

TERMS AND CONDITIONS

Subject to the requirements of applicable Card Association Rules, Payroc WorldAccess, Inc. ("Payroc") and Peoples Trust may allocate their respective duties and obligations between themselves as they deem appropriate at their sole discretion, and Payroc, or Peoples Trust may jointly or individually assert or exercise the rights or remedies provided to Peoples Trust hereunder. For purpose of the Merchant Agreement, unless expressly stated to the contrary, Peoples Trust and Payroc, are collectively referred to hereinafter as "Peoples Trust". Peoples Trust and Merchant agree as follows:

ARTICLE 1 - DEFINITIONS

- 1.01 **"Account"** means a commercial chequing or demand deposit account maintained by Merchant (and referred to in the Section hereof entitled **"Deposit Account"**) for the crediting of collected funds and the debiting of fees and charges under the Merchant Agreement.
- 1.02 **"Authorization"** means a computerized function or a direct phone call to a designated number to examine individual Transactions to obtain approval from the Card Issuer to charge or debit the Card, as the case may be, for the amount of the sale.
- 1.03 **"Brandedcard"** means a Visa or MasterCard branded card or an Interac debit card.
- 1.04 **"Card"** means, (i) a valid credit or debit card bearing the "Visa", "MasterCard" or "Interac" branded marks; or (ii) any other valid credit or debit card accepted by Merchant by agreement with Peoples Trust.
- 1.05 **"Card Association"** means Visa, MasterCard, Interac, or any other brand in conjunction with which Card Issuers provide Cards accepted by Merchant by agreement with Peoples Trust.
- 1.06 **"Card Association Rules"** means the respective and collective by-laws, rules, regulations, operating manuals, operating letters and policies, and cardholder data security standards, as such may be amended from time to time, and established and imposed by Card Associations in respect of Cards.
- 1.07 **"Card Issuer"** means the financial institution or company that has provided a Card to a Cardholder.
- 1.08 **"Card Not Present (CNP)"** means that an Imprint of the Card is not obtained at the point-of-sale.
- 1.09 **"Cardholder"** means the person whose name is embossed upon the face of the Card, or other authorized users of the Card.
- 1.10 **"Cardholder Information"** means any non-public, personally identifiable information about a Cardholder, including any combination of Cardholder name plus the Cardholder's social insurance number, driver's license or other identification number or credit or debit card number, or other bank account number.
- 1.11 **"Chargeback"** means the procedure by which a Sales Draft (or disputed portion thereof) is returned to Peoples Trust by a Card Issuer because such item does not comply with the applicable Card plan's operating regulations.
- 1.12 **"Credit Voucher"** means a document executed by a Merchant evidencing any refund or price adjustment relating to Cards to be credited to a Cardholder account.
- 1.13 **"Data Privacy Requirements"** means Applicable Laws and guidelines pertaining to privacy such as the Personal Information Protection and Electronic Documents Act, Card Association bylaws, operating regulations and rules related to data security, data integrity and the safeguarding of Cardholder Information including the Payment Card Industry Data Security Standard ("**PCI**"), MasterCard's Site Data Protection Program ("**SDP**"), Visa's Customer Information Security Program ("**CISP**"), INTERAC requirements and such other reasonable requirements provided by PTC or Payroc, from time to time.
- 1.14 **"EFT"** means the Electronic Funds Transfer system managed by the Canadian Payments Association.
- 1.15 **"Imprint"** means (i) an impression on a Sales Draft manually obtained from a Card through the use of an imprinter, or (ii) the electronic equivalent obtained by swiping or dipping a Card through a terminal and electronically capturing Card Data and printing a Sales Draft.
- 1.16 **"Law"** or "**Laws**" means all laws, statutes, codes, ordinances, decrees, rules, regulations, by-laws, statutory rules, principles of law, published policies and guidelines, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, including general principles of common and civil law, and the terms and conditions of any grant of approval, permission, authority or license of any governmental authority, including without limitation, all consumer credit and consumer protection Laws, and anti-money laundering Laws; and the term "applicable" with respect to Laws and in a context that refers to one or more persons, means that the Laws apply to the person or persons, or its or their business, undertaking or property, and emanate from a governmental authority having jurisdiction over the person or persons or its or their business, undertaking or property.
- 1.17 **"Merchant Agreement"** means the Merchant Application once approved and accepted by Peoples Trust together with these Terms and Conditions, and any supplementary documents referenced herein, and all schedules and amendments to the foregoing.
- 1.18 **"Non-Qualifying Transaction"** means any sale Transaction that fails to qualify for lowest interchange rate assigned by the applicable Card Association for Merchant's standard card industry code.
- 1.19 **"Qualifying Transaction"** means any sale Transaction that is not a Non-Qualifying Transaction.
- 1.20 **"Representative(s)"** means any employee, service provider, subcontractor, agent, representative, contractor, associate, officer, director, principal of Merchant or any other third party engaged by Merchant.
- 1.21 **"Reserve Account"** has the meaning set out in Section 3.05.
- 1.22 **"Retrieval"** means responding to requests for documentation relating to a Transaction.
- 1.23 **"Sales Draft"** means the paper form, whether electronically or manually imprinted, evidencing a Transaction.
- 1.24 **"Scrip"** means any substitute for currency, which is not legal tender.
- 1.25 **"Schedule A"** means Schedule A: VISA/MASTERCARD and INTERAC and DISCOUNT RATES & FEES set out in the in the Merchant Application.



- 1.26 **"Transaction"** means any sale of products or services, or credit for such, from a Merchant for which the Cardholder makes payment or receives credit through the use of any Card and which is presented to Peoples Trust for collection or payment.
- 1.27 **"Voice Authorization"** means a direct phone call to a designated number to obtain credit approval on a Transaction from the Card Issuer, whether by voice or voice-activated systems.

ARTICLE 2 - CARD ACCEPTANCE

- 2.01 **Honouring Cards.** Merchant will accept all valid Cards when properly presented by Cardholders in payment for goods or services, subject to applicable Card Association Rules requiring Merchant to elect whether to accept credit only, debit only or both debit and credit Cards. Merchant's election is set forth in the Application. Merchant may not establish minimum or maximum amounts for Card sales as a condition for accepting any Card. Merchants have the right to provide discounts to customers based on any method of payment selected by the customer. Any discounts must be clearly marked at the point of sale. Merchant may not engage in a Transaction (other than a mail, internet, telephone order, or preauthorized sale to the extent permitted under the Merchant Agreement) if the person seeking to charge the purchase to his or her Card account does not present the Card to permit Merchant to compare the signature on the Card to the signature on the Sales Draft and obtain an Imprint or otherwise use the physical Card to complete the Transaction. Merchant must ensure that the Cardholder is easily able to understand that the Merchant is responsible for the Transaction, including delivery of the goods (whether physical or digital) or provision of the services that are the subject of the Transaction, and for customer service and dispute resolution, all in accordance with the terms applicable to the Transaction. Merchant must not engage in any acceptance practice that discriminates against or discourages the use of a Card in favour of any other acceptance brand.
- 2.02 **Advertising.** Merchant will prominently display the promotional materials provided by Peoples Trust in its place(s) of business as it relates to Card Present transactions. Merchant's use of promotional materials and use of any trade name, trademark, service mark or logo type ("**Marks**") associated with a Card is limited to informing the public that the Card will be accepted at Merchant's place(s) of business. Merchant's use of promotional materials and Marks is subject to Peoples Trust's direction and to the Card Association Rules. Merchant may use promotional materials and Marks only during the term of the Merchant Agreement and will immediately cease use and return any inventory to Peoples Trust upon termination thereof. Merchant may not use any promotional materials or Marks associated with Visa, MasterCard or Interac in any way which suggests or implies that either endorses any goods or services other than Card services.
- 2.03 **Card Acceptance.** When accepting a Card Present transaction, Merchant will follow the steps provided by Peoples Trust for accepting Cards and will: (a) Determine in good faith and to the best of its ability that the Card is valid on its face; (b) obtain Authorization from the Card Issuer to charge the Cardholder's account; (c) unless the Sales Draft is electronically generated or is the result of a mail, internet, phone or preauthorized order, (i) obtain an Imprint of the Card including embossed data from the merchant imprinter; and (ii) except where Cardholder verification requires the processing of the Cardholder's PIN, obtain the Cardholder's signature on the Sales Draft and compare that signature to the signature on the Card, where Cardholder verification requires the processing of the Cardholder's PIN, in lieu of obtaining the Cardholder's signature, Merchant shall have the Cardholder enter Cardholder's PIN to process the Transaction; (d) enter a description of the goods or services sold and the price thereof (including any applicable taxes); (e) deliver a true and completed copy of the Sales Draft to the Cardholder at the time the goods are delivered or services performed, or, if the Sales Draft is prepared by a point-of-sale terminal, at the time of the sale; and (f) offer the Sales Draft to Peoples Trust (but not Payroc,) for purchase according to procedures and the terms of the Merchant Agreement.
- 2.04 **Authorization.** Merchant will obtain an Authorization for all Card sales. If Merchant cannot, for any reason, obtain an electronic Authorization through the use of a terminal, Merchant will request a Voice Authorization from Peoples Trust designated authorization centre and will legibly print the Authorization number on the Sales Draft. Merchant will not obtain or attempt to obtain Authorization from Peoples Trust's authorization centre unless Merchant intends to submit to Peoples Trust a Transaction for the authorized amount if Authorization for the Transaction is given. Merchant may not divide a single Transaction between two or more Sales Drafts on a single Card to avoid Authorization limits that may be set by the Card Issuer. Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale and that an Authorization is not a guarantee that the Transaction will not be subject to dispute or Chargeback and does not warranty the Cardholder's identity. Merchant may not attempt to obtain an authorization by successively decreasing the sale amount. Peoples Trust may refuse to purchase or process any Sales Draft presented by Merchant: (a) unless a proper authorization code or approval code has been recorded on the Sales Draft; (b) if Peoples Trust determines that the Sales Draft is or is likely to become uncollectible from the Cardholder to which the transaction would otherwise be charged; or (c) if Peoples Trust has reason to believe that the Sales Draft was prepared in violation of any provision of the Merchant Agreement. Merchant will use, and may not circumvent, fraud identification tools requested by Peoples Trust, including Address Verification System processing, CVC2/CVV2 processing and acknowledges that the use of these tools may prevent Merchant from accepting certain Cards as payment. Merchant acknowledges that its use of fraud identification tools may not prevent fraudulent Card usage, and agrees that any fraudulent Transaction may ultimately result in a Chargeback, for which Merchant retains full liability under the Merchant Agreement.
- 2.05 **Multiple Transaction Records; Partial Consideration.** Merchant may not prepare more than one Sales Draft for a single sale or for a single item but will include all items of goods and services purchased in a single Transaction in the total amount on a single Sales Draft except under the following circumstances: (a) for purchases in separate departments of a multiple department store; (b) for partial payment, installment payment, delayed delivery or an advance deposit; or (c) for delayed or amended charges governed by Card Association Rules for travel and entertainment merchants and Transactions.
- 2.06 **Telephone Orders, Mail Orders, Internet.** Preauthorized Orders and Installment Orders. For all Card Transaction made by mail, phone or preauthorized order, the Sales Draft may be completed without the Cardholder's signature or an Imprint, but in such case Merchant will create a sales slip containing Cardholder data, an Authorization number, the sale amount and the letters "**MO**", "**TO**", "**IO**", or "**PO**", as appropriate. Receiving an Authorization will not relieve the Merchant of liability for Chargebacks. The Merchant must prominently and clearly disclose to the Cardholder at all points of interaction the name of the Merchant, so that the Cardholder can easily distinguish the Merchant from any other party, such as a supplier of products or services to the Merchant.
- 2.07 **Returns and Adjustments; Credit Vouchers.** Merchant's policy for exchange or return of goods sold and for adjustments for services rendered will be established and posted in accordance with the applicable Card Association's operating regulations. Merchant will disclose to a Cardholder before a Card sale is made, if applicable; (i) that if merchandise is returned, (a) no refund, or less than a full refund, will be given, (b) returned merchandise will only be exchanged for similar merchandise of comparable value, or (c) only a credit toward purchases will be given, and (ii) that special conditions or circumstances apply to the sale (e.g., late delivery, delivery charges, restocking fees, or other non-credit terms). If



Merchant does not make these disclosures, a full refund in the form of a credit to the Cardholder's Card account must be given upon the Cardholder's request. Any change in Merchant's return, cancellation or adjustment policies must be submitted in writing to Peoples Trust not less than 14 days prior to the change and approved by Peoples Trust, which approval shall not be unreasonably withheld. Peoples Trust may refuse to process any Sales Draft made subject to a revised return, cancellation or adjustment policy which Peoples Trust had not approved.

- 2.08 Cash Payments. Merchant may not receive any payment from a Cardholder for charges included in any Transaction nor receive any payment from a Cardholder to prepare and present a Transaction for the purpose of affecting a credit to the Cardholder's Card account.
- 2.09 Cash Advances; Scrip Purchases. Merchant may not (i) present to Peoples Trust for collection any Transaction for the purpose of obtaining or providing a cash advance either on Merchant's Card or the Card of any other party and (ii) accept any Card at a Scrip terminal. Violation of either clause of this Section is grounds for Peoples Trust's immediate termination of the Merchant Agreement.
- 2.10 Duplicate Transactions. Merchant may not present to Peoples Trust for collection duplicate Transactions. Peoples Trust may debit Merchant for any duplicate Transaction adjustments and Merchant is liable for any Chargebacks resulting therefrom.
- 2.11 Presentment of Fraudulent Transactions. Merchant may not accept or present to Peoples Trust for collection any fraudulent Transaction and may not under any circumstances present for processing or credit, directly or indirectly, Transactions originated with any other merchant or any other source. Merchant may accept only Transactions arising from bona fide purchases from Merchant for the goods and services for which Merchant has been approved under the Merchant Agreement. If Merchant presents to Peoples Trust for collection any prohibited Transaction, Peoples Trust may: (a) immediately terminate the Merchant Agreement; (b) withhold funds and establish a Reserve Account as provided herein; and (c) report Merchant to MATCH (as defined in Section 2.16) file, and any Interac equivalent. Merchant's employees' actions are chargeable to Merchant under the Merchant Agreement.
- 2.12 Data Security Personal/Cardholder Information. Merchant may not, as a condition of sale, impose a requirement on Cardholders to provide any personal information as a condition for honoring Cards unless such information is required to provide delivery of goods or services or Merchant has reason to believe the identity of the person presenting the Card may be different than that of the Cardholder. Merchant will not, under any circumstances, release, sell or otherwise disclose any Cardholder Information to any person other than Peoples Trust or the applicable Card Association, except as expressly authorized in writing by the Cardholder, or as required by law.
- a. Safeguards. Merchant will maintain appropriate administrative, technical and physical safeguards for all Cardholder Information. These safeguards will (a) insure the confidentiality of Cardholder Information; (b) protect against any anticipated threats or hazards to the security or integrity of Cardholder Information; (c) protect against unauthorized access to or use of Cardholder Information that could result in substantial harm or inconvenience to any Cardholder; and (d) properly dispose of all Cardholder Information to ensure no unauthorized access to Cardholder Information. Merchant will maintain all such safeguards applicable to Merchant in accordance with Data Privacy Requirements and applicable Laws.
 - b. Compliance with Data Privacy Requirements and Card Association Data Security Rules. Merchant represents, warrants and covenants that it is and will remain throughout the term of the Merchant Agreement in compliance with obligations pertaining to the collection, use, disclosure, retention of Cardholder Information including, data security, data integrity and the safeguarding of such information as set out in the Data Privacy Requirements in effect and as may be amended, supplemented or replaced. Merchant will maintain appropriate administrative, technical and physical safeguards for all Cardholder Information. These safeguards will (a) insure the confidentiality of Cardholder Information; (b) protect against any anticipated threats or hazards to the security or integrity of Cardholder Information; (c) protect against unauthorized access to or use of Cardholder Information that could result in substantial harm or inconvenience to any Cardholder; and (d) properly dispose of all Cardholder Information to ensure no unauthorized access to Cardholder Information. Merchant will cause all of its Representatives to comply with the Data Privacy Requirements at all times. Merchant will report any noncompliance immediately to Peoples Trust. To help accomplish the foregoing, Merchant and its Representatives will encrypt, at appropriate standards required by the Data Privacy Requirements, all debit, credit or stored value card numbers whether in storage, transport or backup and will not store data security codes on its systems, network or software.
 - c. Annual Certification. Merchant will provide, if requested by Peoples Trust, annual certification to Peoples Trust (in a form acceptable to Peoples Trust) certifying its and its Representatives compliance with the Data Privacy Requirements and other data security provisions of the Merchant Agreement.
 - d. Information Use Limitations. Merchant may not sell, disclose, or otherwise make Cardholder Information available, in whole or in part, in a manner not provided for in the Merchant Agreement, without Peoples Trust's prior written consent. Merchant may, however, transfer Cardholder Information to its Representatives who have a need to know such information to enable Peoples Trust to provide the services described in the Merchant Agreement provided that such individuals or entities have agreed in writing to be bound by the confidentiality obligations and data security provisions herein, including compliance with Data Privacy Requirements and other applicable Laws.
 - e. Response to Unauthorized Access. Merchant will immediately notify Peoples Trust of its knowledge or suspicion of any breach in security resulting in unauthorized access to Cardholder Information. Merchant will, provide any assistance that Peoples Trust, the issuing bank of any Cardholder, and their regulators and the Card Associations deem necessary to contain and control the incident to prevent further unauthorized access to or use of Cardholder Information. Such assistance may include, but not be limited to, preserving records and other evidence, compiling information to enable Peoples Trust and the issuing bank or the Card Associations to investigate the incident and providing assistance and cooperation to facilitate the ability of the issuing bank to: (a) file suspicious activity reports (as applicable); (b) notify their regulators (as applicable); and (c) notify the affected Cardholder (as required). Unless the unauthorized access was due to Peoples Trust's acts or omissions, Merchant will bear all costs associated therewith, including but not limited to the cost of notifying the affected Cardholder(s).
 - f. Access Requests and Complaints. Merchant will cooperate with Peoples Trust in any request for access to Cardholder Information by an individual and in responding to any complaints or investigations by individuals, Card Associations or regulators or with respect to Cardholder Information.
 - g. Miscellaneous. Merchant may not make a claim against Peoples Trust or hold Peoples Trust liable for the acts or omissions of others, including but not limited to Merchants, Representatives, Card Associations, and financial institutions. These provisions supplement, augment and are in addition to obligations of indemnification, audit, confidentiality and other similar provisions contained in the



Merchant Agreement. This Section and each of its subsections will survive the Merchant Agreement's termination. Merchant may not store in any system or in any manner Card read data, including without limitation CVV2/CVC2 data, PIN data, address verification data or any other information prohibited by Card Association Rules and/or Data Privacy Requirements.

- h. Survival. Merchant obligations pertaining to Data Privacy Requirements and Cardholder Information contained in the Merchant Agreement will survive indefinitely beyond termination of the Merchant Agreement.

2.13 Compliance with Card Association Rules. Merchant will comply with and conduct its Card activities in accordance with all applicable Card Association Rules and regulations as such rules and regulations may be amended from time to time whether or not Merchant has been informed of any such amendment. Failure to comply with such rules and regulations may result in Merchant being terminated for cause and listed on various Card Association and industry databases, including the Terminated Merchant File and the Merchant Alert to Control High Risk Merchants file maintained by MasterCard and Visa (collectively as "**MATCH**") and any Interac equivalent. With respect to MasterCard, Visa and Interac, Merchant may not: (a) accept Cardholder payments, cash or otherwise, for previous Card charges incurred at the Merchant location; (b) establish a minimum or minimum transaction amount as a condition for honoring a Card; (c) require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed; (d) add any surcharge to Transactions; (e) add any tax to Transactions, unless applicable Law expressly requires that Merchant impose such tax (and, in such cases, such tax must be included in the transaction amount and not collected separately); (f) deposit or submit to Peoples Trust any Sales Draft or Credit Voucher for a Transaction that was previously charged back to Peoples Trust and subsequently returned to Merchant, irrespective of Cardholder approval (Merchant may pursue payment from the Cardholder outside the Card Association system); (g) request or use an account number of any purpose other than as payment for its goods or services; (h) disburse funds in the form of travelers cheques, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant; (i) disburse funds in the form of cash, unless: (i) Merchant is a lodging or cruise line merchant disbursing cash to a Cardholder. (ii) Merchant is dispensing funds in the form of travelers cheques or foreign currency, or (iii) Merchant is participating in a Card Association cash back service; (j) accept a Card for the purchase of Scrip; (k) accept a Card for manual cash disbursement; (l) accept a Card to collect or refinance existing debt; or (m) enter into a Transaction that represents collection of a dishonored cheque. Merchant will pay all Card Association fines, fees, penalties and all other assessments or indebtedness levied by Card Associations to Peoples Trust which are attributable, at Peoples Trust's discretion, to Merchant's Transaction processing or business; (n) must not impose, as a condition of acceptance, a requirement that the Cardholder waive a right to dispute a Transaction with its issuer.

2.14 Merchant's Business. Merchant will notify Peoples Trust immediately if it intends to, and prior to taking of any steps to (a) transfer or sell a substantial part of its assets, or liquidate; (b) change the basic nature of its business, including selling any products or services not related to its current business; (c) change ownership or transfer control of its business; (d) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to the Merchant Agreement assumes any interest in Merchant's business; (e) alter in any way Merchant's approved monthly volume, average ticket, or maximum ticket; (f) changes its return policies or fulfillment house from those identified in the Merchant Application; (g) any substantial change in the volume of Transactions in respect of domestic versus foreign purchases; or (h) adds any outlet operations to its business in respect of the same products and/or services being offered by Merchant. Merchant will immediately notify Peoples Trust in writing if it becomes subject to any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Merchant's failure to provide notice as required above may be deemed a material breach and will be sufficient grounds for termination of Merchant and for Peoples Trust's exercise of all its rights and remedies provided by the Merchant Agreement. If any change listed above occurs, Peoples Trust may immediately terminate the Merchant Agreement. Merchant further acknowledges and agrees that Peoples Trust may withhold funds (settlement or otherwise) or temporarily suspend processing under the Merchant Agreement if Peoples Trust, in its sole discretion, determines that such withholding or suspension is required to protect Peoples Trust from potential losses or if there exist material variances from the disclosures on the Merchant application in (i) the nature of Merchant's business, (ii) the type of or composition of Card processing conducted, or (iii) the actual average ticket size or actual monthly volume amount. If (A) such variances exist, (B) Merchant does not swipe or dip credit card or debit card through POS terminals, (C) Merchant does not receive authorization for Transactions, (D) Peoples Trust receives excessive Retrieval requests against Merchant's prior activity, or (E) excessive Chargebacks are debited against Merchant's prior activity, then Peoples Trust may delay or withhold settlement of funds for a period not less than 180 days or until Peoples Trust is reasonably certain fraud or other activity detrimental to Peoples Trust has not occurred. Peoples Trust's right to withhold settlement funds as set forth herein survives termination of the Merchant Agreement. Merchant must immediately contact Peoples Trust if material variances from the average ticket size or monthly volume occur. For purposes hereof, Peoples Trust's determination of materiality shall be binding upon Merchant.

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

ARTICLE 3 - PRESENTMENT, PAYMENT, CHARGEBACK

3.01 Acceptance. Peoples Trust (but not Payroc,) will accept from Merchant all Sales Drafts presented under the terms of the Merchant Agreement and will present the same to the appropriate Card Issuers for collection against Cardholder accounts. Merchant must transmit Sales Drafts and



Credit Vouchers to Peoples Trust or its processing vendor on the same or next business day immediately following the day that such Sales Drafts and Credit Vouchers have been originated and via electronic data transmission in accordance with Peoples Trust's formats and procedures. All presentment and assignment of Sales Drafts, collection therefor and reassignment or rejection of such Sales Drafts are subject to the terms of the Merchant Agreement and regulations of the Card Association. Peoples Trust (but not Payroc,) will only provisionally credit the value of collected Sales Drafts to Merchant's Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks (actual and anticipated), fees, penalties, late submission charges, reserve deposits, negative Sales Draft batch presentments and items for which Peoples Trust did not receive final payment.

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

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

- 4.01 4.01 **Term.** Subject to Section 4.02, the Merchant Agreement will be effective once Peoples Trust accepts it and, unless otherwise terminated, will continue for (5) five years with automatic six-month renewals thereafter until Merchant provides written notice of non-renewal given not less than 90 days before the end of the then current term. An early termination fee will apply as per Section 4.04.
- 4.02 4.02 **Termination.**
- a. **Without Cause.** Peoples Trust may terminate the Merchant Agreement, without cause, upon 30 days advance written notice to Merchant.
 - b. **For Cause.** Peoples Trust may terminate the Merchant Agreement in its sole discretion, effective immediately, upon written or verbal notice, or by closing Merchant's point-of-sale terminal, if Peoples Trust reasonably determines either that any of the conditions enumerated as a reason for the establishment of a Reserve Account exist or that any of the following conditions exist: (i) Merchant has violated any provision of the Merchant Agreement; (ii) there is a material adverse change in Merchant's business, operations, financial condition, assets or prospects; (iii) any case or proceeding is commenced by or against Merchant under any federal or provincial or other law related to insolvency, bankruptcy, receivership or other debt relief; (iv) any information which Merchant provided to Peoples Trust, including Application information, was false, incomplete or misleading when received; (v) any information which Merchant provided to Peoples Trust, including Application information, has thereafter become false, incomplete or misleading; (vi) an overdraft in the Account exists for more than three days; (vii) Peoples Trust believes that Merchant or any of Merchant's officers or employees has been involved in processing Transactions arising from fraudulent, criminal, suspicious or otherwise unauthorized Transactions; (viii) Merchant or will be unable or unwilling to perform its obligations under the Merchant Agreement or applicable Law; (ix) Merchant has failed to timely pay Peoples Trust any amount due; (x) Merchant has failed to promptly perform or discharge any



obligation under the Account or the Reserve Account; (xi) any of Merchant's representations or warranties made in connection with the Merchant Agreement was not true or accurate when given or has thereafter become untrue; (xii) Merchant has defaulted on any agreement it has with Peoples Trust; (xiii) Peoples Trust is served with legal process seeking to attach or garnish any of Merchant's funds or property in Peoples Trust's possession, and Merchant does not satisfy or appeal the legal process within 15 days of such service; (xiv) any Card Association Rules are violated, amended in any way so that the continued existence of the Merchant Agreement would cause Peoples Trust to be in breach of those rules or any Card Association no longer permits Merchant to participate in its Card program; (xv) any guaranty supporting Merchant's obligations is revoked, withdrawn, terminated or altered in any way; (xvi) any circumstances arise regarding Merchant or its business that create harm or loss of goodwill to any Card Association; (xvii) termination is necessary to prevent loss to Peoples Trust or Card Issuers; (xviii) Merchant's type of business indicated on the Application or as conducted by Merchant could endanger Peoples Trust's safety or soundness; (xix) Merchant's owner, officer, guarantor, or corporate entity has a separate relationship with Peoples Trust and that relationship is terminated, (xx) Merchant appears on any Card Association's security reporting; (xxi) Peoples Trust's security for repayment becomes impaired; (xxii) an event of default under any other indebtedness of Merchant shall have occurred the effect of which is to permit the holder thereof to accelerate the due date of all or part of such indebtedness; or (xxiii) one or more judgments shall have been entered against Merchant which judgment or judgments shall have remained unsatisfied for a period of 45 days from entry thereof. Merchant shall notify Peoples Trust in writing immediately upon becoming aware of the occurrence of an Event of Default, or an event which with the passage of time or the giving of notice, or both, would constitute an Event of Default.

- c. In the event of a fee increase/decrease or the introduction of a new fee, other than Association fees merchant will be allowed to opt out of their contracts, without facing any form of penalty, within 90 days of receiving notice of the fee increase/decrease or a new fee.
- d. Where Merchant receives a notice from Payroc regarding a reduction in interchange fees applicable to it, and Payroc does not pass through the full savings from such reduction to Merchant, Merchant may terminate the Merchant Agreement without any early termination fee or other penalty within ninety (90) days of receiving the notice of such reduction.

4.03 **Effect of Bankruptcy.** Any account or security held by Peoples Trust will not be subject to any preference, claim or stay by reason of bankruptcy or similar law. The parties expressly agree that the acquisition of Card Transactions hereunder is a financial accommodation and if Merchant becomes a debtor in any bankruptcy or similar proceeding, the Merchant Agreement may not be assumed or enforced by any other person and Peoples Trust will be excused from performance hereunder.

4.04 **Effect of Termination.** When termination becomes effective, the parties' rights and obligations existing under the Merchant Agreement survive. If the Merchant Agreement is terminated, regardless of cause, Peoples Trust may withhold and discontinue the disbursement for all Transactions in the process of being collected and deposited and Peoples Trust may, without notice to Merchant, refuse to accept or revoke acceptance any Sales Draft or Credit Voucher or the electronic transmission thereof, if applicable, received by Peoples Trust on or anytime after the occurrence of any Event of Default. If Merchant is terminated for cause, Merchant acknowledges that Peoples Trust may be required to report Merchant's business name and the names and other identification of its principals to the MATCH file maintained by Visa and MasterCard and any Interac equivalent. Merchant expressly agrees and consents to such reporting if Merchant is terminated for any reason requiring or permitting listing on the MATCH file and Interac report. Merchant waives and will hold harmless Peoples Trust from any claims that Merchant may raise as a result of Peoples Trust's MATCH file and Interac reporting. If Merchant is terminated for cause, Peoples Trust may, without prior notice to Merchant, debit Merchant's Account and Reserve Account in an amount equal to the amount then owed to Peoples Trust, increase the fees payable by Merchant hereunder, require Merchant to deposit, as cash collateral, such amount as Peoples Trust may require to secure Merchant's obligations hereunder, and report to one or more credit reporting agencies any outstanding indebtedness of Merchant (or any guarantor of merchant's obligations under the Merchant Agreement). Merchant will immediately cease requesting Authorizations. If Merchant obtains any Authorization after termination, the fact that any Authorization was requested or obtained will not reinstate the Merchant Agreement. Further, immediately upon termination Merchant will return all Peoples Trust property, forms, or equipment. All obligations for Transactions prior to and after termination (including payment for Chargebacks and Peoples Trust's expenses relating to Chargebacks) survive termination. Peoples Trust is not liable to Merchant for damages (including prospective sales or profits) due to termination. Following termination, Merchant will upon request, provide Peoples Trust with all original and electronic copies of Sales Drafts and Credit Vouchers that have been retained by Merchant as of the date of termination. Upon termination, any amounts due to Peoples Trust will accelerate and be immediately due and payable, without any notice, declaration or other act whatsoever by Peoples Trust. The parties agree that if the Merchant Agreement is terminated before completion of the initial term or any renewal term of the Merchant Agreement for any reason other than a material uncured breach by Peoples Trust, Merchant will pay Peoples Trust damages equal to (a) if the Agreement is terminated during the first six months of the initial term, then the processing fees Peoples Trust would have received during such term based upon Merchant's volume representations set forth on **Merchant Agreement** or, (b) if the Agreement is terminated thereafter, the amount equal to the product of the aggregate number of months remaining in the then current term of the Merchant Agreement and any renewal term to which the parties have committed multiplied by the average monthly processing fees earned hereunder plus, Peoples Trust's costs and legal fees incurred in connection with collecting such damages. Merchant agrees that these damages are not a penalty but are a reasonable computation of the financial harm caused by the termination of the Merchant Agreement. Peoples Trust's rights of termination are noncumulative.

4.05 **Exclusivity.** During the term of the Merchant Agreement Peoples Trust shall be the exclusive provider of the services offered hereunder for Merchant and for all of Merchant's affiliates and divisions. Such exclusivity extends to all product and business lines of Merchant and its affiliates and divisions and Merchant will not, and will cause its affiliates and divisions not to, retain or otherwise allow any other person or entity to provide such services or perform any such services for itself.

ARTICLE 5 - MISCELLANEOUS

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

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



- 5.03 **Indemnification.** Merchant will defend, indemnify and hold Peoples Trust and its officers, directors, members, shareholders, partners, employees, agents, subcontractors and representatives harmless from and against any and all fines, penalties, claims, damages, expenses, liabilities or fees of any nature whatsoever, including legal fees and costs (“**Damages**”), asserted against or incurred by Peoples Trust arising out of, relating to or resulting from, either directly or indirectly; (a) a breach of the security of any system safeguarding Cardholder Information resulting in unauthorized access to Cardholder Information; (b) a breach of any representation, warranty or term of the Merchant Agreement, including, but not limited to, the Data Privacy Requirements herein, by Merchant, or by any of Merchant’s Representatives; (c) the negligence, gross negligence or willful misconduct of Merchant or any of its Representatives in the performance of their obligations under the Merchant Agreement, including, but not limited to, the data security provisions; (d) any violation of applicable Law and Card Association Rules by Merchant or any of its Representatives; (e) matters for which Merchant provides indemnification pursuant to the terms hereof; and (e) all third party claims arising from the foregoing or asserted against Peoples Trust as a result of Peoples Trust entering into the Merchant Agreement. Notwithstanding the preceding, Merchant is not liable to Peoples Trust if Damages are caused by, related to or arise out of Peoples Trust’s gross negligence or willful misconduct, or Peoples Trust’s material breach of the Merchant Agreement. Merchant will promptly reimburse Peoples Trust for any assessments, fines, fees or penalties imposed by the Card Association in connection with the Merchant Agreement, including the data security provisions, and authorizes Peoples Trust to deduct any such sums from amounts to be cleared and settled with Merchant.
- 5.04 **Records.** In addition to any records Merchant routinely furnishes to Peoples Trust under the Merchant Agreement, Merchant will preserve a copy of actual paper Sales Drafts and Credit Vouchers and any written Authorization of the Cardholder for at least two years after the date Merchant presents the Transaction to Peoples Trust.
- 5.05 **Requests for Copies.** Within two business days following Merchant’s receipt of a request by Peoples Trust, Merchant will provide to Peoples Trust either the original or a legible copy (in a size comparable to the actual Sales Draft) of the paper Sales Draft and any other documentary evidence available to Merchant that Peoples Trust reasonably requests to meet Peoples Trust’s obligations under applicable Laws or otherwise to respond to questions concerning Cardholder accounts.
- 5.06 **Compliance with Law; Taxes.** Merchant will comply with all applicable Laws to Merchant, Merchant’s business and any Card Transaction. Merchant shall be liable for all taxes, except Peoples Trust’s income taxes, required to be paid or collected as a result of the Merchant Agreement.
- 5.07 **Fees and Charges.** Merchant will pay to Peoples Trust the fees and charges set forth on **Schedule A**. Peoples Trust may adjust all charges set forth on **Schedule A** to reflect changes in, or additions to, (i) Association fees (including but limited to interchange, assessments, and all other Association fees, costs or charges) or (ii) pricing of third party vendor goods or services used in connection with the provision of services hereunder. All such adjustments will be effective as of the date such changes or additions are imposed on Peoples Trust. Amounts due from Merchant hereunder, including but not limited to all fees, charges, amounts required, in Peoples Trust’s sole discretion, to fund the Reserve Account and adjustments incurred by Merchant will be debited through EFT from Merchant’s Account or withheld from daily payments to Merchant. The fees and charges herein are based upon Merchant’s representations regarding annual anticipated Transaction volume, amount and type, all as set forth on **Schedule A**. To the extent that any such representations are not as anticipated, Peoples Trust may adjust the fees and charges hereunder to fees and charges appropriate for the actual, as opposed to anticipated, Transaction volume, amount and type. Peoples Trust may add fees for additional services utilized by Merchant upon 90 days’ notice to Merchant.
- 5.08 **Pre-Authorized Debit Agreement.** This authorization (the “**PAD Authorization**”) is provided in connection with the Merchant Agreement upon Peoples Trust’s acceptance of the Merchant Application. Merchant is entering into this PAD Authorization for business purposes. Merchant hereby authorizes Payroc, for itself and/or on behalf of Peoples Trust, and Merchant’s financial institution(s) designated in the Merchant Application, to debit the bank account(s) designated in the Merchant Application or on the void cheque(s) attached to the Merchant Application for the purpose of paying any amounts that become due by Merchant under the Merchant Agreement including but not limited to any and all: (i) fees and charges as set forth on **Schedule A**, (ii) refunds and Chargebacks, (iii) payments required to establish a Reserve Account, and (iv) Card Association fines, fees, penalties and all other assessments or indebtedness levied by Card Associations to Peoples Trust which are attributable to Merchant, in accordance with the following instructions:
- where only one account is designated in the Merchant Application, Merchant instructs and authorizes Payroc to debit that account for all such amounts payable by Merchant under the Merchant Agreement on the date such amounts become due and payable,
 - where a Fee Bank Account is designated in the Merchant Application but not a Chargeback Bank Account, Merchant instructs and authorizes Payroc to debit the Fee Bank Account for all such amounts payable by Merchant under the Merchant Agreement on the date such amounts become due and payable,
 - where both a Fee Bank Account and a Chargeback Bank Account are designated in the Merchant Application, Merchant instructs and authorizes Payroc to debit the Chargeback Bank Account for any Chargeback payable by Merchant under the Merchant Agreement on the date that such Chargeback becomes due and payable, and to debit the Fee Bank Account for all other amounts payable by Merchant under the Merchant Agreement on the date such amounts become due and payable,
 - where multiple accounts are designated in the Merchant Application and an authorized debit to one account is rejected due to insufficient funds or any other reason, Merchant instructs and authorizes Payroc to debit one or more of the other accounts designated above for the same amount.

If the date of any authorized debit as described above is on a weekend or statutory holiday, Merchant authorizes Payroc to debit the relevant account on the next business day.

Merchant agrees to waive all pre-notification requirements under the Payments Canada Rules in respect of any debits drawn from the Account under this PAD Agreement including, without limitation, pre-notification of the amount or payment dates of all debits drawn against the Account.

This PAD Authorization shall remain in force for so long as the Merchant Agreement is in force, unless revoked by providing Payroc with at least 10 business days’ notice. Merchant may obtain a sample cancellation form, or more information on Merchant’s right to cancel this PAD Authorization, at Merchant’s financial institution or by visiting www.payments.ca. Payroc may also cancel this PAD Agreement by providing Merchant with at least 10 business days’ notice in accordance with the Payments Canada Rules.



Merchant has certain recourse rights if any debit does not comply with this PAD Authorization. For example, Merchant has the right to receive reimbursement for any debit that is not authorized or is not consistent with this PAD Authorization. To obtain more information on Merchant's recourse rights Merchant may contact Merchant's financial institution or visit www.payments.ca.

Assignment: Merchant may not assign this PAD Authorization without the prior written consent of Payroc. Payroc may assign this PAD Authorization to another person or entity, provided that Payroc shall provide Merchant with written notice of the details of any such assignment, including the identity and contact information of the assignee.

- 5.09 **Security Interest.** To secure payment of Merchant's obligations under the Merchant Agreement, Merchant grants to Peoples Trust a security interest in all now existing or hereafter acquired: (a) Transactions, Sales Drafts, Credit Vouchers and other items submitted to Peoples Trust for processing by or for Merchant; (b) accounts receivable and payment rights relating to or arising from the Merchant Agreement, including all amounts due Merchant (including any rights to receive credits or payments hereunder); (c) accounts (including without limitation all deposit accounts) maintained with Peoples Trust or any institution other than Peoples Trust, including the Reserve Account, in the name of or for the benefit of, Merchant or any guarantor of Merchant's obligations under the Merchant Agreement; (d) deposits, regardless of source, to Merchant's or any guarantor's accounts with Peoples Trust or any institution other than Peoples Trust, including the Reserve Account; (e) all deposits and all other property and funds presented by Merchant to Peoples Trust or withheld by Peoples Trust, including funds and property withheld as the result of security monitoring; and (f) proceeds of the foregoing. If Peoples Trust reasonably determines that Merchant has breached any obligation under the Merchant Agreement, or that proceeds of Merchant's future Card sales are unlikely to cover anticipated Chargebacks, credits, fees and adjustments, as reasonably determined by Peoples Trust (whether because the Merchant Agreement has been terminated or for any other reason), Peoples Trust may setoff or otherwise exercise its security interest without notice or demand by immediately withdrawing from or freezing any account or otherwise exercising its rights under the Merchant Agreement or those rights available under and subject to, applicable Laws, or in equity. In addition to the collateral pledged above, Peoples Trust may require Merchant to furnish such other and different security as Peoples Trust deems appropriate in its sole discretion to secure Merchant's obligations under the Merchant Agreement. Peoples Trust may fully or partially prohibit withdrawal by Merchant of funds from Merchant's deposit accounts maintained with Peoples Trust or financial institutions other than Peoples Trust, pending Peoples Trust's determination from time to time to exercise its rights as a secured party against such accounts in partial or full payment of Merchant's obligations to Peoples Trust. Merchant agrees that Peoples Trust may file such financing statements and any other documents as may be required for Peoples Trust to perfect its security interest, and Merchant will execute any other documents as may be requested by Peoples Trust and take such actions as Peoples Trust may require in connection with the security interest, at Merchant's cost. Merchant represents and warrants that no other party has a security interest or lien in any of the collateral pledged above, and Merchant will obtain Peoples Trust's written consent before it grants a lien or security interest in that pledged collateral to any other person.
- 5.10 **Modifications to Agreement.** The Merchant Agreement is subject to amendment required to conform with Card Association regulations, as amended from time to time, and Merchant expressly acknowledges that any election by Peoples Trust regarding means to comply with either Card Association Rules or applicable Law or regulation will not diminish or otherwise impact any of Peoples Trust's rights hereunder. From time to time Peoples Trust may amend any provision or provisions of the Merchant Agreement, other than those relating to the discount rate or to other fees and charges payable by Merchant, by mailing written notice to Merchant of the amendment at least 30 days prior to the effective date of the amendment, and the amendment will become effective unless Peoples Trust receives Merchant's written notice of termination of the Merchant Agreement before such effective date. Amendments required due to changes in either Card Association's rules and regulations or any law or judicial decision may become effective on such shorter period of time as Peoples Trust may specify if necessary to comply with the applicable rule, regulation, Law or decision. If there is any conflict between a part of the Merchant Agreement and any present or future Association Regulation or applicable Law or regulation, only the part of the Merchant Agreement that is affected shall be modified and that modification shall be limited to the minimum necessary to bring the Merchant Agreement within the requirements of the Association Regulation, law or regulation.
- 5.11 **Warranty Disclaimer.** PEOPLES TRUST MAKES NO WARRANTIES REGARDING THE USE, OPERATION OR PERFORMANCE OR NON-PERFORMANCE OF SOFTWARE, SYSTEMS, OR THIRD PARTY PROCESSORS UTILIZED IN CONNECTION WITH THE MERCHANT AGREEMENT, WHETHER EXPRESS OR IMPLIED, AND PEOPLES TRUST EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE
- 5.12 **Limitation of Liability.** Notwithstanding any other provision herein, (i) Peoples Trust's liability with respect to any Card Transaction may not exceed the amount of the Sales Draft in connection with that Transaction less any applicable fees and charges and (ii) Peoples Trust's aggregate liability shall not, under any circumstance, exceed the fees paid to Peoples Trust under **Schedule A** (net of interchange, assessments and all other Card Association and third party fees imposed on Peoples Trust) during the twelve month period immediately preceding the event upon which such liability is based. Peoples Trust is not liable for any special, incidental, indirect, punitive or consequential damages whatsoever (whether any such claim alleges breach of contract, tort or any other theory of liability. Merchant waives all claims against Peoples Trust for any loss, claim, demand, penalty, action, delay, cost or expense (including reasonable legal fees) of any kind unless Merchant provides written notice to Peoples Trust of the occurrence that gave rise to the alleged liability within 30 days after Merchant knew or should have known of the occurrence. Merchant will indemnify and hold Peoples Trust harmless from any claim relating to or arising out of (i) any Sales Draft or Credit Voucher presented to Peoples Trust as may be made by anyone by way of defense, dispute, offset, counterclaim or affirmative action (including but not limited to disputes concerning the quality, fitness or delivery of merchandise or the performance or quality of services) or (ii) damages or losses that Peoples Trust may incur as a result of (a) Merchant's breach of the Merchant Agreement or (b) presentment by Merchant of acceptance or rejection by Peoples Trust of any Sales Draft or Credit Voucher, provided however that, with respect to clause (b), such indemnification shall not apply in the event of Peoples Trust's gross negligence. Further, Merchant will reimburse Peoples Trust for all expenses and costs, including legal fees, with regard thereto.
- 5.13 **Waiver.** Peoples Trust's failure to enforce one or more of the provisions of the Merchant Agreement will not constitute a waiver of the right to enforce the same or other provision in the future.
- 5.14 **Written Notices.** All written notices and other written communications required or permitted under the Merchant Agreement must be either personally delivered, sent by prepaid, registered mail or sent by facsimile, charges (if any) prepaid, addressed as follows:
- a. If to Peoples Trust: c/o Payroc WorldAccess, Inc.
6D – 7398 Yonge St PMB 902
Thornhill, ON L4J8J2



b. If to Merchant: At the facsimile number or address provided as the billing address and to the contact listed on the Merchant Application.

Any written notice delivered to the party to whom it is addressed will be deemed to have been given and received on the day it is so delivered at that party's address, provided that (i) it is so delivered before 5:00 p.m.; and (ii) if that day is not a business day then the written notice will be deemed to have been given and received on the next business day. Any written notice transmitted by facsimile will be deemed to have been given and received on the day on which it was transmitted (but if the written notice is transmitted on a day which is not a business day (or after 5:00 p.m.), the written notice will be deemed to have been received on the next business day). Any written notice given by registered mail will be deemed to have been received on the fifth business day after which it is so mailed. Merchant acknowledges and agrees that written notice and other written communications required or permitted to be given by Peoples Trust under the Merchant Agreement shall be properly given if contained in the on-line statement provided from time to time to Merchant by Peoples Trust. For purposes of this Section 5.13, references to a time of day shall mean that time of day in the jurisdiction of the receiving party (e.g., "5:00 p.m." shall mean 5:00 p.m. in the jurisdiction of the receiving party) and references to "business day" shall be mean a day other than a Saturday, Sunday or statutory holiday in the jurisdiction of the receiving party.

- 5.15 **Choice of Law; Jurisdiction.** The Merchant Agreement is governed by and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in that Province. Each of the parties irrevocably submits and attorns to the exclusive jurisdiction of the courts of the Province of Ontario to determine all issues, whether at law or in equity arising from the Merchant Agreement. To the extent permitted by applicable Law, each of the parties irrevocably waives any objection (including any claim of inconvenient forum that it may now or hereafter have) to the venue of any legal proceeding arising out of or relating to the Merchant Agreement in the courts of that Province, or that the subject matter of the Merchant Agreement may not be enforced in the courts, and irrevocably agrees not to seek, and waives any right to, judicial review by any court which may be called upon to enforce the judgment of the courts referred to in this Section 5.14, of the substantive merits of any such suit, action or proceeding.
- 5.16 **Entire Agreement; Interpretation; Assignability.** The Merchant Agreement expresses the entire understanding of the parties with respect to the subject matter hereof and except as provided herein, may be modified only in writing executed by Peoples Trust and Merchant. The Merchant Agreement may not be assigned by Merchant, directly or by operation of law, without Peoples Trust's prior written consent. Peoples Trust may assign its rights and obligations under the Merchant Agreement only upon receiving the written consent of Payroc. The Merchant Agreement will be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors and assigns. The Merchant Agreement shall not be construed more strongly against any party, regardless of which party was more responsible for its preparation.
- 5.17 **Deposit Account.** Merchant will at all times maintain an Account at a bank that is a member of the Canadian Payments Association EFT system and will provide Peoples Trust with proper authorization to debit the Account. All credits for collected funds and debits for fees, payments and Chargebacks and other amounts for which Merchant is liable under the terms of the Merchant Agreement will be made to the Account. Merchant may not close or change the Account without written notice to Peoples Trust. Merchant will be solely liable for all fees and costs associated with the Account and for all overdrafts and Merchant shall immediately deposit into the Deposit Account an amount sufficient to cover any overdraft and any related service charges or fees. All credits and debits to the Deposit Account made hereunder are subject to review, verification and acceptance by Peoples Trust. In the event of error, Merchant authorizes Peoples Trust to make correcting credits or debits, as the case may be, without notice to Merchant. Merchant hereby grants to Peoples Trust a security interest in the Account to the extent of any and all fees, payments, Chargebacks and other amounts due which may arise under the Merchant Agreement, and Merchant will execute any document and obtain any consents or waivers from the bank at which the Account is maintained as requested by Peoples Trust to protect its security interests therein.
- 5.18 **Credit and Financial Inquiries; Additional Locations; Inspection.** Peoples Trust may make, at any time, any credit inquires which it may consider necessary to accept or review acceptance of the Merchant Agreement or investigate Merchant's ability to perform its obligations hereunder, or its Sales Draft presentment and Card acceptance activities subsequent to acceptance of the Merchant Agreement. Such inquiries may include, but are not limited to, a credit and/or criminal background check of the business including its proprietor, partners, principal owners, shareholders or officers. Upon Peoples Trust's request, Merchant will provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed the Merchant Agreement and will provide any financial statements, income tax and business tax returns and other financial information as Peoples Trust may consider necessary to perform initial or periodic reviews of Merchant's financial stability and business practices. Merchant may accept Cards only at locations approved by Peoples Trust. Additional locations may be added subject to Peoples Trust's approval. Peoples Trust may delete any location by providing notice as provided herein. Merchant will permit Peoples Trust, at any time and from time to time, to inspect locations to confirm that Merchant has or is adhering to the terms of the Merchant Agreement and is maintaining the proper facilities, equipment, inventory, records and license or permit (where necessary) to conduct its business. Peoples Trust, its internal and external auditors, and its regulators may audit compliance with (i) the Merchant Agreement, (ii) all applicable Law (iii) Data Privacy Requirements, (iv) Card Association Rules and regulations and (v) guidance applicable to the services, Card acceptance, Transaction processing, and data security provisions hereof. Merchant will make available its records maintained and produced under the Merchant Agreement, and Merchant's facilities will be made accessible, upon notice during normal business hours for examination and audit. Nothing in this section may be construed to require Merchant to give access to its facilities, personnel or records in a manner that unreasonably interferes with its business operations. Each party will bear its expenses of any audit.
- 5.19 **Marketing of Non-Branded card Services.** From time to time, Peoples Trust may offer to Merchant certain additional products and services, which may or may not be related to the acceptance or processing of Card Transactions. If such an offer is made, Merchant may decline the offer or, based on acceptance of the offer by Merchant, in accordance with terms provided by Peoples Trust, and such non-Branded card organization, be liable for payment associated with its acceptance of such additional products and services.
- 5.20 **Force Majeure.** The parties will be released from liability hereunder if they fail to perform any obligation where the failure occurs by reason of any act of God, fire, flood, storm, earthquake, tidal wave, communications failure, sabotage, war, military operation, terrorism, national emergency, mechanical or electronic breakdown, civil commotion, governmental regulation or the order, requisition, request or recommendation of any governmental authority, or either party's compliance therewith, or any other similar cause beyond either party's reasonable control.
- 5.21 **No Third-Party Beneficiary; No Partnership.** Other than with respect to Payroc, no person or entity may be deemed a third party beneficiary of the Merchant Agreement. Nothing in the Merchant Agreement shall be deemed to create a partnership, joint venture or any agency relationship between the parties.

