

## MERCHANT AGREEMENT: TERMS OF SERVICE

This Merchant Terms of Service (“TOS”) encompasses the terms governing acceptance of debit and credit cards by Merchant, and includes provisions applicable to Additional Services, such as gift cards, foreign currency services, equipment purchase and maintenance, gateway services and terminal leasing (as selected by Merchant on its application).

THIS MERCHANT TOS, TOGETHER WITH THE MERCHANT’S APPLICATION AND SCHEDULES THERETO (THE “**MERCHANT AGREEMENT**”) COMPRISES THE TERMS AND CONDITIONS UNDER WHICH PEOPLES TRUST COMPANY (“**PTC**”), PIVOTAL PAYMENTS DIRECT CORP. (“**PPD**”) AND/OR THIRD PARTIES, WILL PROVIDE PAYMENT PROCESSING AND RELATED SERVICES TO MERCHANT.

Subject to the requirements of applicable Card Association Rules, PPD and PTC may allocate their respective duties and obligations between themselves as they deem appropriate at their sole discretion, and PPD or Peoples Trust Company may jointly or individually assert or exercise the rights or remedies provided to Peoples Trust hereunder. For purpose of the Agreement, unless expressly stated to the contrary, PTC and PPD are collectively referred to hereinafter as “**Peoples Trust**”.

The information collected by PPD will be used for underwriting the Merchant Application, and if accepted, to provide the merchant services hereunder. The information provided will be kept confidential and stored in a secure environment. Your personal information may be processed and stored in the U.S. by a third party service provider acting on PPD’s behalf and may be subject to disclosure to law enforcement and regulatory agencies in the U.S.

Peoples Trust and Merchant agree as follows:

### **ARTICLE 1 - DEFINITIONS**

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- 1.01 “**Acceptance Currency**” means the international currencies Merchant has selected for multi-currency processing, as per Article 6, Section D
- 1.02 “**Account**” means a commercial chequing or demand deposit account maintained by Merchant (and referred to in the Section 5.17 entitled “**Deposit Account**”) for the crediting of collected funds and the debiting of fees and charges under the Merchant Agreement.
- 1.03 “**Authorization**” means a computerized function or a direct phone call to a designated number to examine individual Transactions to obtain approval from the Card Issuer to charge or debit the Card, as the case may be, for the amount of the sale.
- 1.04 “**Bankcard**” means a Visa or MasterCard branded card or an Interac debit card.
- 1.05 “**Card**” means (i) a valid credit or debit card bearing the “Visa”, “MasterCard” or “Interac” branded marks; or (ii) any other valid credit or debit card accepted by Merchant by agreement with Peoples Trust.
- 1.06 “**Card Association**” means Visa, MasterCard, Interac, or any other brand in conjunction with which Card Issuers provide Cards accepted by Merchant by agreement with Peoples Trust.
- 1.07 “**Card Association Rules**” means the respective and collective by-laws, rules, regulations, operating manuals, operating letters and policies, and cardholder data security standards, as such may be amended from time to time, and established and imposed by Card Associations in respect of Cards.
- 1.08 “**Card Issuer**” means the financial institution or company which has provided a Card to a Cardholder.
- 1.09 “**Card Not Present (CNP)**” means that an Imprint of the Card is not obtained at the point-of-sale.

- 1.10 “**Cardholder**” means the person whose name is embossed upon the face of the Card, or other authorized users of the Card.
- 1.11 “**Cardholder Information**” means any non-public, personally identifiable information about a Cardholder, including any combination of Cardholder name plus the Cardholder’s social insurance number, driver’s license or other identification number or credit or debit card number, or other bank account number.
- 1.12 “**Chargeback**” means the procedure by which a Sales Draft (or disputed portion thereof) is returned to Peoples Trust by a Card Issuer because such item does not comply with the applicable Card plan’s operating regulations.
- 1.13 “**Credit Voucher**” means a document executed by a Merchant evidencing any refund or price adjustment relating to Cards to be credited to a Cardholder account.
- 1.14 “**Code**” refers to the access codes and procedures as more fully described in Article 6, Section C.
- 1.15 “**Data**” has the meaning set out in Article 6, Section C.
- 1.16 “**Data Privacy Requirements**” means Applicable Laws and guidelines pertaining to privacy such as the Personal Information Protection and Electronic Documents Act, Card Association bylaws, operating regulations and rules related to data security, data integrity and the safeguarding of Cardholder Information including the Payment Card Industry Data Security Standard (“**PCI**”), MasterCard’s Site Data Protection Program (“**SDP**”), Visa’s Account Information Security Program (“**AIS**”), INTERAC requirements and such other reasonable requirements provided by Peoples Trust from time to time.
- 1.17 “**EFT**” means the Electronic Funds Transfer system managed by the Canadian Payments Association.
- 1.18 “**Equipment**” has the meaning set out in Article 6, Section A.
- 1.19 “**Event of Default**” has the meaning set out in Section 4.02(b).
- 1.20 “**Foreign Cardholders**” and “**Foreign Transactions**” refer to the cardholder and transaction relating to Dynamic Currency Conversion (DCC).
- 1.21 “**Gateway Services**” has the meaning set out in Article 6, Section C.
- 1.22 “**GC**” refers to gift cards and has the meaning set out in Article 6, Section B.
- 1.23 “**Imprint**” means (i) an impression on a Sales Draft manually obtained from a Card through the use of an imprinter, or (ii) the electronic equivalent obtained by swiping or dipping a Card through a terminal and electronically capturing Card Data and printing a Sales Draft.
- 1.24 “**Law**” or “**Laws**” or “**Applicable Laws**” means all laws, statutes, codes, ordinances, decrees, rules, regulations, by-laws, statutory rules, principles of law, published policies and guidelines, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, including general principles of common and civil law, and the terms and conditions of any grant of approval, permission, authority or licence of any governmental authority, including without limitation, all consumer credit and consumer protection Laws, and anti-money laundering Laws; and the term “applicable” with respect to Laws and in a context that refers to one or more persons, means that the Laws apply to the person or persons, or its or their business, undertaking or property, and emanate from a governmental authority having jurisdiction over the person or persons or its or their business, undertaking or property.
- 1.25 “**Marks**” has the meaning set out in Section 2.02.
- 1.26 “**MATCH**” has the meaning set out in Section 2.16(A).

- 1.27 “**MCP**” or “**MCP Transaction**” shall refer to the multi-currency processing services as more fully described in paragraph 6.01 of Article 6, Section D.
- 1.28 “**Merchant Agreement**” means the Merchant Application once approved and accepted by Peoples Trust together with this TOS, and any supplementary documents referenced herein, and all schedules and amendments to the foregoing. (This definition of *Merchant Agreement* is consistent with that ascribed to it in the Merchant Application.)
- 1.29 “**Merchant Application**” means the application which Merchant signed and submitted to Peoples Trust in order to be eligible to receive the payment processing services described in this TOS. (This definition of *Merchant Application* is consistent with that ascribed to it in the Merchant Application itself.)
- 1.30 “**MSP**” or “**Merchant Service Provider**” has the meaning set out in Article 6, Section C.
- 1.31 “**Non-Qualifying Transaction**” means any sale Transaction that fails to qualify for lowest interchange rate assigned by the applicable Card Association for Merchant’s standard card industry code.
- 1.32 “**Program Currency**” refers to the currency of a Foreign Cardholder’s Card.
- 1.33 “**Qualifying Transaction**” means any sale Transaction that is not a Non-Qualifying Transaction.
- 1.34 “**Representative(s)**” means any employee, service provider, subcontractor, agent, representative, contractor, associate, officer, director, principal of Merchant or any other third party engaged by Merchant.
- 1.35 “**Reserve Account**” has the meaning set out in Section 3.05.
- 1.36 “**Retrieval**” means responding to requests for documentation relating to a Transaction.
- 1.37 “**Sales Draft**” means the paper form, whether electronically or manually imprinted, evidencing a Transaction.
- 1.38 “**Scrip**” means any substitute for currency which is not legal tender.
- 1.39 “**Schedule A**” means the *Schedule A: “Services Subscribed”* found in the Merchant Application, which schedule includes VISA, MASTERCARD, INTERAC and other rates and fees. Additional fees are listed below in Article 5.
- 1.40 “**Terminal**” refers to the point-of-sale device into which Cards are swiped or dipped for purposes of processing Transactions.
- 1.41 “**TMP**” refer to the terminal maintenance program as more fully described in Article 5, Section 5.03.
- 1.42 “**Transaction**” means any sale of products or services, or credit for such, from a Merchant for which the Cardholder makes payment or receives credit through the use of any Card and which is presented to PTC for collection or payment.
- 1.43 “**Voice Authorization**” means a direct phone call to a designated number to obtain credit approval on a Transaction from the Card Issuer, whether by voice or voice-activated systems.

## **ARTICLE 2 - CARD ACCEPTANCE**

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- 2.01 Honouring Cards. Merchant will accept all valid Cards when properly presented by Cardholders in payment for goods or services, subject to applicable Card Association Rules requiring Merchant to elect whether to accept credit only, debit only or both debit and credit Cards. Merchant’s election is set forth in the Merchant Application. Merchant may not establish minimum or maximum amounts for Card sales as a condition for

accepting any Card. Merchant may not require any Cardholder to pay any part of any discount rate or other charge imposed upon Merchant by the Merchant Agreement. However, nothing herein shall prevent Merchant from offering discounts to customers for different methods of payment (*e.g.*, cash, debit or credit card purchases) and differential discounts among different payment networks, provided any such discounts are clearly marked at the point-of-sale. Merchant may not engage in a Transaction (other than a mail, internet, telephone order, or preauthorized sale to the extent permitted under the Merchant Agreement) if the person seeking to charge the purchase to his or her Card account does not present the Card to permit Merchant to compare the signature on the Card to the signature on the Sales Draft and obtain an Imprint or otherwise use the physical Card to complete the Transaction.

- 2.02 Advertising. Merchant will prominently display the promotional materials provided by Peoples Trust in its place(s) of business. Merchant's use of promotional materials and use of any trade name, trademark, service mark or logo type ("**Marks**") associated with a Card is limited to informing the public that the Card will be accepted at Merchant's place(s) of business. Merchant's use of promotional materials and Marks is subject to Peoples Trust's direction and to the Card Association Rules. Merchant may use promotional materials and Marks only during the term of the Merchant Agreement and will immediately cease use and return any inventory to Peoples Trust upon termination thereof. Merchant may not use any promotional materials or Marks associated with Visa, MasterCard or Interac in any way which suggests or implies that either endorses any goods or services other than Card services.
- 2.03 Card Acceptance. When accepting a Card, Merchant will follow the steps provided by Peoples Trust for accepting Cards and will: (a) determine in good faith and to the best of its ability that the Card is valid on its face; (b) obtain Authorization from the Card Issuer to charge the Cardholder's account; (c) unless the Sales Draft is electronically generated or is the result of a mail, internet, phone or preauthorized order, (i) obtain an Imprint of the Card including embossed data from the merchant imprinter; and (ii) except where Cardholder verification requires the processing of the Cardholder's PIN, obtain the Cardholder's signature on the Sales Draft and compare that signature to the signature on the Card, where Cardholder verification requires the processing of the Cardholder's PIN, in *lieu* of obtaining the Cardholder's signature, Merchant shall have the Cardholder enter Cardholder's PIN to process the Transaction; (d) enter a description of the goods or services sold and the price thereof (including any applicable taxes); (e) deliver a true and completed copy of the Sales Draft to the Cardholder at the time the goods are delivered or services performed, or, if the Sales Draft is prepared by a point-of-sale terminal, at the time of the sale; and (f) offer the Sales Draft to Peoples Trust for purchase according to procedures and the terms of the Merchant Agreement.
- 2.04 Authorization. Merchant will obtain an Authorization for all Card sales. If Merchant cannot, for any reason, obtain an electronic Authorization through the use of a terminal, Merchant will request a Voice Authorization from Peoples Trust's designated authorization centre and will legibly print the Authorization number on the Sales Draft. Merchant will not obtain or attempt to obtain Authorization from Peoples Trust's authorization centre unless Merchant intends to submit to Peoples Trust a Transaction for the authorized amount if Authorization for the Transaction is given. Merchant may not divide a single Transaction between two or more Sales Drafts on a single Card to avoid Authorization limits that may be set by the Card Issuer. Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale and that an Authorization is not a guarantee that the Transaction will not be subject to dispute or Chargeback and does not warranty the Cardholder's identity. Merchant may not attempt to obtain an Authorization by successively decreasing the sale amount. Peoples Trust may refuse to purchase or process any Sales Draft presented by Merchant: (a) unless a proper authorization code or approval code has been recorded on the Sales Draft; (b) if Peoples Trust determines that the Sales Draft is or is likely to become uncollectible from the Cardholder to which the transaction would otherwise be charged; or (c) if Peoples Trust has reason to believe that the Sales Draft was prepared in violation of any provision of the Merchant Agreement. Merchant will use, and may not circumvent, fraud identification tools requested by Peoples Trust, including Address Verification System processing, CVC2/CVV2 processing and acknowledges that the use of these tools may prevent Merchant from accepting certain Cards as payment. Merchant acknowledges that its use of fraud identification tools may not prevent fraudulent Card usage, and agrees that any fraudulent Transaction may ultimately result in a Chargeback, for which Merchant retains full liability under the Merchant Agreement.

- 2.05 Retention of Cards. Merchant will use its best efforts, by reasonable and peaceful means, to retain or recover a Card when receiving such instructions when making a request for Authorization or if Merchant has reasonable grounds to believe the Card is counterfeit, fraudulent or stolen. Merchant's obligations under this section do not authorize a breach of the peace or any injury to persons or property, and Merchant will hold Peoples Trust harmless from any claim arising from any injury to person or property or other breach of the peace in connection with the retention or recovery of a Card.
- 2.06 Multiple Transaction Records: Partial Consideration. Merchant may not prepare more than one Sales Draft for a single sale or for a single item but will include all items of goods and services purchased in a single Transaction in the total amount on a single Sales Draft except under the following circumstances: (a) for purchases in separate departments of a multiple department store; (b) for partial payment, installment payment, delayed delivery or an advance deposit; or (c) for delayed or amended charges governed by Card Association Rules for travel and entertainment merchants and Transactions.
- 2.07 Telephone Orders, Mail Orders, Internet, Preauthorized Orders and Installment Orders. Unless Merchant has been approved by Peoples Trust to accept mail, internet or telephone orders (as reflected on the Merchant Application), Merchant warrants that it is a walk-in trade business, located in a retail business place where the public moves in and out freely in order to purchase merchandise or obtain services. If Peoples Trust determines Merchant has accepted unapproved Card Transactions which are placed by telephone, generated through telephone solicitation or mail order or through other means that do not create a Sales Draft that bears the Card Imprint and Cardholder's signature, Peoples Trust may immediately terminate the Merchant Agreement, debit back to Merchant all such unapproved Card Transactions from the first day of processing hereunder and exercise all other rights hereunder to protect against loss, including but not limited to, withholding funds, establishing a Reserve Account, demanding other security, foreclosing on security interests and exercising all rights triggered by the termination of the Merchant Agreement. Unless approved by Peoples Trust, the Merchant Agreement does not contemplate acceptance of Cards for preauthorized orders or for orders generated by mail, internet or telephone. If an occasional Card Transaction is made by mail, phone or preauthorized order, the Sales Draft may be completed without the Cardholder's signature or an Imprint, but in such case Merchant will create a sales slip containing Cardholder data, an Authorization number, the sale amount and the letters "MO", "TO", "IO", or "PO", as appropriate. Receiving an Authorization will not relieve the Merchant of liability for Chargebacks.
- 2.08 Bona Fide Purchases by Merchant to the Cardholder. Merchant must estimate and obtain Authorization for the amount of the Transaction based upon the Cardholder's intended length of stay at hotel, car rental, restaurant(s) (and/or approximate tip/gratuity). Additional Authorization must be obtained and recorded for charges actually incurred in excess of the estimated amount. Regardless of the terms and conditions of any written preauthorization form, the Sales Draft amount for any lodging, vehicle rental or restaurant Transaction must include only that portion of the sale, including any applicable taxes evidencing a bona fide sale by Merchant to the Cardholder and may not include any consequential charges. Nothing contained herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card Transaction.
- 2.09 Returns and Adjustments: Credit Vouchers. Merchant's policy for exchange or return of goods sold and for adjustments for services rendered will be established and posted in accordance with the applicable Card Association's operating regulations. Merchant will disclose to a Cardholder before a Card sale is made, if applicable; (i) that if merchandise is returned, (a) no refund, or less than a full refund, will be given, (b) returned merchandise will only be exchanged for similar merchandise of comparable value, or (c) only a credit toward purchases will be given, and (ii) that special conditions or circumstances apply to the sale (e.g., late delivery, delivery charges, restocking fees, or other non-credit terms). If Merchant does not make these disclosures, a full refund in the form of a credit to the Cardholder's Card account must be given upon the Cardholder's request. The above disclosures must be made on all copies of Sales Drafts or invoices in each case in letters approximately 1/4" (64 mm) high and, with respect to all Sales Drafts and all invoices requiring a signature, in close proximity to the space provided for the Cardholder's signature. Any change in Merchant's return, cancellation or adjustment policies must be submitted in writing to Peoples Trust not less than 14 days prior to the change and approved by Peoples Trust, which approval shall not be unreasonably

withheld. Peoples Trust may refuse to process any Sales Draft made subject to a revised return, cancellation or adjustment policy which Peoples Trust had not approved.

- 2.10 Cash Payments. Merchant may not receive any payment from a Cardholder for charges included in any Transaction nor receive any payment from a Cardholder to prepare and present a Transaction for the purpose of affecting a credit to the Cardholder's Card account.
- 2.11 Cash Advances; Scrip Purchases. Merchant may not (i) present to Peoples Trust for collection any Transaction for the purpose of obtaining or providing a cash advance either on Merchant's Card or the Card of any other party and (ii) accept any Card at a Scrip terminal. Violation of either clause of this Section is grounds for Peoples Trust's immediate termination of the Merchant Agreement.
- 2.12 Duplicate Transactions. Merchant may not present to Peoples Trust for collection duplicate Transactions. Peoples Trust may debit Merchant for any duplicate Transaction adjustments and Merchant is liable for any Chargebacks resulting therefrom.
- 2.13 Presentment of Fraudulent Transactions. Merchant may not accept or present to Peoples Trust for collection any fraudulent Transaction and may not under any circumstances present for processing or credit, directly or indirectly, Transactions originated with any other merchant or any other source. Merchant may accept only Transactions arising from bona fide purchases from Merchant for the goods and services for which Merchant has been approved under the Merchant Agreement. If Merchant presents to Peoples Trust for collection any prohibited Transaction, Peoples Trust may: (a) immediately terminate the Merchant Agreement; (b) withhold funds and establish a Reserve Account as provided herein; and (c) report Merchant to MATCH (as defined in Section 2.16) file, and any Interac equivalent. Merchant's employees' actions are chargeable to Merchant under the Merchant Agreement.
- 2.14 Collection of Pre-existing Debt. Merchant may not prepare and present to Peoples Trust for collection any Transaction representing the refinancing of an existing Cardholder obligation including, but not limited to, obligations: (a) previously owed to Merchant; (b) arising from the dishonor of a Cardholder's personal cheque or relating to a Chargeback; or (c) representing the collection of any other pre-existing indebtedness, including collection of delinquent accounts on behalf of third parties.
- 2.15 Data Security Personal/Cardholder Information. Merchant may not, as a condition of sale, impose a requirement on Cardholders to provide any personal information as a condition for honoring Cards unless such information is required to provide delivery of goods or services or Merchant has reason to believe the identity of the person presenting the Card may be different than that of the Cardholder. Merchant will not, under any circumstances, release, sell or otherwise disclose any Cardholder Information to any person other than Peoples Trust or the applicable Card Association, except as expressly authorized in writing by the Cardholder, or as required by law.
  - (a) Safeguards. Merchant will maintain appropriate administrative, technical and physical safeguards for all Cardholder Information. These safeguards will (a) insure the confidentiality of Cardholder Information; (b) protect against any anticipated threats or hazards to the security or integrity of Cardholder Information; (c) protect against unauthorized access to or use of Cardholder Information that could result in substantial harm or inconvenience to any Cardholder; and (d) properly dispose of all Cardholder Information to ensure no unauthorized access to Cardholder Information. Merchant will maintain all such safeguards applicable to Merchant in accordance with Data Privacy Requirements and applicable Laws.
  - (b) Compliance with Data Privacy Requirements and Card Association Data Security Rules. Merchant represents, warrants and covenants that it is and will remain throughout the term of the Merchant Agreement, in compliance with obligations pertaining to the collection, use, disclosure, retention of Cardholder Information including, data security, data integrity and the safeguarding of such information as set out in the Data Privacy Requirements in effect and as may be amended, supplemented or replaced. Merchant will maintain appropriate administrative, technical and physical safeguards for all Cardholder Information. These safeguards will (a) insure the confidentiality of Cardholder Information; (b) protect against any anticipated threats or hazards to the security or integrity of Cardholder Information; (c)

protect against unauthorized access to or use of Cardholder Information that could result in substantial harm or inconvenience to any Cardholder; and (d) properly dispose of all Cardholder Information to ensure no unauthorized access to Cardholder Information. Merchant will cause all of its Representatives to comply with the Data Privacy Requirements at all times. Merchant will report any non-compliance immediately to Peoples Trust. To help accomplish the foregoing, Merchant and its Representatives will encrypt, at appropriate standards required by the Data Privacy Requirements, all debit, credit or stored value card numbers whether in storage, transport or backup and will not store data security codes on its systems, network or software.

- (c) Annual Certification. Merchant will provide, if requested by Peoples Trust, annual certification to Peoples Trust (in a form acceptable to Peoples Trust) certifying its and its Representatives compliance with the Data Privacy Requirements and other data security provisions of the Merchant Agreement.
- (d) Information Use Limitations. Merchant may not sell, disclose, or otherwise make Cardholder Information available, in whole or in part, in a manner not provided for in the Merchant Agreement, without Peoples Trust's prior written consent. Merchant may, however, transfer Cardholder Information to its Representatives who have a need to know such information to enable Peoples Trust to provide the services described in the Merchant Agreement provided that such individuals or entities have agreed in writing to be bound by the confidentiality obligations and data security provisions herein, including compliance with Data Privacy Requirements and other applicable Laws.
- (e) Response to Unauthorized Access. Merchant will immediately notify Peoples Trust of its knowledge or suspicion of any breach in security resulting in unauthorized access to Cardholder Information. Merchant will provide any assistance that Peoples Trust, the issuing bank of any Cardholder, and their regulators and the Card Associations deem necessary to contain and control the incident to prevent further unauthorized access to or use of Cardholder Information. Such assistance may include, but not be limited to, preserving records and other evidence, compiling information to enable Peoples Trust and the issuing bank or the Card Associations to investigate the incident and providing assistance and cooperation to facilitate the ability of the issuing bank to: (a) file suspicious activity reports (as applicable); (b) notify their regulators (as applicable); and (c) notify the affected Cardholder (as required). Unless the unauthorized access was due to Peoples Trust's acts or omissions, Merchant will bear all costs associated therewith, including but not limited to the cost of notifying the affected Cardholder(s).
- (f) Access Requests and Complaints. Merchant will cooperate with Peoples Trust in any request for access to Cardholder Information by an individual and in responding to any complaints or investigations by individuals, Card Associations or regulators or with respect to Cardholder Information.
- (g) Miscellaneous. Merchant may not make a claim against Peoples Trust or hold Peoples Trust liable for the acts or omissions of others, including but not limited to Merchants, Representatives, Card Associations, and financial institutions. These provisions supplement, augment and are in addition to obligations of indemnification, audit, confidentiality and other similar provisions contained in the Merchant Agreement. This Section and each of its subsections will survive the Merchant Agreement's termination. Merchant may not store in any system or in any manner Card read data, including without limitation CVV2/CVC2 data, PIN data, address verification data or any other information prohibited by Card Association Rules and/or Data Privacy Requirements.
- (h) Survival. Merchant obligations pertaining to Data Privacy Requirements and Cardholder Information contained in the Merchant Agreement will survive indefinitely beyond termination of the Merchant Agreement.

#### 2.16 Compliance with Card Association Rules.

(a) Merchant will comply with and conduct its Card activities in accordance with all applicable Card Association Rules and regulations as such rules and regulations may be amended from time to time whether or not Merchant has been informed of any such amendment. Failure to comply with such rules and regulations may result in Merchant being terminated for cause and listed on various Card Association

and industry databases, including the Terminated Merchant File and the Merchant Alert to Control High Risk Merchants file maintained by MasterCard and Visa (collectively as “MATCH”) and any Interac equivalent. With respect to MasterCard, Visa and Interac, Merchant may not: (i) accept Cardholder payments, cash or otherwise, for previous Card charges incurred at the Merchant location; (ii) establish a minimum or minimum transaction amount as a condition for honoring a Card; (iii) require a Cardholder to complete a postcard or similar device that includes the Cardholder’s account number, card expiration date, signature, or any other card account data in plain view when mailed; (iv) add any surcharge to credit Transactions; (v) add any tax to Transactions, unless applicable Law expressly requires that Merchant impose such tax (and, in such cases, such tax must be included in the transaction amount and not collected separately); (vi) deposit or submit to Peoples Trust any Sales Draft or Credit Voucher for a Transaction that was previously charged back to Peoples Trust and subsequently returned to Merchant, irrespective of Cardholder approval (Merchant may pursue payment from the Cardholder outside the Card Association system); (vii) request or use an account number for any purpose other than as payment for its goods or services; (viii) disburse funds in the form of travelers cheques, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant; (ix) disburse funds in the form of cash, unless: (1) Merchant is a lodging or cruise line merchant disbursing cash to a Cardholder; (2) Merchant is dispensing funds in the form of travelers cheques or foreign currency, or (3) Merchant is participating in a Card Association cash-back service; (x) accept a Card for the purchase of Scrip; (xi) accept a Card for manual cash disbursement; (xii) accept a Card to collect or refinance existing debt; or (xiii) enter into a Transaction that represents collection of a dishonored cheque. Merchant will pay all Card Association fines, fees, penalties and all other assessments or indebtedness levied by Card Associations to Peoples Trust which are attributable, at Peoples Trust’s discretion, to Merchant’s Transaction processing or business.

(b) In addition to, and without limiting the foregoing, Merchant shall in connection with acceptance of debit card transactions: (i) place or equip the Terminal so as to maximize the privacy of information entered by the Cardholder; (ii) never ask a Cardholder for his/her personal identification number (PIN); (iii) securely store and limit access to all Cardholder information and promptly destroy all cardholder information when no longer required; (iv) never use, remit or disclose the names, numbers, sales drafts, receipts or any other transactional or personal information except for the purposes of processing bona fide Card transactions or in accordance with this Merchant Agreement; (v) take all reasonable steps to ensure that Terminals are closed and unavailable for use after business hours; (vi) maintain accurate logs of employee shifts and provide same within 24 hours of a request by Peoples Trust or Interac; (vii) provide Cardholder with a transaction receipt regardless of whether the debit card transaction was approved, declined or not completed; (viii) connect its Terminal only to Peoples Trust or one of its designated vendors; (ix) allow Peoples Trust or its agent to perform audits of security and technical standards relating to terminals and provide financial statements pertaining to transactions; (x) advise Peoples Trust immediately if Merchant suspects that any Terminal has been tampered with or any or PIN pad lost or stolen; and (xi) adhere to and keep confidential all applicable Interac rules, regulations, policies and directives, as may be modified from time to time (a copy of the Interac rules is available upon request).

2.17 Merchant’s Business. Merchant will notify Peoples Trust immediately if it intends to, and prior to taking of any steps to (a) transfer or sell a substantial part of its assets, or liquidate; (b) change the basic nature of its business, including selling any products or services not related to its current business; (c) change ownership or transfer control of its business; (d) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to the Merchant Agreement assumes any interest in Merchant’s business; (e) alter in any way Merchant’s approved monthly volume, average ticket, or maximum ticket; (f) change its return policies or fulfillment house from those identified in the Merchant Application; (g) undertake any substantial change in the volume of Transactions in respect of domestic versus foreign purchases; or (h) add any outlet operations to its business in respect of the same products and/or services being offered by Merchant. Merchant will immediately notify Peoples Trust in writing if it becomes subject to any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Merchant’s failure to provide notice as required above may be deemed a material breach and will be sufficient grounds for termination of Merchant and for Peoples Trust’s exercise of all its rights and remedies provided by the Merchant Agreement. If any change listed above occurs, Peoples Trust may immediately terminate the Merchant Agreement. Merchant further acknowledges and agrees that Peoples Trust may withhold funds

(settlement or otherwise) or temporarily suspend processing under the Merchant Agreement if Peoples Trust, in its sole discretion, determines that such withholding or suspension is required to protect Peoples Trust from potential losses or if there exist material variances from the disclosures on the Merchant Application in (i) the nature of Merchant's business, (ii) the type of or composition of Card processing conducted, or (iii) the actual average ticket size or actual monthly volume amount. If (A) such variances exist, (B) Merchant does not swipe or dip credit card or debit card through Terminals, (C) Merchant does not receive authorization for Transactions, (D) Peoples Trust receives excessive Retrieval requests against Merchant's prior activity, or (E) excessive Chargebacks are debited against Merchant's prior activity, then Peoples Trust may delay or withhold settlement of funds for a period not less than 180 days or until Peoples Trust is reasonably certain fraud or other activity detrimental to Peoples Trust has not occurred. Peoples Trust's right to withhold settlement funds as set forth herein survives termination of the Merchant Agreement. Merchant must immediately contact Peoples Trust if material variances from the average ticket size or monthly volume occur. For purposes hereof, Peoples Trust's determination of materiality shall be binding upon Merchant.

2.18 Merchant's Warranties. Merchant represents, warrants and covenants that: (a) all information contained in the Merchant Application or any other documents delivered to Peoples Trust in connection therewith is true and complete and properly reflects Merchant's business, financial condition and principal partners, owners and officers; (b) Merchant has power to execute, deliver and perform the Merchant Agreement, and the Merchant Agreement is duly authorized, and will not violate any provisions of law, or conflict with any other agreement to which Merchant is subject; (c) Merchant holds all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so; (d) there is no action, suit or proceeding at law or in equity now pending or, to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right or ability to carry on its business as now conducted or adversely affect its financial condition or operations or the entering into of the Merchant Agreement; during the term of the Merchant Agreement, (e) each Sales Draft presented to Peoples Trust for collection will be genuine and will not be the result of any fraudulent or prohibited Transaction or will not be presented on behalf of any business other than Merchant as authorized by the Merchant Agreement; (f) each Sales Draft will be the result of a bona fide Card Transaction for the purchase of goods or services from Merchant by the Cardholder in the total amount stated on the Sales Draft; (g) Merchant has performed or will perform all of its obligations to the applicable Cardholder in connection with each Card Transaction; (h) Merchant has complied (and will comply) with Peoples Trust's procedures for accepting Cards, and each Card Transaction itself will not involve any element of credit for any purpose other than as set forth in the Merchant Agreement, and will not be subject to any defense, dispute, offset or counterclaim which may be raised by any Cardholder under the Card Associations' Rules, under any applicable consumer protection legislation or any other relevant provincial or federal statutes or regulations; and (i) any Credit Voucher which it issues and will issue, will represent a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Sales Draft has been accepted by Peoples Trust.

2.19 Fraud Monitoring. Merchant is solely responsible for monitoring its Transactions and the actions of its officers, directors, employees, agents, business invitees, third party vendors and other person who, with out or without Merchant's consent or cooperation, obtains access to Transactions for fraudulent or other improper use. Additional fraud-prevention, risk-mitigating and other operational procedures, including those pertaining to PCI compliance, may be accessed free of charge at [www.visa.com](http://www.visa.com) and [www.mastercard.com](http://www.mastercard.com) Merchant is required to access such information and remain familiar with same.

### **ARTICLE 3 - PRESENTMENT, PAYMENT, CHARGEBACK**

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3.01 Acceptance. PTC (but not PPD) will accept from Merchant all Sales Drafts presented under the terms of the Merchant Agreement and will present the same to the appropriate Card Issuers for collection against Cardholder accounts. Merchant must transmit Sales Drafts and Credit Vouchers to Peoples Trust or its processing vendor on the same or next business day immediately following the day that such Sales Drafts and Credit Vouchers have been originated and via electronic data transmission in accordance with Peoples Trust's formats and procedures. All presentment and assignment of Sales Drafts, collection therefor and reassignment or rejection of such Sales Drafts are subject to the terms of the Merchant Agreement and regulations of the Card Association. Peoples Trust (but not PPD) will only provisionally credit the value of collected Sales

Drafts to Merchant's Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks (actual and anticipated), fees, penalties, late submission charges, reserve deposits, negative Sales Draft batch presentments and items for which Peoples Trust did not receive final payment.

- 3.02 Endorsement. By presenting Sales Drafts to Peoples Trust or for collection and payment, Merchant agrees to sell and assign all its right, title and interest in each such Sales Draft and constitutes an endorsement by Merchant to Peoples Trust of such Sales Drafts. Peoples Trust may supply such endorsement on Merchant's behalf.
- 3.03 Prohibited Payments. Peoples Trust may receive payment of any Sales Draft presented by Merchant unless and until there is a Chargeback. Unless specifically authorized in writing by Peoples Trust, Merchant may not collect or attempt to collect any Sales Draft, including Chargebacks, and will hold in trust for Peoples Trust and promptly deliver in kind to Peoples Trust any payment Merchant receives, in whole or in part, of the amount of any Transaction, together with the Cardholder's name and account number and any correspondence accompanying payment.
- 3.04 Chargebacks. Merchant will accept for chargeback any sale for which the Cardholder disputes the validity of the sale according to prevailing Card Association regulations, or a Card issuer or Peoples Trust determines that Merchant has in any way failed to comply with Card Association regulations or Peoples Trust's procedures in accepting a Card and presenting the resulting Sales Draft to Peoples Trust for purchase. Merchant shall require Cardholder to sign an imprinted copy of the Sales Draft during the time when the point of sale Terminal printer is inoperable. Notwithstanding any other provision herein, Peoples Trust may chargeback the amount of a Card sale disputed by the Cardholder if Merchant failed to obtain the Card Imprint or the Cardholder's signature. Merchant may not initiate a Transaction in an attempt to collect a Chargeback. Merchant will pay the current published fees for each Chargeback as listed on **Schedule A**.
- 3.05 Reserve Account. Notwithstanding anything to the contrary in the Merchant Agreement, Peoples Trust may, at its own discretion, establish and Merchant shall upon request by Peoples Trust, be required to fund a reserve account without interest accruing to the Merchant (the "**Reserve Account**") or may demand other security from the Merchant, including on the happening of any of the following: (a) Merchant engages in any processing that creates an overcharge to a Cardholder by duplicating charges; (b) any activity designed by Merchant to circumvent a "call centre" message when attempting to process a Transaction; (c) Merchant breaches the Merchant Agreement, violates any representation, covenant or warranty herein, violates any applicable Card Association Rules or applicable Law; (d) Merchant's application is in any way inaccurate or becomes inaccurate subsequent to Peoples Trust's approval of such Merchant Application; (e) Merchant changes its type of business without Peoples Trust's prior written approval; (f) Merchant engages in fraud, processes an unauthorized charge, or engages in other action that violates Peoples Trust's applicable risk management standards or is likely to cause a loss; (g) the ratio of Chargebacks to Bankcard Transactions completed during any 30 calendar day period exceeds the lesser of one half of one percent (0.5%) or a percentage that violates a then applicable Card Association Rules or the ratio of aggregate dollars charged back to the aggregate Bankcard dollar sales volume during any 30 calendar day period exceeds the lesser of one half of one percent (0.5%) or a percentage that violates a then applicable Card Association Rules; (h) Peoples Trust receives an excessive number of requests from consumers or Card Issuer to retrieve documentation; (i) Merchant's financial stability is in question or Merchant ceases doing business; or (j) Merchant terminates the Merchant Agreement. Once the Reserve Account is established, collected funds will be placed in the Reserve Account until the balance is sufficient, in the discretion of Peoples Trust, to address the applicable risk. Further, Peoples Trust may require Merchant to deposit additional amounts into the Reserve Account, from time to time during the term of the Merchant Agreement based upon Merchant's processing history and/or anticipated risk of loss to Peoples Trust. The Reserve Account funds may be commingled with other Peoples Trust funds. If a Reserve Account is established in accordance with this Section 3.05, then Merchant hereby grants a security interest in respect of the Reserve Account in favour of Peoples Trust in accordance with Section 5.08. Upon termination or expiration of the Merchant Agreement, before releasing funds from the Reserve Account Merchant will pay any equipment cancellation fees and any outstanding challenges, losses or amounts, and Chargebacks for which Merchant has liability and has provided indemnification under the Merchant Agreement. Once established, unless Peoples Trust determines otherwise at its sole discretion, the Reserve Account will remain in place for 180 days and a reasonable

period thereafter during which Cardholder disputes may remain valid under applicable Card Association Rules following termination or expiration of the Merchant Agreement. The provisions of the Merchant Agreement relating to account debits and credits apply to the Reserve Account and survive the Merchant Agreement's termination until Peoples Trust, in its discretion, terminates the Reserve Account. Any balance remaining after Chargeback rights have expired and all of Peoples Trust's other expenses, losses and damages have been paid will be disbursed to Merchant upon request of Merchant. Any amounts in the Reserve Account which Merchant fails to claim within 120 days of such amounts being payable to Merchant shall be forfeited to Peoples Trust.

#### **ARTICLE 4 - TERM, TERMINATION, EFFECT OF TERMINATION AND EXCLUSIVITY**

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4.01 Term. Subject to Section 4.02, the Merchant Agreement will be effective once Peoples Trust accepts it and, unless otherwise terminated, will continue for (3) three years with automatic two-year renewals thereafter until Merchant provides written notice of non-renewal given not less than 30 days before the end of the then current term. Subject to Section 5.07, early termination damages will apply as per Section 4.04. The term of this Merchant Agreement shall be automatically extended an additional three years in the event of a price decrease or introduction of a new product or service (including but not limited to a terminal upgrade), effective as of the date such price change is implemented or such product/service is accepted by Merchant.

#### 4.02 Termination.

- (a) Without Cause. Peoples Trust may terminate the Merchant Agreement, without cause, upon ten (10) days advance written notice to Merchant.
  
- (b) For Cause. Peoples Trust may terminate the Merchant Agreement in its sole discretion, effective immediately, upon written or verbal notice, or by closing Merchant's Terminal, if Peoples Trust reasonably determines either that any of the conditions enumerated as a reason for the establishment of a Reserve Account exist or that any of the following conditions exist (each an "**Event of Default**"): (i) Merchant has violated any provision of the Merchant Agreement; (ii) there is a material adverse change in Merchant's business, operations, financial condition, assets or prospects; (iii) any case or proceeding is commenced by or against Merchant under any federal or provincial or other law related to insolvency, bankruptcy, receivership or other debt relief; (iv) any information which Merchant provided to Peoples Trust, including Merchant Application information, was false, incomplete or misleading when received; (v) any information which Merchant provided to Peoples Trust, including Merchant Application information, has thereafter become false, incomplete or misleading; (vi) an overdraft in the Account exists for more than three days; (vii) Peoples Trust believes that Merchant or any of Merchant's officers or employees has been involved in processing Transactions arising from fraudulent, criminal, suspicious or otherwise unauthorized Transactions; (viii) Merchant is or will be unable or unwilling to perform its obligations under the Merchant Agreement or applicable Law; (ix) Merchant has failed to timely pay Peoples Trust any amount due; (x) Merchant has failed to promptly perform or discharge any obligation under the Account or the Reserve Account; (xi) any of Merchant's representations or warranties made in connection with the Merchant Agreement was not true or accurate when given or has thereafter become untrue; (xii) Merchant has defaulted on any agreement it has with Peoples Trust; (xiii) Peoples Trust is served with legal process seeking to attach or garnish any of Merchant's funds or property in Peoples Trust's possession, and Merchant does not satisfy or appeal the legal process within 15 days of such service; (xiv) any Card Association Rules are violated, amended in any way so that the continued existence of the Merchant Agreement would cause Peoples Trust to be in breach of those rules or any Card Association no longer permits Merchant to participate in its Card program; (xv) any guaranty supporting Merchant's obligations is revoked, withdrawn, terminated or altered in any way; (xvi) any circumstances arise regarding Merchant or its business that create harm or loss of goodwill to any Card Association; (xvii) termination is necessary to prevent loss to Peoples Trust or Card Issuers; (xviii) Merchant's type of business indicated on the Merchant Application or as conducted by Merchant could endanger Peoples Trust's safety or soundness; (xix) Merchant's owner, officer, guarantor, or corporate entity has a separate relationship with Peoples Trust and that relationship is terminated; (xx) Merchant appears on any Card Association's security reporting; (xxi) Peoples Trust's security for repayment

becomes impaired; (xxii) an event of default under any other indebtedness of Merchant shall have occurred the effect of which is to permit the holder thereof to accelerate the due date of all or part of such indebtedness; or (xxiii) one or more judgments shall have been entered against Merchant which judgment or judgments shall have remained unsatisfied for a period of 45 days from entry thereof. Merchant shall notify Peoples Trust in writing immediately upon becoming aware of the occurrence of an Event of Default, or an event which with the passage of time or the giving of notice, or both, would constitute an Event of Default.

- 4.03 Effect of Bankruptcy. Any account or security held by Peoples Trust will not be subject to any preference, claim or stay by reason of bankruptcy or similar law. The parties expressly agree that the acquisition of Card Transactions hereunder is a financial accommodation and if Merchant becomes a debtor in any bankruptcy or similar proceeding, the Merchant Agreement may not be assumed or enforced by any other person and Peoples Trust will be excused from performance hereunder.
- 4.04 Effect of Termination. When termination becomes effective, the parties' rights and obligations existing under the Merchant Agreement survive. If the Merchant Agreement is terminated, regardless of cause, Peoples Trust may withhold and discontinue the disbursement for all Transactions in the process of being collected and deposited and Peoples Trust may, without notice to Merchant, refuse to accept or revoke acceptance any Sales Draft or Credit Voucher or the electronic transmission thereof, if applicable, received by Peoples Trust on or anytime after the occurrence of any Event of Default. If Merchant is terminated for cause, Merchant acknowledges that Peoples Trust may be required to report Merchant's business name and the names and other identification of its principals to the MATCH file maintained by Visa and MasterCard and any Interac equivalent. Merchant expressly agrees and consents to such reporting if Merchant is terminated for any reason requiring or permitting listing on the MATCH file and Interac report. Merchant waives and will hold harmless Peoples Trust from any claims that Merchant may raise as a result of Peoples Trust's MATCH file and Interac reporting. If Merchant is terminated for cause, Peoples Trust may, without prior notice to Merchant, debit Merchant's Account and Reserve Account in an amount equal to the amount then owed to Peoples Trust, increase the fees payable by Merchant hereunder, require Merchant to deposit, as cash collateral, such amount as Peoples Trust may require to secure Merchant's obligations hereunder, and report to one or more credit reporting agencies any outstanding indebtedness of Merchant (or any guarantor of merchant's obligations under the Merchant Agreement). Merchant will immediately cease requesting Authorizations. If Merchant obtains any Authorization after termination, the fact that any Authorization was requested or obtained will not reinstate the Merchant Agreement. Further, immediately upon termination Merchant will return all Peoples Trust property, forms, or equipment. All obligations for Transactions prior to and after termination (including payment for Chargebacks and Peoples Trust's expenses relating to Chargebacks) survive termination. Peoples Trust is not liable to Merchant for damages (including prospective sales or profits) due to termination. Following termination, Merchant will upon request, provide Peoples Trust with all original and electronic copies of Sales Drafts and Credit Vouchers that have been retained by Merchant as of the date of termination. Upon termination, any amounts due to Peoples Trust will accelerate and be immediately due and payable, without any notice, declaration or other act whatsoever by Peoples Trust. The parties agree that if the Merchant Agreement is terminated before completion of the initial term or any renewal term of the Merchant Agreement for any reason other than a material uncured breach by Peoples Trust or an adjustment per Section 5.07, Merchant will pay Peoples Trust damages equal to the greater of (a) \$400 per Merchant outlet or location or (b) if the Agreement is terminated during the first six months of the initial term, then the processing fees Peoples Trust would have received during such term based upon Merchant's volume representations set forth on **Schedule A** or, if the Agreement is terminated thereafter, the amount equal to the product of the aggregate number of months remaining in the then-current term of the Merchant Agreement multiplied by the average monthly processing fees earned hereunder plus, with respect to both clauses (a) and (b), Peoples Trust's costs and legal fees incurred in connection with collecting such damages. Merchant agrees that these damages are not a penalty but a reasonable computation of the financial harm caused by the termination of the Merchant Agreement. Merchant specifically waives application of Articles 2125 and 2129 of the Civil Code of Quebec.
- 4.05 Exclusivity. During the term of the Merchant Agreement, Peoples Trust shall be the exclusive provider of the services offered hereunder for Merchant and for all of Merchant's affiliates and divisions. Such exclusivity extends to all product and business lines of Merchant and its affiliates and divisions and Merchant will not,

and will cause its affiliates and divisions not to, retain or otherwise allow any other person or entity to provide such services or perform any such services for itself.

- 4.06 Payment Networks; New Products/Services. With respect to Visa and MasterCard products, if Merchant accepts credit card payments from a particular Card Association (e.g., MasterCard), Merchant is not obligated to accept debit cards issued by Canadian issuers belonging to such Card Association (e.g., Maestro cards), and *vice versa*. Similarly, Merchant is not required to accept any new product or service introduced by the Card Association, unless Merchant expressly consents prior to such acceptance. For greater certainty, Merchant shall not be permitted to accept any new product or service, even if it has the technical capability to do so, unless Merchant has given its express consent to Peoples Trust indicating acceptance of such new product or service.

## **ARTICLE 5 - MISCELLANEOUS; FEES**

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- 5.01 Monitoring. Merchant acknowledges that Peoples Trust may monitor Merchant's daily presentment activity. Peoples Trust may upon reasonable grounds suspend disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual presentment activity. Peoples Trust will make good faith efforts to notify Merchant promptly following suspension. Peoples Trust is not liable to Merchant for any loss, either direct or indirect, attributable to any suspension of funds disbursement. In order to maintain quality service, telephone communications with Merchant may be monitored and recorded without further notice or disclosure.

- 5.02 Forms. Merchant will use only the forms or modes of transmission of Sales Drafts and Credit Vouchers that are provided or approved in advance by Peoples Trust, and Merchant may not use such forms other than in connection with Card Transactions.

5.03 Terminal Maintenance Program

**A.** (a) During the term of this Merchant Agreement, and provided Merchant is not delinquent in respect of any obligation hereunder, PPD shall repair or replace, at its option, all defective terminals sold or leased to Merchant ("TMP"). Replacement terminals may be manufactured from new or refurbished parts; all such replacements will be functional equivalents of the replaced terminal. Merchant is responsible for ensuring that terminal is properly packaged and bears the full risk of loss or damage for any terminal that is returned improperly packaged. Replacements are limited to no more than three terminals during any consecutive twelve-month period. (b) To receive TMP services, Merchant must (i) return the defective terminal to PPD no later than three days from discovering the defect; (ii) provide its identification number and terminal serial number; (iii) describe the symptoms and causes of terminal problems to PPD; and (iv) follow PPD's instructions. Replaced terminals become PPD's property. Failure to return any replaced terminal within the aforementioned three-day period will result in a charge of \$1,200 per terminal. All shipping costs shall be borne by Merchant. (c) TMP does not cover (i) lost or stolen terminals; (ii) damage caused by abuse, neglect, misuse (including, faulty installation, repair or maintenance by anyone other than PPD); (iii) unauthorized modifications, use of incompatible devices or accessories, extreme ambient environments, physical stress, fluctuation or surges of electrical power, electrical or magnetic interference, lightning, static electricity, fire, acts of God or other external causes; (iv) equipment with serial numbers that have been altered, defaced or removed; (v) cosmetic damage having no effect on functionality; (vi) damage to or loss of software or data; (vii) consumable parts, such as batteries; or (viii) preventive maintenance. The TMP shall automatically terminate in the event Merchant ceases processing for 30 consecutive days.

**B.** Merchant may, for an additional charge, enrol in the TMP Plus Paper program pursuant to which Merchant will be entitled to receive all TMP services (as described upon), and up to 18 paper rolls per six-month period upon request. Costs for ground shipping shall be borne by PPD.

- 5.04 Indemnification. Merchant will defend, indemnify and hold Peoples Trust and its officers, directors, members, shareholders, partners, employees, agents, subcontractors and representatives harmless from and against any and all fines, penalties, claims, damages, expenses, liabilities or fees of any nature whatsoever,

including legal fees and costs (“**Damages**”), asserted against or incurred by Peoples Trust arising out of, relating to or resulting from, either directly or indirectly; (a) a breach of the security of any system safeguarding Cardholder Information resulting in unauthorized access to Cardholder Information; (b) a breach of any representation, warranty or term of the Merchant Agreement, including, but not limited to, the Data Privacy Requirements herein, by Merchant, or by any of Merchant’s Representatives; (c) the negligence, gross negligence or wilful misconduct of Merchant or any of its Representatives in the performance of their obligations under the Merchant Agreement, including, but not limited to, the data security provisions; (d) any violation of applicable Law and Card Association Rules by Merchant or any of its Representatives; (e) matters for which Merchant provides indemnification pursuant to the terms hereof; and (e) all third party claims arising from the foregoing or asserted against Peoples Trust as a result of Peoples Trust entering into the Merchant Agreement. Notwithstanding the preceding, Merchant is not liable to Peoples Trust if Damages are caused by, related to or arise out of Peoples Trust’s gross negligence or wilful misconduct. Merchant will promptly reimburse Peoples Trust for any assessments, fines, fees or penalties imposed by the Card Association in connection with the Merchant Agreement, including the data security provisions, and authorizes Peoples Trust to deduct any such sums from amounts to be cleared and settled with Merchant.

- 5.05 Records. In addition to any records Merchant routinely furnishes to Peoples Trust under the Merchant Agreement, Merchant will preserve a copy of actual paper Sales Drafts and Credit Vouchers and any written Authorization of the Cardholder for at least two years after the date Merchant presents the Transaction to Peoples Trust.
- 5.06 Requests for Copies. Within two business days following Merchant’s receipt of a request by Peoples Trust, Merchant will provide to Peoples Trust either the original or a legible copy (in a size comparable to the actual Sales Draft) of the paper Sales Draft and any other documentary evidence available to Merchant that Peoples Trust reasonably requests to meet Peoples Trust’s obligations under applicable Laws or otherwise to respond to questions concerning Cardholder accounts.
- 5.07 Compliance with Law; Taxes. Merchant will comply with all applicable Laws to Merchant, Merchant’s business and any Card Transaction. Merchant shall be liable for all taxes, except Peoples Trust’s income taxes, required to be paid or collected as a result of the Merchant Agreement.
- 5.08 Fees and Charges. (a) Merchant will pay to PPD the fees and charges set forth on Schedule A. In addition to the Schedule A fees and charges, Merchant agrees to pay the following, where applicable: a fee of \$75 for any host-level and other account changes initiated by Merchant; a monthly on-file fee of \$10; an Interac processing minimum of \$10; a monthly credit card processing minimum of \$25; a communications fee of \$0.03 per transaction; a batch close fee of \$0.05; an Amex connectivity fee of \$2.95 per month; a voice authorization fee of \$1.75; an Assessment Fee equal to 0.10% of credit card transaction volume; a MasterCard Cross-Border Assessment fee in an amount equal to 0.8% of applicable credit card volume; a minimum monthly amount equal to a 0.0070 ratio where the numerator is net bankcard revenue and the denominator is gross bankcard volume; a Chargeback fee of \$30; a retrieval fee of \$25; a return payment administration fee of \$35 per event; a monthly fee of \$5.99 for TMP; a monthly fee of \$9.95 for TMP Plus Paper; a wireless service fee of \$15 per month for 400 KB of data, and \$10 for each additional MB in excess of 400 KB (if Merchant physically alters related equipment, uses any wireless service for a purpose not strictly related to processing Card transactions or otherwise misuses any wireless services, PPD shall be entitled, in addition to any other recourses and remedies hereunder, to terminate this Merchant Agreement immediately and/or charge PPD’s costs for such wireless services plus a sum equal to 20% of the total costs of such services). All fees relating to wireless services shall be aggregated on Merchant’s statement; a breakdown is available upon request. All fees and charges shall be subject to a yearly adjustment of 0.0007 to reflect increases in the Consumer Price Index. Any amounts not paid when due are subject to a late payment charge of 2% per month (26.8% *per annum*). PPD may also, at its option (i) withhold settlements until such time as all outstanding amounts have been duly acquitted; and/or (ii) suspend or terminate all services hereunder. To resume services following such suspension or termination, Merchant shall pay a \$250 reconnection fee for each terminal.

(b) PPD may upon 90 days' prior notice adjust all fees, rates and charges set forth on **Schedule A** to reflect *inter alia* changes in, or additions to (i) Card Association fees (including but limited to interchange, assessments, and all other Card Association fees, costs or charges); or (ii) pricing of third party vendor goods or services used in connection with the provision of services hereunder. All such adjustments shall become effective on the 90<sup>th</sup> day following notice by PPD unless Merchant provides notice to PPD of its intent to opt out of such adjustment prior to the effective date. If, however, Merchant terminates its Merchant Agreement based on an adjustment made pursuant to this subsection 5.07(a), the early-termination damages described in Section 4.04 shall not apply, provided notice of such termination is received by PPD prior to the effective date. Failing receipt of such notice, this Agreement shall remain in full force and effect and the adjustments shall apply to services performed by PTC and PPD after the effective date of the adjustment. The preceding opt-out and termination rights shall not apply where adjustments to fees, rates or charges (i) are made in accordance with a pre-determined schedule or this Merchant Agreement; or (ii) are not related to debit and credit transactions, in which case any such adjustment may be made upon 20 days' prior notice to Merchant.

(c) Notwithstanding any provision to the contrary, but without limiting Merchant's right to terminate for a price adjustment described in the preceding paragraph 5.07 (a), PPD may adjust any fees, rates and charges if the Card Association or a government entity increases any fees, rates and charges in connection with the services provided hereunder and PPD did not receive sufficient prior notice of such increase to reasonably permit PPD to comply with the foregoing 90-day timeframe; in such case, the amount of the prior notice shall be reasonable under the circumstances, and the adjustment shall become effective no later than such adjustment becomes effective as to PPD.

(d) PPD shall provide to Merchant 180 days prior written notice before making any significant structural fee adjustment (*e.g.*, the introduction of a new interchange category or new type of Card).

(f) The Qualification Fees set forth on **Schedule A** are based on the assumption that each Transaction is a Qualifying Transaction. If any Transaction is a Non-Qualifying Transaction, then Merchant will be charged Non-Qualifying fees (as applicable and as set forth on **Schedule A**). Non-Qualifying fees include increased Card Association interchange rates and fees as well as a Peoples Trust surcharge. Information concerning Visa and MasterCard interchange rates is available, respectively, at [www.visa.com](http://www.visa.com) and [www.mastercard.com](http://www.mastercard.com).

(g) Merchant agrees to pay an annual compliance fee of \$99 per Terminal in consideration of PPD monitoring, advising and implementing any Bank or Card-Association mandated changes to regulations.

5.09 Security Interest. To secure payment of Merchant's obligations under the Merchant Agreement, Merchant grants to Peoples Trust a security interest in all now existing or hereafter acquired: (a) Transactions, Sales Drafts, Credit Vouchers and other items submitted to Peoples Trust for processing by or for Merchant; (b) accounts receivable and payment rights relating to or arising from the Merchant Agreement, including all amounts due Merchant (including any rights to receive credits or payments hereunder); (c) accounts (including without limitation all deposit accounts) maintained with Peoples Trust or any institution other than Peoples Trust, including the Reserve Account, in the name of or for the benefit of, Merchant or any guarantor of Merchant's obligations under the Merchant Agreement; (d) deposits, regardless of source, to Merchant's or any guarantor's accounts with Peoples Trust or any institution other than Peoples Trust, including the Reserve Account; (e) all deposits and all other property and funds presented by Merchant to Peoples Trust or withheld by Peoples Trust, including funds and property withheld as the result of security monitoring; and (f) proceeds of the foregoing. If Peoples Trust reasonably determines that Merchant has breached any obligation under the Merchant Agreement, or that proceeds of Merchant's future Card sales are unlikely to cover anticipated Chargebacks, credits, fees and adjustments, as reasonably determined by Peoples Trust (whether because the Merchant Agreement has been terminated or for any other reason), Peoples Trust may setoff or otherwise exercise its security interest without notice or demand by immediately withdrawing from or freezing any account or otherwise exercising its rights under the Merchant Agreement or those rights available under and subject to, applicable Laws, or in equity. In addition to the collateral pledged above, Peoples Trust may require Merchant to furnish such other and different security as Peoples Trust deems appropriate in its sole discretion to secure Merchant's obligations under the Merchant Agreement. Peoples Trust may fully or partially prohibit withdrawal by Merchant of funds from Merchant's deposit accounts

maintained with Peoples Trust or financial institutions other than Peoples Trust, pending Peoples Trust's determination from time to time to exercise its rights as a secured party against such accounts in partial or full payment of Merchant's obligations to Peoples Trust. Merchant agrees that Peoples Trust may file such financing statements and any other documents as may be required for Peoples Trust to perfect its security interest, and Merchant will execute any other documents as may be requested by Peoples Trust and take such actions as Peoples Trust may require in connection with the security interest, at Merchant's cost. Merchant represents and warrants that no other party has a security interest or lien in any of the collateral pledged above, and Merchant will obtain Peoples Trust's written consent before it grants a lien or security interest in that pledged collateral to any other person.

- 5.10 Pre-Authorized Debits (PADs). Merchant authorizes PPD or PTC and any third party hereto, to initiate debit and credit entries to the Account (as more fully described in Section 5.17 below), the Reserve Account or any other account maintained by Merchant or any guarantor at any financial institution for amounts owed under the Merchant Agreement, which amounts may be variable. Merchant agrees that any withdrawal by Peoples Trust or any third party hereto in accordance with this Merchant Agreement are business PADs, as defined in Rule H1 of the Canadian Payments Association. This authorization includes initiation by Peoples Trust of monthly variable recurring payments and/or occasional one-time payment of any amounts payable pursuant to this Merchant Agreement. **Merchant waives its right to receive pre-notification of the debit amount before such debit is processed.** This authorization shall survive the termination of the Merchant Agreement and remain in effect until full and final payment of all of Merchant's obligations. If (i) Merchant's Account is closed, transferred, invalid or out of funds; (ii) Merchant withdraws its authorization for Peoples Trust to make withdrawals from the Account(s); or (iii) Peoples Trust cannot access such Account(s) for any reason, then Peoples Trust may terminate this Merchant Agreement and Merchant shall immediately pay all applicable fees and damages. If a new account is opened at another branch or bank, this authorization shall have the same force and effect as if it had originally been directed to that branch or bank and Merchant shall provide Peoples Trust all reasonably requested information in relation to such new account. Any delivery of this authorization to such new bank or branch shall constitute delivery by Merchant. Merchant must give Peoples Trust no less than 30 days' prior written notice of any changes to the Account(s) and/or cancellation of this authorization. If debits from Merchant's Account(s) do not comply with this Merchant Agreement, Merchant has certain recourse rights (*e.g.*, Merchant has the right to seek reimbursement for any debit that is unauthorized or inconsistent with this Merchant Agreement). Merchant may contact its financial institution or visit [www.cdnpay.ca](http://www.cdnpay.ca) for further information and cancellation resources. Peoples Trust will not be liable for any delays in receipt of funds or errors in debit entries. The above authorization applies only to the method of payment and does not have any bearing on the contractual obligations between Merchant and Peoples Trust under this Merchant Agreement.
- 5.11 Modifications to Agreement. The Merchant Agreement is subject to amendment required to conform with Card Association regulations, as amended from time to time, and Merchant expressly acknowledges that any election by Peoples Trust regarding means to comply with either Card Association Rules or applicable Law or regulation will not diminish or otherwise impact any of Peoples Trust's rights hereunder. Subject to Section 5.07 above, Peoples Trust may from time to time amend any provision or provisions of the Merchant Agreement upon 20 days' prior notice to Merchant. Amendments required due to changes in either Card Association's rules and regulations or any law or judicial decision may become effective on such shorter period of time as Peoples Trust may specify if necessary to comply with the applicable rule, regulation, Law or decision. If there is any conflict between a part of the Merchant Agreement and any present or future Association Regulation or applicable Law or regulation, only the part of the Merchant Agreement that is affected shall be modified and that modification shall be limited to the minimum necessary to bring the Merchant Agreement within the requirements of the Association Regulation, law or regulation.
- 5.12 Warranty Disclaimer. PEOPLES TRUST MAKES NO WARRANTIES REGARDING THE USE, OPERATION OR PERFORMANCE OR NON-PERFORMANCE OF SOFTWARE, SYSTEMS, OR THIRD PARTY PROCESSORS UTILIZED IN CONNECTION WITH THE MERCHANT AGREEMENT, WHETHER EXPRESS OR IMPLIED, AND PEOPLES TRUST EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PEOPLES TRUST SIMILARLY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED

WARRANTIES OR CONDITIONS OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE IN RELATION TO ANY PRODUCT HEREUNDER.

- 5.13 Limitation of Liability. Notwithstanding any other provision herein, (i) Peoples Trust's liability with respect to any Card Transaction may not exceed the amount of the Sales Draft in connection with that Transaction less any applicable fees and charges and (ii) Peoples Trust's aggregate liability shall not, under any circumstance, exceed the fees paid to Peoples Trust under **Schedule A** of the Merchant Application (net of interchange, assessments and all other Card Association and third-party fees imposed on Peoples Trust) during the twelve-month period immediately preceding the event upon which such liability is based. Peoples Trust is not liable for any special, incidental, indirect, punitive or consequential damages whatsoever (whether any such claim alleges breach of contract, tort or any other theory of liability. Merchant waives all claims against Peoples Trust for any loss, claim, demand, penalty, action, delay, cost or expense (including reasonable legal fees) of any kind unless Merchant provides written notice to Peoples Trust of the occurrence that gave rise to the alleged liability within 30 days after Merchant knew or should have known of the occurrence. Merchant will indemnify and hold Peoples Trust harmless from any claim relating to or arising out of (i) any Sales Draft or Credit Voucher presented to Peoples Trust as may be made by anyone by way of defense, dispute, offset, counterclaim or affirmative action (including but not limited to disputes concerning the quality, fitness or delivery of merchandise or the performance or quality of services) or (ii) damages or losses that Peoples Trust may incur as a result of (a) Merchant's breach of the Merchant Agreement or (b) presentment by Merchant of acceptance or rejection by Peoples Trust of any Sales Draft or Credit Voucher, provided however that, with respect to clause (b), such indemnification shall not apply in the event of Peoples Trust's gross negligence. Further, Merchant will reimburse Peoples Trust for all expenses and costs, including legal fees, with regard thereto.
- 5.14 Waiver. Peoples Trust's failure to enforce one or more of the provisions of the Merchant Agreement will not constitute a waiver of the right to enforce the same or other provision in the future.
- 5.15 Written Notices. All written notices and other written communications required or permitted under the Merchant Agreement must be either personally delivered or sent by courier, charges prepaid, addressed as follows:
- (a) **If to Peoples Trust Company:**  
c/o Pivotal Payments Direct  
888 Dunsmuir Street, Vancouver, BC V6C 3K4  
-and-  
**Pivotal Payments Direct Corp.**  
14 Commerce Place, St. Catharines, ON, L2R 6P7, Attn: Legal Dept.
  - (b) **If to Merchant:** At the address provided as the billing address and to the contact listed on the Merchant Application.

Any written notice delivered to the party to whom it is addressed will be deemed to have been given and received on the day it is so delivered at that party's address, provided that (i) it is so delivered before 5:00 p.m.; and (ii) if that day is not a business day then the written notice will be deemed to have been given and received on the next business day. Merchant acknowledges and agrees that written notice and other written communications required or permitted to be given by Peoples Trust under the Merchant Agreement shall also be properly given if contained in the on-line or monthly statement provided to Merchant by Peoples Trust, or if sent via electronic mail at the email address provided by Merchant. For purposes of this Section 5.15, references to a time of day shall mean that time of day in the jurisdiction of the receiving party (e.g., "5:00 p.m." shall mean 5:00 p.m. in the jurisdiction of the receiving party) and references to "business day" shall mean a day other than a Saturday, Sunday or statutory holiday in the jurisdiction of the receiving party. If the addressee of a notice rejects or otherwise refuses to accept a notice hereunder, or if the notice cannot be delivered because of a change of address for which notification of change was not given, then notice will be deemed received upon rejection, refusal or inability to deliver.

- 5.16 Choice of Law; Arbitration. The Merchant Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Quebec exclusively. Each of the parties agrees that all issues, claims and dispute arising from or related the Merchant Agreement (including with third parties who are not parties to this Merchant Agreement) shall be referred to and determined by private, confidential arbitration in Quebec before a single arbitrator chosen by the parties, the whole at their joint cost. To the extent permitted by applicable law, each of the parties irrevocably waives any objection (including any claim of inconvenient forum that it may now or hereafter have) to arbitration arising out of or relating to the Merchant Agreement in the courts of Quebec, as well as any right it may have to launch or participate in any class action against Peoples Trust. Where applicable laws do not permit the use of compulsory arbitration or the waiver of class-action rights, the arbitration and class-action provisions of this Section 5.15 shall be subject to severance.
- 5.17 Entire Agreement; Interpretation; Assignability. This Merchant Agreement expresses the entire understanding of the parties with respect to the subject matter hereof and except as provided herein, may be modified only in writing executed by Peoples Trust and Merchant. The Merchant Agreement may not be assigned by Merchant, directly or by operation of law, without Peoples Trust's prior written consent. Peoples Trust may assign its rights and obligations under the Merchant Agreement only upon receiving the written consent of PPD. The Merchant Agreement will be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors and assigns. The Merchant Agreement shall not be construed more strongly against any party, regardless of which party was more responsible for its preparation.
- 5.18 Deposit Account. Merchant will at all times maintain an Account at a bank that is a member of the Canadian Payments Association EFT system and will provide Peoples Trust with proper authorization to debit the Account. All credits for collected funds and debits for fees, payments and Chargebacks and other amounts for which Merchant is liable under the terms of the Merchant Agreement will be made to the Account. Merchant may not close or change the Account without written notice to Peoples Trust. Merchant will be solely liable for all fees and costs associated with the Account and for all overdrafts and Merchant shall immediately deposit into the Deposit Account an amount sufficient to cover any overdraft and any related service charges or fees. All credits and debits to the Deposit Account made hereunder are subject to review, verification and acceptance by Peoples Trust. In the event of error, Merchant authorizes Peoples Trust to make correcting credits or debits, as the case may be, without notice to Merchant. Merchant hereby grants to Peoples Trust a security interest in the Account to the extent of any and all fees, payments, Chargebacks and other amounts due which may arise under the Merchant Agreement, and Merchant will execute any document and obtain any consents or waivers from the bank at which the Account is maintained as requested by Peoples Trust to protect its security interests therein.
- 5.19 Credit and Financial Inquiries; Additional Locations; Inspection. Peoples Trust may make, at any time, any credit inquires which it may consider necessary to accept or review acceptance of the Merchant Agreement or investigate Merchant's ability to perform its obligations hereunder, or its Sales Draft presentment and Card acceptance activities subsequent to acceptance of the Merchant Agreement. Such inquiries may include, but are not limited to, a credit and/or criminal background check of the business including its proprietor, partners, principal owners, shareholders or officers. Upon Peoples Trust's request, Merchant will provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed the Merchant Agreement and will provide any financial statements, income tax and business tax returns and other financial information as Peoples Trust may consider necessary to perform initial or periodic reviews of Merchant's financial stability and business practices. Merchant may accept Cards only at locations approved by Peoples Trust. Additional locations may be added subject to Peoples Trust's approval. Peoples Trust may delete any location by providing notice as provided herein. Merchant will permit Peoples Trust, at any time and from time to time, to inspect locations to confirm that Merchant has or is adhering to the terms of the Merchant Agreement and is maintaining the proper facilities, equipment, inventory, records and license or permit (where necessary) to conduct its business. Peoples Trust, its internal and external auditors, and its regulators may audit compliance with (i) the Merchant Agreement, (ii) all applicable Law (iii) Data Privacy Requirements, (iv) Card Association Rules and regulations and (v) guidance applicable to the services, Card acceptance, Transaction processing, and data security provisions hereof. Merchant will make available its records maintained and produced under the Merchant Agreement, and Merchant's facilities will be made accessible, upon notice during normal business hours for examination and audit. Nothing in this section may

be construed to require Merchant to give access to its facilities, personnel or records in a manner that unreasonably interferes with its business operations. Each party will bear its expenses of any audit.

- 5.20 Marketing of Non-Bankcard Services. From time to time, Peoples Trust may offer to Merchant certain additional products and services, which may or may not be related to the acceptance or processing of Card Transactions. If such an offer is made, Merchant may decline the offer or, based on acceptance of the offer by Merchant, in accordance with terms provided by Peoples Trust, and such non-Bankcard organization, be liable for payment associated with its acceptance of such additional products and services.
- 5.21 Force Majeure. Peoples Trust will be released from liability hereunder if it fails to perform any obligation where the failure occurs by reason of any act of God, fire, flood, storm, earthquake, tidal wave, sabotage, war, military operation, terrorism, national emergency, mechanical or electronic breakdown, computer malfunction (whether software, hardware or firmware related), transmission link failures, communication failures, unanticipated loads, transactions or infiltrations of Gateway Services, delay or error in clearing or processing a Transaction (including through Interchange), or any other systems, failure, delay or error by any third party or in any third party system, civil commotion, governmental regulation or the order, requisition, request or recommendation of any governmental authority, or either party's compliance therewith, or any other similar cause beyond either party's reasonable control.
- 5.22 No Third Party Beneficiary; No Partnership. Other than with respect to PPD, no person or entity may be deemed a third party beneficiary of the Merchant Agreement. Nothing in the Merchant Agreement shall be deemed to create a partnership, joint venture or any agency relationship between the parties.
- 5.23 Language. This Merchant Agreement and all related documentation was drafted in English at the express consent of the parties hereto. Les parties ont demandé que les présents contrats ainsi que les documents s'y rattachant soient rédigés en langue anglaise.

## **ARTICLE 6 – ADDITIONAL SERVICES**

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***THE FOLLOWING SECTION A (EQUIPMENT PURCHASE), SECTION B (GIFT CARDS), SECTION C (E-COMMERCE/GATEWAY) AND SECTION D (FOREIGN CURRENCY PROCESSING) WILL APPLY IF SELECTED BY MERCHANT IN THE MERCHANT APPLICATION. DEFINED TERMS SHALL HAVE THE SAME MEANING AS THOSE ASCRIBED IN ARTICLE 1, HEREBOWE.***

***EXCEPT FOR SECTION D, THE ADDITIONAL SERVICES ARE PROVIDED BY PPD ONLY.***

### **A. EQUIPMENT PURCHASE**

- 6.01 Sale of Equipment. PPD agrees to sell and Merchant agrees to purchase from PPD the equipment described in **Schedule A ("Equipment")**.
- 6.02 Purchase Price. Merchant agrees to pay the price of the Equipment together with all applicable taxes, in accordance with the terms set out in **Schedule A ("Purchase Price")** and this Merchant Agreement.
- 6.03 No Warranties. ALL EQUIPMENT AND RELATED PRODUCTS AND SERVICES PROVIDED BY PPD HEREUNDER ARE PROVIDED "AS IS" AND WITHOUT WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DURABILITY, TITLE, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR INTER-OPERABILITY OR COMPATIBILITY OF EQUIPMENT WITH ANY HARDWARE (PERIPHERAL OR OTHER) OR SOFTWARE INCLUDED OR NOT WITH THE EQUIPMENT, PRODUCTS OR SERVICE.
- 6.04 Title and Risk of Loss. PPD will own the Equipment until complete payment of the Purchase Price by Merchant. The preceding notwithstanding, the risk of loss passes to Merchant from the moment the

Equipment is delivered to the location specified by Merchant when the Equipment was ordered. If Merchant fails to pay any amount owing to PPD in respect of the Equipment, PPD shall the right without prejudice to any other available rights or remedies, to terminate this Merchant Agreement forthwith and to take immediate possession of and remove the Equipment, at Merchant's sole expense and risk. Merchant shall not have the right to offset any amount owing by PPD or Peoples Trust against payment due in respect of the Equipment.

- 6.05 Inconsistency. In the event of any inconsistency between the terms of this Section A and any other terms and conditions of this Merchant Agreement, the provisions of this Section A shall prevail.

## **B. GIFT CARDS**

- 6.01 Exclusivity. During the term of this Merchant Agreement, PPD shall be the exclusive provider of gift card products and services to Merchant.

- 6.02 Services. PPD shall (i) furnish Merchant with standard or custom electronic gift cards ("GC"s) that will enable Merchant to provide its customers with spending credit; (ii) upon request, provide access to standardized reporting listing Merchant's GC transactions and balances; and (iii) provide help desk support services, including a toll-free number that Merchant may call to obtain information and report any problems with GC services (but excluding any problems or outages caused by equipment, software or services provided by a third party).

- 6.03 Orders. To place an order for GCs, Merchant must submit a Gift Card Order Form. All orders are subject to acceptance by PPD. Orders may not be cancelled or rescheduled without PPD's written consent. All orders must include quantities and complete description of GCs being purchased.

- 6.04 Fees. Merchant agrees to pay PPD the fees listed set out in the **Schedule A**, including any applicable taxes. PPD reserves the right upon notice to increase such fees in the event of any increase in PPD's cost or those of its suppliers, of any change in market conditions or any other causes beyond PPD's reasonable control. Merchant hereby authorizes PPD to initiate electronic debit entries and/or credit correction entries to Merchant's depository processing account for payment of such fees in accordance with Section 5.09 above.

- 6.05 Compliance. Merchant shall comply with all Applicable Laws in the sale and management of GC. Merchant acknowledges that the sale and administration of GCs may be regulated by laws that limit or prohibit expiration dates, maintenance and usage fees, and cash redemption of unused balances, as well as laws that impose certain disclosure and escheat requirements. Merchant shall be solely responsible for monitoring legal developments applicable to GC services, and for interpreting and determining the requirements for compliance with all Applicable Laws. PPD shall be entitled to rely upon, without verification, any and all information, data and instructions submitted to PPD by Merchant in relation GC services, and PPD shall have no responsibility or liability whatsoever with respect to such information, data and instructions. **MERCHANT AGREES TO INDEMNIFY AND HOLD PPD HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITY AND LOSSES RELATING TO OR ARISING FROM MERCHANT'S NON-COMPLIANCE WITH ANY LAW OR REGULATION GOVERNING GC SERVICES OR ANY CLAIM REGARDING INTELLECTUAL PROPERTY INFRINGEMENT.**

- 6.06 Merchant Responsibilities. Merchant shall be responsible for: (i) selecting the quantity, form and content of GCs; (ii) the handling, storage and distribution of GCs in a secure manner; (iii) all fraudulent or unauthorized transactions relating to GCs, including unauthorized activation or duplication of GCs, reloading of GCs with additional value, and employee misconduct; (iv) all fraud losses and expenses relating to GCs; (v) deactivating or removing all value from compromised GC; (vi) notifying PPD of any known or suspected risk exposures relating to GCs; (vii) the proper functioning of card terminals, systems or any software or hardware required for use of GCs; and (viii) determining the contractual arrangement between Merchant and GC end-user/customer.

- 6.07 Limited Warranty. PPD will transfer to Merchant any transferable warranties that the manufacturer or third party vendor of GCs provides to PPD. PPD SHALL HAVE NO LIABILITY TO MERCHANT BEYOND THE EXPRESS TERMS OF SUCH MANUFACTURER PRODUCT WARRANTIES. PPD's exclusive obligations with respect to non-conforming GCs shall be, at PPD's option, to replace the GCs, if it is determined to be defective, or refund the fees paid for the GCs by Merchant. No warranty shall apply to any GCs that have been subject to misuse, mishandling, improper testing or any use contrary to instructions.
- 6.08 DISCLAIMERS AND LIMITATION OF LIABILITY. MERCHANT AGREES AND ACKNOWLEDGES THAT USE OF GC SERVICES ARE AT MERCHANT'S SOLE RISK. ANY SERVICES PROVIDED BY PPD HEREUNDER ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS. PPD GIVES NO OTHER EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, OR CONDITIONS OF ANY KIND (INCLUDING IN ANY ATTENDANT DOCUMENTATION), WHETHER STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES THAT THE PPD SERVICES WILL BE COMPLETE, ACCURATE, SECURE, TIMELY, AVAILABLE, ACCESSIBLE, UNINTERRUPTED OR ERROR-FREE. SAVE FOR THE LIMITED WARRANTY AT SECTION 6.07 IMMEDIATELY ABOVE, PPD DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS DISCLAIMER OF WARRANTIES CONSTITUTES AN ESSENTIAL PART OF THIS MERCHANT AGREEMENT.

MERCHANT UNDERSTANDS AND ACKNOWLEDGES THAT PPD SHALL NOT BE LIABLE FOR (A) ANY IMPROPERLY PROCESSED OR AUTHORIZED TRANSACTION, OR ILLEGAL OR FRAUDULENT ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF ANY GC AND RELATED DATA THROUGH ACCIDENT, MISUSE, OR FRAUDULENT MEANS OR DEVICES BY MERCHANT OR ANY THIRD PARTY; OR (B) ANY DAMAGES RESULTING FROM ANY CIRCUMSTANCES BEYOND PPD'S CONTROL (INCLUDING ANY ACT OR OMISSION OF MERCHANT OR ANY OF ITS EMPLOYEES OR AGENTS). NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, PPD'S TOTAL LIABILITY IN CONNECTION TO GCs SHALL UNDER NO CIRCUMSTANCES EXCEED THE TOTAL FEES PAID BY MERCHANT FOR THE GC PRODUCTS AND SERVICES THAT ARE THE SUBJECT OF THE DISPUTE. IN NO EVENT WILL PPD BE LIABLE HEREUNDER FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS MERCHANT AGREEMENT.

- 6.09 Inconsistency. In the event of any inconsistency between the terms of this Section B and any other terms and conditions of this Merchant Agreement, the provisions of this Section B shall prevail.

### **C. E-COMMERCE / GATEWAY**

- 6.01 License. Following the successful enrolment of Merchant through PPD's registration page, PPD shall grant to Merchant a personal, non-transferable, non-exclusive, revocable and limited license to use its payment gateway services, which services include an e-commerce gateway application software that authorizes payments, MCP Transactions and an online transactional reporting tool ("**Gateway Services**").
- 6.02 Merchant Obligations. (1) Merchant shall provide a valid, working administrative email address on enrolment. Any changes to Merchant's account must be made via the administrative email address provided upon enrolment. The security of Merchant's account is dependent in part upon Merchant maintaining the security of such administrative email address. Merchant shall be fully and solely responsible for any unauthorized changes to Merchant's account via this email address. (2) Merchant will be given an ID code and password to allow Merchant to have access to Gateway Services. Merchant shall be fully and solely responsible for the establishment and maintenance of procedures to insure the control and confidentiality of identification codes and passwords and other access procedures ("**Codes**"). FAILURE TO PROTECT THE CODES MAY ALLOW UNAUTHORIZED PARTIES TO ACCESS THE GATEWAY SERVICES. Merchant is required to put in place internal procedures to limit such risk, including, but not limited to (a) changing the password at least once every 120 calendar days; (b) keeping every identification code under

secure conditions; and (c) not keeping, in any form or in any place, any list of passwords. Merchant agrees to comply with any access or identification procedures and security protocols established from time to time by PPD, and if Merchant believes that any Code or security procedures has or may have become known by an unauthorized person (whether employed by Merchant or not), Merchant shall immediately notify PPD by telephone and confirm to PPD in writing such oral notification within 24 hours.

6.03 Merchants Responsibilities. Merchant understands and acknowledges that Gateway Services are merely a processing conduit. PPD has no control of or responsibility for accepting, processing or filling any orders for purchases by Merchant's customers, or for handling any related inquiries. Merchant shall be fully and solely responsible for verifying the accuracy and completeness of all card transactions submitted and processed via Gateway Services, including determining the appropriate action to be taken for each such transaction (approve, void, reject or decline). PPD shall not be liable for any improperly processed transaction or illegal or fraudulent access to Merchant's gateway account. Merchant agrees and acknowledges that it shall be fully and solely responsible for all activities conducted through Gateway Services. Merchant shall be fully and solely responsible for the content and promotion of its Web site. Merchant represents and warrants that it is the owner and/or that it has full right and authority to disseminate all information, data, graphics, text, video, music or other intellectual property which forms part of its Web site, which is provided by Merchant to persons purchasing goods or services from Merchant, or which is used by Merchant in its advertising and promotion.

6.04 Protecting Data. Merchant acknowledges and agrees that in the course of providing Gateway Services to Merchant, PPD will capture certain personal and identifiable information, including Cardholder account numbers and transactional information ("Data"). PPD shall not disclose Data to other third parties or use the Data except to the extent the use or disclosure of Data is necessary in (i) providing Gateway Services (including the dissemination of Data required by the acquiring bank, payment processor, any reseller, or financing agency (each a "Member Service Provider" or "MSP")); (ii) maintaining records for internal tracking, reporting and support purposes; or (iii) complying with industry requirements, a court or governmental agency request or subpoena, or to defend PPD's rights in a legal dispute.

Merchant shall be fully and solely responsible for the security of Data residing on servers operated, controlled or owned by Merchant or a third party designated by Merchant. Merchant agrees to use commercially reasonable efforts, at its sole cost and expense, to maintain the security of its systems, including creating firewalls to protect against unauthorized access and any other Data Privacy Requirements. Merchant shall immediately notify PPD of any actual or suspected security breach involving Data and allow, at Merchant's expense, PPD or any PPD agent to investigate and implement any measures reasonably required to prevent future occurrences of any such breaches. Merchant shall at all times comply with Data Privacy Requirements, as amended from time to time.

6.05 Singular Use. Gateway Services are provided for single Merchant Accounts. Merchant is prohibited from processing payments for or on behalf of any other individual or business.

6.06 Records. Merchant shall be solely responsible for compiling and retaining records of all transactional information for Merchant's records. Except as otherwise provided herein, PPD shall not have the obligation to store, retain, report or otherwise provide any copies of or access to any Data collected or processed by PPD or any of its suppliers. Merchant shall be solely responsible for all equipment, hardware and software required to access or use Gateway Services.

6.07 Fees. Merchant shall pay to PPD the Gateway fees listed in **Schedule A**, including all applicable taxes.

6.08 Limitation of Liability. MERCHANT AGREES AND ACKNOWLEDGES THAT USE OF GATEWAY SERVICES ARE AT MERCHANT'S SOLE RISK. ANY GATEWAY SERVICES, GOODS OR SOFTWARE PROVIDED HEREUNDER ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS, AND PPD GIVES NO OTHER EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, OR CONDITIONS OF ANY KIND, WHETHER STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO: WARRANTIES THAT THE GATEWAY SERVICES WILL BE COMPLETE, ACCURATE, SECURE, TIMELY, AVAILABLE, ACCESSIBLE,

UNINTERRUPTED OR ERROR-FREE; IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE; OR THOSE ARISING BY OPERATION OF LAW, COURSE OF DEALING OR USAGE OF TRADE. MERCHANT UNDERSTANDS AND ACKNOWLEDGES THAT PPD SHALL NOT BE LIABLE FOR ANY IMPROPERLY PROCESSED OR AUTHORIZED TRANSACTION, OR ILLEGAL OR FRAUDULENT ACCESS TO MERCHANT'S GATEWAY ACCOUNT OR DATA. THIS DISCLAIMER OF WARRANTIES CONSTITUTES AN ESSENTIAL PART OF THIS MERCHANT AGREEMENT. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS MERCHANT AGREEMENT.

EXCEPT AS OTHERWISE PROVIDED IN THIS MERCHANT AGREEMENT, MERCHANT EXPRESSLY AGREES THAT PPD SHALL NOT BE LIABLE FOR ANY LOSS (HOWEVER ARISING, INCLUDING NEGLIGENCE), ARISING FROM OR RELATED TO: (A) MERCHANT'S FAILURE TO PROPERLY ACTIVATE, INTEGRATE OR SECURE ITS GATEWAY ACCOUNT; (B) IMPROPER, ILLEGAL, UNAUTHORIZED OR FRAUDULENT TRANSACTIONS PROCESSED THROUGH MERCHANT'S GATEWAY ACCOUNT; (C) DISRUPTION OF MERCHANT SERVICES, SYSTEMS, SERVER OR WEB SITE BY ANY MEANS, INCLUDING WITHOUT LIMITATION, DDOS ATTACKS, SOFTWARE VIRUSES, TROJAN HORSES, WORMS, TIME BOMBS, OR ANY OTHER TECHNOLOGY; (D) ACTIONS OR INACTIONS BY ANY THIRD PARTY, INCLUDING WITHOUT LIMITATION, A MSP OR BANK; OR (E) UNAUTHORIZED ACCESS TO (i) DATA, CARDHOLDER INFORMATION (INCLUDING CREDIT CARD NUMBERS AND OTHER DATA), TRANSACTION DATA OR PERSONAL INFORMATION BELONGING TO PPD, MERCHANT OR ANY THIRD PARTY OR (ii) THE GATEWAY SERVICES, OR ANY SYSTEM OR PROGRAM ASSOCIATED THEREWITH; OR (F) THE LIMITATION OF THE FUNCTIONING OF ANY GATEWAY SERVICES OR SOFTWARE, HARDWARE, OR EQUIPMENT ASSOCIATED THEREWITH.

PPD MAKES NO REPRESENTATION, WARRANTY OR GUARANTEE WHATSOEVER IN RELATION TO THIRD PARTY PRODUCTS OR SERVICES (INCLUDING THOSE OF A MSP). MERCHANT'S USE OF ANY SUCH THIRD PARTY PRODUCTS OR SERVICES IS AT ITS OWN RISK. PPD ASSUMES NO RESPONSIBILITY AND EXPRESSLY DISCLAIMS ANY LIABILITY FOR CLAIMS OF LOSS AND/OR FRAUD INCURRED RESULTING FROM THE USE OF OR CONCLUSIONS DRAWN FROM ANY THIRD PARTY PRODUCT OR SERVICE, REGARDLESS OF WHETHER OR NOT PPD IS A RESELLER OF OR REFERRAL AGENT FOR SUCH PRODUCT OR SERVICE.

- 6.09 Indemnification. Merchant shall defend, indemnify, and hold harmless PPD and any of its officers, directors, agents and employees, from and against any and all claims, actions, proceedings and suits, and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses) incurred by PPD, arising out of or relating to ("Claim"): (a) any breach or alleged breach by Merchant of any representation, warranty, or obligation of Merchant set forth in this Merchant Agreement; (b) any damage or loss caused by negligence, fraud, dishonesty or wilful misconduct by Merchant or any of its employees, agents or customers; (c) the reliability, accuracy, or legitimacy of payment data or purchase orders submitted by Merchant to PPD; (d) Card transactions submitted by Merchant to PPD and rejected by PPD or Peoples Trust; (e) claims by Merchant's Cardholders, including, without limitation, claims relating to the disclosure of Data; (g) any alleged or actual violation by Merchant of any Applicable Laws; or (h) any fines and/or penalties charged or to be charged to PPD by the Card Associations or any other entity. Upon written notice from PPD to Merchant, Merchant shall immediately undertake the defense of any such Claim, by representatives of Merchant's own choosing, subject to PPD's reasonable approval; and/or reimburse PPD for any expense or loss arising from or relating to a Claim.
- 6.10 Gateway Software/Limited License. Other than the express license granted herein, PPD grants no right or license to Merchant by implication, estoppel or otherwise to the Gateway Services. PPD and its licensors shall retain all ownership rights, title, and interest in and to its own products and services and all intellectual property rights therein, subject only to the rights and licenses specifically granted herein.

Merchant shall not: (i) attempt to reverse engineer, decompile, disassemble or otherwise translate or modify the Gateway Services software or related technology in any manner; (ii) sell, assign, license, sublicense or otherwise transfer, transmit or convey the Gateway Services software, or any copies or modifications thereof, or any interest therein, to any third party.

- 6.11 Inconsistency. In the event of any inconsistency between the terms of this Section C and any other terms and conditions of this Merchant Agreement, the provisions of this Section C shall prevail.
- 6.12 Termination. The license to Gateway Services shall immediately terminate upon the earlier of: (i) termination of expiration of this Merchant Agreement; (ii) termination of the Gateway Services; or (iii) failure of Merchant to comply with any provisions of this Section C. PPD may terminate Gateway Services for any reason with or without notice.
- 6.13 Nomenclature. For the purposes of this Section C, the term 'PPD' shall also include Planet Payments Processing Services, Inc.

#### **D. FOREIGN CURRENCY PROCESSING**

##### 6.01 Multi-Currency Processing Services (MCP)

- (i) Multi-currency processing (“**MCP**”) enables a Merchant to price its goods and services in various selected currencies (each an “**Acceptance Currency**”) and the Cardholder then decides to purchase the goods and services in the currency of his/her choice (e.g. Euro) (“**MCP Transaction**”). The Cardholder provides the card details at the point of sale and completes the Transaction in the chosen Acceptance Currency (e.g. Euro). The Transaction is authorized and submitted to the Card Associations for clearing and settlement in the chosen Acceptance Currency. However, the Merchant receives settlement of the MCP Transaction in Canadian Dollars in the same way as it receives settlement of other Transactions under the Merchant Agreement.
- (ii) It is the Merchant’s responsibility to set its prices in the various Acceptance Currencies. Peoples Trust can make available to the Merchant for download a daily currency exchange rate table. However, the Merchant can choose to set prices for its goods and services as it wishes, either by reference to such exchange rate table, or any other exchange rate source, or as localized pricing in a fixed amount in the Acceptance Currency (e.g. £29.99). MCP Transactions will be cleared through the applicable Card Associations in the selected Acceptance Currency. The MCP shall apply only to those Cards issued under the brands of Visa, MasterCard or such other Card Associations included within the MCP that are billed to the Cardholder in an Acceptance Currency.
- (iii) The conversion of the MCP Transaction from the Acceptance Currency to Canadian Dollars will be effected based upon a daily exchange rate table produced for the conversion of transactions from the involved Acceptance Currency to Canadian Dollars, which is obtainable from Peoples Trust. Upon authorization of a MCP Transaction, the authorization message returned to the Merchant will contain the Canadian Dollar amount into which that MCP Transaction will be converted to assist Merchants in reconciling their accounting. **Merchant acknowledges that because of the fluctuation in currency exchange rates, localized pricing of goods and services in foreign Acceptance Currencies is likely to result in the Merchant receiving different amounts in Canadian Dollars from day to day, which may be more or less than the typical Canadian Dollar price of the Merchant’s goods or services. This risk is reduced if Merchant uses the daily exchange rate table made available by Peoples Trust.**
- (iv) Peoples Trust reserves the right to add, delete or suspend any Acceptance Currency to or from the MCP, as the case may be, at any time without notice to Merchant. Further, Peoples Trust may terminate or suspend MCP services for any reason upon notice to the Merchant.

## 6.02 MCP Service Requirements

Merchant will comply with all reasonable instructions provided by Peoples Trust pertaining to Merchant's participation in MCP. Without limiting the foregoing, Merchant agrees to comply with the following specific MCP requirements:

- (i) *Disclosure of Foreign Currency Amount at Point of Sale:* In order to comply with Card Association regulations, the Merchant must display the amount of the MCP Transaction at the point of sale, including an Internet website buy page, in the various Acceptance Currencies that the Merchant wishes to offer, to enable the Cardholder to select the Acceptance Currency for the Transaction BEFORE providing his Card information for payment. Merchant agrees that it will at its sole cost use a point of sale device, or system which is certified by Planet Payment for use with the MCP.
- (ii) *Disclosure of Foreign Currency Amount on Receipt:* In accordance with Card Association Rules, all MCP Transaction receipts must show the amount of the Transaction in the correct Acceptance Currency chosen by the Cardholder and such amount must be preceded by the appropriate international currency symbol, or currency code for that Acceptance Currency.
- (iii) *Timely Presentment of MCP Transactions:* The Merchant must present all MCP Transactions for settlement to Peoples Trust within one day after authorization, in order to minimize the risk of loss attributable to movement in the currency exchange rates for the various Acceptance Currencies between the time that a Foreign Transaction is completed and the submission of the batch clearing and settlement files to Peoples Trust. For the avoidance of doubt, neither Peoples Trust nor any of its vendors bears responsibility for any foreign exchange loss attributable to an MCP Transaction processed using MCP.
- (iv) *Credits/Returns:* In the event that Merchant issues a credit, reflecting either the partial or complete return or reimbursement of a MCP Transaction, Merchant must process said credit in the Acceptance Currency. In determining the Canadian Dollar amount of the credit to be deducted from the Merchant's account, Peoples Trust shall use the MCP exchange rate applicable on the date of presentment of the credit or return transaction by Merchant. Due to the differences in the currency exchange rates applied to the underlying MCP Transaction and the related credit respectively, Merchant acknowledges that the final amount of the Canadian Dollars and could well be more. Merchant acknowledges that it will be responsible for the full amount of the credit, as set forth in the Merchant Agreement.
- (v) *Chargebacks:* A Chargeback incurred in connection with a Foreign Transaction will be transmitted to Peoples Trust by the applicable Card Association in the Acceptance Currency and converted by such Card Association into Canadian Dollars at the Card Association's designated foreign exchange rate. Due to the variances in currency exchange rates applied to the underlying MCP Transaction and the related Chargeback respectively, Merchant acknowledges that the final amount of the Chargeback will differ from the original settlement amount received by the Merchant for the MCP Transaction in Canadian Dollars and could well be more. Merchant acknowledges that it will be responsible for the full amount of the Chargeback, as set forth in the Merchant Agreement.
- (vi) *Merchant Options:* Merchant shall indicate which currencies it wishes to use as Acceptance Currencies by checking the applicable box in the Schedule. Merchant can change options by written request to Peoples Trust upon not less than 30 days' notice.

## 6.03 Dynamic Currency Conversion (DCC)

- (i) The Dynamic Currency Conversion enables certain of Merchant's customers, whose Cards are denominated in certain currencies ("**Program Currency**") other than Canadian Dollars ("**Foreign Cardholders**"), to present a Card at Merchant's point-of-sale and to pay for a purchase in the currency of the Foreign Cardholder, based upon a rate of exchange determined by Peoples Trust, while Merchant receives settlement of the foreign transaction in Canadian Dollars (collectively, a "**Foreign Transaction**").
- (ii) Merchant acknowledges and agrees that a Foreign Transaction will be converted to the Program Currency in which the Card is denominated based upon an exchange rate in effect at the time of authorization for

retail transactions and that the Foreign Transaction, as converted, will be cleared through the “Card Associations”) in the currency in which the Card is denominated. The Program shall apply only to those Cards issued by Visa, MasterCard or under the brands of such other Card Associations included within the DCC program that are billed to the Foreign Cardholder in a Program Currency. Additionally, DCC may not apply to credit-return transactions, or certain Foreign Transactions that are referred to Peoples Trust for authorization or otherwise authorized by Merchant via telephone. Peoples Trust reserves the right to add, delete or suspend any currency to or from the Program, as the case may be, at any time without notice to Merchant. Further, Peoples Trust may terminate or suspend DCC services for any reason upon notice to the Merchant.

6.04 DCC Service Requirements. Merchant will comply with all reasonable instructions provided by Peoples Trust pertaining to Merchant’s participation in the DCC program. Without limiting the foregoing, Merchant agrees to comply with the following specific DCC requirements:

- (i) *Program Disclosure:* Merchant agrees to comply with all instructions and specifications applicable to DCC as provided by Peoples Trust from time to time. Without limiting the generality of the foregoing, Merchant shall follow DCC program procedures, as may be amended by Peoples Trust from time to time.
- (ii) *Foreign Cardholder Opt-In:* Merchant shall, based upon the instructions provided by Peoples Trust and/or the Card Associations, from time to time, provide Foreign Cardholders with the ability to “opt-in,” or consent to participate in DCC. In the event that a particular Foreign Cardholder elects not to opt-in, it is understood that Peoples Trust will process that Foreign Cardholder’s transaction in Canadian Dollars. Merchant agrees to make such reasonable modifications as Peoples Trust may request to increase the likelihood of Foreign Cardholders opting-into the DCC program. It is understood that any Foreign Transaction for which Merchant fails to provide a Foreign Cardholder with the opt-in procedure as described herein may be subject to a Chargeback as defined in the Agreement.
- (iii) *Timely Presentment of Foreign Transactions:* Merchant acknowledges that the timely presentment of Foreign Transactions is necessary for participation in the DCC program. For the avoidance of doubt, Foreign Transactions must be presented within twenty-four (24) hours of the completion of the Foreign Transaction. Notwithstanding the foregoing, Foreign Transactions submitted by Merchants involved in the hotel, lodging and cruise industries must be submitted within twenty-four (24) hours of a Foreign Cardholder’s checkout from the Merchant’s establishment, failing which Merchant may be subject to additional charges.
- (vii) *Credits>Returns:* Unless Merchant uses point-of-sale technology that is not capable of processing credit-returns in the Program Currency in the manner required by Peoples Trust, a credit-return to a Foreign Cardholder’s account, reflecting either the partial or complete return or reimbursement of a Foreign Transaction, will be converted to the Program Currency using the exchange rate applicable on the date of presentment of the credit by Merchant, and that credit, as converted, will be cleared through the applicable Card Association in the Program Currency in which the Card is denominated, and if such support is not in place, then such credit or return transaction will be processed in Canadian Dollars, subject always to applicable Card Association rules.
- (viii) *Chargebacks:* A Chargeback incurred in connection with a Foreign Transaction will be transmitted to Peoples Trust by the applicable Card Association in the Program Currency and converted by such Card Association into Canadian Dollars at the Card Association’s designated foreign exchange rate. Given the potential variances in exchange rates applied to the underlying Foreign Transaction and Chargeback, Merchant acknowledges that the original amount of the Chargeback will likely differ from the original settlement amount received by the Merchant for the Foreign Transaction in Canadian Dollars. Notwithstanding anything herein to the contrary, Merchant acknowledges that it will be responsible for the full amount of the Chargeback under the terms of this Merchant Agreement.
- (ix) Merchant agrees that any increased Interchange cost attributable to the increase in the price of the goods or services in Canadian Dollars prior to its conversion by the applicable service fee shall be borne by Merchant.

#### 6.05 Indemnification

Merchant agrees to indemnify Peoples Trust, Planet Payment Processing Services Inc., the Card Associations, and other card sponsors against any and all claims, demands, losses, damages, liability, actions, costs, judgments, arbitral awards and expenses (including reasonable attorneys' fees), to which Peoples Trust, Planet Payment, the Card Associations and other card sponsors may be subjected arising in whole or in part from the MCP and DCC services, any Card transaction involving Merchant, any act or omission of Merchant in connection with any such Card transaction, use of any third-party vendor, any breach of the Merchant Agreement by Merchant, or the Merchant's or any third-party vendor's violation of Applicable Laws or Card Association operating regulations, or any return of goods, price adjustment or other dispute with or claim by a Cardholder against Merchant (whether or not such Foreign Cardholder's claim is valid), including, but not limited to, claims or losses of any Cardholder or of any third party. Without limiting the generality of the foregoing or any other provision in this Merchant Agreement, Merchant agrees to be solely responsible for its actions in honoring or refusing to honor Cards and in retaining Cards in accordance with Card Association merchant operating procedures; and Merchant will indemnify, defend and hold the Card Associations, Peoples Trust, and other members of the Card Associations harmless from any claim, loss or liability arising from any injury to persons, property or reputation which occurs as a result thereof.

### **ARTICLE 7 – THIRD PARTY AGREEMENTS**

*THIS ARTICLE 7 WILL APPLY IF SELECTED BY MERCHANT IN THE MERCHANT APPLICATION.*

#### **Equipment Lease Agreement**

This Equipment Lease Agreement (“**Lease Agreement**”) is being entered into by and between **First Data Global Leasing (FDGL)**, a division of First Data Canada Merchant Services and the Merchant/Lessee. In this Lease Agreement, the words “we,” “our” and “us” refer to FDGL and its affiliates, successors and assigns and the words “you” and “your” refer to Lessee and its permitted successors and assigns.

Lessee hereby authorizes (the “**Permission**”) us or our designees (“**Lessor**”) to withdraw any amounts including any and all sales taxes now due or hereinafter imposed, owed by Lessee in conjunction with this Equipment Lease Agreement by initiating debit entries to Lessee's account at the financial institution named above (hereinafter “**Financial Institution**”), or such other financial institution as the Lessee may from time to time use. In the event of default of any of Lessee's obligations hereunder, Lessee authorizes debit of its account for the full amount due under this Lease Agreement. Further, Lessee authorizes Financial Institution to accept and to charge any debit entries initiated by Lessor to Lessee's account. In the event that Lessor withdraws funds erroneously from Lessee's account, Lessee authorizes Lessor to credit Lessee's account for an amount not to exceed the original amount of the debit. Lessee's Permissions in this Lease Agreement will remain in full force and effect until Lessor and Financial Institution have received written notice from Lessee of its termination in such time and in such manner as to afford Lessor and Financial Institution a reasonable opportunity to act.

Lessee hereby authorizes FDGL to draw on the account of Lessee specified in the Merchant Application (the “**Current Account**”) which is designated to receive provisional funding of Lessee's card sales pursuant to the Lease Agreement for the purpose of paying all regular and variable payments, sales taxes now due or hereafter imposed and all other amounts owing by Lessee to FDGL, pursuant to the terms of this Lease Agreement, including late charges and all other amounts owing in the event of a default by Lessee under this Lease Agreement. In particular, Lessee further agrees that if any payment is dishonoured by Lessee's Financial Institution for any reason, then FDGL shall be entitled to issue another debit in substitution for the dishonoured debit until the debit is honoured. Lessee agrees that any withdrawals by FDGL in accordance with this Lease Agreement are business Pre-Authorized Debits, as defined in Rule H1 of the Canadian Payments Association.

The above authorization includes initiation by FDGL of monthly variable recurring payments and/or occasional one-time payments of amounts payable pursuant to this Lease Agreement. **Lessee waives its right to receive pre-**

**notification of the debit amount before such debit is processed.** This authorization shall survive the termination of the Lease Agreement and remain in effect until full and final payment of all of Lessee's obligations. If a new account is opened at another branch or bank, this authorization shall have the same force and effect as if it had originally been directed to that branch or bank and Lessee shall provide FDGL all reasonably requested information in relation to such new account. Any delivery of this authorization to such new bank or branch shall constitute delivery by Lessee. Lessee must give FDGL no less than 30 days' prior written notice of any changes to the Current Account(s) and/or cancellation of this authorization. The authorization applies only to the method of payment and does not have any bearing on the contractual obligations between FDGL and Lessee under this Lease Agreement.

If debits from Lessee's Account(s) do not comply with this Lease Agreement, Lessee has certain recourse rights (e.g., Lessee has the right to seek reimbursement for any debit that is unauthorized or inconsistent with this Lease Agreement). Lessee may contact its financial institution or visit [www.cdnpay.ca](http://www.cdnpay.ca) for further information and cancellation resources.

The Financial Institution's treatment of each debit shall be the same as if Lessee had issued its cheque authorizing the Financial Institution to pay as indicated and to debit the amount specified to Lessee's account. Lessee confirms that this means, in part, that Lessee's Financial Institution is not required to verify that a pre-authorized debit has been issued in accordance with Lessee's instructions or that some precondition to payment has been met or satisfied. Lessee understands that Lessee may only seek reimbursement of amounts paid to FDGL under the Permission if (1) such amounts were not drawn in accordance with this Permission (2) the amounts were paid after cancellation of the Permission. To dispute a debit for one of these two reasons, Lessee agrees to contact the Financial Institution for instructions on how to proceed.

Lessee shall be charged fifteen dollars (\$15.00) for each credit and debit which cannot be processed, and all subsequent funding under the Merchant Agreement may be suspended until Lessee either (1) notifies FDGL that credits and debits can be processed or (2) a new authorization is signed by Lessee. Lessee's Financial Institution must be able to process or accept credits and debits electronically.

Lessee consents to the disclosure of any personal information contained in the Merchant Application submitted by Lessee as part of the Merchant Agreement.

**1. Equipment.** We agree to lease to you and you agree to lease from us the equipment identified on the cover page of this Lease Agreement (the "**FD Equipment**"), according to the terms and conditions of this Lease Agreement. We are providing the Equipment to you "as is" and make no representations or warranties of any kind as to the suitability of the Equipment for any particular purpose. The term FD Equipment includes the FD Equipment initially deployed under the Lease Agreement and/or any additions, replacements, substitutions, or additions thereto.

**2. Effective Date and Term of Agreement.**

(a) This Lease Agreement becomes effective on the earlier of the date we deliver any piece of FD Equipment to you (the "**Delivery Date**") or the date you sign the Merchant Application. This Lease Agreement remains in effect until all of your obligations and all of our obligations under it have been satisfied. We will arrange for the delivery of the FD Equipment to the site designated by you.

(b) The term of this Lease Agreement begins on a date designated by us after receipt of all required documentation and acceptance by us (the "Commencement Date"), and continues for the number of months indicated on the Lease Agreement. **THIS IS A NON-CANCELABLE LEASE FOR THE TERM INDICATED.**

(c) You agree to pay an interim lease payment in the amount of one-thirtieth (1/30th) of the monthly lease charge for each day from and including the Delivery Date until the date preceding the Commencement Date. (d) YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU LEASE UNDER THIS LEASE AGREEMENT MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS AND THAT WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR EQUIPMENT COMPATIBLE

IN THE EVENT THAT YOU ELECT TO USE ANOTHER SERVICE PROVIDER. UPON TERMINATION OF YOUR MERCHANT PROCESSING AGREEMENT YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE LEASED UNDER THIS LEASE AGREEMENT WITH SAID SERVICE PROVIDER.

**3. Site Preparation.** You will prepare the installation site(s) for the FD Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date.

**4. Payment of Amounts Due.**

(a) The monthly lease charge as set out on the Merchant Application is due and payable, monthly, in advance. You agree to pay all assessed costs for delivery and installation of the FD Equipment.

(b) In addition to the monthly lease charge, you shall pay, or reimburse us for, amounts equal to any taxes or assessments on or arising out of this Lease Agreement or the FD Equipment, and related supplies or any services, use or activities hereunder, including without limitation, federal, provincial and local sales, use, value-added, property, privilege and excise tax, tax preparation, compliance expenses, but exclusive, however, of taxes based on our net income.

(c) Your lease payments will be due despite dissatisfaction with the FD Equipment for any reason.

(d) Whenever any payment is not made by you in full when due, you shall pay us as a late charge an amount equal to ten percent of the amount due but no less than \$10.00 for each month during which it remains unpaid (prorated for any partial month), but in no event more than the maximum amount permitted by law. You shall also pay us an administrative charge of \$25.00 for any debit we attempt to make against your Current Account that is rejected.

**5. Use and Return of FD Equipment; Insurance.**

(a) You shall cause the FD Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us, or the manufacturer. You shall maintain the FD Equipment in good operating condition and protect it from deterioration, normal wear and tear excepted.

(b) You shall not permit any physical alteration or modification of the FD Equipment, or change the installation site of the Equipment, without our prior written consent.

(c) You shall not create, incur, assume or allow to exist any consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the FD Equipment without our prior written consent.

(d) You shall comply with all governmental laws, rules and regulations relating to the use of the FD Equipment. You are also responsible for obtaining all permits required to operate the FD Equipment at your facility.

(e) We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the FD Equipment.

(f) The FD Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the FD Equipment evidencing our ownership.

(g) You shall keep the FD Equipment adequately insured against loss by fire, theft, and all other hazards. The loss, destruction, theft or damage of or to the FD Equipment shall not relieve you from your obligation to pay the full purchase price or lease payable hereunder.

(h) You may choose not to insure the FD Equipment and participate in the FD Insurance Program. The FD Insurance Program provides coverage for many types of loss, including: theft, fire, accidental damage, wind, flood,

lightening, hurricane, water damage, power surge, tornado, and terrorism. The monthly fee of \$4.95 for the FD Insurance Program is a per terminal fee. You can choose to insure the FD Equipment and terminate your participation in the program at any time by calling our Customer Service department.

**6. Title to FD Equipment.** We shall at all times retain title to the FD Equipment. You agree to execute and deliver to us any statement or instrument that we may request to confirm or evidence our ownership of the FD Equipment, and you irrevocably appoint us as your attorney-in-fact to execute and file the same in your name and on your behalf. If a court determines that the leasing transaction contemplated by this Lease Agreement creates a security interest for the purposes of the Personal Property Security Act (Ontario), then you hereby grant us a first lien security interest on the FD Equipment as of the date of this Lease Agreement, and you will execute such further documentation as we may request to evidence such security interest.

**7. Return or Purchase of FD Equipment at End of Lease Period.**

a) 10% FMV Lease: Upon the completion of your lease term or any extension thereof, you will have the option to (a) return the FD Equipment to us, or (b) purchase the FD Equipment from us for the lesser of fair market value at the time (as determined in good faith by us) or an amount equal to 10% of the total lease payments under this Lease Agreement with respect to each item of FD Equipment. If you wish to purchase the FD Equipment from us, you must give notice to us in writing prior to the end of the lease term in order to ascertain the purchase price. In the absence of an affirmative election by you to return or purchase the FD Equipment, this Lease Agreement will continue on a month-to-month basis at the existing monthly lease payment. If Client does not want to continue to rent the FD Equipment, then Client will be obligated to provide FDGL with 30 day written notice to terminate and return the equipment to FDGL.

b) If we terminate this Lease Agreement pursuant to Section 11(b) due to a default by you, then you shall immediately return the FD Equipment to us no later than the tenth Business Day after termination, or remit to us the fair market value of the FD Equipment as determined in good faith by us. We may collect any amounts due to us under this Section 7 including, without limitation, all applicable federal, provincial and local sales, use and value-added taxes, by debiting your Current Account, and to the extent we are unable to obtain full satisfaction in this manner, you agree to pay the amounts owed to us promptly upon our request.

**8. Software License.** We retain all ownership and copyright interest in and to all computer software, related documentation, technology, know-how and processes embodied in or provided in connection with the FD Equipment other than those owned or licensed by the manufacturer of the FD Equipment (collectively "Software"), and you shall have only a nonexclusive license to use the Software in your operation of the FD Equipment.

**9. Limitation on Liability.** We are not liable for any loss, damage or expense of any kind or nature caused directly or indirectly by the FD Equipment, including any damage or injury to persons or property caused by the FD Equipment. We are not liable for the use or maintenance of the FD Equipment, its failure to operate, any repairs or service to it, or by any interruption of service or loss of use of the FD Equipment or resulting loss of business. Our liability arising out of or in any way connected with this Agreement shall not exceed the aggregate lease amount paid to us for the particular FD Equipment involved. In no event shall we be liable for any indirect, incidental, special or consequential damages. The remedies available to you under this Agreement are your sole and exclusive remedies.

**10. Indemnification.** You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses, (including legal fees on a solicitor and client basis) resulting from (a) the operation, use, condition, liens against, or return of the FD Equipment or (b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or wilful misconduct.

**11. Default; Remedies.**

(a) If any debit of your Current Account initiated by us is rejected when due, or if you otherwise fail to pay us any amounts due hereunder when due, or if you default in any material respect in the performance or observance of any

obligation or provision of this Lease Agreement or any agreement with any of our Affiliates, alliances or joint ventures, any such event shall be a default hereunder. Without limiting the foregoing, any default by you under the Merchant Agreement will be treated as a default under the Lease Agreement. Such a default would include a default resulting from early termination of the Merchant Agreement.

(b) Upon the occurrence of any default, we may at our option, effective immediately without notice, either (1) terminate our future obligations under this Lease Agreement, repossess the FD Equipment and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, or (2) accelerate and declare immediately due and payable all monthly lease charges for the remainder of the applicable lease period together with the fair market value of the FD Equipment (as determined by us), not as a penalty but as liquidated damages for our loss of the bargain. Upon any such default, we may proceed in any lawful manner to obtain satisfaction of the amounts owed to us and, if applicable, our recovery of the FD Equipment, including entering onto your premises to recover the FD Equipment. In any case, you shall also be responsible for our costs of collection, court costs and legal fees on a solicitor and client basis, as well as applicable shipping, repair and refurbishing costs of recovered FD Equipment. You agree that we shall be entitled to recover any amounts due to us under this Lease Agreement by debiting your Current Account or any other funds of yours that come into our possession or control, or within the possession or control of our Affiliates, alliances or joint ventures, or by setting off amounts that you owe to us against any amounts we may owe to you, in any case without notifying you prior to doing so. Any amounts payable by you pursuant to this Section 11 shall be increased by an amount equal to the rate of all applicable federal, provincial and local sales, use and value-added taxes.

**12. Assignment.** You may not assign or transfer this Lease Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Lease Agreement, any merger amalgamation, transfer of voting control of you or your parent shall be considered an assignment or transfer of this Lease Agreement. We may assign or transfer this Lease Agreement and our rights and obligations here under, in whole or in part, to any third party without the necessity of notifying you or obtaining your consent.

**13. Lease Guarantee.** No guarantor shall have any right of subrogation to any of our rights in the FD Equipment or this Lease 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 this Lease 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.

**14. Governing Law; Venue; Miscellaneous.** This Lease Agreement shall be governed by and will be construed in accordance with the laws of the Province of Ontario (without applying its conflicts of laws principles). If any part of this Lease Agreement is not enforceable, the remaining provisions will remain valid and enforceable. The maximum rate of "interest" (as defined in the Criminal Code (Canada)) which may be charged by us under this Lease Agreement is the lesser of (1) the rate per annum of all "interest" charged pursuant to this Lease Agreement, and (2) the maximum rate of "interest" as would not result in receipt by us of "interest" at a "criminal rate" (as defined in the Criminal Code (Canada)). If any provision of this Lease Agreement would oblige Lessee to make any payment of interest or other amount payable to us in an amount or calculated at a rate which would be prohibited by law or would result in receipt by us of "interest" at a "criminal rate", then, notwithstanding such provision, such amount or rate shall be deemed interest, as the case may be, as would not result in receipt by us of "interest" at a "criminal rate," such adjustment to be effected, to the extent necessary (but only to the extent necessary), by reducing (1) any fees, commissions, premiums and other amounts required to be paid to us which would constitute "interest" for purposes of the Criminal Code (Canada), or (2) the amount or rate of interest required to be paid, as we may elect, and any amount which Lessee previously paid which is included in such reduction shall be returned to Lessee.

**15. Notices.** All notices to Lessor must be in writing, and shall be given (1) if sent by mail, when received, and (b) if sent by courier, when delivered; if to you at the address appearing on the Merchant Application, and if to us c/o First Data Canada Merchant Services, 2630 Skymark Avenue, Suite 500, Mississauga, ON L4W 5A4 Attn: First Data Global Leasing.

**16. Miscellaneous.** The parties hereby confirm their express wish that this Lease Agreement and any documents and notices related thereto be drawn up in English and declare themselves to be satisfied therewith, the whole, however without prejudice to any document which may from time to time, be drawn up in French and English. Par les présentes, les parties confirment qu'elles souhaitent expressément que cette convention et tous les documents et avis connexe soient rédigés en anglais; elles s'en déclarent satisfaites sans préjudice, toutefois, à tout document ou avis qui pourrait, de temps à autre, être rédigé à la fois en français et en anglais.

**17. Signature.** You acknowledge and agree that the signature on the Merchant Application constitutes consent to this Lease Agreement.

**18. Entire Agreement.** This Lease Agreement constitutes the entire agreement between the parties with respect to its subject matter, supersedes any previous agreements and understandings and can be changed only by a written agreement signed by all parties. This Lease Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of the Merchant Application by facsimile shall be effective as delivery of a manually executed counterpart of this Lease Agreement.

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