



Merchant Services
Merchant Terms
and Conditions

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Terms and Conditions
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PREFACE

Thank you for selecting First Data Loan Company, Canada for your payment processing needs. In these terms and conditions, unless otherwise specified, the terms “we,” “us,” “our” or “First Data” refer to First Data Loan Company, Canada, and the terms “you” or “your” refers to you, the merchant, the entity that executed the card acceptance form (the “Form”). We offer a comprehensive suite of services allowing merchants to: (1) select the types of payment cards they wish to accept; (2) choose from several point-of-sale (or POS) equipment and financing options; and (3) add telephone/mail order, Internet and other emerging payment choices. Upon accepting the services that we have agreed to provide, you agree to be bound by these terms and conditions and the provisions outlined on your signed Form (collectively, your “Agreement”).

Your terms and conditions are divided into the following articles, following the introduction. Section headings are for convenience of reference and will not affect the meaning or construction of any section or provision in your Agreement.

- I. Relationship Administration
- II. Card Transactions
- III. Additional Services
- IV. Equipment
- V. Service Fees and Charges
- VI. General Terms and Conditions

INTRODUCTION

We have relationships with Visa Canada Corporation (“Visa”), MasterCard, International Inc. (“MasterCard”), Interac (“Interac”) and other applicable banks and companies, which enable us to offer merchants a suite of payment services in one, comprehensive agreement. We continue to develop and enhance our payment services and marketing channels. You may, from time to time, be contacted by independent companies who have contracted with us to market the payment services set forth in your Agreement. Whether you apply for payment services with us directly or through one of these independent referral organizations or sales professionals, we pledge to provide you and all of our merchants with an unparalleled level of service and support.

ARTICLE I. Relationship Administration

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

2. Payment Account Requirements. You agree to establish three accounts to enable us to provide the Services to you: (i) your Current Account will be where we transfer your settlement funds; (ii) your Merchant Account will be where we maintain your settlement funds, prior to transferring them to your Current Account; and (iii) your Reserve Account, which you agree to fund, all as described below.

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

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

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

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

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

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

2.7. Merchant Account. We will establish, for you, a non-interest bearing deposit account (your “Merchant Account”), where we maintain your settlement funds until they are transferred to your Current Account. Merchant Account funds will be: (i) in Canadian currency; (ii) eligible for up to one hundred thousand dollars (\$100,000) of deposit insurance under the Canada Deposit Insurance Corporation Act; and (iii) subject to our rights under your Agreement, maintained by us until we initiate the transfer of such funds in accordance with section 10. The Merchant Account that is opened by us is for the sole purpose of maintaining settlement funds and exercising our other rights under this Agreement. Accordingly, there are no charges or fees payable in connection with your Merchant Account.

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

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

2.10. Reserve Account. You understand that we may require you to establish a reserve account based upon you committing an Event of Default or upon receipt of your notice of termination of this Agreement (the “Reserve Account”). You understand that the amount you will be required to fund in this Reserve Account will be determined based on factors such as: (i) the amounts of previous settlements, Chargebacks, assessments and fines/penalties; (ii) the frequency and amounts of credits and adjustments; (iii) the value of any goods and/or services billed in advance of fulfilment; and (iv) the amount of any fees or discounts due along with any current or anticipated Association fees or fines. Upon receipt of notice from us, you agree to fund the Reserve Account as set forth in your notice; except, in instances of an Event of Default, you agree to fully fund said Reserve Account immediately. You agree to fund the Reserve Account through any combination of: (i) debits to

your Merchant Account and Current Account (and any other accounts held by us or our affiliates); (ii) deductions or off sets to any payments otherwise due to you; or (iii) your delivery to us of a letter of credit, issued or established by a financial institution acceptable to us. In the event you fail to fund the Reserve Account, we may fund it as set forth in subsections (i) and (ii) above. If funds in your Reserve Account are not sufficient to cover Chargebacks, adjustments, Merchant Processing Rate and other charges due from you, or if we have released funds in your Reserve Account, you agree to promptly pay us such sums upon request. In the event of termination of this Agreement, you agree to immediately establish a Reserve Account which will be held by us for the greater of 10 months after termination of your Agreement or for such longer period of time consistent with our liability for card transactions in accordance with the Rules, defined in section 3. Amounts maintained in the Reserve Account may bear interest. We may, to the extent permitted by law and without notice, from time to time, set off, apply or transfer any and all sums standing to the credit of the Reserve Account in or towards the satisfaction of any indebtedness or liability you may incur to us under your Agreement.

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

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

3. Association Rules. The parties to this Agreement acknowledge that they agree to be bound by all applicable operating rules and regulations (the "Rules") of Visa (www.corporate.visa.com/pd/rules/main.jsp), MasterCard (www.mastercard.com/ca/merchant/en/index.html), Interac (www.interac.ca), any other payment card association that is applicable to this Agreement (collectively, the "Associations") and including the Payment Card Industry Data Security Standards ("PCI DSS") (www.pcisecuritystandards.org/) and any Association, network, or government agency rules related to the protection of consumer and transaction information security. The parties also acknowledge that the Associations publish and make available their Rules, bulletins, alerts and directives and agree that it is each party's sole responsibility to review and comply with any such publications as may be applicable to them for compliance with the Rules and this Agreement.

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

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

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

4. Confidentiality. The parties agree that, unless they obtain consent from the other party, each applicable Association, the cardholder and the issuer of the cardholder's payment card, they will not use, disclose, sell, or disseminate any payment card information obtained in connection with a payment card transaction except for purposes of authorizing, completing and settling card transactions and resolving

Chargebacks, retrieval requests or similar issues involving card transactions, other than as may be required for a court or governmental agency request, subpoena or order. Neither party will obtain ownership rights in any information relating to and derived from card transactions except as set forth in the Rules. The parties also agree not to hold each other liable for any disclosure of confidential information made pursuant to the terms of this Agreement.

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

4.2. Collection, Use and Disclosure of Personal Information. You (and if necessary, each principal, guarantor or other individuals that have signed your Form) agree and consent to the fact that we may, from time to time, use your credit, financial and related Personal Information provided in connection with this Agreement and any update, renewal or extension of same for the following purposes: (i) evaluate current and ongoing credit worthiness; (ii) evaluate your eligibility for the Services and establish, administer, service, and collect in respect of the Services and enforce provisions of your Agreement; (iii) to share personal and credit information with and collect such information from our affiliates, agents, representatives, credit reporting agencies, businesses and financial institutions pursuant to the provision of the Services contemplated in your Agreement; (iv) to verify your identity including matching records or credit information; (v) to share Personal Information in connection with your Authorization, POS equipment (the "Equipment") sale/rental/lease, automatic debit process and with third parties to register a security interest as contemplated in your Agreement; (vi) for detecting and preventing fraud and complying with anti-money laundering and terrorist financing regulations, including checking your identity against watch lists established by regulatory agencies or similar bodies in Canada and foreign countries; (vii) for evaluating the performance of our merchant portfolio; (viii) to allow our service providers to collect, use, store or process Personal Information on our behalf; (ix) to meet legal, regulatory, audit, processing and security requirements; or (x) from time to time, to determine your eligibility for and occasionally to communicate with you regarding additional products, services or business opportunities (you may withdraw consent for this purpose by contacting us at 1-888-263-1938). We may otherwise collect, use and disclose Personal Information as permitted or required by law. You also authorize us to obtain financial and credit information relating to you, from credit reporting agencies, businesses and financial institutions with which you make arrangements with, and references you have provided, in connection with our decision to provide the Services and monitor your financial and credit status. Additionally, you agree to authorize us to share information concerning your business with any of our agents and/or affiliates and applicable Associations, Association members and credit reporting and debt recovery agencies in connection with the performance of the Services set forth in your Agreement. You understand that some of our affiliates or service providers may be located outside Canada, and your Personal Information may be transferred or processed outside of Canada, subject to legal requirements applicable to us and our service providers or affiliates, including those requirements set forth by foreign jurisdictions. We may also use your (and each principal guarantor or other individuals that have signed your Form) business and Personal Information and disclose such information to parties connected with or involved in the proposed or actual financing, insuring, securitization, sale, assignment or other disposal of all or part of our respective businesses or assets (including, for example, your Agreement, accounts or amounts owing to us) for the purposes relating to the evaluation and/or performance of these transactions. Successors and assignees of our business or assets may collect, use and disclose your business or Personal Information as described in this section.

4.3. Authorization to Obtain Personal Information. You warrant that you have the necessary consent of your principals, guarantors and other individuals whose Personal Information we have obtained in connection with this Agreement for the purposes described above. For further information about our Personal Information practices, you may obtain a copy of our "Privacy Principles" available at the website address www.firstdata.com/canada and/or toll-free at 1-888-263-1938. The consents contained in your Agreement will be valid for so long as required to fulfill

the purposes described above. Authorized employees and agents of ours, that require access to your Personal Information will have access to your file, which will be accessible through our affiliates' merchant services facilities in the United States. If you wish to access or make corrections to your Personal Information in our possession, you may notify us as set forth in section 25.

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

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

6. Merchant Employee Responsibilities. You agree to ensure that all Equipment is monitored during and closed/turned off after business hours to minimize the risk of unauthorized use. You agree to develop security procedures and train your employees on them. Security procedures will include your use of employee shift logs (maintained for a minimum of 12 months), and directions/conditions for contacting us in the event your employees suspect that your Equipment has been lost, stolen or tampered with.

ARTICLE II. Card Transactions

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

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

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

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

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

8. Card Acceptance and Authorization. You agree to accept credit and debit cards issued by members of the Associations identified on your Form. When a card-

holder or authorized user presents a credit or debit card for payment, you agree that you will perform the following tasks:

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

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

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

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

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

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

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

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

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

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

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

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

11. Transaction Chargebacks. A Chargeback is a disputed card transaction that is returned to us by a card issuer. Upon notice of a dispute, you agree that it is your responsibility to resolve it directly with the cardholder. If we receive a Chargeback notice, we will debit your Merchant, Current, or Reserve Account for the amount of the Chargeback. In some cases, a card issuer may request a copy of the transaction record prior to initiating a Chargeback. We will forward these requests to you and deliver your response to the card issuer. You understand that you must respond to these requests within the time frames and manner stated. Due to the short time requirements imposed by the Associations, your failure to timely respond will be communicated to the card issuer and may result in a Chargeback(s) as well as Association related costs or fees. You agree that comprehensive Chargeback procedures are published by each Association and the following is intended to serve only as a general guideline for compliance:

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

11.2. Chargeback Reasons. You understand that at the time of a transaction, if you do not follow proper procedures, the transaction may be subject to Chargeback. The following outlines the most common types of Chargebacks, categorized into seven broad groups: (i) "Card Authorization Issues" including no account number verification, full authorization not obtained, expired card; (ii) "Cancellations and Returns" including credit not processed and cancellation of a recurring transaction;

(iii) "Fraud" including counterfeit transaction, unauthorized or fictitious account number; (iv) "Non-Receipt of Goods and Services"; (v) "Processing Errors" including late presentment of a transaction record, incorrect account number, code or amount; (vi) "Quality of Goods and Services" including defective goods; and (vii) "Non-Receipt of Information" including the codes: "transaction document not received" or "document was illegible."

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

ARTICLE III. Additional Services

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

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

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

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

12.4. Internet Notice Requirements. You agree to review and abide by all Rules and requirements for the acceptance of payment, display of Marks, retention of records, dispute processing, information security and any other requirements set forth in any guideline, bulletin, alert or other Association publication related to Internet payment services, notices and disclosures. We require that the following (if applicable) be included/displayed in any Internet website that advertises acceptance of Association cards applicable to this Agreement: (i) a complete description of the goods or services offered, including technical requirements, if any; (ii) your customer service telephone number or email address; (iii) any applicable export or legal restrictions or conditions; (iv) your consumer data privacy and transmission of Personal Information policies; (v) a description of your transaction security processes; (vi) an itemized list of prices including taxes, shipping charges and the method of shipping; (vii) a description and estimated amount of any additional charge(s) (e.g. delivery charges, customs fees) that applies or may apply; (viii) the total amount payable and the amount and frequency of any periodic payments; (ix) a description of any trade-in arrangement and allowances; (x) service related information (e.g. where will services be performed, for whom, third-party providers etc.); disclosure of the country where the merchant outlet is located; (xi) all required Association trade and service marks; and (xii) your physical address.

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

14. Dynamic Currency Conversion (“DCC”). In some instances, we may offer you DCC services. If DCC is available and you wish to offer it to cardholders, you agree to: (i) obtain our prior written approval to offer DCC; (ii) inform cardholders that DCC is optional; (iii) not impose any additional requirements on the cardholder to have the transaction processed in local currency; (iv) not misrepresent that DCC is a service provided by Associations or network organizations; and (v) comply with all transaction, receipt and DCC requirements communicated by us, the Associations and network organizations.

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

ARTICLE IV. Equipment

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

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

16.2. Equipment/Software Setup, Security and Maintenance. You agree that all transactions initiated with your Equipment are assumed to be authorized by you and you are responsible for any losses incurred in connection with misused or compromised passwords. Where applicable, you will immediately replace set-up or default passwords and change them regularly and when an individual leaves your employment. You agree not to install PIN pads in locations that would allow others to view cardholder’s use of the pad without also installing shielding or other appropriate countermeasures. You agree to notify us immediately if the Equipment is not working or if the “*Out of Balance*” message continues to display. You acknowledge and agree that you are solely responsible for the security of all Equipment used in processing transactions under your Agreement. You are also responsible for any unauthorized use of the Equipment, regardless of whether such unauthorized use was made by you, your employees, agents, customers or other third parties. You must review all Equipment user documentation and understand Equipment functionality, capabilities, PIN security measures and cryptographic keys loaded onto the Equipment. You will ensure that no device is connected to your Equipment (regardless of whether this Equipment was provided by us) or permit any physical alteration or modification of your Equipment without our express written permission. You agree that we or our representatives may enter your premises for purposes of inspecting, examining or repairing the Equipment at any time. You agree that, the Equipment shall be kept at the address(es) indicated and shall not be removed without our prior written consent (except where normal use of the Equipment requires temporary removal). Under no circumstances are we responsible for any injuries, damages, penalties, claims or losses incurred by you or any other person caused by the installation, manufacture, selection, purchase, lease, rental, ownership, possession, modification, condition, use, return or disposition of the Equipment and you agree

to reimburse us, defend us and hold us harmless against any claims for any such losses, damages, penalties, claims, injuries or expenses, whether before or after termination of this Agreement.

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

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

18. Equipment Rental. If you rent Equipment from us, you agree that: (i) your acceptance of any piece of Equipment shall occur at the earlier of your actual acceptance after installation, delivery to you if your site is not ready for installation or seven days after shipment of Equipment that we have not agreed to install for you; (ii) even if you return the Equipment to us, before the end of the rental period, you agree to pay us the monthly rental fee for 12 consecutive months, after acceptance (or the number of months mutually agreed upon, for seasonal and single month renters); (iii) the rental fees shown on your Form do not include any GST, VAT and other federal and provincial sales, use, social service, harmonized and similar taxes, all of which you shall pay together with (and in addition to) your rental fees; (iv) we are authorized by you to collect rental fees and applicable taxes, on each piece of rented Equipment, for the rental period by initiating debit entries to your Merchant or Current Account or by deducting such amounts from settlement amounts due to you, on the 17th day of each month (or on such other date as agreed to by the parties) for as long as you are in possession of our Equipment; (v) we retain title to the Equipment and ownership and copyright interest in all Software, documentation, technology, know-how and processes embodied in connection with the Equipment and the rental thereof, and that your sole right to the Equipment is to use same for the term of the rental and subject to the terms of this Agreement; and (vi) the Equipment is rented “as is” with no representations or warranties, expressed or implied, statutory or otherwise, including, without limitation, as to the suitability of the Equipment for any particular purpose, quality, merchantability, fitness for a particular purpose or otherwise.

19. Equipment Lease. If you lease Equipment from us, you agree that: (i) your Agreement and these Equipment lease provisions shall become effective on the first date you use the Equipment to facilitate a card transaction; (ii) you are responsible for all current and future taxes due and imposed as a result of the lease; (iii) we may credit or debit your Merchant Account and you will also authorize your financial institution to accept debits and credits to your Current Account, from us, for purposes of the lease; (iv) you authorize us to obtain investigative credit reports and modify or terminate the lease at our discretion; (v) that the lease is applicable to the Equipment identified on your Form and that said Equipment is leased “as is” with no representations or warranties, expressed or implied, statutory or otherwise, including without limitation as to the suitability of the Equipment for any particular purpose, quality, merchantability, fitness for a particular purpose or otherwise; (vi) to pay (absolutely and unconditionally, and even if the Equipment is damaged, destroyed or defective) monthly lease charges in advance and pay an interim lease payment of one-thirtieth (1/30) of the agreed upon monthly lease charge for each day from and including the date the Equipment is first used for a payment card transaction the date that the first full monthly lease charges are due; (vii) that the monthly lease charge together with all applicable taxes will be debited, in advance, on the 17th day of each month (or on such other date as agreed to by the parties) from your Merchant or Current Account or by deducting such amounts from settlement amounts due to you; (viii) the lease charges shown do not include any applicable GST, VAT and other federal

and provincial sales, use, social service, harmonized and similar taxes, all of which you shall pay together with (and in addition to) your lease payments; (ix) if any payment is not made in full when due, you shall pay us a late charge (the "Equipment Lease Late Fee") of 10 percent of the past due amount or 10 dollars (\$10), whichever is greater, for each month during which it remains unpaid, plus any applicable taxes (prorated for any partial month), but in no event more than the maximum amount permitted by law; (x) you will pay us a NSF Fee, as described on your Form, in the event any debit we attempt to make against your Merchant and/or Current Account is rejected; (xi) that we retain title to the Equipment and ownership and copyright interest in all Software, documentation, technology, know-how and processes embodied in connection with the Equipment and the lease, and that your sole right to the Equipment is to use same for the term of the lease and subject to the terms of your Agreement; and (xii) that THE LEASE IS A NON-CANCELABLE LEASE FOR THE INITIAL TERM OF YOUR AGREEMENT, unless we materially breach your Agreement and are unable to cure said material breach as set forth in section 26.2.

19.1. Equipment Lease Default and Remedies. You agree that we may consider an uncured material default, of this lease to be a default of your Agreement. Upon occurrence of any default of this lease, we may send you a default notice. You have 30 days, from the date of the default notice, to cure the default. If said default is uncured on the next Business Day, we may immediately and without further notice terminate the lease, repossess the Equipment, accelerate and declare immediately due and payable all monthly lease charges for the remainder of the applicable lease period together with our determination of the current fair market value of the Equipment, not as a penalty, but as liquidated damages for our loss of the bargain. We may proceed in any lawful manner to obtain satisfaction of the amounts owed, and, if applicable, our recovery of the Equipment, including entering onto your premises to recover the Equipment. You are responsible for our costs of collection and enforcement (on a solicitor and client and substantial indemnity basis), court costs, as well as applicable shipping, repair, reconditioning and restocking costs of recovered Equipment and costs of sale or other disposition. You agree that we are entitled to recover any amounts due by charging your Merchant Account, Current Account or Reserve Account or any other of your funds that come into our possession or control. You also agree that we are entitled to recover amounts owed to us by obtaining them directly from an affiliate or joint venture to which we are a party and with which you have entered into an agreement.

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

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

election by you to return or purchase the Equipment, this lease will continue for an additional 12 month term unless you choose to terminate your Agreement as set forth below.

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

ARTICLE V. Service Fees and Charges

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VI. General Terms and Conditions

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

24.1. Our Right to Assign/Subcontract. Subject to the Rules, you agree that we may transfer this Agreement and our rights and obligations hereunder (including our rights and obligations in respect of any purchase, rental or lease of Equipment) to any third party with notice to you, and in particular, but without limitation, thereafter any amounts owing by you hereunder will be owed to any such transferee, free from any rights of set-off or other defences you may have, all of which you waive. You also agree that we may delegate our duties hereunder to any subcontractors without notice to you. Without limiting any of our other rights in this section, **we may assign the Authorization** (set forth in section 2.1), **whether directly or indirectly, by operation of law, change of control, or otherwise, by providing you at least 10 days prior notice.**

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

25. Notices. Except as otherwise specifically provided, the parties agree that all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the Services, which may be delivered via statement message or other means) shall be delivered via mail, courier or facsimile to the addresses set forth by you on your Form and to us at: First Data, attention: Chief Financial Officer, 2630 Skymark Ave., Suite 400, Mississauga, Ontario, L4W 5A4; facsimile 1-905-602-3576. Notices and other communications may also be delivered via email or web site publication as agreed to by the parties, from time to time.

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

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

26.2. Your Termination For Cause. If we materially breach a term of this Agreement or the Rules that are applicable to us, you understand that you have the right to provide us with written notice of your intent to terminate this Agreement, unless we remedy our material breach within 30 days of receipt of your notice. If we fail to remedy a material breach, you may terminate immediately following the end of such 30 day period unless you withdraw your notification. You further understand that you have the right to immediately terminate this Agreement and exercise all of your rights and remedies under applicable law and this Agreement if any of the following events occurs: (i) a material adverse change in our business or financial condition, including bankruptcy or insolvency proceedings commenced by or against us; or (ii) we breach or misrepresent any of our warranties or representations with respect to this Agreement.

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

26.4. Equipment, Transaction Supplies and Advertising. Upon termination of this Agreement due to an Event of Default, you agree that all amounts payable, including Equipment purchase/lease/rental payments shall be immediately due and payable in full without demand or other notice of any kind. You acknowledge that you do not own any transaction forms or advertising materials provided by us and agree to immediately cease use and certify destruction of or return, at your expense, all forms and materials bearing any Marks. You agree to cease all representations that you honour Association or other cards processed by us, unless you have entered into a separate agreement with another service provider/financial institution(s) as applicable.

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

27. Survival. The parties agree that provisions governing processing and settlement of card transactions, all related adjustments, fees and other amounts due from you and the resolution of any related Chargebacks, disputes or other issues involving card transactions will continue to apply even after termination of this Agreement, until all card transactions made prior to such termination are settled or resolved. In addition, the provisions of Article IV and sections 2, 4, 10, 11, 13, 21 through 23 (inclusive), 25 through 30 (inclusive) and 34 of this Agreement shall survive any termination.

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

28.1. Your Representations and Warranties. Without limiting any other warranties under this Agreement, you represent and warrant that each card transaction submitted to us for processing: (i) represents a bona fide sale/rental of merchandise or services not previously submitted; (ii) represents an obligation of the cardholder for the amount of the card transaction; (iii) the amount charged for the card

transaction is not subject to any dispute, setoff, or counterclaim; (iv) is only for the merchandise or services (including taxes, but without any surcharge) sold or rented and, except for any delayed delivery or advance deposit card transactions expressly authorized by this Agreement, the merchandise or service was actually delivered to or performed for the person entering into the card transaction simultaneously upon your acceptance and submission of the card transaction for processing; (v) does not represent the refinancing of an existing obligation of the cardholder (including any obligation otherwise owed to you by a cardholder or arising from the dishonour of a personal cheque); (vi) to your knowledge or notice of any fact, circumstance or defence which would indicate that was fraudulent or not authorized by the cardholder or which would otherwise impair the validity or collectability of the cardholder's obligation arising from such card transaction or relieve the cardholder from liability with respect thereto; and (vii) was entered into by you and the cardholder.

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

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

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

28.5. MAXIMUM LIABILITY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING THE INDEMNIFICATION SECTION BELOW), OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING THOSE ARISING OUT OF OR RELATING TO THIS AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED: (i) \$5,000,000; OR (ii) THE AMOUNT OF FEES RECEIVED BY US PURSUANT TO THIS AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING 12 MONTHS, WHICHEVER IS LESS. THIS SECTION 28.5 SHALL NOT APPLY TO OUR: (A) OBLIGATION TO DELIVER SETTLEMENT FUNDS TO YOU PURSUANT TO SECTION 10; (B) WILLFUL MISCONDUCT OR GROSS NEGLIGENCE; (C) VIOLATION OF INFORMATION SECURITY OR CONFIDENTIALITY OBLIGATIONS UNDER SECTIONS 3 AND 4; OR (D) INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

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

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

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

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

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

34. Complaint Notices Required by Regulation. Any complaints with respect to First Data Loan Company, Canada may be directed to our Chief Compliance Officer at the address provided in section 25. You have the right to forward any unresolved complaints to the Canadian Banking Ombudsman, Inc., a third party dispute resolution agency located at Ombudsman For Banking Services and Investments, 401 Bay Street, Suite 1505, PO Box 5, Toronto, ON, M5H 2Y4, www.obsi.ca or 1-888-422-2865. Also, pursuant to the *Trust and Loan Companies Act*, if you have a complaint in respect of a deposit account, a payment, credit or charge card, or the disclosure of or manner of calculating the cost of borrowing in respect of a loan, the complaint may be communicated to The Financial Consumer Agency of Canada ("FCAC"). You can reach the FCAC by telephone: 1-866-461-3222 (English), 1-866-461-2232 (French), Fax 1-866-814-2224; by mail to 6th Floor, Enterprise Building, 427 Laurier Ave., West Ottawa, ON, K1R 1B9; or through its website at www.fcac-acfc.gc.ca.