

Merchant Information

Registered Legal Name *(This is the name under which the business is incorporated or registered [e.g. 972480 Ontario Inc.]*

Is the Trade Name the same as the Legal Name?

No Yes If No, _____

Class / SIC #: _____ Class / SIC Description: _____

TD Canada Trust Branch & Account #: _____

Contact Name: _____

Phone Number: (____) _____

Best Time(s) to Call: Anytime 8 AM - 12 PM 12 PM - 4 PM 4 PM - 8 PM

Can we contact and communicate with you by email? No Yes

 Email Address

% of Transaction Types(s) Processed: Card Physically Present _____% Card Not Physically Present _____%
 (Face to Face - Service / Retail) (Mail, Telephone, Internet)

Description of Business *(What product/services do you sell? Do you delay delivery of goods or services? Who is your Target Customer?):*

Additional Information for New TD Canada Trust Customers

Identification Required (If Non- TD Canada Trust Customer):

Record 2 pieces of signed valid identification (1 piece must have a photograph) for each individual who signs this Rapid App. (Identification must be issued by the Government of Canada or a Canadian province or territory).

Owner/Partner/Principal Name _____
 % Ownership: _____ Signing Officer: Y/N _____

 Type

 ID Number Province/State/Other

 Type

 ID Number Province/State/Other

Owner/Partner/Principal Name _____
 % Ownership: _____ Signing Officer: Y/N _____

 Type

 ID Number Province/State/Other

 Type

 ID Number Province/State/Other

Product(s) Requested *(Tick all that apply):* Visa Interac Direct Payment (IDP) MasterCard All

Existing Merchant Provider: Moneris Global Payments Paymentech
 Other: _____ N/A

Association Member: No Yes If Yes, provide written confirmation:

 Association Name

Guarantee (To be used in all Provinces except Alberta)

In this guarantee the term "Bank" means The Toronto-Dominion Bank, and its affiliates and the term "Client" means the merchant identified on this Merchant Services Application. In consideration of the Bank dealing with or continuing to deal with the Client, the undersigned unconditionally guarantees, jointly and severally, (and for Quebec purposes, solidarily), performance of the Client's obligations under the TD Merchant Services Terms and Conditions, and such other related agreements and notices that the Bank may provide the Client with from time to time (collectively, the "Client Obligations"), and prompt payment of all sums due thereunder, and in the event of default, hereby waives notice of default and agrees to indemnify the Bank for any and all amounts due from Client under the Client Obligations. The undersigned agrees that the Bank may amend any of the terms and conditions of any agreement in respect of any of the Client Obligations and assign the Bank's rights under this guarantee without notice to the undersigned and without the undersigned's consent. The undersigned understands that this is a guarantee of payment and not of collection and that the Bank is relying upon this guarantee in entering into the TD Merchant Services Terms and Conditions with the Client. The undersigned understands that the undersigned's obligations under this guarantee are continuing, unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged, limited or otherwise affected by and the undersigned hereby waives to the greatest extent permitted by law, any act or omission of any person or any other circumstance whatsoever which might constitute a legal or equitable discharge, limitation or reduction of the undersigned's obligations hereunder. The undersigned agrees to make all payments required under this guarantee without regard to any right of setoff or counterclaim that the undersigned has or may have against the Client or the Bank, which rights the undersigned waives. The Bank may, at its option, without notice, debit any accounts that the undersigned has at the Bank to satisfy the undersigned's obligations under this guarantee. The undersigned agrees to pay all costs and expenses, including legal fees, of enforcing this guarantee including the charges and expenses of the Bank's in-house lawyers. This guarantee is in addition to, and does not replace, any other present or future guarantee of the Client Obligations given by the undersigned. The undersigned also waives any benefit of division and discussion. This guarantee is binding on the undersigned and the undersigned's successors, heirs and permitted assigns

In this paragraph, the word Information means the undersigned's personal and business information (except health information). The undersigned authorizes the Bank to obtain Information from parties outside the Bank, including through a credit check, and to verify Information with them, in order to assess the undersigned's current and ongoing creditworthiness. The undersigned authorizes those parties to give the Bank such information. The Bank may disclose Information to credit bureaus and to other lenders - this helps establish the undersigned's credit history and support the credit process. The Bank may use Information: to establish and serve the undersigned as our customer; to determine whether any products or services of the Bank are suitable for the undersigned and offer them; or as required or permitted by law.

Dated this _____ day of _____, _____.

Owner / Partner / Principal Signature

Owner / Partner / Principal Signature

Print Name

Print Name

Branch Information Only

Branch Contact Name

Sales ID

Phone Number

Branch Transit Number

Confidential

The information in this facsimile contains confidential information intended only for TD Merchant Services. If you have received this facsimile in error, please notify us immediately by a telephone call to the above-mentioned toll-free number and return the original transmission to us by mail. We will reimburse you for postage. Please do not disclose the contents to anyone by either dissemination, distribution or the copying of this communication.

In this Agreement, the words "you" and "your" means the merchant named in the applicable Merchant Services application form, and, if the merchant is not an individual, also means each of the owners, partners or principals of the merchant, as well as any person who has offered to provide a guarantee for any product or service offered by us. The words "we", "us" and "our" mean TD Merchant Services, which is part of the TD Bank Financial Group ("TDBFG"). TDBFG means The Toronto-Dominion Bank and its affiliates, which provide deposit, investment, loan, securities, trust, insurance and other products or services. The word "Information" means personal, financial and other details about you that you provide to us and we obtain from others outside our organization, including through the products and services you use.

You acknowledge, authorize and agree as follows:

Collecting and Using Your Information

At the time you begin a relationship with us and during the course of our relationship, we may collect Information including:

- details about you and your background, including your name, address, date of birth, occupation and other identification, all of which are required under law
- records that reflect your business dealings with and through us
- your financial preferences and activities.

This Information may be collected from you and from sources outside our organization, including from:

- government agencies and registries, law enforcement authorities and public records
- credit reporting agencies
- other financial institutions
- other service providers, agents and other organizations with whom you make arrangements
- references you have provided
- persons authorized to act on your behalf under a power of attorney or other legal authority.

You authorize those sources to give us the Information.

We will limit the collection and use of Information to what we require in order to serve you as our customer and to administer our business, including to:

- verify your identity
- evaluate and process your application, accounts, transactions and reports
- provide you with ongoing service
- analyze your financial needs and activities to help us serve you better
- help protect you and us against fraud and error
- help manage and assess our risks, operations and relationship with you
- comply with applicable laws and requirements of regulators, including self-regulatory organizations.

Disclosing Your Information

We may disclose Information, including as follows:

- with your consent
- in response to a court order, search warrant or other demand or request, which we believe to be valid
- to meet requests for information from regulators, including self-regulatory organizations of which we are a member or participant, to satisfy legal and regulatory requirements applicable to us
- to suppliers, agents and other organizations that perform services for you or for us or on our behalf
- when we buy or sell all or part of our businesses or when considering such transactions
- to help us collect a debt or enforce an obligation owed to us by you
- where permitted by law.

Sharing Information Within TDBFG

Within TDBFG we may share Information, other than health-related Information, for the following purposes:

- To manage your total relationship within TDBFG, including servicing your account, as well as our business risks and operations.
- To comply with legal or regulatory requirements.
- To allow other businesses within TDBFG to tell you about products and services. If you prefer, you may choose not to have us share your Information in this way.

Additional Collections, Uses and Disclosures

Social Insurance Number (SIN) - If requesting products, accounts or services that may generate interest or other investment income, we will ask for your SIN for revenue reporting purposes. This is required by the Income Tax Act (Canada). If we ask for your SIN for other products or services, your choice to provide it is optional. When you provide us with your SIN, we may also use it as an aid to identify you and to keep your information separate from that of other customers with a similar name, including through the credit granting process. You may choose not to have us use your SIN as an aid to identify you with credit reporting agencies.

Credit Consent - For a credit card, line of credit, loan, mortgage or other credit facility, or a deposit account with overdraft protection, hold and/or withdrawal or transaction limits, we will obtain Information and reports about you from credit reporting agencies and other lenders at the time of your application and any time during your application and on an ongoing basis to review and verify your creditworthiness and/or establish credit and hold limits. You may choose not to have us conduct a credit check in order to assess an application for credit. Once you have such a facility or product with us, we may from time to time disclose your Information to other lenders and credit reporting agencies seeking such Information, which helps establish your credit history and supports the credit granting and processing functions in general. If you have a credit product with us, you may not withdraw your credit consent.

Insurance - If you are applying for, requesting prescreening for, modifying or making a claim under an insurance product that we insure, reinsure, administer or sell, we may, if necessary, collect, use, disclose and retain health-related Information about you. We may collect this information from you or any health care professional, medically-related facility, insurance company or other person who has knowledge of your Information. We may also obtain a personal investigation report.

We may use your Information to:

- ensure you are eligible for coverage
- administer your insurance and our relationship with you
- investigate and adjudicate your claims
- help manage and assess our risks.

We may share your Information with any health-care professional, medically-related facility, insurance company or other person who has knowledge of your personal Information, to allow them to properly answer questions when providing us with Information about you. We may share lab results about infectious diseases with appropriate public health authorities.

If we collect your health-related Information for the purposes described above, it will not be shared within TDBFG, except to the extent that other TDBFG companies insure, reinsure, administer or sell relevant coverage and the disclosure is required for the purposes described above. Your health-related Information may be shared with administrators, service providers, reinsurers and prospective insurers and reinsurers of our insurance operations, as well as their administrators and service providers for these purposes.

Marketing Purposes - We may also use your Information for marketing purposes, including to:

- better understand your financial needs and activities so that we may tell you about other products and services that may be of interest to you, including those offered by our affiliates and third parties we select
- determine your eligibility to participate in contests, surveys or promotions, and to conduct and administer contests that you enter
- conduct research and surveys to assess your satisfaction with us as a customer, and to develop products and services to meet your needs
- contact you by telephone, fax and automatic dialing-announcing device, at the numbers you have provided us, or by internet, mail, email and other methods.

With respect to these marketing purposes, you may choose not to have us:

- contact you occasionally either by telephone, fax, internet, mail, email or all of these methods, with offers that may be of interest to you
- contact you to participate in customer research and surveys.

Telephone discussions - When speaking with one of our telephone service representatives, we may monitor and/or record your telephone discussions for our mutual protection, to enhance customer service and to confirm our discussions with you.

More Information

Please read our Privacy Code - "Protecting Your Privacy" for further details about this Agreement and our privacy policies. Visit www.td.com/privacy or contact us for a copy.

You acknowledge that we may amend this Agreement and our Privacy Code from time to time to reflect changes in legislation or other issues that may arise. We will post the revised Agreement and Privacy Code on our website listed above. We may also make them available at our branches or other premises or send them to you by mail. You acknowledge, authorize and agree to be bound by such amendments.

If you wish to opt-out or withdraw your consent at any time for any of the opt-out choices described in this Agreement, you may do so by contacting us at 1-800-363-1163. Please read our Privacy Code for further details about your opt-out choices.

Thank you for considering TD Merchant Services for your Point-of-Sale processing needs and completing the Rapid App. Together with your copy of the Rapid App, please find the Merchant Services Agreement.

Here's what you can expect during the rest of the application process. A TD Merchant Services representative will contact you to complete the application process and will be your main contact. Prior to the representative contacting you we encourage you to fully review the Agreement and address any questions to the representative when they contact you. The representative will:

1. Review your Rapid App and contact you to advise you if your application has been approved.
 - If Approved, you will be provided with your *Visa*, MasterCard and *Interac* Direct Payment Merchant Discount Rates using the information provided on the Rapid App.
2. Discuss your Point-of-Sale terminal requirements and make a recommendation on the terminal that meets your needs
3. Gather the following additional information (if applicable):
 - Business Information*
 - *Visa*, MasterCard and *Interac* Direct Payment Sales Volumes
 - *Visa*, MasterCard and *Interac* Direct Payment Average Transaction Size
 - Total annual cash & credit sales broken down into *Visa*, MasterCard, *Interac* Direct Payment, Cash/Cheque
 - Percentage of sales receipts that are Retail, Telephone Order, Internet Order, Mail Order, etc.
 - Banking Information - Bank Name, Address, Transit & Account Number, Average Balance and lending responsibilities
 - Merchant Service Information - Name and merchant number of all merchant providers
 - Personal Information*
 - Banking Information - Bank Name, Address, Transit & Account Number
4. Confirm the approximate time when your Point-of-Sale terminals will be installed and ready for use.
5. Answer any questions you may have including questions about the Merchant Services Agreement.

Thanks again for considering TD Merchant Services.

TD Merchant Services

These terms and conditions ("Terms") are provided by The Toronto-Dominion Bank ("we", "us" and "our") in connection with the provision of merchant products and services ("Services") to you, so that your customers may pay for your goods and services by means of credit cards and/or debit cards. References in these Terms to "the merchant", "you" and "your" refer to the merchant who completed and submitted a Rapid App for TD Merchant Services (an "Application") to us, or on whose behalf an Application was completed and submitted to us. When you use the Services, it means that you have received and read these Terms, a copy of the Application and the letter that you have received setting out the applicable fees. Together, these constitute the agreement between you and us (the "Agreement"). Your use of any product or service covered by the Agreement means that you have received the Agreement (including these Terms, the Application and the fees), that you have read and accept the Agreement, and that you agree to be bound by the Agreement and to pay all fees and charges provided for under the Agreement. The Agreement replaces any previous agreement between you and us relating to the provision of Services.

Future Products and Services - If you obtain additional products or services from us in the future, your use of that product or service will be subject to this Agreement, except to the extent that you and we agree otherwise, and such use will act as your acceptance of and agreement to be bound by this Agreement in respect of that product or service.

1.0 Definitions

1.1 Capitalized and other terms used in these Terms have the meanings set out in Articles 4.0 and 20.0.

2.0 Accepting Cards

2.1 You will accept valid and unexpired Cards, which we have offered to Acquire for you, presented by Cardholders as payment for the goods and services that you offer. Notwithstanding the above, if a Card Association provides you an option to accept a particular type of Card and you have not otherwise indicated your election to accept such type of Card, your first completion of a Transaction with such Card constitutes your election to accept such type of Card.

2.2 You will not:

- (a) charge Cardholders prices for goods or services that exceed your ticketed or posted price for such goods or services;
- (b) impose any fees, other charges or other conditions for the use of a Card as a means of payment, generally known as surcharging, without our prior written approval;
- (c) require a minimum amount of goods be purchased or services be performed before accepting a Card; or
- (d) accept a Card to collect or refinance an existing debt with respect to Credit Cards only.

2.3 When a Card is presented as payment for a Transaction:

- (a) you will, where required, complete a Transaction Record at the time of the Transaction;
- (b) to electronically capture the information on the magnetic stripe, or embedded in the chip, of the Card, you will, as appropriate, follow the prompts on the Terminal and:
 - (i) swipe the Card through the Terminal; or
 - (ii) have the Cardholder insert the Card into the Terminal; or;
 - (iii) have the Cardholder wave the Card in proximity to a contactless Terminal.
- (c) you will ensure that the following information is included on the Transaction Record:
 - (i) the number of the Card except that at least four (4) digits of the Card must be suppressed or disguised on the Cardholder copy (except for an *Interac* Direct Payment Transaction);
 - (ii) your name and full address including city, province and country;
 - (iii) the date of the Transaction;
 - (iv) the amount of the Transaction in the currency of the Transaction;
 - (v) the Authorization Number obtained for the Transaction from the Terminal;
 - (vi) where required, the signature of the Cardholder obtained immediately after completion of the Transaction Record; and
 - (vii) the Transaction type;
- (d) If a Transaction is processed by way of a PIN pursuant to this section, the following provisions apply:
 - (i) For each Card Transaction processed by a Terminal, you will act on the instructions displayed by the Terminal and agree to instruct the Cardholder as to the use of the Terminal for entering and verifying Transaction details and for entering the Cardholder's PIN.
 - (ii) You will inform Cardholders, as required, that a Card Transaction requires the Cardholder to authenticate the Transaction using an authorized Card and entry of the correct PIN.
 - (iii) The PIN entered by the Cardholder will be verified at the time of the Transaction. If an incorrect or unauthorized PIN is entered, the Terminal and PIN Pad will indicate a message that the PIN is incorrect or unauthorized. The Cardholder must be permitted three (3) consecutive attempts to enter the correct PIN for one Transaction. You may decline a Transaction after any three (3) consecutive PIN entry failures.
 - (iv) You will deliver to the Cardholder a copy of the Transaction Record printed by the Terminal.
 - (v) The Cardholder's PIN is confidential to the Cardholder. You will not request or require that the Cardholder disclose in any manner his or her PIN to you or any person.

- (vi) You will ensure that each Cardholder is adequately protected against disclosure of his or her PIN during entry into the Terminal or PIN Pad. The Terminal or PIN Pad must be situated in such a manner as to minimize the potential for disclosure of the PIN during entry by the Cardholder into the Terminal. A prompt asking Cardholders to enter a PIN must not be inserted into a PIN Pad or Terminal other than at the appropriate point that we require.
- (e) If a Credit Card Transaction is processed by way of the magnetic stripe on the Credit Card pursuant to this section, the following provisions apply;
 - (1) if your Terminal does not function or if the Authorization System is Off-Line, you will follow these additional procedures:
 - (i) you will call us for telephone Authorization of all Credit Card Transactions which exceed the Off-Line Floor Limit;
 - (ii) you will accept only Credit Cards with valid expiry dates;
 - (iii) you will obtain a manual imprint from your imprinter of the Credit Card on a Sales Draft that includes:
 - (1) the number of the Credit Card;
 - (2) the expiry date of the Credit Card;
 - (3) the Cardholder's name;
 - (4) your name and full address including city, province and country;
 - (5) the date of the Transaction;
 - (6) the amount of the Transaction in the currency of the Transaction;
 - (7) the Authorization Number obtained from us by telephone for the Transaction;
 - (8) the signature of the Cardholder obtained immediately on the manual imprint of the Credit Card on the Sales Draft;
 - (9) the Transaction type;
 - (10) your name and number from the merchant plate affixed to your imprinter; and
 - (iv) once the Terminal is On-Line, you will enter the Transaction into the Terminal as a "force post" Transaction in accordance with any procedures that we provide to you;
 - (2) if the Credit Card cannot be swiped (for example, if the Credit Card is demagnetized), in accordance with (b) (i) above, you will follow these additional procedures:
 - (i) you will accurately type ("key") the Transaction into the Terminal in accordance with any procedures that we provide to you;
 - (ii) you will accept only Credit Cards with valid expiry dates; and
 - (iii) you will obtain from your imprinter a manual imprint of the Credit Card on a Sales Draft and the Sales Draft that includes:
 - (1) the number of the Credit Card;
 - (2) the expiry date of the Credit Card;
 - (3) the Cardholder's name;
 - (4) your name and full address including city, province and country;
 - (5) the date of the Transaction;
 - (6) the amount of the Transaction in the currency of the Transaction;
 - (7) the Authorization Number obtained for the Transaction from the Terminal;
 - (8) the signature of the Cardholder obtained immediately on the manual imprint of the Credit Card on the Sales Draft; and
 - (9) the Transaction type;
 - (3) if your printer does not function but the Terminal and Authorization System are functioning and the Credit Card can be swiped, in accordance with (b) (i) above, you will obtain from the merchant plate a manual imprint of the Credit Card on a Sales Draft that includes:
 - (1) the number of the Credit Card;
 - (2) the expiry date of the Credit Card;
 - (3) the Cardholder's name;
 - (4) your name and full address including city, province and country;
 - (5) the date of the Transaction;
 - (6) the amount of the Transaction in the currency of the Transaction;
 - (7) the Authorization Number obtained for the Transaction from the Terminal;
 - (8) the signature of the Cardholder obtained immediately on the manual imprint of the Credit Card on the Sales Draft; and
 - (9) the Transaction type;



- (4) Information not visible on the Card and encoded on the magnetic stripe of the Card will not be disclosed to you at any time and you will not attempt to access or use such information for any reason other than completing a Card Transaction.
 - (f) If the Card presented by the Cardholder is not embossed and a manual imprint of such card cannot be obtained, the Transaction must be processed electronically. If such processing is not possible, you may request another form of payment from the Cardholder;
 - (g) the Transaction Record and Sales Draft (if applicable) must be legible;
 - (h) subject to (k) below, you will provide a copy of the completed Transaction Record and Sales Draft (if applicable) to the Cardholder presenting the Card at the time of sale except that you so provide such copy to a Cardholder with respect to a contactless Transaction only if requested by the Cardholder;
 - (i) you will keep the Transaction Record and Sales Draft (if applicable) for a minimum of twelve (12) months from the date of the Transaction; and
 - (j) you will follow such other additional procedures as we may advise you from time to time.
 - (k) notwithstanding the above, if you qualify for the No Signature Required program for *Visa* Cards or the Quick Payment Service for *MasterCard*^{®1} Cards and, subject to our consent, you participate in such program, you are not required to obtain the signature of the Cardholder or to provide to the Cardholder with respect to an eligible transaction (unless requested by the Cardholder) a copy of the completed Transaction Record and Sales Draft.
- 2.4 Except as provided for in sections 2.3 (b)(ii) and (iii) or as set out in section 2.3 (k), each Transaction Record or Sales Draft must be signed by the person presenting the Credit Card in your presence or the presence of your employee or agent. The signature must reasonably appear to be similar to the signature on the signature panel of the Credit Card.
- 2.5 You may obtain permission from a Cardholder to periodically bill that Cardholder's Card for a Recurring Transaction where permitted by a Card Association. For Recurring Transactions, you agree as follows:
- (a) you will obtain permission to periodically charge for recurring goods or services in a written or electronic format, retain this permission for the duration of the recurring goods or services and provide a copy of it to us upon request;
 - (b) each and every Recurring Transaction charged to a Cardholder's Card must be Authorized;
 - (c) the period of time between Recurring Transactions charged to a Cardholder's Card will not exceed one year;
 - (d) you will not complete a Recurring Transaction if you receive a cancellation notice from the Cardholder;
 - (e) you will not include partial payments for goods or services purchased in a single Transaction as part of a Recurring Transaction and you will not include additional finance charges;
 - (f) you will write "Recurring Transaction" on the signature line of the Transaction Record; and
 - (g) for a recurring Internet Transaction, you will include the frequency and duration of the Recurring Transaction, as agreed to by the Cardholder, on the Transaction Record.
- 2.6 You will take reasonable precautions to ensure that each Cardholder is adequately protected from the disclosure of information contained on a Card when it is tendered as payment for a Transaction.
- 2.7 In the event that a Card is inadvertently left by a Cardholder at your premises and remains unclaimed after twenty-four (24) hours, you will return the Card to us.
- 2.8 You will cooperate with us in recovering Cards in accordance with directions received through a Terminal or otherwise or if the four (4) digits printed below the embossed Card number on the Card do not match the first four (4) digits of the embossed Card number. You will indemnify us against and hold us harmless from all claims of whatsoever nature by any person arising out of the recovery or attempted recovery by you of Cards. We are not responsible for losses, damages, or injury incurred by you or your personnel in recovering and/or dishonouring Cards.
- 2.9 You will submit all Card Transactions to us within two (2) Business Days of the date of the Transaction. If you fail to do so, we may adjust the fees and charges applicable to such Transactions. If you fail to close a Batch (if applicable) within such period, we have the right to close such Batch at any subsequent time.
- 2.10 You will not make any cash advance to a Credit Cardholder or any other person as a part of a Credit Card Transaction, or include the amount of any cash advance in the sum being invoiced to a Credit Cardholder in a Transaction Record or Sales Draft.
- 2.11 You will not attempt to obtain multiple Authorizations for a single Transaction on a single Card or to reduce or disguise the amount of any Transaction by the use of multiple Transaction Records or Sales Drafts (known as "split ticketing").
- 2.12 You will not deposit a Transaction Record or Sales Draft with any other financial institution, deposit more than one copy of a Transaction Record or Sales Draft with us, or receive credit or payment more than once, from any source, for any Transaction Record or Sales Draft.
- 2.13 You will not deliver Transaction Records or Sales Drafts to us in respect of fictitious or fraudulent Transactions or with respect to any Transaction that is illegal or may, in the sole discretion of a Card Association, damage the goodwill of such Association.
- 2.14 You will not factor (process a Transaction Record or Sales Draft of or for another person), sell or otherwise transmit Transaction Records or Sales Drafts (except as permitted in the Agreement).
- 2.15 You will not submit Transaction Records or Sales Drafts to us that do not relate to your Transactions.
- 2.16 You will not deposit or complete a Transaction Record or Sales Draft for payment using a Card that we have notified you not to honour, that has been declined or in respect of which you have been unable to obtain an Authorization.
- 2.17 You acknowledge and agree that an Authorization indicates available credit on the Card or funds in the Cardholder's bank account only, and does not mean that a Transaction has been authorized by the Cardholder or that it is authentic or valid. An Authorization does not limit our

rights under Article 5.0 or this Article 2.0.

- 2.18 If you are in the restaurant business, you must ensure that the final sale price of any pre-authorized Card Transaction that you process does not exceed more than 20% of the pre-authorized amount.
- 2.19 You will ensure that you and the individuals who are your principals, employees and agents only submit Transactions on your own and their own Card account(s) for valid and legitimate purchases from you of goods or services.
- 2.20 You will not engage in any acceptance practice that discriminates against or discourages use of a Card in favour of another Card.
- 2.21 Pursuant to section 2.1, you will process all Transactions exclusively with us for the term of this Agreement and any subsequent renewal periods unless we have agreed otherwise in writing with you

3.0 Mail Transactions/Telephone Transactions/Internet Transactions (Remote Transactions)

- 3.1 You will not accept Remote Transactions without our prior written approval. If we approve the acceptance of Internet Transactions, the approval will only apply to a specific website and Internet service provider. Accepting Internet Transactions through any new website or new Internet service provider requires our prior written approval. You hereby authorize us and will obtain the authorization of your Internet service provider for us to conduct security assessment scans of the website(s) and server(s) over the Internet.
- 3.2 You acknowledge and agree that Remote Transactions carry a greater risk of repudiation by Cardholders, and refusals and Chargebacks by us, because the Transaction is not conducted in an environment where you and a Cardholder are both present in person. In particular, Remote Transactions do not allow for the following:
 - (a) inspection of goods or services by Cardholders;
 - (b) inspection by you of Cards including account numbers, names, expiry dates and signatures;
 - (c) signing of Transaction Records or imprinted Sales Drafts by Cardholders; and
 - (d) comparison of signatures on Transaction Records or Sales Drafts with signatures on Cards.
- 3.3 For each Remote Transaction, you will obtain the expiry date of the Card and provide the expiry date to us when you request Authorization of the Transaction from us.
- 3.4 We may refuse to credit, or may Chargeback, Remote Transactions that the Cardholder has disputed with respect to authorization, authenticity or validity. Even if we provide approval permitting you to accept Remote Transactions, you acknowledge and agree that we may refuse to credit, or may Chargeback, Remote Transactions because a Transaction Record or Sales Draft has not been properly completed in accordance with section 2.3 of the Agreement.
- 3.5 You will not accept Cards for the provision of, and you will not display on or be hyperlinked to a website that sells or displays, any of the following goods or services or any other type of business that we deem unacceptable: lottery tickets, escort and dating services, adult telephone call services, collection agency services, cheque cashing services, adult entertainment including pornography, massage parlour services, time share sales, gambling, extended car warranties except major car dealerships, weight loss vitamins and pills, cult material, pre-paid telephone cards, bail, credit reporting, resume preparing services, pyramid sales, and satellite television sales except for satellite television sales that are legal in Canada. You will not accept Cards for the provision of website hosting services.
- 3.6 We will not be liable for any claims, losses, costs, damages and expenses resulting from the operation of or the security of the Electronic Commerce Facilities.
- 3.7 You will be responsible to ensure that the Electronic Commerce Facilities operate securely in accordance with a Card Association - approved method so as to protect Cardholders from the unauthorized disclosure of information with respect to Cards. You will ensure that the Electronic Commerce Facilities comply with the operating and security standards as set by us and Card Associations from time to time. We may require from time to time that the Electronic Commerce Facilities be assessed, at your expense, by us, by a Card Association and/or by another third party chosen by us in order to verify compliance with the operating and security standards. You will fully co-operate with any such assessment and be responsible for all costs associated with implementing or maintaining compliance of the Electronic Commerce Facilities with the operating and security standards.
- 3.8 If at any time the operating or security standards of the Electronic Commerce Facilities do not comply with our standards, you will, at our direction, immediately suspend offering payment by Card for the sale of goods and services over the Internet until such time as we permit re-activation.
- 3.9 Any website(s) from which you accept Internet Transactions will contain at a minimum the following:
 - (a) your legal name and the name under which you are carrying on business, displayed as prominently as any other information depicted on the website, other than images of the products or services being offered for sale;
 - (b) customer service contact information including business address, mailing address, telephone number, fax number and electronic mail address;
 - (c) the jurisdiction in which you are officially registered and located;
 - (d) a complete, fair and accurate description of goods and services being offered including any relevant technical or system specifications;
 - (e) delivery policy including method of delivery;
 - (f) any geographic limitations for the sale of goods and services and any export restrictions if applicable;
 - (g) return, exchange and refund policies;
 - (h) country and transaction currency, for example, by indicating that prices are payable in Canadian dollars;
 - (i) consumer data privacy policies;



- (j) security capabilities and policy for transmission of Credit Card details;
- (k) the Card Brand Mark, in full colour, to indicate Card acceptance in accordance with the Brand Mark standards established by the relevant Card Association available on the website of such association;
- (l) complaint handling procedures;
- (m) details of any applicable warranties or guarantees;
- (n) the total consideration payable for the goods and services;
- (o) an updated and accurate itemized list of the price of goods and services to be sold to the Cardholder as well as any shipping, delivery or handling charges, taxes, custom duties, broker fees or insurance costs;
- (p) the terms, conditions and method of payment;
- (q) the date when the goods will be delivered or the services are to be commenced;
- (r) for Recurring Transactions, a simple and easily accessible online cancellation procedure; and
- (s) any other information or disclosure that we require or that is required by law from time to time in any jurisdiction in which you offer goods or services.

3.10 For Internet Transactions, you will provide the Cardholder with a Transaction receipt, which will contain at a minimum the following:

- (a) your legal name and the name under which you are carrying on business;
- (b) your website address ("*URL*");
- (c) the amount of the Transaction;
- (d) the currency of the Transaction;
- (e) the date of the Transaction;
- (f) a unique Transaction identification number;
- (g) the name of the Cardholder;
- (h) the Authorization Number;
- (i) Transaction type (purchase or credit);
- (j) a description of the goods or services;
- (k) return and refund policies if there is any restriction on returns or refunds;
- (l) customer service contact information including telephone number and telephone country code and area code accessible from all local and international locations where you deliver goods or services;
- (m) terms and conditions of sale if there are any restrictions on terms and conditions of sale;
- (n) if there is a free trial period, the exact date the free trial period ends;
- (o) cancellation policies;
- (p) for a Recurring Transaction, the frequency and duration of the Recurring Transaction; and
- (q) any other information or disclosure that we require or that is required by law from time to time in any jurisdiction in which you offer goods or services.

3.11 It is your sole responsibility to ensure that your website and Transaction receipts comply with applicable laws.

3.12 You will not return the number of the Card to the Cardholder either online or on the Transaction receipt.

4.0 Verified by *Visa* and *MasterCard* SecureCode Transactions

4.1 The provisions of this section apply to our provision of merchant services to you with respect to Verified by *Visa** Transactions, also referred to as VbV Transactions (as defined below) and to *MasterCard* SecureCode Transactions, also referred to as SC Transactions (as defined below). Except as provided for in this section, the provisions of this Agreement between you and us will also apply to and govern each VbV and SC Transaction as applicable.

4.2 Additional Definitions

- (a) "Cardholder Authentication Verification Value" or "CAVV" means an authorization code for a VbV Transaction provided to you electronically through the VbV Facilities from the issuer of a *Visa* Card as part of a VbV Transaction;
- (b) "Commercial Card" means a *Visa* Card which is a *Business Visa* Card, a *Corporate Visa* Card or a *Purchasing Visa* Card or a *MasterCard* Card which is a *MasterCard* Business Card, a *MasterCard* Corporate Card, a *MasterCard* Corporate Purchasing Card or a *MasterCard* Corporate FleetCard
- (c) "*MasterCard* SecureCode Transaction" or "SC Transaction" means an Internet Transaction conducted using SC Facilities and that has been authenticated using an authentication method and system that we have approved;
- (d) "New Channel" means an environment in which payment is initiated through a device that does not use a standard *Hypertext Markup Language (HTML)* browser to process authentication of VbV or SC Transactions or an environment or device which is otherwise not approved by us for VbV or SC Transactions and includes but is not limited to Transactions initiated through a mobile telephone;



- (e) "Non-Authentication Message" means a message provided to you electronically through the VbV or SC Facilities for an attempted VbV or SC Transaction indicating that the VbV or SC Transaction has not been authenticated;
 - (f) "Non-Participation Message" means a message provided to you electronically through the VbV or SC Facilities for an attempted VbV or SC Transaction indicating that the *Visa* Card does not participate in the VbV Transaction program or the *MasterCard* Card does not participate in the SC Transaction program;
 - (g) "Prepaid Card" means a *Visa* Card or a *MasterCard* Card established with previously deposited, authorized or transferred funds and which funds are subsequently decreased when the Transactions are conducted;
 - (h) "SC Facilities" means the computer software and hardware that enables the processing of *MasterCard* SecureCode Transactions over the Internet;
 - (i) "Universal Cardholder Authentication Field" or "UCAF" means an authorization code for an SC Transaction provided to you through the SC Facilities from the issuer of a *MasterCard* Card as part of an SC Transaction;
 - (j) "Verified by *Visa* Transaction" or "VbV Transaction" means an Internet Transaction conducted using VbV Facilities and that has been authenticated using an authentication method and system that we have approved;
 - (k) "Verified by *Visa* Facilities" or "VbV Facilities" means the computer software and hardware that enables the processing of Verified by *Visa* Transactions over the Internet;
- 4.3 You agree not to accept VbV or SC Transactions without our prior written approval. If we approve you to accept VbV or SC Transactions, the approval will only apply to a specific website, service provider and VbV or SC Facilities. Accepting VbV or SC Transactions through any new website, service provider or VbV or SC Facilities requires our prior written approval. You hereby authorize us and will obtain the authorization of your Internet service provider for us to conduct security assessment scans of the website(s) and server(s) over the Internet.
- 4.4 Subject to the exceptions set out in section 4.5, a VbV Transaction will be considered equivalent to a *Visa* Card Transaction, and an SC Transaction will be considered equivalent to a *MasterCard* Card Transaction, in which a Transaction Record was signed by the Cardholder in person and at your premises in accordance with the terms of this Agreement if you provide us with the correct CAVV in respect of the VbV Transaction or the correct UCAF in respect of the SC Transaction or if you provide us with the record of a Non-Participation Message in respect of the VbV or the SC Transaction.
- 4.5 A VbV Transaction will not be considered equivalent to a *Visa* Card Transaction, or an SC Transaction will not be considered equivalent to a *MasterCard* Card Transaction, in which a Transaction Record was signed by the Cardholder in person and at your premises in accordance with the terms of this Agreement if:
- (a) you received a Non-Authentication Message;
 - (b) the Transaction was conducted by way of a New Channel and you received a Non-Authentication Message;
 - (c) the Transaction was conducted with a Prepaid *Visa* Card or *MasterCard* Card and you received a Non-Authentication Message or a Non-Participation Message;
 - (d) the Transaction was conducted with a Commercial Card and you received a Non-Authentication Message or a Non-Participation Message;
 - (e) the VbV or the SC Facilities failed to operate; or
 - (f) if we notified you that a Card Association considers the number or amount of Chargebacks of your Transactions to be excessive in which case we may Chargeback any VbV or SC Transaction, as the case may be, in which you do not receive a CAVV or UCAF, as the case may be, and we may terminate your VbV or SC Facilities and this Agreement.
- 4.6 We may Chargeback a VbV or SC Transaction for any reason set out in this Agreement.
- 4.7 You agree to follow all procedures as set out in this Agreement in respect of Internet Transactions and confidentiality of Cardholders' information and you agree to comply for VbV Transactions, with the *VbV Merchant Best Practices*, as amended from time to time available on www.visa.ca and, for SC Transactions, with the *MasterCard SecureCode Best Practices*, as amended from time to time, available on www.mastercard.com.
- 4.8 You acknowledge and agree that we are not the service provider in respect of the VbV or the SC Facilities and that we will not be liable for any claims, losses, costs, damages, and expenses resulting from the operation of or the security of the VbV or the SC Facilities. You acknowledge and agree that your relationship with the service provider in respect of the VbV or the SC Facilities is governed by the terms and conditions of your arrangement with the service provider and that we are not responsible for any failure by you or the service provider to deal with each other in accordance with the terms and conditions of your arrangement. You agree to indemnify and save us harmless from and against any and all claims, suits, damages, losses, costs and expenses (including legal fees) of whatsoever nature arising between you and the service provider.
- 4.9 You agree to be responsible to ensure that the VbV and the SC Facilities operate securely so as to protect Cardholders from the unauthorized disclosure of information with respect to Credit Cards. You agree to ensure that the VbV and the SC Facilities comply with the operating and security standards as set by us and Card Associations from time to time. You further agree that we may require that the VbV and the SC Facilities be assessed, at your expense, by us, by a Card Association and/or by another third party chosen by us in order to verify compliance with the operating and security standards. You also agree to fully co-operate with and be responsible for all costs associated with implementing or maintaining compliance of the VbV and the SC Facilities with the operating and security standards.
- 4.10 If at any time the operating or security standards of the VbV or the SC Facilities do not comply with our standards, we may require you, and you agree to immediately suspend offering payment by Credit Card for the sale of goods and services over the Internet until such time as we permit re-activation.
- 4.11 You agree to display the VbV and/or the SC logo(s) on your website and agree to the terms of the *Visa* and/or the *MasterCard* trademark

license agreement. The logo(s) and trademark license agreement are available at the website www.Visa.ca/verified and www.mastercard.com.

5.0 Refusals and Chargebacks for Card Transactions

- 5.1 Notwithstanding any Authorization or approval of a Transaction which may be given by or on behalf of the issuer of a Card (other than a Debit Card for *Interac* Direct Payment Transactions), we may refuse to credit to the Account, may Chargeback to the Account, in whole or in part, or may deduct from any payment due to you the total amount of any Transaction Record or Sales Draft in any of the following circumstances:
- (a) a Transaction is completed when the Authorization System is Off-Line, and the Transaction Record or Sales Draft refers to a Card that expired prior to the Transaction date or to a Transaction which took place prior to the embossed *valid from* date on the Card;
 - (b) the Sales Draft refers to a Card which expired;
 - (c) the Transaction Record or Sales Draft is not properly completed in accordance with section 2.3 of these Terms;
 - (d) you completed the Transaction after we declined your request for Authorization of the Transaction or after we notified you not to honour the Card;
 - (e) the Transaction Record or Sales Draft bears a signature which does not reasonably appear to be similar to the signature on the Card signature panel, or does not bear a signature at all and the Transaction was processed without the Cardholder's permission;
 - (f) the goods or services referred to in the Transaction Record or Sales Draft:
 - (i) have been returned to you or have not been received by the Cardholder; or
 - (ii) have been claimed by the Cardholder to have been returned to you, or not to have been received;
 - (g) the Cardholder claims that the goods or services referred to in the Transaction Record or Sales Draft have not been received, are not as described, are defective, are unsatisfactory or were returned and that you failed to provide a refund to the Cardholder's Card;
 - (h) the Transaction is or is alleged by the Cardholder to be illegal, null or invalid;
 - (i) the Cardholder has disputed the authorization, authenticity or validity of any Transaction or part of a Transaction (including a Remote Transaction), Transaction Record or Sales Draft;
 - (j) we have credited the Account more than once for the same Transaction Record or Sales Draft;
 - (k) you have done anything prohibited by Article 2.0 or 3.0 of these Terms or have failed to do anything required by Article 2.0 or 3.0 of these Terms;
 - (l) you or your employees or agents have defrauded or attempted to defraud us;
 - (m) the Transaction Record or Sales Draft was submitted to us more than two (2) days after the date of the Transaction;
 - (n) a copy of the Transaction Record or Sales Draft was requested for delivery to the issuer of the Card but was not provided by you within the time required by the Agreement;
 - (o) a Transaction Record or Sales Draft is altered by you without the Cardholder's permission;
 - (p) in the circumstances set out in section 7.5;
 - (q) the Transaction includes a cash disbursement made by you to the Cardholder;
 - (r) you have failed to comply with the Agreement; or
 - (s) any other circumstance in which we in good faith deem it appropriate to refuse such credit or make such Chargeback.
- 5.2 You are responsible for all fees, discounts, refusals and Chargebacks resulting from unsigned, unimprinted, manually keyed or unauthorized Transactions. You are also liable to us for all of the costs we incur in collecting and processing Chargebacks.
- 5.3 The amount of any Chargeback and the costs we incur in collecting and processing any Chargeback constitute a debt that you must pay to us on demand and that is subject to Article 12.0 of this Agreement.
- 5.4 We will advise you of any Transaction which we have refused to pay or have charged back to you. At our option, we may do so after we have already refused to pay or charged back the Transaction.
- 5.5 In the event of a Chargeback, you may pursue your remedies against the Cardholder and we are not obligated to resolve any disputes arising between you and the Cardholder.
- 5.6 Except for the Transaction Records or Sales Drafts that we have refused to credit to you or have charged back to you, you must not receive payment in respect of a Transaction from any party except from us.
- 5.7 If a Card Association proposes additional circumstances, in addition to those referred to in this Article, which will result in a Chargeback, you agree to be responsible for such Chargebacks.

6.0 Disputes and Refunds

- 6.1 Any claims or disputes as to availability, quality, receipt, price and satisfaction of goods or services or the amount of a Transaction must be settled directly between you and the Cardholder.
- 6.2 If any refund or other money adjustment is payable by you to the Cardholder in respect of a *Visa* Card Transaction, such refund or adjustment must be made (unless the amount of such Transaction has not been credited to the Account by us or has been charged back to you) by means of you issuing a credit voucher or refund which must be delivered to us within two (2) Business Days of being issued.
- 6.3 You will not refund any Debit Card Transactions that are the subject of a dispute as to whether funds were or were not debited correctly to the account of a Cardholder. You will instruct the Cardholder to contact his or her own financial institution with respect to such disputes. You will

not comment on or offer help to any Cardholder on matters that are within the responsibility of the Cardholder's financial institution, particularly concerning account relationships. You are liable for any attempts by you or your employees or agents to correct disputes in the event of any incorrect debit, including without limitation a double debit of the Cardholder's account or a cash refund.

7.0 Terminals

- 7.1 Subject to section 2.3 of these Terms, you must use a Terminal for all Authorization Services. You will follow all instructions and abide by all responses communicated from time to time by means of a Terminal and a PIN Pad and, when required, you will record the Authorization Number on the Transaction Record. For Authorization procedures when using a Terminal; (i) those set out in the Agreement will apply to Cards, if we are providing these services; and (ii) those of the Third Party will also apply to Other Cards, Cheques, certain loyalty and gift card programs and other services where we provide a means of facilitating communication through a Terminal. For Other Cards, Cheques and certain loyalty and gift card programs, our services will be limited to providing a means to communicate with a Third Party through the use of a Terminal, but only if that Terminal was provided by us.
- 7.2 If we supply you with Terminals and/or PIN Pads and you are not using other equipment and/or point of sale software applications, the following provisions apply:
- (a) each Terminal and PIN Pad that we have supplied to you, as indicated in our internal records, remains our exclusive property even when it is attached to any building. Each Terminal and PIN Pad may only be moved with our prior written consent and at your expense. You will provide us with a complete address of any new location, which must be approved by us prior to moving the Terminal and PIN Pad. You will keep each Terminal and PIN Pad free and clear of all security interests, privileges, liens, encumbrances and other charges. Each Terminal and PIN Pad will be installed and operated in accordance with the instructions that we provide. You will provide all necessary electrical connections and outlets at your own expense. All programs and software associated with the Terminals and PIN Pads are confidential and you will not copy or disclose them to any other person;
 - (b) you are responsible for all costs of telecommunication lines, electricity and other charges related to data line or communications services, even if we order such services on your behalf. If a third party engaged by us supplies such services to you and bills you directly for such services, you agree to enter into a direct relationship with that third party with respect to such services and to pay promptly, and in full, all fees and charges billed to you by such third party;
 - (c) you will ensure that the installation of Terminals and PIN Pads on your premises will comply initially, and will continue to comply during the term of the Agreement, with and will not violate or conflict with any federal, provincial or municipal law or regulation or any regulation of any regulatory body applicable to such installation. You will obtain all consents, authorizations and approvals of any governmental authority or any regulatory body which may be required in connection with such installation;
 - (d) you will promptly report any errors, malfunctions or other problems with the Terminals and PIN Pads to us in accordance with problem reporting procedures established by us from time to time;
 - (e) you will take care, secure and protect the Terminals and PIN Pads in a manner consistent with the protection of your own property and take appropriate actions to care, secure and protect the Terminals and PIN Pads by instruction or agreement with your personnel who are permitted access to the Terminals and PIN Pads. You will immediately contact us if any Terminal or PIN Pad is stolen or any seal in relation thereto is removed or tampered with. You are responsible, and will reimburse us, for any loss (including theft) of, or damage to, any Terminal or PIN Pad which we supplied, from any cause whatsoever, other than ordinary wear and tear. We may debit the Account without notice to you for any cost that we incur in replacing lost, stolen or damaged equipment;
 - (f) subject to this section, we will make reasonable efforts to maintain and correct malfunctions of the Terminals and PIN Pads that we provide. We are not responsible for any Terminals, PIN Pads, equipment, software, telecommunications or systems that are not provided by or owned by us;
 - (g) if applicable, you will allow our employees and agents to have access to your premises as required for site preparation, installation and maintenance activities during your normal business hours. If access to your premises is required outside of your normal business hours, we will obtain your prior consent, which you may not unreasonably withhold. You will have your personnel present when our employees and agents are on your premises; and
 - (h) you will pay us fees for any training provided to you or your personnel in the use of the Terminals. If applicable, we may offer initial training for the use of the Terminals at no cost. However, you will pay fees for any additional training that we provide and you will be responsible for all of your own out-of-pocket expenses including without limitation the cost of transporting your personnel to the applicable training location.
- 7.3 You will not make any changes to Terminals, PIN Pad(s), equipment, point of sale software applications, telecommunications, Transaction Record printing and formatting functions or your Terminal provider, or make any change that otherwise impacts Card Transactions, without our prior written approval. You will not use Terminals or PIN Pads that are not provided by us for the purpose of communicating with us or to obtain services from us in relation to Cards or Cheques, or use Terminals and/or PIN Pads provided by us but also use other equipment and/or point of sale software applications or processing services without our prior written approval. We may, in our sole discretion, not approve such changes or use of Terminals, PIN Pad(s) and other equipment and services not provided by us. If we do approve the change or use of Terminals, PIN Pad(s) and other equipment, point of sale software applications and services not provided by us, the following provisions apply:
- (a) you will be responsible for all expenses associated with the care, maintenance, use, security and replacement, and we are not liable for any losses you incur arising out of your use, of such Terminals, PIN Pads, equipment and point of sale software applications;
 - (b) we will have the right to conduct certification testing at your expense, and our prior written approval of your use of such Terminals, PIN Pads, equipment, point of sale software applications and your Terminal provider is required;
 - (c) PIN Pads must have physical attributes such as privacy shields, privacy screens or be hand held, to provide a Cardholder with protection from having their PIN observed during entry of the PIN by the Cardholder into the PIN Pad;

- (d) you will allow us to inspect and confirm compliance of such Terminals, PIN Pads, equipment and point of sale software applications with our own and Card Association standards; and
- (e) we are not responsible for providing any reporting services, dealing with reconciliation problems or providing records of authorization requests.

With respect to Terminals and/or PIN Pads provided by us, section 7.2 applies.

- 7.4 You will maintain accurate logs of employee shifts and provide those logs to us within twenty-four (24) hours of a request to do so as part of our investigation of a fraud incident.
- 7.5 The Merchant agrees to implement no later than September 30, 2010, or any subsequent date set by Card Associations, a Credit and Debit Card processing infrastructure capable of processing chip Credit and Debit Cards that is compatible with the Bank's Credit and Debit Card processing infrastructure in accordance with the operating, certification and security standards and specifications of the Bank, Card Associations, EMVCo LLC. and PCI Security Standards Council, LLC., (in this section, the "Standards"). The Merchant agrees to permit the Bank, Card Associations, or their agents, to verify the compliance of the Merchant's Credit and Debit Card processing infrastructure with the Standards. The Merchant also agrees to be fully responsible for all of the costs of the implementation of such infrastructure and compliance with the Standards including the costs of verification of such compliance incurred by the Bank, Card Associations, or their agents. The Merchant will be solely liable for any Chargeback relating to a Transaction involving a Credit Card with both a chip and a magnetic stripe (i) if the Merchant does not implement the Credit Card processing infrastructure referred to above by September 30, 2010, or (ii) if the Merchant does not process a chip Transaction in accordance with applicable Card Association rules and regulations.

8.0 Use of Terminals and Terminal Access Numbers

- 8.1 You acknowledge that Terminals and/or Terminal Access Numbers may permit debits to your Account. You will take such steps as are necessary or advisable in order to prevent unauthorized uses of Terminals and/or Terminal Access Numbers, including without limitation such steps as are necessary or advisable to prevent unauthorized disclosure of the Terminal Access Numbers. You will be liable for any unauthorized use of any Terminals and/or Terminal Access Numbers. We have no obligation to offer you Terminal Access Numbers or any other security functionality.
- 8.2 Terminal Access Numbers are confidential identification numbers that may be issued by us to you for the sole purposes of permitting you to effect refunds or Transaction reversals pursuant to a Debit Card and/or Credit Card sale by you to a Cardholder, complete a Batch Close and perform other sensitive functionality. You acknowledge that a Terminal has the capability for transactions and services other than those contemplated by the Agreement by communicating with other computer equipment, persons or institutions, and you further acknowledge that we are not liable for any loss, damage, expense or claim resulting from the processing or non-processing of any such transactions or provision of any such services using a Terminal.
- 8.3 You will notify us immediately upon discovering any loss (including theft) or damage to or unauthorized use of a Terminal and/or Terminal Access Numbers. You will advise us immediately upon any error occurring for any Debit Card or Credit Card Transaction. A copy of the Transaction Record for the relevant Transaction must be provided to us for each Transaction being investigated.

9.0 Gift and Loyalty Cards

- 9.1 Subject to our prior approval, you may use Terminals, PIN Pads, equipment and point of sale software applications for the purpose of a Gift Card program, a Loyalty Card program or both which you or your service provider offers to your customers. With respect to any such program, our responsibilities are limited to switching or routing transactions under the program from you to your program service provider through our communications network.
- 9.2 As a condition of the approval referred to in section 9.1 above, we may require certification testing of Terminals, PIN Pads, equipment and point of sale software applications and, in such event, you shall be responsible for all costs incurred by us with respect to such testing. In addition, you may not make any changes to Terminals, PIN Pads, equipment or point of sale software applications relating to any Gift Card program or Loyalty Card program without our prior written consent. You acknowledge and agree that we may require certification testing as a result of any change and that you will be responsible for all costs incurred by us with respect to such testing.
- 9.3 All costs incurred by us in switching and routing transactions in accordance with this Article 9.0 shall be charges payable by you to us under Article 12.0 of this Agreement.
- 9.4 We shall not be liable for any costs or any loss incurred by you or by any of your service providers with respect to any Gift Card program or Loyalty Card program. You shall indemnify and hold us harmless from any loss, damage or expense incurred by us in relation to any such program.
- 9.5 Any claim or dispute involving your customer or involving any of your service providers as to any transaction under the program or as to the program must be settled directly among such customer, you and any of your service providers.

10.0 Dynamic Currency Conversion

- 10.1 If you offer and provide dynamic currency conversion or any other currency conversion services to your customers who use Cards, you must:
 - (a) obtain our approval prior to offering dynamic currency conversion to your customers who use Cards;
 - (b) inform your customers who use Cards that dynamic currency conversion is optional;
 - (c) not impose any additional requirements on a customer who uses a Card to have the Transaction processed in the local currency;
 - (d) not use any language or procedures that cause a customer who uses a Card to choose dynamic currency conversion by default;
 - (e) not misrepresent, either explicitly or implicitly, that its dynamic currency conversion service is a service of a Card Association;
 - (f) comply with all of the Transaction Record requirements required by us from time to time; and

- (g) comply with any other requirements regarding dynamic currency conversion that we may notify you of from time to time.

11.0 Banking, Settlement and Security

- 11.1 You will maintain the Account for the Agreement, subject to an operation of account agreement. The Account may be changed only with our prior approval.
- 11.2 Subject to sections 11.3 and 11.4 and unless otherwise advised to you, we will generally provide same Business Day settlement of *Visa* Card, *MasterCard* Card and Debit Card Transactions submitted electronically before Cut-Over, which Transactions will be credited to the Account on the next Business Day but posted as of the same Business Day, subject to any refunds or other deductions. Debit Card, *MasterCard* Card and *Visa* Card Transactions will be settled by a credit to the Account for the face amount (including sales taxes if applicable).
- 11.3 Subject to section 11.4, we will generally provide value for Debit Card, *MasterCard* Card and *Visa* Card Transactions submitted on or after Cut-Over or submitted on Saturdays, Sundays, and statutory holidays and delivered electronically on the next Business Day.
- 11.4 If you use Terminals or other services, including third party processing or banking services that are not provided by us or not connected to us, settlement of Transactions delivered electronically before Cut-Over will generally be provided as soon as the next Business Day and settlement of Transactions submitted to us on or after Cut-Over will generally be provided in as soon as within two (2) Business Days.
- 11.5 You will ensure that Transactions submitted to us electronically conform to the standards and procedures that we require from time to time. If any Transaction submitted electronically to us is not readable or capable of being processed by our processing equipment as it does not comply with our standards, such Transaction will not be processed by us or credited to your Account.
- 11.6 Unless you use our Online Reporting service, once each month, we will issue a written statement of account to you setting out total dollar amounts settled by us and payments made or due to us. If you use our Online Reporting Service, you will review your statement no less frequently than every 30 days. You will notify us in writing (i) within thirty (30) days of the statement date if you receive a written statement or (ii) within 30 days of the date of the statement item if you use our Online Reporting service, of any errors or omissions in the statement. We will investigate reported errors or omissions if we receive written notice from you within thirty (30) days of the statement date. If we do not receive written notice from you within the thirty (30) day time periods referred to above, the statement date, the statement and every item on the statement and our records respecting your account will be considered to be correct (subject to our rights under section 11.7) and you may not afterwards make any claim against us respecting any item or omission in your statement.
- 11.7 All deposit figures are subject to final audit by us, and in the case of any inaccuracies, we have the right to debit or credit the Account.
- 11.8 We have the right to require that you provide a security deposit in an amount that is acceptable to us which will act as security for any outstanding Chargeback liability or potential, contingent or pending Chargeback liability or fees which may be incurred by you in respect of Transactions, or for any potential, pending or actual fine, fee or penalty which may be imposed on us by a Card Association with respect to your acts or omissions in connection with the processing of your Transactions. We also have the right from time to time to require that you increase the amount of the security deposit in an amount that is acceptable to us. If you do not provide such security deposit or increased security deposit within five (5) days of our request to you, or immediately in the event of an allegation of fraud or termination pursuant to Article 14.0 of this Agreement, we reserve the right to withhold or suspend providing services under the Agreement until such time as you provide the security deposit or increased security deposit. You hereby grant to us a security interest in such security deposit and you agree to sign any documents as may be required by us to perfect and otherwise confirm our security interest. We have the right to retain funds on deposit in the Account or otherwise retain funds for a period of the greater of one (1) year after the termination of the Agreement, or such longer period as is consistent with any related chargeback obligation or liability we have under Card Association rules, in respect of outstanding Chargeback liability, or potential, contingent or pending Chargeback liability or fees which may be incurred after the termination of the Agreement. We have the right, without notice to you, to freeze funds in the Account or otherwise retain funds during the term of the Agreement and for a period of the greater of one (1) year following the termination of the Agreement, or such longer period as is consistent with any related chargeback obligation or liability we have under Card Association rules.
- 11.9 At any time, we may, at our option, require a separate or comingled reserve account to secure the performance of your obligations under this Agreement. You hereby grant to us a security interest in such reserve account and you agree to sign any documents as may be required by us to perfect and otherwise confirm our security interest. The reserve account may be funded through any or all of the following methods;
 - (a) Direct payment by you (if you are requested to do so by us); or
 - (b) Transfer by us into the reserve account of funds withdrawn from (i) the Account, or (ii) other accounts maintained by you with us, or (iii) other accounts maintained by you with another financial institution.
- 11.10 In any of the circumstances set out in section 14.1(b), we may, with or without notice to you, change processing or payment terms and/or suspend payments to you under the Agreement during our investigation of such circumstances.

12.0 Fees and Other Charges

- 12.1 You agree to pay us fees for our services as set out in the Agreement. The fees do not include any additional taxes that may also apply. We may change our fees from time to time by providing thirty (30) days notice to you. Notwithstanding the generality of the foregoing, the fees and other pricing set out in the Fee Schedule may be unilaterally adjusted by us at any time to reflect any increase by a Card Association in interchange fees, assessment fees, switch fees and any other Card Association fees payable by us or any increase in applicable taxes or other government levies.
- 12.2 If in any month during the term of the Agreement, the total fees payable by you for both the Merchant Discount Rate fee and the *Interac* Direct Payment Transaction Fee in respect of a merchant outlet are less than the Minimum Monthly Discount Fee, you agree to pay to us the difference. Therefore, you may be charged up to the full amount of the Minimum Monthly Discount Fee for each of your merchant outlets. If the Minimum Monthly Discount Fee is payable, it will be noted on your monthly statement as a *Minimum Discount Adjustment*. Other fees that may be paid to us are not considered in determining whether the Minimum Monthly Discount Fee is payable.
- 12.3 All fees, charges, adjustments, applicable taxes, and the amount of any Chargeback or any credit voucher issued by you and any other amount

that you owe to us under the Agreement, constitute a debt payable on demand to us. We may, without notice to you, deduct from the amounts that we owe to you under the Agreement, debit the Account or deduct from any other account that you have with us or any of our affiliated companies (which include any member of the TD Bank Financial Group), and pay any amount that you owe us. You will pay all our legal expenses on a solicitor and own client basis (including legal fees charged by our own internal legal counsel) that we incur to collect or attempt to collect what you owe to us.

- 12.4 The rates and fees set out in the Fee Schedule are based upon assumptions associated with the anticipated annual volume of Transactions, average Transaction amount and number and amount of Chargebacks. If the actual annual volume of Transactions, average Transaction amount or number or amount of Chargebacks are not as anticipated, we may, at any time and at our discretion, change the rates and fees payable by you without prior notice.
- 12.5 You agree to pay any fine, fee or penalty imposed on us by any Card Association with respect to your acts or omissions in connection with the processing of your Transactions. Any such fine, fee or penalty shall be a charge payable by you under this Article.
- 12.6 If we experience any increase in any cost or costs of telecommunications related to the provision by us to you of services under this Agreement, we shall provide notice thereof to you and such increase shall be a charge payable by you to us under this Article.

13.0 Procedures and Records

- 13.1 We may from time to time provide you with procedures, forms, rules, instructions, manuals and Card Association mandated systems or operational changes. You will comply with and implement, and take all necessary and advisable measures to ensure that your personnel comply with and implement, all such procedures, forms, rules, instructions, manuals and changes. You agree to comply with all Card Association rules and operating regulations as may be applicable to you and in effect from time to time as published (on a website or otherwise) by any Card Association or of which you may have been otherwise informed.
- 13.2 You will keep all Transaction Records, Sales Drafts and other records pertaining to *Visa* Card Transactions for a minimum of twelve (12) months and to *MasterCard* and *Maestro* Card Transactions for a minimum of eighteen (18) months. We have the right to have access to and examine and copy such records at any reasonable time and you agree to provide us with access to such records when requested within five (5) Business Days even after termination of the Agreement.
- 13.3 When we request that you provide a copy of a Transaction Record or Sales Draft, you will deliver it to us in the manner that we specify within eight (8) days of the date of our request. Failure to provide the copy within such time may result in a Chargeback.

14.0 Term, Termination and Amendment

- 14.1 Unless terminated earlier in accordance with its terms, the Agreement shall remain in full force and effect for an initial term of three years, commencing on the date you first used any product or service covered by the Agreement. Thereafter it shall be automatically renewed for additional successive terms of three years each, unless either party gives written notice to the other, not less than 90 days before the end of the then current term, that it does not intend to renew the Agreement. Notwithstanding the foregoing, this Agreement may be terminated:
 - (a) by us at any time upon providing ten (10) days notice to you. In any such case, upon such notice, all amounts payable by you hereunder shall be due and payable on demand;
 - (b) by us without notice to you in the following circumstances, in which case all amounts payable by you hereunder shall be immediately due and payable in full without demand or another notice of any kind, all of which are waived by you:
 - (i) you fail to comply with the Agreement;
 - (ii) you fail to maintain the minimum credit standard established by us for your account from time to time, or we believe that there has occurred a material adverse change in your creditworthiness, assets, business or financial condition;
 - (iii) you become insolvent or the subject of bankruptcy or insolvency proceedings, commit an act of bankruptcy, make any assignment for the benefit of your creditors or a receiver is appointed for your business or any part of your property;
 - (iv) any statement made by you to induce us to enter into the Agreement was false in any respect when made, or becomes false;
 - (v) you are in default of paying any amount that you owe to us under the Agreement or under any loan, debt or obligation to us or anyone else;
 - (vi) you cease to carry on business;
 - (vii) we consider the number or amount of Chargebacks, potential Chargebacks, contingent Chargebacks or pending Chargebacks under the Agreement to be excessive or your Transactions to be irregular or any other circumstances which we consider, in our sole discretion, may increase our exposure to Chargebacks or otherwise present a financial or security risk to us;
 - (viii) any Credit Card or Debit Card Transactions are irregular;
 - (ix) you make a change described in section 7.3 of this Agreement;
 - (x) a Card Association requires that we terminate this Agreement;
 - (xi) you or any Guarantor of your obligations under this Agreement, ("Guarantor") default in paying any creditor, including us, or
 - (xii) you or a Guarantor fail to comply with any other agreement (including a security agreement) to which you or a Guarantor are a party.
- 14.2 Our right to terminate does not limit any of our other legal or equitable rights.
- 14.3 Upon termination, all imprints, forms and other material bearing the name or trade-mark of the Bank, the name *Visa*, the name *MasterCard*, the name *Maestro*, the name CHARGEX, the bands design, the *Visa* Brand Mark, the *Visa* Brand Mark with the Electron identifier, the *MasterCard* Brand Mark, the *Maestro* Brand Mark, any marks owned by a Card Association or any representation of them shall be returned to the Bank forthwith and you shall immediately discontinue all references to, uses of, or displays of such marks or names.



- 14.4 If you breach the Agreement by improperly terminating it prior to the end of the applicable term of the Agreement, then we will suffer damages that would be extremely difficult to calculate. You agree to pay to us an early termination fee of \$250.00 per location or as otherwise set out in the Fee Schedule. You agree that this early termination fee will be paid to us as liquidated damages, that it is not as a penalty and that it is a reasonable estimate of our actual damages. Such early termination fee does not apply if you terminate the Agreement after we notify you, pursuant to section 12.1, of a change or adjustment to our fees but before the effective date of such change or adjustment. If we terminate the Agreement pursuant to section 14.1(b), then, notwithstanding any other claim or right we may have against you under this Agreement or otherwise at law, you agree to pay us an early termination fee of \$250.00 per location or as otherwise set out in the Fee Schedule.
- 14.5 If the Agreement is terminated, your right to accept Cards in accordance with the Agreement and to use any advertising materials or other display materials provided by us will immediately cease. You will promptly return to us, at your expense and risk, all Terminals, PIN Pads and any other equipment that we provided to you.
- 14.6 The provisions of sections 7.2(e), 11.8, 12.3, 13.2, 13.3, 14.2, 14.4, 14.5 and 19.7 and Articles 15.0, 16.0 and 17.0 of these Terms will survive termination of the Agreement. All obligations of the parties in respect of any event which occurred prior to the date of termination of the Agreement will survive such termination. After termination you will continue to be responsible for payment of all Chargebacks, fees and other amounts that you owe to us under the Agreement.
- 14.7 We may amend the Agreement from time to time by providing ten (10) days notice to you by sending you such amendment or by directing you to download such amendment from our website or to contact us by telephone requesting that such amendment be mailed to you.

15.0 Limitation of Liability and Indemnities

- 15.1 Any and all disputes between you and a Cardholder or another person relating to the receipt, quality, price or satisfaction of goods or services furnished by you or any act or omission of you arising out of a Transaction (unless the amount of such Transaction has not been credited to your Account by us or has been charged back to you), must be handled directly by you without liability to us.
- 15.2 We will not be responsible for any claims, suits damages, losses, costs and expenses incurred directly or indirectly by you (unless resulting from our gross negligence or willful misconduct) resulting from:
 - (a) the installation, operation, failure to operate, or maintenance of a Terminal, PIN Pad, Electronic Commerce Facilities or other equipment or services;
 - (b) breakdown of or interruption of services in telecommunication lines;
 - (c) errors in messages transmitted through a Terminal, PIN Pad, Electronic Commerce Facilities or other equipment or services;
 - (d) transactions submitted electronically to us and data produced using information transmitted through a Terminal, PIN Pad, Electronic Commerce Facilities or other equipment or services;
 - (e) any failure or delay in the performance of any of the services contemplated in the Agreement;
 - (f) unauthorized or fraudulent use of or errors in the use of Terminals, PIN Pad(s), Electronic Commerce Facilities, Terminal Access Numbers or other equipment or services and any resulting unauthorized, fraudulent or erroneous Transactions; or
 - (g) your failure to receive any Communications under section 19.7.
- 15.3 We are not responsible for equipment or services provided by third parties, including without limitation Third Parties, software vendors, Internet service providers, other providers of services in respect of Electronic Commerce Facilities, third party processors, providers of Terminals, PIN Pad(s) and other equipment and services. Any approval by us of any such third party or certification of such equipment or services is for our own purposes and does not constitute a representation or warranty with respect to the third party or its equipment or services. You will not make any representation that we or a Card Association endorse or certify such equipment or services.
- 15.4 You will indemnify and hold us harmless from and against any and all claims, suits, damages, losses, fines, penalties (including fines, penalties, and other charges by Card Associations), costs and expenses (including legal fees) incurred directly or indirectly by us or a third party resulting from:
 - (a) all claims of any kind by any Cardholder arising out of any Transaction;
 - (b) your failure or the failure of your employees or agents to use the Terminals, PIN Pad(s), Electronic Commerce Facilities, Terminal Access Numbers or other products or services in accordance with the terms and conditions of the Agreement, our rules, instructions, manuals or procedures in effect from time to time; or
 - (c) unauthorized or fraudulent use of negligence or errors in the use of Terminals, PIN Pad(s), Electronic Commerce Facilities, Terminal Access Numbers or other equipment or services and any resulting unauthorized, fraudulent or erroneous Transactions;
 - (d) your failure to comply with any of your obligations set out in this Agreement, or with any requirements of which you are advised from time to time including requirements of any Card Association Association (for greater certainty, with respect to your obligations under section 16.10, your indemnity herein shall apply whether your non-compliance occurred before or after the effective date of this Agreement); or
 - (e) your breach of any of your representations and warranties set out in this Agreement.
- 15.5 The Agreement is a service Agreement. We disclaim all representations or warranties, express or implied, made to you or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or otherwise of any equipment or services provided by us under or incidental to the Agreement.
- 15.6 In no circumstances will we or our affiliates or any of our or their respective directors, officers, employees, agents or subcontractors, be liable under any theory or tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, loss of goodwill, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such

damages.

- 15.7 Notwithstanding anything in this Agreement to the contrary, our cumulative liability for all losses, claims, suits, breaches or damages for any cause whatsoever (including, but not limited to, those arising out of or related to this Agreement) shall not exceed, (i) \$50,000; or (ii) the amount of fees received by us pursuant to this Agreement for services performed in the immediately preceding 12 months, whichever is less.
- 15.8 In no circumstances will we be liable in any way to you, any of your service providers or any other person with respect to any processing we may perform at your request relating to any card, product or service not covered by this Agreement. You shall indemnify and hold us harmless from any loss, damage or expense incurred by us in relation thereto.

16.0 Confidentiality and Data Security

- 16.1 In this section the term "Confidential Information" means any business, marketing, technical, scientific or other information of a party whether in written, oral, graphic, photographic, electronic or any other form, which, at the time of disclosure by that party to the other party, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential.
- 16.2 Except as expressly authorized by prior written consent of the other party, or as provided in this Agreement, each party agrees to:
 - (a) Limit access to any Confidential Information received by it to its employees and agents who have a need-to-know in connection with this Agreement;
 - (b) Advise its employees and agents having access to the Confidential Information of the proprietary nature thereof and of the confidentiality obligations set forth in this Agreement;
 - (c) Safeguard all Confidential Information received by it using a reasonable degree of care, but not less than that degree of care used by it in safeguarding its own similar information or material;
 - (d) Use all Confidential Information received by it solely for purposes of performance of this Agreement; and
 - (e) Not disclose any Confidential Information received by it to any third party except as required for purposes of performance of this Agreement.
- 16.3 The obligations of confidentiality and restriction on use do not apply to any Confidential Information which the recipient of Confidential Information can establish:
 - (a) Was in the public domain prior to the date of this Agreement or subsequently came into the public domain through no fault of the recipient;
 - (b) Was lawfully received by the recipient from a third party free of any obligation of confidence to such third party;
 - (c) Was already in the possession of the recipient prior to the receipt thereof, directly or indirectly, from the disclosing party; or
 - (d) Is subsequently and independently developed by employees, consultants or agents of the recipient without reference to the Confidential Information disclosed under this Agreement.
- 16.4 You will not, without our and the Cardholder's consent, sell or provide to, purchase from, exchange with or disclose to any third party any Cardholder names, account numbers or any other information obtained from Cards. You will protect Cardholders from possible fraud by maintaining the confidentiality of their personal information. You will comply with all applicable laws dealing with the protection and disclosure of personal information about or belonging to Cardholders.
- 16.5 You will not use Cardholder names, Card numbers or other Card Transaction information embossed, encoded, or appearing in any other manner on the Card for any purpose other than for the sole purpose of assisting you in completing the Transaction, or as specifically required by law. You will not disclose or remit Cardholder names, Card numbers or other Card Transaction information embossed, encoded, or appearing in any other manner on a Card or any document or form evidencing such information to any third party other than to us or our designated agent. You will store all materials containing Cardholder names, Card numbers or other Card Transaction information, including without limitation Transaction Records, Sales Drafts and carbons, in a secure area access to which is limited to selected personnel and, prior to discarding, will destroy this data in a manner rendering it unreadable.
- 16.6 You will maintain all materials and records, in any form, that contain Cardholder names, Card numbers or other Transaction information in a safe and secure manner.
- 16.7 You will allow us or a Card Association to inspect your premises and computers for the purposes of verifying that Cardholder names, Card numbers and other Transaction information are securely stored and processed, and will co-operate with the Card Association and with us in any investigation of suspected or confirmed loss or theft of Cardholder names, Card numbers or other Transaction information. All of the costs incurred by us under this section 16.4 constitute a debt that you must pay us on demand and that is subject to Article 12.0 of this Agreement.
- 16.8 If you make arrangements with a third party for the collecting, processing or storing of Cardholder names, Card numbers or other Transaction information, you will execute a written contract with such party that includes obligations regarding security and confidentiality of Cardholder names, Card numbers and other Transaction information and the right to inspect the third party's premises and computers that are similar to those in this Article 16.0.
- 16.9 You shall comply with the Payment Card Industry Data Security Standard ("PCI DSS") and the *Visa* Account Information Security Program, details of which are available, if applicable, at www.visa.ca or from us. The PCI DSS also applies to any agent or third party provider that you may use to store, process or transmit Cardholder data. In addition, such agents or third party providers must be registered with the applicable Card Association. Therefore, you must:
 - (a) Notify us in writing of any agent or third party provider that engages in, or proposes to engage in, the provision of payment related services and/or the storing, processing or transmitting of Cardholder data on your behalf, regardless of the manner or duration of such activities; and



- (b) Ensure that all such agents and third party providers are (i) registered with the applicable Card Association; and (ii) comply with all applicable data security standards, including, without limitation, the PCI DSS.

You are solely responsible for the compliance of any and all third parties that are given access by you to Cardholder data and of any third party software that you may use, including for greater certainty, any POS solution, application or software for facilitating payment processing.

- 16.10 You will not disclose, and will maintain in a safe and secure manner, confidential information that we provide to you from or related to Card Associations.
- 16.11 If this Agreement is terminated, we may be required to inform any Card Association or other relevant party of the fact of, and reasons for, such termination, and your name and address and the names and other information of your principals, which could affect your ability to obtain Card processing services in future. You hereby consent to such disclosure and represent and warrant that you shall obtain the consent of your principals to such disclosure. In addition, you agree to waive and hold us harmless from and against any and all claims you may have as a result of such reporting.
- 16.12 This Article 16.0 survives termination of the Agreement.

17.0 Representations and Warranties

17.1 As to each Transaction, you represent and warrant to us that:

- (a) it represents a bona fide sale of goods or services or if applicable, in the case of a Debit Card Transaction, the advance of money, in the ordinary course of business;
- (b) it is in all respects as required by and in compliance with the Agreement and the law;
- (c) you have no knowledge or actual notice of any circumstances that would impair enforceability of collection against the named Cardholder;
- (d) the Transaction represents an obligation of the Cardholder for the amount of the Transaction;
- (e) the amount charged for the Transaction is not subject to any dispute, setoff or counterclaim;
- (f) the Transaction amount is only for the merchandise or services (including taxes, but without any surcharge on Card) sold or rented and, except for any delayed delivery or advance deposit Transactions expressly authorized by this Agreement, the merchandise or service was actually delivered to or performed for the person entering into the Transaction simultaneously upon your accepting and submitting the Transaction for processing;
- (g) the Transaction does not represent the refinancing of an existing obligation of the Cardholder, including any obligation otherwise owed to you by a Cardholder;
- (h) you have no knowledge or notice of any fact, circumstances or defence which would indicate that the Transaction was fraudulent or not authorized by the Cardholder or which would otherwise impair the validity or collectability of the Cardholder's obligation arising from such Transaction or relieve the Cardholder from liability with respect thereto;
- (i) the Transaction submitted to us was entered into by you and the Cardholder;
- (j) the Transaction was made in accordance with this Agreement and applicable Card Association rules and operating regulations; and
- (k) the Transaction is not a payment for a product or service that violates federal, provincial or local law in any jurisdiction that may be applicable.

18.0 If you have a problem or concern

If you have a problem or concern with any product or service we provide under this Agreement, you will contact TD Merchant Services at 1-800-363-1163.

If your problem or concern remains unresolved, you may contact a Customer Service Representative at your TD Canada Trust Branch or Business Unit that handles your account, call us toll free at 1-888-572-8923 or contact us by mail at Customer Feedback, TD Centre, P.O. Box 193, Toronto, Ontario, M5K 1H6, by fax at 1-877-983-2932 or by e-mail⁺ at customerfeedback@td.com. As a next step, if your concern remains unresolved, the Manager will offer to elevate your problem to a representative of the Senior Management Office. Alternatively, if you prefer to elevate the problem yourself, you may contact the Manager, or one of our telephone banking specialists at the toll-free number above, and they will assist you.

If your concern remains unresolved, you may contact the TD Ombudsman, by mail at P.O. Box 1, TD Centre, Toronto, Ontario, M5K 1A2, or call toll-free at 1-888-361-0319. If your concern still remains unresolved, you may then contact the Ombudsman for Banking Services and Investments (OBSI) by mail at P.O. Box 896, STN Adelaide, Toronto, Ontario, M5C 2K3 or toll free at 1-888-451-4519.

For a more detailed overview please obtain a copy of our "If You Have a Problem or Concern" brochure from any branch or from our website at www.td.com.

Financial Consumer Agency of Canada (FCAC) - If you have a complaint regarding a potential violation of a consumer protection law, you may contact the FCAC in writing at 6th Floor, Enterprise Building, 427 Laurier Ave. West, Ottawa, Ontario K1R 1B9. Please note that the FCAC does not become involved in matters of redress or compensation - all such requests must follow the process set out above.

19.0 General Provisions

- 19.1 **Display:** You agree to prominently display decals and signs provided or approved by us in your premises and promotional material indicating that you accept *Visa* Cards, *MasterCard* Cards, and Debit Cards. You will not more prominently display acceptance of a Card than that of any other Card. You will submit for our prior approval any advertising, which refers to us or to *Visa* Cards, *MasterCard* Cards, Debit Cards or Credit Card Associations. You will not make any representation that we or a Card Association endorse your goods and services.

- 19.2 **Approval Of Publicity And Communications:** You may not distribute or use any sales promotions and advertising materials, nor make any announcements and press releases, relating in any way to this Agreement, us, or our trade-marks without our prior approval in writing. You agree not to use the *Visa*[®] name, the CHARGEX name, the bands design, the *Visa* Brand Mark, the *Visa* Brand Mark with the Electron identifier, the *MasterCard* name, the *Maestro* name, the *MasterCard* Brand Mark, the *Maestro* Brand Mark, any marks owned by a Card Association or any representation of them without the our prior approval in writing. Any use by you of a name, logo, trade name, logotype, trademark, service mark, owned, managed, licensed or otherwise controlled and made available by MasterCard International Incorporated or Maestro International Incorporated must be in accordance with the applicable standards established from time to time by such Card Associations. Notwithstanding the above, by accepting any Card that permits a contactless Transaction, you consent to the use by the applicable Card Association of your name and address in any advertising and/or informational campaign by such Card Association regarding contactless payments including, without limitation, any press release in relation thereto, on such Card Association's website, and in other Card Association materials relating to contactless payments.
- 19.3 **Assignment:** The Agreement will be binding upon the parties and their heirs, successors and assigns. However, you are not permitted to assign the Agreement or any obligations without our prior written approval. In the event you become a debtor in bankruptcy or become subject to restructuring or insolvency proceedings, this Agreement cannot be assumed or enforced and we shall be excused from performance hereunder. We may transfer, sell or otherwise assign the Agreement or any rights and obligations without your approval. If we do so, we may disclose information about you and the individuals who are your principals to anyone to whom we assign the Agreement, our rights and obligations.
- 19.4 **Headings:** The headings to each part of the Agreement are added for convenience and do not change the meaning of any provision of the Agreement.
- 19.5 **Waiver:** Any waiver by us of any of the provisions of the Agreement will not constitute a waiver of any other provision (whether similar or not), nor will such waiver constitute a continuing waiver of that particular provision unless expressly provided by us in writing.
- 19.6 **Severability:** If it is found by a court that any portion of the Agreement is invalid or unenforceable, the remainder of the Agreement will not be affected.
- 19.7 **Communication:** Statements and other communications, including without limitation notices under the Agreement, are "Communications") and will be sent by ordinary mail to your address appearing in our records. "Communication" also includes any communication to you regarding our fees and charges. At our option, we may also send Communications by any other method, including fax, email, web, telephone or electronic delivery to your Terminal.. If you have more than one principal, a Communication sent to any one principal will be sufficient communication to you and to all principals. Communication sent by mail will be considered to have been received by you five (5) days after we mail it or at the time of sending in the case of an electronic method or when received in the case of a Communication delivered by hand. You must advise us immediately of any change of address or other information to keep our records current. We are not responsible for your failure to receive a Communication if we send it to the address, or in accordance with other contact information for you, appearing in our records. You will be responsible for any Communications that we send to you even if you do not receive them or read them. For our mutual protection, we may record all telephone calls that relate to the services provided under the Agreement.
- 19.8 **Language:** It is the express wish of the parties that the Agreement and any directly or indirectly related documents be drawn up in English. Les parties ont exprimé la volonté expresse que cette convention et tous les documents s'y rattachant directement ou indirectment soient rédigés en anglais.
- 19.9 **Law:** You agree to comply with all applicable laws regarding the Agreement. The Agreement will be governed by and interpreted in accordance with the laws of the province or territory in Canada where we opened your merchant services account and the laws of Canada, as applicable, and you agree to submit to the jurisdiction of the courts of that province.
- 19.10 **Entire Agreement:** The Agreement is the complete agreement and replaces all prior communications, undertakings and agreements, written or oral, related to the subject matter of the Agreement.
- 19.11 **Business Changes:** You agree to inform us immediately of any changes in the nature of your business or the way you do business including Remote Transactions.
- 19.12 **Financial Information:** In connection with any periodic or other review by us of your relationship with us, you shall provide us any financial information about you and any guarantor that we request from you.
- 19.13 **Relationship of Parties:** It is understood and agreed that the relationship of the parties is that of independent contractors and nothing herein contained may be construed as constituting a partnership, joint venture or agency between us and you.
- 19.14 **Addendum:** Any attached Addendum or any Addendum sent to you by us in hard copy or electronic format applies to our provision to you of merchant services if you are engaged in the activity covered by the Addendum.

20.0 Definitions

In the Agreement:

- (a) "Account" means the deposit account specified in the Application;
- (b) "Acquire" means to engage in the activities of authorizing Transactions, submitting such Transactions for settlement, and clearing and settling such Transactions;
- (c) "Authorization" or "Authorize" means the following:
 - (i) in the case of a Credit Card Transaction (other than an Other Card), approval by us that the Cardholder's account with the issuer of the Credit Card has available credit, which is at least equal to the amount of the Transaction for which the Credit Card is presented;
 - (ii) in the case of a Debit Card Transaction, approval by the Third Party issuer of the Debit Card that the Cardholder's account has available funds which is at least equal to the value of the Transaction for which the Debit Card is presented; and



- (iii) in the case of an Other Card Transaction, if we are the primary acquirer, the communication link which includes communication:
 - (a) from you to us; (b) from us to the Third Party; (c) from the Third Party to us with the approval; (d) back to you with the approval; and (e) which approval is governed by the terms of the agreement between you and the Third Party.
- (d) "Authorization Number" means the number given by us to you which confirms our Authorization of the Transaction for which Authorization was requested;
- (e) "Authorization Services" means the Authorizations and approvals provided to you for Transactions initiated by use of Cards;
- (f) "Authorization System" means the communication links between the computers, and the computers themselves, which are operated by or for you and us, which are used, among other things, to communicate Authorization Numbers from us to you upon your requesting Authorization Numbers;
- (g) "Batch" means a single submission by you to us of a group of Transactions (sales and credits) for settlement;
- (h) "Batch Close" means a Terminal function which submits all the accumulated Transactions processed through the Terminal to us or a Third Party;
- (i) "Business Day" means any day, other than a Saturday, Sunday or statutory holiday observed in the Province of Ontario;
- (j) "Card" means a Credit Card or a Debit Card;
- (k) "Card Association" means *Visa* Canada Corporation, *Visa* Inc., *Visa* International Service Association, MasterCard International Incorporated, Maestro International Incorporated, Interac Inc., other card organizations as we may advise and related associations, and their successors, assigns, subsidiaries and affiliates as applicable;
- (l) "Cardholder" means a person who is:
 - (i) in the case of a *Visa* Card or *MasterCard* Card, the person whose name is embossed on the *Visa* Card or *MasterCard* Card, or whose signature appears in the signature panel on the reverse of a *Visa* Card or *MasterCard* Card, and is authorized to use that *Visa* Card or *MasterCard* Card;
 - (ii) in the case of a Debit Card, the person presenting the Debit Card to you and to whom the Debit Card was issued by us, or a Third Party; or
 - (iii) in the case of an Other Card, the person whose name is embossed on the Other Card or as required by a Third Party.
- (m) "Chargeback" means the exercise by us of our right to return Card Transactions to you and be reimbursed for such Card Transactions by you pursuant to the provisions of the Agreement;
- (n) "Cheque" means a cheque payable to you for the purchase of goods or performance of services for which you have been guaranteed payment by a Third Party subject to certain conditions and charges;
- (o) "Communication" is defined in section 19.7;
- (p) "Credit Card" means a *Visa* Card capable of being used for credit card Transactions, a *MasterCard* Card or an Other Card
- (q) "Cut-Over" means 12:00 a.m. Eastern Time, which time may be changed from time to time in our absolute discretion without notice to you;
- (r) "Debit Card" means any valid card bearing our name, our trade-name or the name of a Third Party, which card can be used, together with a PIN, for *Interac*[®] Direct Payment Transactions, or for debit card Transactions through the network of a Card Association;
- (s) "Electronic Capability" means point of transaction capability where all of the following is true: zero off-line Floor Limit applies (or the Terminal is capable of reading and acting upon the service code in the magnetic stripe or information provided in the chip); Authorization response is obtained online; and Authorization response and Transaction Record data are captured electronically;
- (t) "Electronic Commerce Facilities" means the computer software and hardware that enables the processing of Transactions over the Internet;
- (u) "Mail Transaction"/"Telephone Transaction"/"Internet Transaction" or collectively "Remote Transaction" means any sale of goods and/or services by you and charged to the Cardholder's Card pursuant to a request for such a sale received by telephone, by mail, by Internet or other medium in which the Credit Card, the Cardholder and/or an individual representing you are not present at your physical premises;
- (v) "Off-Line" means any situation in which you are unable to obtain a response to a request for an Authorization through the use of the Authorization System;
- (w) "Off-Line Floor Limit" means the maximum amount authorized by us in writing from time to time that may be charged in any single Transaction when the Authorization System is Off-Line against a Transaction Record or Sales Draft properly completed pursuant to section 2.3 of the Agreement, without obtaining Authorization from us;
- (x) "On-Line" means connected to the Authorization System;
- (y) "Gift Card" means a card issued to a person by you or by your service provider that, when swiped through a Terminal, identifies such person for the purpose of a purchase by that person from you;
- (z) "Loyalty Card" means a card issued to a customer of you by you or by a service provider to you that, when swiped through a Terminal, identifies such Customer for the purpose of a purchase by that Customer from you;
- (aa) "Maestro Card" means a valid and unexpired *Maestro*^{®2} debit card;
- (bb) "MasterCard Card" means a valid and unexpired *MasterCard*^{®1} credit card;



- (cc) "Other Card" means any credit card which is not a *Visa* Card or a *MasterCard* Card, which you have agreed with a Third Party or with us to honour, and which credit card we and the Third Party agree may be used in the Terminals;
- (dd) "PIN" means a confidential personal identification number issued by us or a Third Party for sole use by the Cardholder in conjunction with the Cardholder's Credit or Debit Card to authenticate the Cardholder's instructions for Credit or Debit Card Transactions at a Terminal;
- (ee) "PIN Pad" means a device, incorporating an alphanumeric keyboard, to be used by the Cardholder for secure entry of his or her PIN. A PIN Pad may also be incorporated as part of a Terminal;
- (ff) "Recurring Transaction" means multiple Transactions processed at predetermined intervals not to exceed one year between Transactions, representing an agreement between you and a Cardholder to purchase goods or services over a period of time;
- (gg) "Remote Transaction" is defined in section 20.0(r);
- (hh) "Sales Draft" means the form approved or provided by us to be used to record the purchase of goods and/or services from you by use of a Card;
- (ii) "Terminal Access Number" means a confidential personal identification number also known as a *supervisor/admin number* issued by us for use by you to permit Debit Card Transaction refunds or reversals or to access other Terminal functionality from time to time;
- (jj) "Terminal" means equipment and/or point of sale software application(s) which we provide to you or agree may be used by you for the purpose of communicating with us respecting Transactions;
- (kk) "Third Party" means a person who is: (i) in the case of Other Cards and Cheques, a person with whom you have an agreement to accept an Other Card or Cheques; (ii) in the case of Debit Cards, either a member of Interac Inc. that issues and controls Debit Cards and associated PINs or a financial institution who we have entered into an agreement with regarding the provision of Debit Card services; or (iii) in the case of certain loyalty and gift card programs, the service provider in respect of the loyalty card program with whom you have an agreement.
- (ll) "Transaction" means the sale of goods or performance of services by you in respect of which a Credit Card or a Debit Card was presented for payment;
- (mm) "Transaction Record" means the printed form dispensed by the Terminal upon completion of a Credit Card or Debit Card Transaction conducted at a Terminal; and
- (nn) "*Visa* Card" means a valid and unexpired *VISA*® card bearing the distinctive blue, white and gold colour bands identical to that appearing on the CHARGEX card or bearing the distinctive "winged *Visa*" dual colour *Visa* symbol (the "*Visa* Brand Mark"), or, if you are a merchant with Electronic Capability (as defined above), bearing the *Visa* Brand Mark with the Electron identifier (with all of which you hereby acknowledges you are familiar).

+ **Email Disclaimer:** For your protection, do not send confidential or personal information (e.g. Access Card number, account numbers, etc) via email, as it is NOT a secure method of communication. If your request is urgent or requires disclosure of confidential or personal information for resolution, please call us.

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