rights or obligations with respect to, or pledge, lend, or create a security interest in, or directly or indirectly create, incur, assume or allow to exist any other consensually or judicially imposed liens, security interests or encumbrances on, or part with possession of, or lease or sublease the Equipment to any other person, firm or organization without our prior written consent (Any such assignment, lease, delegation, sublease, pledge, security interest lien or other action in the absence of such consent shall be void). You waive the benefits of all provisions of any law, statute or regulation which would in any manner affect our rights and remedies in connection with your purchase, rent or lease of Equipment or license of Software, including the Limitations of Civil Rights Act of Saskatchewan.

**16.1. Commercial Use/Compatibility.** Under no circumstances will Equipment be provided for home or personal use, by you or your principals, employees or other individuals, nor shall you use or allow the Equipment to be used in any manner or for any purpose for which it is not designed or reasonably suited. You acknowledge that the Equipment and/or software you purchase, lease, or rent from us may not be compatible with another processor's systems. In no case do we have any obligation to make such software and/or Equipment compatible with any other processing systems. In the event that you elect to use another processing service provider, upon the termination of your Agreement, you acknowledge that you will not use the Equipment and/or software obtained under your Agreement.

**16.2. Equipment/Software Setup, Security and Maintenance.** You agree that all transactions initiated with your Equipment are assumed to be authorized by you and you are responsible for any losses incurred in connection with misused or compromised passwords. Where applicable, you will immediately replace set-up or default passwords and change them regularly and when an individual leaves your employment. You agree not to install PIN pads in locations that would allow others to view Cardholder's use of the pad without also installing shielding or other appropriate countermeasures. You agree to notify us immediately if the Equipment is not working or if the "Out of Balance" message continues to display. You acknowledge and agree that you are solely responsible for the security of all Equipment used in processing transactions under your Agreement. You are also responsible for any unauthorized use of the Equipment, regardless of whether such unauthorized use was

made by you, your employees, agents, customers or other third parties. You must review all Equipment user documentation and understand Equipment functionality, capabilities, PIN security measures and cryptographic keys loaded onto the Equipment. You will ensure that no device is connected to your Equipment (regardless of whether this Equipment was provided by us) or permit any physical alteration or modification of your Equipment without our express written permission. You agree that we or our representatives may enter your premises for purposes of inspecting, examining or repairing the Equipment at any time. You agree that the Equipment shall be kept at the address(es) indicated and shall not be removed without our prior written consent (except where normal use of the Equipment requires temporary removal). Under no circumstances are we responsible for any injuries, damages, penalties, claims or losses incurred by you or any other person caused by the installation, manufacture, selection, purchase, lease, rental, ownership, possession, modification, condition, use, return or disposition of the Equipment and you agree to reimburse us, defend us and hold us harmless against any claims for any such losses, damages, penalties, claims, injuries or expenses, whether before or after termination of this Agreement.

**16.3. Cards Not Supported By Us.** You understand that the Equipment may allow you to accept cards that are not supported by us and we will calculate our processing fee (for cards we do not support) by taking a percentage of the total amount of the charges made on the card (during the statement period) or a per transaction fee for all such card transactions during the period.

**17. Equipment Purchase.** If you agree to purchase Equipment from us: (i) we warrant that Equipment purchased by you is free and clear of all liens and encumbrances; (ii) "Software," defined as computer programs, related documentation, technology, know-how and processes embodied in or provided in connection with the Equipment, will be provided to you in the form of a nonexclusive license to use, for purposes of operating your Equipment (but no right is given to reverse engineer, disassemble or decompile the Software); (iii) you agree to pay the Equipment purchase price as set forth in your Form (including any return/exchange conditions), which also includes insurance, licences, shipping/handling, supplies and any other applicable fees and charges; (iv) you agree to pay us the full Equipment purchase price and applicable taxes upon receipt of our invoice or upon your agreement, we will collect the full Equipment purchase price and the applicable goods and services taxes ("GST"), value added taxes ("VAT") and other federal and provincial sales, use, social service, harmonized and similar taxes by debits or deductions from your Settlement Funds Account or Current Account; (v) you agree to comply with all governmental laws, rules and regulations relating to the purchase of the Equipment; and (vi) you agree that Equipment maintenance and repair is your responsibility. Should your Equipment become inoperable, we can provide you with rental Equipment under the terms described below.

**18. Equipment Rental.** If you rent Equipment from us, you agree that: (i) your acceptance of any piece of Equipment shall occur at the earlier of your actual acceptance after installation, delivery to you if your site is not ready for installation or seven days after shipment of Equipment that we have not agreed to install for you; (ii) the rental fees shown on your Form do not include any GST, VAT and other federal and provincial sales, use, social service, harmonized and similar taxes, all of which you shall pay together with (and in addition to) your rental fees; (iii) we are authorized by you to collect rental fees and applicable taxes, on each piece of rented Equipment, for the rental period by initiating debit entries to your Settlement Fund Account or Current Account or by deducting such amounts from settlement amounts due to you, on the 17th day of each month (or on such other date as

agreed to by the parties) for as long as you are in possession of our Equipment; (iv) we retain title to the Equipment and ownership and copyright interest in all Software, documentation, technology, know-how and processes embodied in connection with the Equipment and the rental thereof, and that your sole right to the Equipment is to use same for the term of the rental and subject to the terms of this Agreement; and (v) the Equipment is rented "as is" with no representations or warranties, expressed or implied, statutory or otherwise, including, without limitation, as to the suitability of the Equipment for any particular purpose, quality, merchantability, fitness for a particular purpose or otherwise.

**19. Equipment Lease.** If you lease Equipment from us, you agree that: (i) your Agreement and these Equipment lease provisions shall become effective on the first date you use the Equipment to facilitate a card transaction; (ii) you are responsible for all current and future taxes due and imposed as a result of the lease; (iii) we may credit or debit your Settlement Funds Account and you will also authorize your financial institution to accept debits and credits to your Current Account, from us, for purposes of the lease; (iv) you authorize us to obtain investigative credit reports and modify or terminate the lease at our discretion; (v) that the lease is applicable to the Equipment identified on your Form and that said Equipment is leased "as is" with no representations or warranties, expressed or implied, statutory or otherwise, including without limitation as to the suitability of the Equipment for any particular purpose, quality, merchantability, fitness for a particular purpose or otherwise; (vi) to pay (absolutely and unconditionally, and even if the Equipment is damaged, destroyed or defective) monthly lease charges in advance and pay an interim lease payment of one-thirtieth (1/30) of the agreed upon monthly lease charge for each day from and including the date the Equipment is first used for a payment card transaction the date that the first full monthly lease charges are due; (vii) that the monthly lease charge together with all applicable taxes will be debited, in advance, on the 17th day of each month (or on such other date as agreed to by the parties) from your Settlement Funds Account or Current Account or by deducting such amounts from settlement amounts due to you; (viii) the lease charges shown do not include any applicable GST, VAT and other federal and provincial sales, use, social service, harmonized and similar taxes, all of which you shall pay together with (and in addition to) your lease payments; (ix) if any payment is not made in full when due, you shall pay us a late charge (the "Equipment Lease Late Fee") of 10 percent of the past due amount or 10 dollars (\$10), whichever is greater, for each month during which it remains unpaid, plus any applicable taxes (prorated for any partial month), but in no event more than the maximum amount permitted by law; (x) you will pay us a NSF Fee, as described on your Form, in the event any debit we attempt to make against your Settlement Fund Account and/or Current Account is rejected; (xi) that we retain title to the Equipment and ownership and copyright interest in all Software, documentation, technology, know-how and processes embodied in connection with the Equipment and the lease, and that your sole right to the Equipment is to use same for the term of the lease and subject to the terms of your Agreement; and (xii) that THE LEASE IS A NON-CANCELABLE LEASE FOR THE INITIAL TERM OF YOUR AGREEMENT, unless we materially breach your Agreement and are unable to cure said material breach as set forth in section 26.2.

**19.1. Equipment Lease Default and Remedies.** You agree that we may consider an uncured material default, of this lease to be a default of your Agreement. Upon occurrence of any default of this lease, we may send you a default notice. You have 30 days, from the date of the default notice, to cure the default. If said default is uncured on the next Business Day, we may immediately and without further notice terminate the lease, repossess the Equipment, accelerate and declare immediately due and payable all monthly lease charges for the remainder of the applicable

lease period together with our determination of the current fair market value of the Equipment, not as a penalty, but as liquidated damages for our loss of the bargain. We may proceed in any lawful manner to obtain satisfaction of the amounts owed, and, if applicable, our recovery of the Equipment, including entering onto your premises to recover the Equipment. You are responsible for our costs of collection and enforcement (on a solicitor and client and substantial indemnity basis), court costs, as well as applicable shipping, repair, reconditioning and restocking costs of recovered Equipment and costs of sale or other disposition. You agree that we are entitled to recover any amounts due by charging your Settlement Fund Account, Current Account or Reserve Account or any other of your funds that come into our possession or control. You also agree that we are entitled to recover amounts owed to us by obtaining them directly from an affiliate or joint venture to which we are a party and with which you have entered into an agreement.

**19.2. Ownership and Use of Equipment; Insurance.** You agree: (i) to maintain the Equipment in good operating condition and protect it from deterioration, normal wear and tear excepted; (ii) to not permit any physical alteration or modification of the Equipment, or change the installation site of the Equipment, without our prior written consent; (iii) that, without limiting any of our rights in section 16, you shall not create, incur, assume or allow to exist any consensually or judicially imposed liens, security interests or encumbrances on, or part with possession of, or sublease the Equipment without our prior written consent; (iv) that notwithstanding (iii), no guarantor shall have any right of subrogation to any of our rights in the Equipment or your Agreement or against you, and any such right of subrogation is hereby waived and released. All indebtedness that exists now or arises after the execution of your Agreement between you and any guarantor is hereby subordinated to all of your present and future obligations and those of your guarantor, to us and no payment shall be made or accepted on such indebtedness due to you from a guarantor until the obligations due to us are paid and satisfied in full; (v) that you are solely responsible for obtaining all permits required to operate the Equipment at your facility(ies); (vi) that the Equipment shall remain our personal property and shall not be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment evidencing our ownership; (vii) that you shall keep the Equipment adequately insured against loss by fire, theft, and all other hazards. You agree that the loss, destruction, theft or damage of or to the Equipment shall not relieve you from your obligation to pay the full lease charges payable hereunder for the full term of the lease; and (viii) that we shall retain title of the Equipment and you will irrevocably appoint us as your attorney-in-fact to execute and file any statement or instrument of ownership of the Equipment in your name or on your behalf, and you will execute such further documentation as we may request to evidence our rights to the Equipment.

**19.3. Return of Equipment.** You agree that: (i) upon completion of the lease term or any extension thereof, you will have the option to return the Equipment to us, in the condition required by your Agreement, or purchase the Equipment from us for the lesser of the fair market value at the time (as determined in good faith by us and based on an assumption that you have complied with your obligations under section 19.2) or an amount equal to 10% of the total lease payments under your Agreement with respect to each item of Equipment plus, in either event, any applicable GST, VAT and other federal and provincial sales, use, social service, harmonized and similar taxes; (ii) if you wish to purchase the Equipment, you must give First Data written notice prior to the end of the lease term; and (iii) in the absence of an affirmative election by you to return or purchase the Equipment, this lease will continue for an additional 12 month term unless you choose to terminate your Agreement as set forth below.

**20. Use of Other Equipment.** If you choose to use equipment not supplied by us, you understand and agree that you are solely responsible for ensuring that this equipment conforms to, and is installed in accordance with our rules and standards. You further understand and agree that if a third party's equipment is used to electronically process card transactions, such third party becomes your agent for the delivery of card transactions to us via the applicable processing network. You agree to assume full responsibility and liability for any failure of such agent to comply with the operating regulations and rules of the applicable Card Organization or network organization including any violation that results in a Chargeback to it. You agree to remain liable to us to process and submit sales drafts according to your Agreement and further agree that in no case will we be liable for any losses arising out of your use of a third party's equipment. You understand and agree to abide by the Card Organization Rules requiring that you deploy only PIN pads that are PCI compliant and certified in accordance with Interac specific technical specifications and testing requirements.

## ARTICLE V. Service Fees and Charges

**21. Merchant Processing Rates.** You agree to pay the fees and charges set forth on your Form and any alternative price schedule as agreed to by the parties. You understand that the merchant processing fees and charges that you owe us for the Services that we provide to you (the "Merchant Processing Rate") are calculated one of two ways. Under both methods, you understand that your Merchant Processing Rate is exclusive of any applicable GST, VAT and other federal and provincial sales, use, social service, harmonized and similar taxes, which are your sole responsibility. Regardless of how your Merchant Processing Rate is calculated, such rate is composed of the following three components: (i) our "Processing Fee," which is based on risk factors like your representations of your method for doing business, anticipated transaction amount(s), expected annual transaction volume and other factors; (ii) "Card Organizations Interchange Rates," based on type of card and card program (e.g., "MasterCard Electronic – Consumer Programs"); and (iii) "Card Organizations and Other Fees and Assessments," which include cross-border fees and United States dollars conversion costs.

**21.1. Merchant Processing Rate Calculation Method 1:** For each transaction, you are billed separately for each of the three cost components listed in section 21.

**21.2. Merchant Processing Rate Calculation Method 2:** A standard Merchant Processing Rate is developed specifically for you based on a combination of the three cost components listed in section 21 and our assumption that your transactions will qualify for certain reduced interchange levels set by the applicable Card Organizations. If a transaction fails to qualify for such reduced interchange levels, then the applicable Card Organizations will downgrade the transaction and we will process such transaction at the higher applicable interchange level. In this event, you understand that you will be subject to interchange downgrade fees and any applicable Non-Qualified Surcharge (as set forth on your Form), and agree to accept said fees and Surcharge which will be billed back to you and reflected on your monthly statement.

**21.3. Merchant Processing Rate Adjustments.** Subject to your rights under section 26.1, we may adjust your Merchant Processing Rate: (i) if your actual annual Visa and/or MasterCard Credit volume is lower or the average Visa and/or MasterCard Credit transaction size is higher by 15% or more, or if you materially alter your method of doing business (e.g., there is a significant increase in CNP transactions or a change in the merchant category code ("MCC")); and (ii) to reflect increases or decreases in Card Organizations Interchange Rates or Card

Organizations and Other Fees and Assessments that we pass through to you.

## **22. Financial Information Requests, Billing Inquiries and Error Resolution Rights.**

**22.1. Requests For Financials.** Upon our request, you agree to provide us with your most recent quarterly and/or annual audited financial statements as such statements become available to you. If you or your parent is publicly traded, we will obtain said financial statements through other means, so long as you (or your parent) remain publicly traded. You also agree to provide such other financial statements and information concerning your business and your compliance with this Agreement as we may reasonably request.

**22.2. Error Resolution.** You agree to notify First Data in writing of discrepancies or billing errors within 45 days of the date of the applicable statement or invoice. If you fail to notify First Data within the 45 day period, you will be deemed to have accepted the fees and charges set forth in the applicable statement or invoice and we will have no obligation to investigate.

**23. Early Termination and Fair Compensation.** You acknowledge and agree to pay us the amounts on your Form and calculated in subsections 23.1 and 23.2 below: (i) if you terminate this Agreement prior to the expiration of the applicable term; or (ii) if this Agreement is terminated due to an Event of Default. Any recovery pursuant to this section shall in no way limit our right to receive Equipment payments or any other payments due from you pursuant to your Agreement. You agree to pay said fair compensation to us within 15 days after your receipt of our calculation of the amounts due.

**23.1. Merchants With Annual Card Volume Less Than Or Equal To \$5,000,000 (this threshold is subject to change at our discretion).** You agree to pay us \$250 per Visa and MasterCard entitlement as well as the fees set forth on your Form in the event of early termination of this Agreement.

**23.2. Merchants With Annual Card Volume Greater Than \$5,000,000.** You agree to pay us an early termination fee equal to 80% of the product of: (i) the average net monthly Merchant Processing Rate, as calculated in section 23.3; multiplied by (ii) the number of months, including any pro rata portion of a month, then remaining in the initial term or any renewal term, as applicable.

**23.3. Average Net Merchant Processing Rate Calculation.** The average net monthly Merchant Processing Rate shall equal one-twelfth of the gross Merchant Processing Rate payable pursuant to your Form, less applicable interchange fees and assessments due pursuant to this Agreement during the 12 months immediately preceding the date on which: (i) First Data received notice from you of your intent to terminate this Agreement early; or (ii) we learned of your early termination in violation of this Agreement; or (iii) we terminate this Agreement early pursuant to section 26.3 (whichever produces the higher amount). If this Agreement has been in place less than 12 months, the estimated average net monthly Merchant Processing Rate shall equal the aggregate gross fees paid hereunder by you, divided by the number of months this Agreement was effective.

## **ARTICLE VI. General Terms and Conditions**

**24. Assignment/Third Party Services.** The parties agree that this Agreement is binding upon the parties, their heirs, successors and assigns and some of the Services in connection with this Agreement may be provided by third parties.

**24.1. Our Right to Assign/Subcontract.** Subject to the Card Organization Rules, you agree that we may transfer this Agreement and our rights and obligations hereunder (including First Data's rights and obligations in respect of any purchase, rental or lease of Equipment) to our affiliates and/or any third party with notice to you, and in particular, but without limitation,

thereafter any amounts owing by you hereunder will be owed to any such transferee, free from any rights of set-off or other defences you may have, all of which you waive. You also agree that we may delegate our duties hereunder to any subcontractors without notice to you. Without limiting any of our other rights in this section, we may assign the Authorization (set forth in section 2.1), whether directly or indirectly, by operation of law, change of control, or otherwise, by providing you written notice.

**24.2. Your Right to Assign.** You agree that your transfer or assignment of any right or obligation or interest in this Agreement, without our prior written consent, which will not be unreasonably withheld, by operation of law or otherwise, is voidable by us.

**25. Notices.** Except as otherwise specifically provided, the parties agree that all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the Services, which may be delivered via statement message or other means) shall be delivered via mail, courier or facsimile if to you at the addresses set forth by you on your Form and if to First Data at: First Data Loan Company Canada, (to be known as First Data Canada Ltd.), Attention: CEO, 2630 Skymark Ave., Suite 400, Mississauga, Ontario, L4W 5A4; facsimile 1-905-602-3576. If notice to the Bank is required, such notice shall be delivered via mail, courier or facsimile to the Bank at: c/o Wells Fargo Bank, National Association, Attn: Executive Vice President, 1200 Montego Way, Walnut Creek, California 94598, and Wells Fargo Financial Corporation Canada, Attn: President, 40 King St. West, Toronto, Ontario M5H 3Y2; with a copy to: Wells Fargo Bank, National Association, Attn: Senior Counsel, 800 Walnut Street, MAC: N0001-10A, Des Moines, Iowa 50309, facsimile 515-557-1397. Notices and other communications may also be delivered via email or web site publication as agreed to by the parties, from time to time.

**26. Term and Termination.** The parties agree that this Agreement shall take effect on the date when we begin providing the Services to you (the "Effective Date"). The parties agree that the initial term of this Agreement shall begin on the Effective Date and continue in full force for a term of four years (or such term as mutually agreed to by the parties). Unless either party provides the other with a written notice of termination at least 30 days prior to the expiration of the then existing term, the parties agree that this Agreement shall automatically renew for successive one year terms. You understand that any transaction documents accepted by us after the date of termination will be returned to you and will not be credited/debited. You agree that termination of this Agreement shall not affect our rights or your obligations relating to any applicable termination fees or Chargebacks that occurred prior to the date of termination, even if the Chargebacks are instigated after the date of termination. Upon termination of this Agreement, you agree to immediately send us all the data relating to card transactions made up to the date of termination.

**26.1. Your Termination Without Cause.** In the event we notify you of: (i) an increase in or any additional fees (subject to a 90 days prior notice); (ii) a material change to the terms of this Agreement; or (iii) the addition of any material terms to this Agreement, none of which were previously negotiated and agreed to by the parties, you understand that you may terminate this Agreement without further cause or penalty by providing us 30 days' written notice prior to the effective date of such modification of this Agreement. You agree that continued use of our Services or the Equipment, after the effective date of any modification constitutes acceptance throughout the initial or any renewal term of this Agreement. You agree that upon delivery of your notice of termination, you will fund your Reserve Account as set forth in section 2.10.

**26.2. Your Termination For Cause.** If we materially breach a term of this Agreement or the Card Organization Rules that are applicable to us, you understand that you have the right to provide

First Data with written notice of your intent to terminate this Agreement, unless we remedy our material breach within 30 days of receipt of your notice. If we fail to remedy a material breach, you may terminate immediately following the end of such 30 day period unless you withdraw your notification. You further understand that you have the right to immediately terminate this Agreement and exercise all of your rights and remedies under applicable law and this Agreement if any of the following events occurs: (i) bankruptcy or insolvency proceedings commenced by or against us; or (ii) we breach or misrepresent any of our warranties or representations with respect to this Agreement.

**26.3. Our Termination For Cause.** You agree that if you materially breach a term of this Agreement or the Card Organization Rules that are applicable to you, we have the right to provide you with written notice of our intent to terminate this Agreement (including any rental or lease of Equipment), unless you remedy your material breach within 30 days of receipt of our notice. You further agree that we may immediately terminate this Agreement (including any rental or lease of Equipment) and exercise all of our rights and remedies under applicable law and this Agreement if any of the following events (the "Events of Default") occurs: (i) a material adverse change in your business or financial condition including bankruptcy or insolvency proceedings commenced by or against you; (ii) any merger, amalgamation, assignment or transfer of your or your parent's voting control; (iii) the sale of all or a substantial portion of your assets; (iv) fraud; (v) irregular card sales, excessive Chargebacks or any other circumstances which, in our judgment, may increase our risk of loss; (vi) any improper use or presentation of the Marks; (vii) you breach or misrepresent any of your warranties or representations with respect to this Agreement; or (viii) you cancel or revoke your Authorization.

**26.4. Equipment, Transaction Supplies and Advertising.** Within 30 days of termination of this Agreement for any reason, you shall return the Equipment to First Data or a \$500 fee will be charged to you. If you purchase the Equipment, First Data will return the Equipment back to you after removing all of our proprietary software. Upon termination of this Agreement due to an Event of Default, you agree that all amounts payable, including Equipment purchase/lease/rental payments shall be immediately due and payable in full without demand or other notice of any kind. You acknowledge that you do not own any transaction forms or advertising materials provided by First Data and agree to immediately cease use and certify destruction of or return, at your expense, all forms and materials bearing any Marks. You agree to cease all representations that you honour Card Organizations or other cards processed by us, unless you have entered into a separate agreement with another service provider/ financial institution(s) as applicable.

**26.5. Reporting Termination.** If we terminate this Agreement for cause, you acknowledge that we may be required to report your business name and the names and other identification of your principals to the Card Organizations. You expressly agree and consent to such reporting in the event you are terminated as a result of the occurrence of an Event of Default or for any reason specified by the Card Organization(s) as cause. Furthermore, you agree to waive and hold us harmless from and against, any and all claims which you may have as a result of such reporting.

**27. Survival.** The parties agree that provisions governing processing and settlement of card transactions, all related adjustments, fees and other amounts due from you and the resolution of any related Chargebacks, disputes or other issues involving card transactions will continue to apply even after termination of this Agreement, until all card transactions made prior to such termination are settled or resolved. In addition, the provisions of Article IV and sections 2, 4, 10, 11, 13, 21 through

23 (inclusive), 25 through 30 (inclusive) and 34 of this Agreement shall survive any termination.

**28. Representations, Warranties, Limitations on Liability, Exclusion of Consequential Damages.**

**28.1. Your Representations and Warranties.** Without limiting any other warranties under this Agreement, you represent and warrant that each card transaction submitted to us for processing: (i) represents a bona fide sale/rental of merchandise or services not previously submitted; (ii) represents an obligation of the Cardholder for the amount of the card transaction; (iii) the amount charged for the card transaction is not subject to any dispute, setoff, or counterclaim; (iv) is only for the merchandise or services (including taxes, but without any surcharge) sold or rented and, except for any delayed delivery or advance deposit card transactions expressly authorized by this Agreement, the merchandise or service was actually delivered to or performed for the person entering into the card transaction simultaneously upon your acceptance and submission of the card transaction for processing; (v) does not represent the refinancing of an existing obligation of the Cardholder (including any obligation otherwise owed to you by a Cardholder or arising from the dishonour of a personal cheque); (vi) to your knowledge or notice of any fact, circumstance or defence which would indicate that was fraudulent or not authorized by the Cardholder or which would otherwise impair the validity or collectability of the Cardholder's obligation arising from such card transaction or relieve the Cardholder from liability with respect thereto; and (vii) was entered into by you and the Cardholder.

**28.2. Our Representations and Warranties.** Without limiting any other warranties hereunder, we represent and warrant that we possess the resources, expertise, knowledge, and skills necessary to perform the Services in accordance with the terms and conditions of this Agreement.

**28.3. SERVICE AGREEMENT.** THIS AGREEMENT IS A SERVICE AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES EXPRESS OR IMPLIED, MADE TO YOU OR ANY OTHER PERSON INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT.

**28.4. INDIVIDUAL LIABILITY.** IN NO EVENT SHOULD ANY PARTY BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**28.5. MAXIMUM LIABILITY.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING THE INDEMNIFICATION SECTION BELOW), OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING THOSE ARISING OUT OF OR RELATING TO THIS AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED THE LESSER OR: (i) \$5,000,000; OR (ii) THE AMOUNT OF FEES RECEIVED BY US PURSUANT TO THIS AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING 12 MONTHS. THE LIMITATIONS SET FORTH IN THIS SECTION 28.5 SHALL NOT APPLY TO

**OUR OBLIGATION TO DELIVER SETTLEMENT FUNDS TO YOU PURSUANT TO SECTION 10.**

**29. Indemnification.** The parties agree to indemnify each other from and against any losses, actions, causes of action, claims, demands, costs, liabilities, expenses, damages, sanctions fines, legal fees or penalties arising from: (i) a party's misrepresentation or breach of warranty, covenant, or any provision under this Agreement; (ii) a party's employees'/agents' fraud, gross negligence, willful misconduct or failure to comply with this Agreement and the Card Organization Rules; or (iii) actions where we have provided third party indemnification(s).

**30. Choice of Law; Venue; Waiver of Jury Trial.** The parties agree that this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws applicable therein. Each party agrees: (i) that any action or proceeding relating to this Agreement may be brought in any court of competent jurisdiction in the Province of Ontario, and for that purpose now irrevocably and unconditionally agrees and submits to the jurisdiction of such Ontario court; (ii) that it irrevocably waives any right to, and will not, oppose any such Ontario action or proceeding on any jurisdictional basis, including forum non conveniens; and (iii) not to oppose the enforcement against it in any other jurisdiction of any judgment or order duly obtained from an Ontario court as contemplated by this section. The parties irrevocably waive any and all rights they may have to a trial by jury in any judicial proceeding involving any claim relating to this Agreement. You additionally agree to waive personal service of process and consent that service of process upon you may be made by certified or registered mail, return receipt requested, at the address provided on your Form.

**31. Force Majeure.** No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused directly or indirectly by a force majeure event. In any such event, the non-performing party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable.

**32. Severability.** The parties intend for every provision of this Agreement to be severable. If any part of this Agreement is not enforceable, the remaining provisions shall remain valid and enforceable.

**33. Entire Agreement and Waiver.** The parties agree that this Agreement (along with any attached amendments or schedules (if applicable)) constitutes the entire agreement between the parties with respect to the subject matter thereof, and supersedes any previous agreements and understandings. A party's waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.

**34. Complaints.** Any complaints with respect to First Data may be directed to First Data's Chief Compliance Officer at the address for First Data provided in section 25. Any complaints with respect to the Bank may be directed to the Bank at the address for the Bank provided in section 25. Pursuant to the Bank Act, if you have a complaint in respect of a deposit account, certain loan arrangements, a payment, credit or charge card, or the disclosure of or manner of calculating the cost of borrowing in respect of a loan or any other obligations of the Bank under a consumer provision of the Bank Act, the complaint may be communicated to The Financial Consumer Agency of Canada ("FCAC"). You can reach the FCAC by: telephone 1-866-461-3222 (English), 1-866-461-2232 (French), Fax 1-866-814-2224, by mail to 6th Floor, Enterprise Building,

427 Laurier Ave., Ottawa, ON, K1R 1B9 or through its website at [www.fcac-acfc.gc.ca](http://www.fcac-acfc.gc.ca).

**ARTICLE VII. Discover Association Rules and Regulations**

**35. Sublicense to Use Program Marks.**

**35.1. Sublicense.** You are granted a limited sublicense to use the Program Marks, solely in connection with your acceptance of Discover Network Cards. "Program Marks" means the brands, emblems, trademarks and/or logos that identify Discover Cards. Additionally, shall not use the Program Marks other than to display decals, signage, advertising and other forms depicting the Program Marks that are provided to you by us or otherwise approved in advance in writing by First Data.

**35.2. Display of Program Marks.** You must display, at each of your locations, in catalogs and websites, signage or logos showing the Program Marks in such manner and with such frequency as accorded any other payment cards accepted by you.

**35.3. Restriction on Use of Program Marks.** You are prohibited from using the Program Marks other than as expressly authorized in writing by First Data. You may use the Program Marks only to promote the services covered by the Program Marks by using them on decals, indoor and outdoor signs, advertising materials and marketing materials; provided that all such uses by you must be approved in advance by us in writing. You shall not use the Program Marks in such a way that customers could believe that the products or services offered by you are sponsored or guaranteed by the owners of the Program Marks. You recognize that you have no ownership rights in the Program Marks. You shall not assign to any third party any of the rights to use the Program Marks.

**35.4. Termination of Sublicense.** Your sublicense to use the Program Marks shall terminate upon the earlier of (i) the termination of your Discover Agreement, (ii) delivery of notice by us or by Discover Network to you of the termination of the sublicense, or (iii) termination of the license of the Program Marks by Discover Network to us. You must immediately discontinue use or display of the Program Marks, upon termination of the License.

**36. Honoring Cards.** The following rules are requirements strictly enforced by Discover:

1. You cannot establish minimum or maximum amounts as a condition for accepting a Card, with the following exception: you may limit the maximum amount a Discover Cardholder may spend if, and only if, you have not received a positive authorization response from the Card Issuer.
2. You cannot impose a surcharge or fee for accepting a Card.
3. You cannot establish any special conditions for accepting a Card.
4. You cannot require the Cardholder to supply any personal information (e.g., home or business phone number; home or business address; or driver's license number) unless instructed by the Authorization Center. The exception to this is for a mail/telephone/Internet order or delivery required Transaction and card-present key-entered Transaction in order to obtain an Address Verification ("AVS"). Any information that is supplied by the Cardholder must not be in plain view when mailed.
5. Any tax required to be collected must be included in the total Transaction amount and not collected in cash.
6. You cannot submit any Transaction representing the refinance or transfer of an existing Cardholder obligation deemed uncollectible.
7. You cannot submit a Transaction or sale that has been previously charged back.

8. You must create a Sales or Credit Draft for each Card Transaction and deliver at least one copy of the Sales Draft or Credit Draft to the Cardholder.
9. You cannot submit a Transaction or sale to cover a dishonored check.
10. Failure to comply with any of the Rules may result in fines or penalties.

**37. Merchant Creation of Sales Drafts, Transaction Receipts and Sales Drafts.** You must prepare a Sales Draft for each card transaction and provide a Transaction Receipt or a copy of the Sales Draft to the Cardholder at the time of completion of the transaction. Prior to completing the Sales Draft, you must verify the card has not expired and has been signed by the Cardholder. You shall ensure that the Sales Draft for each Transaction is legible and contains all of the following information prior to transmission to us:

1. Date of transaction;
2. Total amount of the transaction, including tax;
3. Discover Network Card account number;
4. Expiration date of the card;
5. Authorization Code;
6. Merchant's "doing-business-as" name and physical address (city/town and country);
7. Valid Cardholder signature; and
8. If manually imprinted, ensure the Discover Network scripted "D" is clearly legible on the imprint.

**38. Submission of Sales and Credit Drafts to Us.** You may present for payment only valid charges that arise from a transaction between a valid Cardholder and your establishment. If you deposit or attempt to deposit transactions that arise from sales between Cardholders and a different business than the one approved by us in our Agreement with you, then the transaction may be charged back, we may suspend or debit funds associated with all such transactions, and we may immediately terminate your account and the Agreement.

**38.1.** You shall collect all Sales Drafts and transmit the Sales Drafts to us with thirty (30) days of the transaction date, the date that you conduct the Discover Network Card Sale.

**38.2.** Sales Drafts submitted to us for Settlement after thirty (30) days of the transaction date may be rejected or, if accepted and processed, are subject to Chargeback to you.

**38.3.** You may not submit Sales Drafts for goods or services ordered until the goods or services have been delivered or furnished to the Cardholder.

**38.4.** You may present for payment only valid charges that arise from a Transaction between a valid Cardholder and your establishment. If you deposit or attempt to deposit Transactions that arise from sales between Cardholders and a different business than the one approved by us in our Agreement with you, then the Transaction may be charged back, we may suspend or debit funds associated with all such Transactions, and we may immediately terminate your account and the Agreement.

**38.5.** You must promptly complete and submit a Credit Draft for the total amount of the refund within five (5) days. Failure to do so may result in Chargebacks to you.

**38.6.** The refund amount may not be for more than the original Credit Card sale amount.

**38.7.** For Discover transactions, factoring is considered merchant fraud and is strictly prohibited, unless you are registered with us. Factoring is the submission of authorization requests and/or Sales Drafts by a merchant for Card transactions by another business. If you submit Sales Drafts on behalf of another Person, you will suffer any losses associated with the disputes of

the Discover Card Sales. Also if any fraud is involved, you could face criminal prosecution.

**39. Requirements Applicable to All Authorization Requests.**

Submission of an Authorization Request that does not fully comply with the applicable provisions of this Agreement may result in assessment of additional fees to you, a declined Authorization response or a Chargeback to you of the Discover Network Card Sale.

**40. Request for Cancellation of Authorization.** If a Discover Network Card Sale is cancelled or the amount of the card sale changes following your receipt of Authorization for the sale, you must call us and request a cancellation of the Authorization. An Authorization may be cancelled at any time within eight (8) days of your receipt of the Authorization but must be cancelled before sales drafts relating to the sale have been submitted to us. Once Sales Draft relating to the card sale has been submitted to Discover Network, the Authorization cannot be changed. You must provide the following information to First Data:

1. Discover Merchant Number used in the authorization;
2. Expiration date on the card being presented;
3. Brief reason the Authorization is being cancelled;
4. The card number;
5. Original amount of the Authorization;
6. The new amount of the total transaction (if any); and
7. The original Authorization Code for the Authorization being cancelled.

**41. Discover Network Card Security Features.** All Discover Network Cards contain common characteristics and distinctive features. Security features common to all Discover Network Cards include:

1. Distinctive Discover Network/NOVUS or Discover Network Acceptance Mark, depending on the date of issuance of the card;
2. Cards display a three-dimensional hologram on the front of the Card OR a three-dimensional holographic magnetic stripe on the back of the Card. Valid cards do not display holograms on both front and back.
3. Card Numbers are composed of 16 digits are displayed on the front of the Card.
4. Card Numbers are clear and uniform in size and spacing within groupings.
5. On embossed Cards, the stylized "D," appears on the same line as the embossed "Member Since" date (if present) and the "Valid Thru" date.
6. The embossed "Valid Thru" date, if present, appears in mm/yy format and indicates the last month in which the Card is valid.
7. "DISCOVER" or "DISCOVER NETWORK" will appear in ultraviolet ink on the front of the Card when it is held under an ultraviolet light.
8. An underprint of "void" on the signature panel becomes visible if erasure of the signature is attempted.
9. An overprint on the signature panel reads "Discover" or "Discover Network." On some Cards, the overprint may display the name of the Card (e.g., Discover Platinum).
10. The last four digits of the Card Number are displayed on the signature panel in reverse indent printing.
11. CID is printed in a separate box to the right of the signature panel on the back of the Card.
12. A Discover Zip Indicator may appear on the back of a standard rectangular plastic Card indicating the Card can be used to conduct Contactless Card Transactions.

**Note:** Valid Cards may not always be rectangular in shape (e.g., Discover 2GO Cards) and certain valid Contactless Payment Devices approved by us for use in accessing Card Accounts (e.g., contactless stickers, key fobs, and Mobile Commerce Devices) and to conduct Contactless Card Transactions may not display the features described above. Card expiration date and other features listed above are not displayed on such Contactless Payment Devices.

**42. Reminders for Preventing Fraudulent Discover Network Card Usage.** In addition to complying with Authorization requirements as stated in your Agreement, you shall pay careful attention to both the Discover Network Card presenter and the Discover Network Card presented. In particular, you should:

1. Verify that the signature on the signed receipt is reasonably similar to the signature on the back of the card.
2. Check the signature panel for signs of erasure or alteration. You should not accept the card if the word "VOID" appears in the signature panel.
3. Check the card expiration date and do not accept any expired card.
4. Examine the card for signs of alteration.
5. If you have any doubts about the validity of the card or the card presenter, you may request additional identification.
6. When using a POS device and printer to process transactions, you must verify that the card number printed on the Transaction Receipt matches the number embossed on the front of the card.
7. Follow procedures for Address Verification if the transaction is a Card Not Present transaction.
8. Enter the CID for all Authorization Requests for all Card Not Present transactions.

**43. Discover Network Cardholder Verification and Discover Network Card Retrieval.** Occasionally in response to an Authorization request, we may direct you to obtain certain information from the card presenter to verify the card presenter's identity. Also, in response to an Authorization request, we may direct you to take and retain a Discover Card from the card presenter. If we direct you to retain a card, you must call First Data's Authorization Center and follow the instructions we provide. Do not use any force or effort if the card presenter refuses to give up the card, and do not take any action that will alarm or embarrass the card presenter. You will bear all responsibility for claims, liabilities, costs and expenses as a result of any failure by you, your employees, vendors or agents, that attempt to retain a card without the Issuer's direct request or that fail to use reasonable, lawful means in retaining or attempting to retain a card.

**44. Signature on Discover Network Card.** You must verify that there is a signature on the signature panel on the back of the card and verify that the name on the back of the card is reasonably similar to the name embossed on the front of the card.

**45. Unsigned Cards.** If a card presented to you is not signed, you must request two pieces of identification, one of which must be government-issued picture identification. When you have confirmed that the person presenting the card is the Cardholder, you must require Cardholder to sign the back of the Discover Network Card.

**45.1.** If you are unable to positively identify the Discover Network Card presenter as the Cardholder, or if you have reason to suspect fraud, you should contact First Data.

**46. Verification of Discover Network Card Expiration Date.** For each Discover Network Card Sale, you must check or obtain the expiration date of the Discover Network Card and confirm that the Discover Network Card is not expired prior to completing the

sale. The Discover Network Card is valid through the last day of the month embossed on the card.

**46.1.** If the card has expired, you must not accept it for a sale.

**46.2.** If you are suspicious that the card presenter is not an authorized user of the card, you should call us at the telephone number we provided to you.

#### **47. Credit Transaction Receipt and Credit Drafts**

**Requirements.** You must ensure that all Transaction Receipts and Sales Drafts created as a result of a Credit, whether generated by electronic means or completed manually on paper, include the following information:

1. Discover Network Card Account Number;
2. Discover Network Cardholder's name;
3. Discover Network Card expiration date;
4. Merchant's name, location (city/town and country) and Discover Network Merchant Number;
5. Quantity and brief description of merchandise or service returned/refunded;
6. Date of the Credit issuance;
7. Total amount of the Credit, including taxes, and the name of the currency used; and
8. Signature of an authorized representative of the Merchant.

**48. Refunds/Exchanges (Credits).** You must promptly complete and submit a Credit Draft for the total amount of the refund which must include the following information:

1. The account number and expiration date;
2. The Cardholder's name;
3. Your "doing business as" name and address (city and country);
4. Your Discover Merchant Account Number;
5. A description of the goods or services;
6. The Transaction date of the Credit;
7. The total amount of the Credit; and
8. The signature of your authorized representative or employee.

**48.1.** Full refunds must be for the exact dollar amount of the original Transaction including tax, handling charges, etc. (You must identify the shipping and handling charges incurred.)

**48.2.** The refund amount may not be for more than the original Credit Card sale amount.

**48.3.** Have the Cardholder sign the Credit Draft, give the Cardholder the appropriate copy, and deposit the Credit Draft immediately. Failure to process a Credit within five (5) calendar days may result in a Chargeback.

**48.4.** Authorization is not required for refunds. You cannot intentionally submit a sale and an offsetting Credit at a later date solely for the purpose of debiting and crediting your own or a customer's account.

**48.5.** You are responsible for paying all refunds submitted to us on your merchant account.

**48.6.** We assume no responsibility for verifying any credits or refunds. You are responsible to secure your terminals and to institute appropriate control to prevent employees or others from submitting refunds that do not reflect valid returns or reimbursements of prior transactions.

#### **49. Retention of Records for Retrievals and Chargebacks.**

You must retain legible copies of all Sales and Credit Drafts or any other transaction records for the longer of (i) 365 days or (ii) the resolution of any pending or threatened disputes, claims, disagreements or litigation involving the Card transaction. You must also keep microfilm or other copies of Sales Drafts for no

less than three (3) years from the date of the Discover transaction.

**49.1.** You must provide all Sales and Credit Drafts or other Transaction records requested by us within the shortest time limits established by us. You are responsible for any deficiencies in Card Transaction data transmitted or otherwise delivered to us.

**50. Discover Network Card Not Present Sales; Discover Network Card Identification Data (CID).** You must obtain the three-digit CID in all Card Not Present Card Sales. The CID must be included in all Authorization requests you send to us for an Authorization response with respect to Card Not Present Card Sales. Failure to include the CID may result in a Chargeback to you. You are strictly prohibited from retaining, archiving or otherwise storing the CID in any form or format for any reason, including the recording of the CID on Transaction Receipts or Sales Drafts.

**51. Mail and Telephone Order Sales.** You must comply with the following procedures for Mail and Telephone Order Sales:

1. For each mail or telephone order sale, you must transmit the CID with the authorization request. If you accept a card sale without receiving a prior authorization approval and without transmitting the CID in the authorization request, the sale may be subject to Chargeback to you.
2. For each sale, you must verify the name and billing address of the Cardholder using the electronic Address Verification Service. Completing an Address Verification is not a guarantee against possible Disputes, only a tool by which to reduce the risk or occurrence of fraudulent activity.
3. You must obtain the following information from the Cardholder for each mail or telephone order sale: Cardholder name, card account number, card expiration date, billing address and shipping address. You must retain the information along with the shipping date for the document retention period noted in this document. You shall provide the shipping date to the Cardholder at the time of each telephone order sale and upon request for each mail order sale.
4. You must not transmit Sales Drafts to us for merchandise or services ordered by a Cardholder until the merchandise or services have been shipped, delivered or furnished to the Cardholder; except that you may accept a Discover Network Card for a deposit on a purchase of merchandise or services and you may transmit the Sales Drafts relating to such deposit prior to the time of shipment or delivery of the merchandise or services purchased in such sale.
5. At the time of delivery of merchandise or services ordered in a mail or telephone order sale, you must provide the Cardholder with an invoice or other similar documentation. You also must obtain the Cardholder's signature as proof of delivery. If the Cardholder requests delivery to a third party, you must obtain the signature of a party designated by the Cardholder as proof of delivery. You must retain this proof of delivery for the document retention period as set forth in this document. If a Cardholder takes delivery of merchandise ordered by mail or telephone at your retail location, you must obtain an imprint of the Discover Network Card and the Cardholder's signature on the Sales Drafts.

**52. Card Sales over the Internet.** You must obtain our prior approval before accepting any Discover Network Card transactions over the Internet and you must comply with the requirements as noted below:

1. You shall accept only those Internet Discover Network Card transactions that are encrypted in accordance with our designated protocol. We may, at our discretion, withhold settlement until security standards can be verified. However, our designated protocol, including any specifications with respect to data encryption, may change at any time upon

thirty (30) days advance written notice. You may not accept Discover Network Card Account Numbers through Electronic Mail over the Internet.

2. You shall not accept any Internet Discover Network Card transactions unless the transaction is sent by means of a browser which supports our designated protocol.
3. You must obtain an authorization decision for the sale using an electronic means of transmission that is approved by us.
4. You must submit the CID to us. If you do not submit the CID to us, the sale may be subject to Chargeback.
5. You must obtain address verification for the sale from First Data.
6. You must submit Sales Drafts using an electronic means of transmission.
7. You may not submit Sales Drafts to us using non-electronic means.
8. You must not submit Sales Drafts to us until the merchandise or services ordered are delivered to the Cardholder.
9. Any transaction over the internet that fails to comply with our requirements is subject to immediate Chargeback. We may collect any amounts owed by you with respect to Chargebacks on transaction from the proceeds of Settlement amounts otherwise payable for any Card transactions. We may, at our discretion, terminate the Agreement immediately if you fail to comply with these terms.

**53. Special Circumstances/Businesses; Card Acceptance During Store Closings or Liquidation.** You must comply with the following requirements during the liquidation and/or closure of any of your outlets, locations and/or entire business:

1. Post signs visible to customers stating "All Sales Are Final";
2. Stamp receipts or print Sales Drafts with notice that "All Sales Are Final"; and
3. Contact First Data to advise of the closure of locations and/or liquidation of your establishment.

**54. Delayed Delivery or Deposit Balance.** In a delayed delivery Transaction where a Cardholder makes a deposit toward the full amount of the sale, you should execute two separate Sales Drafts, the first for a deposit and the second for payment of the balance upon delivery of the merchandise or the performance of the services. You must label one Sales Draft "deposit" and the other "balance," as appropriate. You must obtain the "deposit" authorization before submitting the sales data for the "deposit" or the "balance" to us. If delivery of the merchandise or service purchased will occur more than ninety (90) calendar days after the "deposit" authorization, you must obtain a subsequent authorization for the "balance." In addition, you must complete Address Verification at the time of the "balance" authorization, and you must obtain proof of delivery upon delivery of the services/merchandise purchased. You may not submit sales data relating to the "balance" to us for processing until the merchandise/service purchased has been completely delivered.

**55. Recurring Transaction and Preauthorized Order Regulations.** If you process recurring Transactions and charge a Cardholder's account periodically for recurring goods or services (e.g., monthly insurance premiums, yearly subscriptions, annual membership fees, etc.), the Cardholder shall complete and deliver to you a Cardholder approval for such goods or services to be charged to his account. The approval must at least specify the Cardholder's name, address, account number and expiration date, the Transaction amounts, the timing or frequency of recurring charges and the duration of time for which the Cardholder's permission is granted. The approval must also include the total amount of recurring charges to be billed to the Cardholder's account, including taxes and tips and your Merchant Number.

**55.1.** If the recurring Transaction is renewed, the Cardholder must complete and deliver to you a subsequent written request for the continuation of such goods or services to be charged to the Cardholder's account. You may not complete a recurring Transaction after receiving a cancellation notice from the Cardholder or Issuer or after a request for authorization has been denied.

**55.2.** If we or you have terminated your Merchant Agreement, you may not submit authorization requests or sales data for recurring Transactions that are due after the termination date of your Merchant Agreement.

**55.3.** You must obtain an authorization for each Transaction and write "Recurring Transaction" on the Sales Draft in lieu of the Cardholder's signature. A positive authorization response for one recurring Transaction Card Sale is not a guarantee that any future recurring authorization request will be approved or paid.

**55.4.** For all recurring Transactions, you must submit the 3 digit Card Validation Code number with the first authorization request, but not subsequent authorization requests. Also, the Sales Draft must include a general description of the transaction, your merchant name and a toll-free customer service number that the Cardholder may call to obtain customer assistance from you or to cancel the written approval for the recurring transaction.

**55.5.** All Recurring Transactions or Preauthorized Orders may not include partial payments for goods or services purchased in a single Transaction.

**55.6.** You may not impose a finance charge in connection with a Recurring Transaction or Preauthorized Order.

**55.7.** If you process recurring payment Transactions, the Recurring Payment Indicator must be included in each authorization request. Penalties can be assessed for failure to use the Recurring Payment Indicator.

**56. Discover Cash Over Transactions.** You may issue Cash Over in connection with a Discover Card sale, provided that you comply with the following requirements:

1. You must deliver to us a single authorization request for the aggregate total of the goods/services purchase amount and the Cash Over amount of the Card sale.
2. You may not submit separate authorization requests for the purchase amount and the Cash Over amount.
3. The Sales Draft must include both the purchase amount and the Cash Over amount, and you may not use separate Sales Drafts for the purchase amount and Cash Over amount.
4. No minimum purchase is required for you to offer Cash Over to a Cardholder provided that some portion of the total card sale must be attributable to the purchase of goods or services.
5. The maximum amount of cash that you may issue as Cash Over is \$100.00.

**(Cash Over may not be available in certain markets. Contact us for further information.)**

**57. Cash Advances and Cash Equivalent.** You may not accept a card in exchange for advancing cash or cash equivalents to a Cardholder and will be subject to Chargeback to you, regardless of whether your agreement with the Cardholder describes a cash advance or cash equivalent as a sale of goods or services.

**58. Merchants in the Lodging Industry.** Provided below are our requirements for Merchants in the lodging industry, who take reservations and require Cardholders to pay advance deposits. Failure to comply may result in Chargeback. Please note that for all Discover Network Card transactions that are not swiped through your terminal or POS device you must for the procedures described above for card not present sales.

**59. Requirements for Guaranteed Reservations.** You may bill the Cardholder for one night's lodging (plus applicable taxes) if you have complied with all of your obligations as noted below.

**60. Notice to Cardholder of Rights and Obligations.** At the time of reservation, you must verify that the Cardholder plans to guarantee their reservation. If a guarantee is requested, you must advise the Cardholder of the rights and obligations and inform the Cardholder of the room rate and reservation confirmation number and advise the Cardholder to retain this information. You must advise the Cardholder of the following:

1. Accommodations of the type requested will be held until check-out time on the day following the scheduled arrival date.
2. If the Cardholder seeks to cancel the reservation, the Cardholder must do so before 6:00 p.m. (local time) on the scheduled arrival date. Resorts may move the 6:00 p.m. (local time) deadline back no more than three hours to 3:00 p.m. (local time), provided that the Cardholder has been verbally informed of the date and time the cancellation privileges expire.
3. When the reservation is made, the Merchant should provide a telephone number for the Cardholder to call to cancel the reservation.
4. If the reservation is not cancelled within the allowed time frame and the Cardholder does not use the accommodation and the Merchant does not use or rent the room to another guest, the Merchant may bill the Cardholder for a no-show charge equal to one night's lodging (plus applicable taxes).

**61. Record of Guaranteed Reservation.** You must preserve a record of the following information for each guaranteed reservation:

1. Cardholder's name as it appears on the Card, if present;
2. Card Number, truncated and Card expiration date;
3. Anticipated arrival date and length of stay;
4. The cancellation policy in its entirety, inclusive of the date and time the cancellation privileges expire; and
5. Any other pertinent details related to the reserved accommodations.

**62. Written Confirmation of Guaranteed Reservations.** You must provide Cardholders with written confirmation of each guaranteed reservation. The confirmation must contain:

1. Cardholder's name as it appears on the Card, if present;
2. Card Number, truncated and Card expiration date;
3. Reservation confirmation number;
4. Anticipated arrival date and length of stay;
5. The cancellation policy in its entirety, inclusive of the date and time the cancellation privileges expire; and
6. Any other pertinent details related to the reserved accommodations.

**63. Cancellation of Guaranteed Reservations.** If a Cardholder seeks to cancel a reservation in accordance with your cancellation policy and specified timeframes, you must provide the Cardholder with a cancellation number and instructions to retain a record of it. You shall forward written confirmation of the cancellation of each guaranteed reservation within three Business Days of Cardholder's request for written confirmation. This cancellation confirmation must contain:

1. Cardholder's reference that charges were placed on the Card, if applicable, or a guarantee that a "no-show" charge will not be placed on the Card;
2. Cardholder's name as it appears on the Card, if present;
3. Card Number, truncated and Card expiration date;

4. Reservation cancellation number;
5. Date of cancellation;
6. The name of the Merchant's employee that processed the cancellation; and
7. Any other pertinent information related to the reserved accommodations.

**64. Sales Drafts for "No-Show" Charges.** If the Cardholder does not cancel a reservation in accordance with your cancellation policy and specified time frames and the Cardholder does not use the accommodations and you do not rent the room to another guest, you may charge the Cardholder for a "No-show" charge by preparing and transmitting Sales Drafts with the following information:

1. Cardholder's name as it appears on the Card;
2. Card Number, truncated and Card expiration date;
3. Hotel name and location imprinted on the Sales Data;
4. Room rate (as quoted when the reservation was made), including applicable taxes;
5. Transaction date;
6. Authorization Code ;
7. Employees initials; and
8. The words "No-Show" printed on the signature line.

**65. Requirements for Advance Deposit.** You may require Cardholders to pay a deposit at the time of a reservation, if you comply with the requirements noted below. The amount of the deposit cannot exceed the cost of seven nights lodging (plus applicable tax) and the deposit must be applied to the entire bill. When you require an advance deposit, you must provide Cardholders with the information required below. **Note:** Cardholders may NOT be charged a "No-show" penalty in addition to a forfeited advance deposit.

**66. Obligations with Advance Deposits.** If you make advance deposits for reservations, you must comply with the following requirements:

1. Hold reserved accommodations until checkout time following the last day covered by the advance deposit;
2. Specify a reservation cancellation time frame including the date and time when cancellation privileges expire;
3. Fully reimburse an advance deposit when the Cardholder cancels a reservation within the specified time frame; and
4. Provide a written disclosure informing the Cardholder of his or her rights and obligations and that failure to cancel a reservation within the specified time frame may result in forfeiture of all or part of an advance deposit. **Note:** Cardholders may NOT be charged a "No-show" penalty in addition to a forfeited advance deposit.

**67. Sales Drafts Requirements for Advance Deposits/Folio.** For each advance deposit taken by you, you shall prepare Sales Drafts in the amount of the advance deposit and transmit it to us immediately after taking the reservation for the advance deposit. Sales Drafts must contain the following information:

1. Cardholder's name as it appears on the Card;
2. Card Number, truncated, and Card expiration date;
3. Cardholder's complete mailing address and telephone number;
4. Transaction date;
5. Anticipated arrival date and length of stay;
6. Reservation confirmation number;
7. Authorization Code; and
8. Advance deposit amount (including applicable taxes).

**68. Written Confirmation.** You must provide the Cardholder with written confirmation of an advance deposit that contains the following information:

1. Cardholder copy of the advance deposit Transaction Documentation;
2. Reference that charges were placed on the Card Account;
3. Cardholder's name as it appears on the Card;
4. Card Number, truncated, Card expiration date;
5. Reservation confirmation number;
6. Anticipated arrival date;
7. The cancellation policy in its entirety, including the date and time the cancellation privileges expire; and
8. Any other pertinent information related to the reserved accommodations.

**69. Cancellation of Reservations with Advance Deposits.** If the Cardholder requests a cancellation of a reservation in accordance with your cancellation policy and time frames, you must issue a Credit to the Cardholder's Discover Network Card Account for the full amount of the advance deposit charged to the account within seven (7) days of the Cardholder's request. In addition, you must:

1. Provide a cancellation number to the Cardholder and instructions to retain a record of the number; and
2. Prepare Sales Drafts for the Credit and transmit the Sales Drafts to us within the time frames prescribed.

**70. Sales Drafts Required for Cancellation of Reservations with Advanced Deposits.** You must prepare and transmit Sales Drafts to us for each cancellation that includes the following information and you must send a copy of the Sales Drafts documenting the Credit to the Cardholder within the time frames prescribed:

1. Cardholder's name as it is embossed on the card;
2. Card Account Number, truncated, and Card expiration date;
3. Cardholder's complete mailing address and phone number;
4. Transaction date;
5. Reservation Cancellation Number;
6. Advance deposit amount; and
7. Words "Advance Deposit" on the signature line.

**71. Requirements for Overbooking.** If the accommodations reserved by a Cardholder pursuant to a guaranteed reservation or with an advance deposit are unavailable upon arrival, you must at your own expense, provide the Cardholder with the following:

1. Comparable accommodations for one night at a similar Merchant location (including applicable taxes);
2. Transportation to the alternative Merchant location; and
3. Forwarding of all calls and messages to the alternate Merchant location.

**72. Requirements for Priority Check-out Service.** If you offer priority checkout services, you must comply with the following requirements:

1. Require the Cardholder to sign the registration card at the time of check-in acknowledging responsibility for all charges. Obtain an authorization decision for the estimated amount of the accommodations at check-in by swiping the card through your terminal or POS device.
2. Complete Sales Drafts at checkout by entering the total amount of charges incurred during the stay including: restaurant, telephone and miscellaneous expenses.
3. Write the words "Priority Check-out" on the signature line of the Sales Drafts.

4. Obtain a final Authorization approval code for any additional amounts from the check-in estimate to equal the total amount to be billed to the Cardholder.
5. Mail the Cardholder (at the address shown on the registration card) a copy of the Sales Drafts and itemized lodging bill.
6. Transmit completed Sales Drafts to First Data within the applicable time frame.

**73. Requirements for Estimated Authorization.** If you seek to obtain an authorization decision for the estimated amount of charges to be billed to a Cardholder, you shall comply with the following procedures. At the beginning of the Cardholder's stay and on a periodic basis thereafter, you may obtain an authorization decision as set forth in herein for an amount equal to the estimated total of a Cardholder's charges based on his/her length of stay and other criteria. You must obtain an Authorization decision for the amount of the estimated charges expected during the length of a Cardholder's stay and to obtain additional Authorization decisions for the actual charges that exceed the amount originally estimated by you for which you obtained Authorization decision.

**73.1.** At check-in, you may estimate the Cardholder's total charges based on the below requirements and obtain an authorization decision for the amount of that estimate:

1. Intended length of stay;
2. Room rate;
3. Applicable taxes;
4. Applicable service charges; and
5. Any miscellaneous charges, as dictated by experience.

**74. Changes to Estimated Charges.** You must monitor the charges made during the course of a Cardholder's stay to ensure that the actual charges do not exceed the amount indicated in the estimated authorization. The following conditions apply:

1. If the actual charge activity exceeds the amount of the estimated Authorization, then you must secure a positive Authorization decision or approval for the amount in excess of the estimated Authorization. **Note:** Such amounts should not be cumulative and each additional Authorization decision should cover a separate portion of the total amount. If an Authorization request is declined, no charges occurring after that date will be accepted by us for that Cardholder.
2. A final (or additional) Authorization decision is not required if the final amount (total sum) of the Discover Network Cardholder's charges does not exceed the sum of the previously authorized charges, plus a twenty percent (20%) tolerance.
3. The dates, authorized amounts, and their respective Authorization approval codes must be individually recorded on the Sales Drafts.

**75. Data Security.** The following is information regarding the protection of Cardholder data. Failure to comply may result in substantial fines and liabilities for unauthorized disclosure and termination of this agreement. The requirements for Data Security apply to you and all third parties you may engage to enable your ability to accept Discover Network Cards.

**75.1.** Visa, MasterCard, American Express, Diners Club International, Discover and JCB have aligned data security requirements to create a global standard for the protection of Cardholder data. The resulting PCI Data Security Standard defines the requirements with which all entities that store, process, or transmit payment card data must comply. PCI is the name used to identify those common data security requirements. Discover Information Security and Compliance (DISC) is Discover's data security program based on the PCI Data Security Standard and industry aligned validation requirements.

**75.2.** PCI enables Acquirers, Issuers and merchants to implement a single security program, based on common security requirements, validation requirements, and tools, to ensure the protection of Cardholder data. PCI compliance validation is focused on any system or system component(s) where Cardholder data is retained, stored, or transmitted, including:

1. All external connections into your network;
2. All connections to and from the authorization and settlement environment; and
3. Any data repository outside of the authorization and settlement environment.

**75.3.** The Card Organizations or we may impose fines or penalties, or restrict you from accepting Cards if it is determined that you are not compliant with the applicable data security requirements. We may in our sole discretion, suspend or terminate Card processing services under your Merchant Agreement for any actual or suspected data security compromise.

**75.4.** The PCI Data Security Standard and detailed information including the PCI Self-Assessment Questionnaire which you should complete, can be found at the PCI Data Security Council's website: [www.pcsecuritystandards.org](http://www.pcsecuritystandards.org)

**75.5.** The PCI Data Security Standard and information about DISC can be found at Discover's DISC website: [www.discovernetwork.com/merchants/data-security/disc.html](http://www.discovernetwork.com/merchants/data-security/disc.html)

**75.6.** At all times, you must comply with PCI DSS Security Standard and the other obligations with respect to data security as part of your merchant agreement which may be amended from time to time. We may impose restrictions, fines or prohibit you from accepting payment cards if we determine that you are not in compliance with the Data Security requirements. You understand and acknowledge that it is solely your responsibility to maintain compliance with the Data Security requirements and to pay any and all fines levied by the applicable Card Organization or networks for your non-compliance. You also understand and acknowledge that you are solely responsible for the compliance of any and all third parties that are given access by you, to Discover Network Cardholder data, and for any third party POS VAR ("Value Added Reseller") software that you may use.

**75.7.** We may in our sole discretion, suspend or terminate Discover Network Card processing services under your Merchant Agreement for any actual or suspected data security compromise. Notwithstanding anything in this Agreement to the contrary, you agree to indemnify and hold us harmless from and against all losses, liabilities, damages and expenses resulting from your failure to comply with the Data Security requirements.

**75.8.** You may be subject to and we retain the right to conduct an audit performed by us and a third party designated by us to verify your compliance with the data security requirements.

**75.9.** You must notify First Data as soon as reasonably practicable and in no event more than 24 hours after becoming aware of (i) any suspected or actual data security breach in any of your systems or databases used to conduct or in any way process Discover Network Card transactions or to store Discover Network Cardholder information, including websites or electronic links used to conduct Discover Network Card transactions, and (ii) any noncompliance by you with the Data Security requirements. Such breaches shall include third party incursions that could in any way result in access to Discover Network Card transaction information, Discover Network Card account information or Discover Network Cardholder information.

**75.10.** You must, at your expense (i) perform or cause to be performed an independent investigation (including a forensics analysis) of any data security breach, (ii) perform or cause to be performed any remedial actions recommended by any such independent investigation, and (iii) cooperate with us in the investigation and resolution of any data security breach.

**75.11.** You must provide First Data or Discover Network as requested, with the following information concerning any suspected or actual data security breach:

1. the date of such breach;
2. details concerning the data compromised (e.g., Discover Network Card numbers and expiration dates, Discover Network Cardholder names and addresses);
3. the method of such breach;
4. your security personnel contacts;
5. the name of any Person (including any law enforcement agency) assisting you with your investigation of such breach; and
6. any other information which we reasonably request from you concerning such breach, including any forensics report(s).

**75.12.** You will provide the information requested as soon as is reasonably practicable and the information listed above shall in any event be provided to First Data within 48 hours of your initial notification to First Data of such breach.

**75.13.** You must provide First Data or Discover Network as requested, with copies of any reports concerning such breach as soon as practicable. You must not issue any press release or other public announcement concerning such breach until after you have provided us and Discover Network with the information requested above.

**76. Audit Rights.** You will allow First Data to conduct, or to engage a third party designated by us to conduct, annual examinations and audits of your compliance with the applicable provisions of Discover rules and with applicable law.

#### **ARTICLE VIII. TeleCheck® Services Agreement**

**77. Term, Termination and Amendment.** TeleCheck will provide the services, and any specified equipment and maintenance, to this Agreement for an initial term of 12 or 24 months (as specified on the face of this Agreement) from the Effective Date; provided, however, that Subscriber may terminate this Agreement if Subscriber gives and TeleCheck receives written notice of termination within the first 30 days of the Agreement. Thereafter, this Agreement shall automatically renew for successive 12 month terms until terminated as provided for herein. Subscriber may terminate this Agreement at the end of the initial term or any renewal term upon at least 30 days' prior written notice to TeleCheck. TeleCheck may terminate this Agreement at any time upon notice to Subscriber. TeleCheck reserves the right to amend, at its discretion, this Agreement, including, without limitation, any addenda or Operational Procedures, by providing Subscriber notice thereof and such amendments shall be effective 30 days from the date notice is mailed to Subscriber. In the event TeleCheck changes the rates, fees or warranty limits hereunder, Subscriber may terminate this Agreement upon written notice received by TeleCheck from Subscriber within such 30 day period. Subscriber agrees that any of the services to be performed by TeleCheck under this Agreement may be provided by TeleCheck or any of its affiliates.

**78. Definitions.** As used herein the following definitions apply: "**Claim**" means any claim, demand, directive, suit or other proceeding, notice, damage, expense (including reasonable legal fees), assessment, fine or liability of any kind. "**Consumer**" means a cheque writer, person, or entity that issues a cheque. "**Effective Date**" means the date Subscriber's TeleCheck account has been activated for use with the service. "**Operational Procedures**" means TeleCheck's published policies and procedures contained in various documents provided to Subscriber concerning the services, equipment and maintenance provided pursuant to this Agreement, the terms of which are incorporated in this Agreement as if fully set forth herein. "**Return Item Fee**" means any fee allowed by law that may be assessed on a Return. "**Returned**

**Payment**" means any financial obligation pursuant to this Agreement not paid by Subscriber's financial institution. "**Return Items**" mean any cheques that are dishonoured, returned, reversed, charged back or otherwise unpaid by a Consumer's financial institution upon presentation for payment, regardless of the reason or timing. "**Subscriber's Account**" means Subscriber's financial institution account. "**TeleCheck Approval Code**" means that TeleCheck has authorized a cheque for warranty coverage under this Agreement. "**TeleCheck Parties**" means TeleCheck and its affiliates and their respective officers, directors, employees, shareholders, agents and attorneys. "**Warranty Maximum**" is applicable only to the warranty service and means the lower of (a) the face amount of the cheque; or (b) the lesser amount set forth on the face of this Agreement.

**79. Fees and Rates.** Subscriber shall pay TeleCheck the fees and rates set forth on the face of this Agreement, or in this Agreement, as changed from time to time by TeleCheck, plus all applicable taxes. The "**Inquiry Rate**" is the percentage rate set forth on the face of this Agreement which shall apply to the face amount of each cheque for which a warranty service authorization inquiry is made to TeleCheck by telephone, electronically or otherwise, up to the Warranty Maximum. The "**Rate Schedule**" is the amount which shall apply to each cheque for which an authorization inquiry is made to TeleCheck by telephone, electronically or otherwise, as set forth in the attachment to this Agreement. The "**Verification Fee**" is the amount on the face of this Agreement which shall apply to each cheque for which a verification service authorization inquiry is made to TeleCheck by telephone, electronically or otherwise. The "**Charge per Transaction**" is the additional per transaction charge for all transactions. The "**Monthly Minimum Fee**" is the minimum amount of inquiry fees (Inquiry Rate fees, Rate Schedule fees or Verification Fees, as applicable) that Subscriber shall pay on a monthly basis. If the total fees for Subscriber's inquiries for any month are less than the Minimum Monthly Fee, then the Minimum Monthly Fee shall apply. The "**December Risk Surcharge**" is an additional percentage charge for each transaction in December. The "**Customer Requested Operator Call Fee**" is an additional charge per operator-assisted call not requested by TeleCheck. The "**Set Up Fees**" First Location and Additional Locations are the one time fees related to the establishment and set up of the first and each subsequent location on the TeleCheck service.

**79.1.** The following additional fees may also be charged by TeleCheck: The "**Processing Fee**" is a monthly fee for handling Subscriber's account, depending upon the method of payment. "**Terminal Application Update Fee**" of \$25.00 per terminal shall be charged for each occasion that a terminal application update is made available for additional features, different information or regulatory compliance.

**80. Payment.** All fees and charges are due upon receipt of invoice. Interest at a nominal annual percentage rate of 18% per annum or the highest amount permitted by law, whichever is lower, shall be charged to the outstanding balance of any account over 15 days delinquent. TeleCheck shall have the right to suspend all services and obligations to Subscriber, including the payment of all warranties due and all transactions previously authorized, during any period in which Subscriber's account is delinquent. Subscriber agrees to pay to TeleCheck a \$25.00 fee for any Returned Payment. Subscriber shall also be responsible for paying for all of the point of sale supplies related to the TeleCheck services (i.e., paper and ink for terminals, rubber stamps, if applicable).

#### **TERMS APPLICABLE ONLY TO TELECHECK'S PRE-AUTHORIZED DEBIT AUTHORIZATION PLAN**

**81. Pre-Authorized Debit Authorization Plan.** The provisions of this Section 81 shall be applicable if Subscriber has enrolled in TeleCheck's Pre-Authorized Debit Authorization Plan (as indicated on the face of this Agreement) for all payments and

other amounts due to TeleCheck. Subscriber acknowledges that this authorization is provided for the benefit of TeleCheck and Subscriber's bank or other financial institution listed on the face of this Agreement ("**Bank**") and is provided in consideration of Bank's agreeing to process debits against Subscriber's account in accordance with the rules of the Canadian Payments Association. Subscriber consents to the disclosure of any personal information contained in this Authorization to Bank for the purpose of TeleCheck's pre-authorized debit plan. Subscriber agrees to execute any additional documentation which may be requested by TeleCheck in connection with this Authorization. The debits authorized hereunder are for business purposes.

- (a) Subscriber hereby authorizes TeleCheck to draw on the account listed on the face of this Agreement (the "**Account**") for the purpose of paying all regularly scheduled payments and all other amounts owing by Subscriber to TeleCheck pursuant this Agreement, including without limitation, late charges, charge backs or rejected and reassigned warranty items and all other amounts (including interest) owing in the event of a default by Subscriber under the Agreement. In particular, Subscriber further agrees that if any regularly scheduled payment is dishonoured by Bank for any reason, then TeleCheck shall be entitled to issue another debit in substitution for the dishonoured debit until the debit is honoured. If Subscriber wishes to change the account from which debits are processed, Subscriber shall provide TeleCheck with another voided cheque with its instructions.
- (b) Subscriber warrants and guarantees that all persons whose signatures are required to sign on the Account have signed on the face of this Agreement and Subscriber agrees to inform TeleCheck in writing, of any change in the Account information in sufficient time for the processing of the next scheduled debit. This Authorization applies only to the method of payment and does not have any bearing on the contractual obligations between Subscriber and TeleCheck under the Agreement.
- (c) Bank's treatment of each debit shall be the same as if Subscriber had issued a cheque authorizing Bank to pay as indicated and to debit the amount specified to the Account. Subscriber understands this to mean, in part, that Bank is not required to verify that a pre-authorized debit has been issued in accordance with Subscriber's instructions or that some pre-condition to payment has been met or satisfied. Subscriber further understands that it may only seek reimbursement of amounts paid to TeleCheck under this Authorization if (i) such amounts were not drawn in accordance with this Authorization or (ii) the amounts were paid after cancellation of this Authorization. To dispute a debit for one of these three reasons, Subscriber agrees to contact its Bank for instructions on how to proceed.
- (d) This Authorization may be cancelled at any time by written notice by Subscriber to TeleCheck which notice shall be effective 30 days after receipt. Any such cancellation shall terminate the Agreement, but may result in an increase in the Processing Fee. This Authorization may be discontinued at any time by TeleCheck without notice. Delivery of this Authorization to TeleCheck constitutes delivery by Subscriber to Bank.
- (e) Subscriber hereby waives its right to receive any notice, written or otherwise, from TeleCheck of the amount to be debited and the date(s) on which such debits are to be processed as required by the rules of the Canadian Payments Association, however TeleCheck will provide Subscriber with prior notice of all amounts to be debited prior to the processing of such debit. Subscriber acknowledges its acceptance of this waiver.

#### **TERMS APPLICABLE ONLY TO RENTAL OF EQUIPMENT**

**82. Equipment.** If point of sale equipment is rented from TeleCheck by Subscriber: (a) title to the equipment is retained by TeleCheck, (b) if the equipment is removed within the first 12 months of delivery, TeleCheck shall be entitled to receive, in addition to any other amounts provided hereunder, a disconnection fee of \$200.00, (c) upon termination of this Agreement, Subscriber shall at its expense return the equipment in good repair, except for ordinary wear and tear resulting from ordinary use, and (d) TeleCheck shall replace or repair rental equipment upon Subscriber's request. The "POS Support" is a monthly fee for point of sale support services. A swap fee of \$39.95 will be charged per rented or purchased equipment item replaced for the Eclipse Payment Terminal. If replacement equipment is mailed to Subscriber, it is Subscriber's responsibility to return defective equipment to TeleCheck's office within 20 days or Subscriber will be deemed to have purchased and will be billed for such equipment. A fee of \$50.00 per hour plus the cost of parts will be charged for any damage to the equipment covered by maintenance beyond ordinary wear and tear. Subscriber shall not permit persons other than authorized representatives of TeleCheck to adjust, maintain, program or repair any equipment. Subscriber shall bear the entire risk of loss, theft or damage of or to equipment whether or not owned by Subscriber. Any telecommunication equipment (i.e., routers) provided by TeleCheck will remain the property of TeleCheck and shall promptly be returned to TeleCheck upon any termination or expiration of this Agreement. Subscriber agrees that it will not adjust, modify, replace, reverse engineer, access or in any way tamper with the equipment or any information or software contained therein without the prior written consent of TeleCheck.

#### **TERMS APPLICABLE ONLY TO THE TELECHECK VERIFICATION SERVICE**

**83. Verification Service.** The TeleCheck verification service provides Subscriber with coded information to assist Subscriber in deciding whether or not to accept a cheque. TeleCheck does not guarantee the accuracy or completeness of the information provided to Subscriber. Subscriber agrees that there shall be no payment to Subscriber by TeleCheck for any loss from transactions processed through the verification service. Subscriber assumes all risks that cheques accepted by it may be dishonoured.

#### **TERMS APPLICABLE ONLY TO THE WARRANTY SERVICE**

**84. Warranty Service.** The TeleCheck warranty service provides Subscriber with: (a) coded information to assist Subscriber in deciding whether or not to accept a cheque; and (b) warranty service for cheques that meet the warranty requirements of Section 85, all in accordance with this Agreement.

**85. Warranty Requirements.** TeleCheck warrants the accuracy of its information provided that all requirements set forth in this section are strictly met. TeleCheck agrees to purchase from Subscriber one cheque per warranty transaction for which a TeleCheck Approval Code was inaccurate; provided, however, that TeleCheck's liability will be limited by the Warranty Maximum and warranty requirements and shall not exceed the amount of the cheque. Subscriber's sole and exclusive remedy for breach of warranty shall be the right to require TeleCheck to purchase such cheque subject to the terms and conditions contained in this Agreement. Subscriber represents and warrants with respect to each warranty transaction submitted to TeleCheck for processing under this Agreement that:

- (a) The cheque is a first party cheque drawn on a Canadian or United States financial institution, completely and properly filled out, and made payable to Subscriber. The name of the Consumer is imprinted or typed on the cheque by the cheque manufacturer. If P.O. Box is used or an address is not imprinted by the cheque manufacturer, a physical address

description is written on the cheque according to the Operational Procedures;

- (b) Subscriber made an inquiry to TeleCheck in strict accordance with the Operational Procedures and obtained a single TeleCheck Approval Code. The transaction was not performed in an attempt to avoid the warranty requirements or Warranty Maximum (as more fully described in Section 88(f)), including through split sales;
- (c) The transaction represents an obligation of Consumer at the point of sale (no phone, mail or internet orders) for goods sold or rented or services rendered for the price of such goods or services, and is not a transaction for credit, cash or payment on an account, debt or cheque already due Subscriber;
- (d) The signature in the signature block on the cheque is not substantially different from the name imprinted on the cheque;
- (e) The date of the cheque accurately coincides within one calendar day of (i) the date of the inquiry call to TeleCheck, and (ii) the date the transaction actually occurred. (Cheques may not pre-date or post-date by more than one calendar day the date of the inquiry call and the transaction date.);
- (f) Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectibility of Consumer's obligation or relieve Consumer from liability;
- (g) The TeleCheck Subscriber Number, Consumer's telephone number (including area code), identification type and number and TeleCheck Approval Code are printed or written on the cheque;
- (h) The amount shown in words and figures on the cheque is: (i) less than or equal to the amount entered into the TeleCheck system; or (ii) no more than \$1.00 over the amount entered into the TeleCheck system;
- (i) The cheque has been deposited in Subscriber's Account and received by TeleCheck for purchase within 30 days of the date of the cheque. Such cheque has been sent directly from Subscriber's financial institution after being presented for payment only once (no re-presentments shall be allowed, whether paper or electronic); and
- (j) The transaction is not subject to any stop payment due to a dispute or set-off.

**86. Point of Sale Notices; Return Item Fees.** Subscriber agrees to follow procedures and post and/or provide at TeleCheck's direction any notices (including any updates to such notices) which in TeleCheck's opinion may be required (a) inform cheque-writers about, and obtain their consent to, TeleCheck's collection, use, disclosure and storage of their personal information, and (b) for TeleCheck to process the cheque and/or charge the Return Item Fee. Subscriber also agrees (i) to assess a Return Item Fee on all Return Items, which fee shall be clearly posted and brought to the attention of the Consumer, and (ii) that TeleCheck shall be entitled to collect and retain the Return Item Fee from Consumer.

**87. Assignment of Cheques.** By the execution of this Agreement, Subscriber ASSIGNS, TRANSFERS AND CONVEYS to TeleCheck all of Subscriber's rights, title and interest in any cheque submitted to TeleCheck for coverage under this Agreement. Subscriber shall, at TeleCheck's request, in TeleCheck's discretion, endorse such cheque and take any action reasonably deemed necessary by TeleCheck to aid in the enforcement of TeleCheck's rights hereunder.

**88. Reassignment.** TeleCheck may reassign to Subscriber any cheque purchased by TeleCheck pursuant to the warranty service program provisions of this Agreement in any of the following circumstances:

- (a) The goods or services, in whole or in part, for which the cheque was issued have been returned to Subscriber, have not been delivered by Subscriber or are claimed by Consumer to have been unsatisfactory or are subject to any stop payment due to a dispute or set-off;
- (b) Subscriber has received full or partial payment or security in any form to secure payment of the cheque, or the goods or services for which the cheque was issued were initially delivered on credit or under a lease;
- (c) The transaction for which the cheque was submitted is for any reason illegal, void or invalid; or purchase by or transfer to TeleCheck of the cheque is not permitted by applicable law; or a court of law determines that the cheque is, in whole or in part, not due and payable by Consumer, unless such determination results from Consumer's bankruptcy proceeding;
- (d) Any of the representations made by Subscriber as set forth in Section 9 are or become false or inaccurate;
- (e) Subscriber failed to comply with this Agreement;
- (f) Subscriber, or any of its owners, agents or employees: (i) materially altered either the cheque; or (ii) accepted the cheque with reason to know that it was likely to be dishonoured or that the identification used was forged, altered or did not belong to Consumer; or (iii) processed the transaction in a manner which was an attempt to avoid the warranty requirements or Warranty Maximum. "Knowledge" shall be presumed in the presence of facts or circumstances which, if known, would cause a non-subscribing merchant, using commercially reasonable judgment, to independently refuse to accept a cheque. "Knowledge" is also presumed where there is evidence of Subscriber's attempt to avoid warranty limitations through manipulation of transactions, including, but not limited to the splitting of a single transaction into smaller components or resubmission of a previously denied transaction; or
- (g) Subscriber received notice that Consumer filed bankruptcy and Subscriber failed to notify TeleCheck of the bankruptcy within 3 business days of Subscriber's receipt of such notice.

**88.1.** Subscriber shall immediately notify TeleCheck upon the happening of any of the above circumstances. If the cheque is reassigned as provided herein, TeleCheck may debit Subscriber's Account for the amount paid by TeleCheck for the cheque in accordance with the Pre-Authorized Debit Form signed by Subscriber, or upon request, Subscriber shall remit the amount of the cheque to TeleCheck. Upon reassignment of a cheque, TeleCheck shall have no further liability to Subscriber on such cheque. Following termination of this Agreement, Subscriber shall continue to bear total responsibility for any reassignments, chargebacks and adjustments made under this Section 88.

**89. "Goodwill" of a Return.** TeleCheck, in its sole discretion, may voluntarily elect not to reassign to Subscriber a specific non-compliance Item which fails to comply with the warranty requirements set forth in Section 85. Such discretionary election by TeleCheck shall not (a) constitute a course of dealing or a waiver of TeleCheck's right to reassign any other Return Item, or (b) relate to any other past or subsequent Return Item, or (c) act as a waiver of TeleCheck's right to decline to pay any other Return Item.

**90. Updating Information.** With regard to any Return Items, Subscriber shall promptly notify TeleCheck if: (a) a cheque writer makes any payment to Subscriber; (b) there is a return of goods or services, in whole or in part; or (c) there is a dispute of any amount, notice of bankruptcy or any other matter.

## GENERAL TERMS

**91. TeleCheck Approval Code.** Subscriber acknowledges that TeleCheck will use its internal and proprietary risk management

systems to evaluate the risk associated with any particular cheque and to assist in its decision whether or not to issue a TeleCheck Approval Code. The decision to issue a TeleCheck Approval Code shall be within the discretion of TeleCheck.

**92. Privacy Law Compliance.** As used in this section, "Personal Information" has the same meaning as is given to that term in the Personal Information Protection and Electronic Documents Act (Canada) and any substantially similar provincial statutes (collectively, "Applicable Privacy Laws"). Subscriber represents and warrants to TeleCheck that, prior to communicating any Personal Information to TeleCheck, it will obtain all necessary consents from any Consumer from whom it collects Personal Information to all of the collection, use and disclosure of Personal Information contemplated by this Agreement by providing Consumer with a copy of the consent notice, in the form approved by TeleCheck, prior to completing the transaction. Subscriber represents and warrants to TeleCheck that: (i) it has a legitimate business need, in connection with a business transaction initiated by Consumer, to receive Personal Information from TeleCheck under this Agreement regarding such Consumer; (ii) any Personal Information provided to Subscriber by TeleCheck will only be used for permissible purposes as defined by Applicable Privacy Laws; (iii) it will not use any Personal Information for any purpose (including employment-related purposes) other than a single business transaction between Subscriber and Consumer occurring on the date of the inquiry call to TeleCheck, and (iv) it will comply with all Applicable Privacy Laws relating to the collection, use and disclosure of Personal Information about each Consumer. Subscriber shall not, and shall use reasonable commercial efforts to ensure that its agents shall not, disclose any Personal Information received from TeleCheck, including the results of any inquiry made to TeleCheck, except to the Consumer the Personal Information relates to. For greater certainty, Subscriber shall not disclose any Personal Information received from TeleCheck to any other person outside Subscriber's organization.

**93. Use of TeleCheck Materials and Marks.** Pursuant to authorization granted to TeleCheck by TeleCheck International, Inc., the owner of the trademarks referenced in this section, TeleCheck grants to Subscriber, and Subscriber accepts, a nonexclusive, nonassignable and nontransferable limited license, uncoupled with any right or interest, to use the **TELECHECK**, **TELECHEQUE**, **TELECHEQUE CANADA** and the **TELECHECK** logo or service marks (collectively, the "TeleCheck Marks") as follows. Subscriber may use and display decals, identification data and other materials provided by TeleCheck during the term of this Agreement at Subscriber's location solely in connection with the offering of TeleCheck services as authorized under this Agreement. Subscriber shall not permit any persons other than its own officers or employees at Subscriber's locations to use the TeleCheck Subscriber number assigned by TeleCheck. Subscriber agrees that upon termination of this Agreement it will, at its own expense, either return or destroy all TeleCheck materials (including the prompt removal of any TeleCheck decals, electronic files, logos or other materials or references to TeleCheck that are displayed to the public, including those affixed to equipment, doors or windows). The monthly fees payable by Subscriber will apply for all months or fractions of a month that any materials or TeleCheck-owned equipment remain in use. Subscriber shall not create any print, electronic or Internet-based materials including but not limited to any advertising or promotional materials using any TeleCheck Marks without the prior written consent of TeleCheck. Subscriber acknowledges TeleCheck International, Inc.'s ownership of the TeleCheck Marks and will not contest the validity of the marks or the ownership thereof. Subscriber further agrees to refrain from performing any acts that might discredit, disparage, dilute, infringe or negatively affect the value of the TeleCheck Marks or constitute unfair

competition to TeleCheck or TeleCheck International, Inc. Subscriber agrees promptly to bring to TeleCheck's attention any unauthorized use of the TeleCheck Marks by third parties of which Subscriber becomes aware. Subscriber shall use the TeleCheck Marks pursuant to any guidelines provided by TeleCheck, as may be amended from time to time. The following shall appear at least once on every piece of advertising or promotional material created by Subscriber which uses the TeleCheck Marks and has received prior written approval from TeleCheck: "The ["Applicable Mark"] trademark is owned by TeleCheck International, Inc. and is licensed for use by ["Subscriber Name"]."

**94. Use of Information.** Subscriber agrees that any data and other information relating to an item or Consumer obtained by TeleCheck in connection with any service provided hereunder (including any electronic or other image of all or any portion of any cheque or identification) shall be owned by TeleCheck with all right, title, and interest thereto.

**95. TeleCheck Procedures.** Subscriber shall strictly follow all Operational Procedures provided to Subscriber, as may be amended from time to time by TeleCheck, in its discretion.

**96. Changes in Law.** Notwithstanding anything to the contrary in this Agreement, if the continued performance of all or any portion of the obligations of TeleCheck becomes impossible or illegal due to changes in applicable federal, provincial or local laws or regulations, as determined by TeleCheck in its reasonable discretion, TeleCheck may upon 30 days written notice to Subscriber request to modify or discontinue its performance of the subject obligations to the extent necessary to avoid a violation of law or, if TeleCheck chooses in its sole discretion to incur additional expenses to comply, request to increase its fees to cover the additional cost of compliance. If TeleCheck makes such a request and the parties are unable to agree upon corresponding changes to the terms and conditions of this Agreement within 30 days of the request, TeleCheck may terminate this Agreement upon 30 days written notice.

**97. Confidentiality.** Subscriber shall maintain the confidentiality of this Agreement and any information provided to it by TeleCheck, including, without limitation, Operational Procedures, pricing or other proprietary business information, whether or not such information is marked confidential. Such information shall not be used except as required in connection with the performance of this Agreement or disclosed to third parties.

**98. Assignment of Agreement.** This Agreement may be assigned by Subscriber only with the prior written consent of TeleCheck. TeleCheck may freely assign this Agreement, its rights, benefits or duties hereunder. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of TeleCheck and the heirs, executors, administrators, successors and assigns of Subscriber. Such information shall not be used except as required in connection with the performance of this Agreement nor shall such information be disclosed to third parties.

**99. Indemnification.** In the event Subscriber (a) fails to strictly comply, in whole or in part, with any: (i) terms and conditions of this Agreement; or (ii) applicable law, rules and regulations, or (b) makes any false or inaccurate representation, Subscriber shall indemnify, defend and hold harmless the TeleCheck Parties from and against any and all Claims arising therefrom, including payment of all costs and reasonable attorneys' fees for actions taken by TeleCheck, whether by suit or otherwise, to defend the TeleCheck Parties from any Claim related thereto or to preserve or enforce TeleCheck's rights under this Agreement, and TeleCheck shall have the right to immediately repossess all equipment owned by TeleCheck. In the event of any legal action with third parties or regulatory agencies concerning any transaction or event arising under this Agreement, Subscriber shall: (a) promptly notify TeleCheck of the Claims or legal action;

(b) reasonably cooperate with TeleCheck in the making of any Claims or defenses; and (c) provide information, assist in the resolution of the Claims and make available at least one employee or agent who can testify regarding such Claims or defenses. Upon written notice from TeleCheck to Subscriber, Subscriber shall immediately undertake the defense of such Claim by representatives of its own choosing, subject to TeleCheck's reasonable approval; provided, however, that TeleCheck shall have the right to control and undertake such defense by representatives of its own choosing, but at Subscriber's cost and expense, if the Claim arises out of patent, trademark, or other intellectual property rights or laws.

**100. Limitation of Liability.** In no event shall TeleCheck or Subscriber be liable to the other party, or to any other person or entity, under this Agreement, or otherwise, for any punitive, exemplary, special, incidental, indirect or consequential damages, including, without limitation, any loss or injury to earnings, profits or goodwill, regardless of whether such damages were foreseeable or whether such party has been advised of the possibility of such damages. Notwithstanding anything to the contrary contained in this Agreement, in no event shall TeleCheck's liability under this Agreement for all Claims arising under, or related to, this Agreement exceed, in the aggregate (inclusive of any and all Claims made by Subscriber against TeleCheck, whether related or unrelated), the lesser of: (i) the total amount of fees paid to TeleCheck by Subscriber pursuant to this Agreement during the 12 month period immediately preceding the date the event giving rise to such Claims occurred; or (ii) \$75,000.00.

**101. DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 9, TELECHECK MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND NO IMPLIED AT LAW WARRANTY SHALL ARISE FROM THIS AGREEMENT, THE SALE OF ANY EQUIPMENT BY TELECHECK TO SUBSCRIBER, OR FROM PERFORMANCE BY TELECHECK, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ALL OF WHICH ARE EXPRESSLY WAIVED BY SUBSCRIBER. All decisions to reject any cheque, driver's license or other form of identification or payment for Subscriber's products or services are solely Subscriber's responsibility.

**102. Notices.** Any notice or other communication required or permitted to be given hereunder shall be in writing, and shall be delivered by facsimile transmission, overnight courier or certified or registered mail (postage prepaid return receipt requested) addressed or transmitted to the party to be notified at such party's address or number as provided on the face of this Agreement, or at such party's last known address or number. Any notice delivered hereunder shall be deemed to have been properly given (a) upon receipt if by facsimile transmission, as evidenced by the date of transmission indicated on the transmitted material, (b) upon receipt if deposited on a prepaid basis with a nationally recognized overnight courier for next business day delivery, and (c) on the date of delivery indicated on the return receipt, if mailed by certified or registered mail. TeleCheck shall also be permitted to provide notice by regular mail, and such notice shall be deemed effective 10 days after mailing. The parties' addresses may be changed by written notice to the other party as provided herein.

**103. Force Majeure.** TeleCheck shall not be held responsible for any delays in or failure or suspension of service caused by mechanical or power failure, computer malfunctions (including, without limitation, software, hardware and firmware malfunctions), transmission link failures, communication failures, failure, delay or error by any third party or any third party system, strikes, labour difficulties, fire, inability to operate or obtain service for its

equipment, unusual delays in transportation, act of God, or other causes reasonably beyond the control of TeleCheck.

**104. Compliance with Laws, Governing Law and Integration.** Subscriber shall comply with all applicable federal and provincial laws, regulations and rules, relating to the services provided hereunder. This Agreement constitutes the entire agreement between the parties concerning subject matter hereof and supersedes all prior and contemporaneous understandings, representations and agreements in relation to its subject matter. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE PROVINCE OF ONTARIO, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

**105. No Resale: Internet.** This Agreement is solely between Subscriber and TeleCheck; Subscriber shall not provide or resell, directly or indirectly, the services provided by TeleCheck to any other third party. Subscriber is not authorized to, and shall not in any manner, utilize the TeleCheck services in connection with any transaction conducted, in whole or in part, over the Internet or in any other non face to face transaction.

**106. Severability and Interpretation.** If any provision, in whole or in part, of this Agreement is held invalid or unenforceable for any reason, the invalidity shall not affect the validity of the remaining provisions of this Agreement, and the parties shall substitute for the invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provision. This Agreement shall not be interpreted in favor or against any party because such party or its counsel drafted such document. No course of dealing, usage, custom of trade or communication between the parties shall modify or alter any of the rights or obligations of the parties under this Agreement. This Agreement is solely for the benefit of TeleCheck (and its affiliates) and Subscriber and no other person or entity shall have any right, interest or claim under this Agreement.

**107. Amendment and Waiver.** No modification or amendment of any of the terms and conditions of this Agreement shall be binding upon TeleCheck, unless made in writing and approved and signed by TeleCheck. No waiver of any rights hereunder shall be deemed effective unless in writing executed by the waiving party. No waiver by either party of a breach or any provision of this Agreement shall constitute a waiver of any prior or subsequent breach of the same or any other provision of this Agreement. The parties agree that no failure or delay in exercising, any right hereunder shall operate as a waiver of any such right. All of TeleCheck's rights are cumulative, and no single or partial exercise of any right hereunder shall preclude further exercise of such right or any other right.

**108. Damages.** Upon Subscriber's breach of this Agreement, including any unauthorized termination, TeleCheck shall be entitled to recover from Subscriber liquidated damages in an amount equal to ninety percent (90%) of the aggregate Monthly Minimum Fees and Processing Fees payable for the unexpired portion of the then current term of this Agreement. TeleCheck and Subscriber hereby acknowledge and agree that, after giving due consideration to the costs TeleCheck may incur by reason of Subscriber's breach or unauthorized termination of this Agreement, to the possibility that TeleCheck will not be able to mitigate its damages, and to the expense savings that TeleCheck may obtain by not having to provide services, equipment or maintenance, the liquidated damages specified herein constitute a realistic pre-estimate of the loss to TeleCheck in the event of such breach and shall not be construed as a penalty.

**109. Survivability.** All representations, warranties, indemnities, limitations of liability and covenants made herein shall survive the termination of this Agreement and shall remain enforceable after such termination.

**110. Language.** The parties expressly require that this Agreement and any related and subsequent documents be drafted in the English language. Les parties exigent expressément que cette Entente et tous les documents reliés et subséquents soient rédigés en Anglais.