



management system if available or notify Operator at the toll free customer service line shown on the billing statement. Operator reserves the right to charge a "Card Delivery Fee" of up to two dollars fifty cents (\$2.50) per Card plus shipping & handling for creating and delivering each replacement Card. If Customer requires expedited Card delivery, additional shipping and handling fees apply, based on the delivery method and timeframe. If Customer requires same-day plastic embossing, FleetCor will charge an additional fee of twenty-five dollars (\$25) per Card plus any expedited shipping and handling fees. Expedited card delivery requires a physical delivery address and cannot be made to a post office box.

**24. Lost or Stolen Cards.** Customer agrees to notify Operator immediately at the toll free customer service line of any loss, theft or possible unauthorized use of the Account or of any Card. Customer understands that it is liable for unauthorized use of the Account and Cards to the fullest extent permitted by applicable law. Customer agrees in any event that if at any time Customer has been issued ten (10) or more Cards at Customer's request, then Customer waives any and all limitations of liability for unauthorized use of such Cards. This provision does not include misuse of Cards by Customer's employees or agents (for which Customer is always obligated), Customer also agrees to assist FleetCor in determining the facts, circumstances, and other pertinent information related to any loss, theft, or possible unauthorized use of any Card or Account and to comply with such procedures as FleetCor may reasonably require in connection with any investigation.

**25. Enforcement.** FleetCor may enforce any right or remedy FleetCor may have regarding any of Customer's obligations under this Agreement without affecting FleetCor's other rights or remedies. Customer waives (i) any right to require FleetCor to proceed against any other person or entity liable on the Account or pursue any other remedy in FleetCor's power whatsoever; (ii) any defense because of any disability or other defense or cessation of liability on the Account by anyone else for any reason other than full payment; (iii) any defense or right against FleetCor arising out of the exercise of the rights under this Agreement to the extent that such exercise of rights results in the loss of any right of subrogation, reimbursement or other right Customer may have against any other person liable on the Account; and (iv) all presentments, diligence, protests, demands, and notices or protest, dishonor or nonperformance. FleetCor can delay enforcing or fail to enforce any rights under this Agreement without losing them.

**26. Credit Reports.** Customer authorizes FleetCor to make or have made, and authorizes any credit reporting agency or bureau to provide to us upon our request, any credit, employment, and investigative inquiries FleetCor deems appropriate (including obtaining consumer reports and commercial credit reports) in connection with any updates, renewals or extensions of credit or the collection of amounts owed on the Account. If Customer wishes to know the names of the consumer reporting agencies FleetCor has contacted, Customer should send a written request to the Customer Service address listed on the billing statement. FleetCor may furnish information concerning the Account, the Customer, and/or the Principal/s/Guarantor's credit history with FleetCor to consumer reporting agencies, commercial credit bureaus, and others who may properly receive that information. A negative credit report reflecting on the Account's record may be submitted to a consumer reporting agency or a commercial credit bureau if Customer fails to fulfill the terms of this Agreement. If Customer requests additional Cards on the Account for others, you understand that FleetCor may report Account information in Customer's name as well as in the names of those other people, any Principal and/or guarantors. If Customer believes FleetCor reported information incorrectly to a credit reporting agency, Customer should send a written request to the Customer Service address listed on the billing statement. FleetCor will investigate the matter to determine if incorrect information was reported, in which case FleetCor will notify each credit reporting agency to which FleetCor reported and will request they correct the report.

**27. Cooperation on Information.** Subject to applicable law, Customer will provide FleetCor any information that FleetCor reasonably requests about an Authorized User's use of a Card. Customer agrees to provide Operator with annual, fiscal year-end financial statements on an annual basis as requested. Customer will also provide reasonable cooperation to FleetCor in any investigation, litigation, or prosecution arising in connection with the use of a Card.

**28. Preauthorized Charges.** If you default, if a Card is lost or stolen, or we change your Account or Account number for any reason, we may suspend automatic charges on that Account to third party vendors for insurance premiums (if possible under your Account terms) or other goods or services. If preauthorized charges are suspended, you must contact the third party vendor to reinstate them. You are responsible for making direct payment for such charges until you reinstate automatic charges.

**29. Arbitration.** PLEASE READ THIS PROVISION OF THE AGREEMENT CAREFULLY. IT PROVIDES THAT MOST DISPUTES SHALL BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING. Customer or Operator or Issuing Bank may, without the other's consent, elect mandatory, binding arbitration for any claim, dispute, or controversy between or among such parties relating to the Cards or Account, a prior related account, or the relationship of such parties, including without limitation claims regarding the application, enforceability, or interpretation of this Agreement and this arbitration provision, and no matter what legal theory such claims are based on or what remedy (damages, or injunctive or declaratory relief) such claims seek. All disputes arising out of, or in connection with, this Agreement, or in respect of any legal relationship associated with it or derived from it, whether based on contract, tort, equity, statute or otherwise, and whether arising before or after the date of this Agreement, but excluding disputes in which the party seeking relief asserts a claim to recover less than \$25,000, shall be finally resolved by a single arbitrator in an arbitration administered by the British Columbia International Commercial Arbitration Centre under its applicable Rules of Procedure. The place of arbitration shall be Vancouver, British Columbia. Claims of two or more persons, including assigned or representative claims, may not be joined or consolidated in the same arbitration and each such claim must be resolved in a separate arbitration. To accommodate the right to arbitrate, Customer agrees that it will neither assert, nor participate in, a class action or other representative action or proceeding related to this Agreement, the Account, the Cards or any other aspect of Customer's relationship with Operator or Issuing Bank.

**30. Telephone Monitoring and Recording.** From time to time we may monitor and record your telephone calls regarding your Account with us to assure the quality of our service.

**31. Closing Your Account.** You may close your Account at any time by notifying us in writing via mail to the customer service address on the billing statement. However, you remain responsible to pay the total balance according to the terms of this Agreement. We may close your Account or suspend your account privileges at any time for any reason without prior notice.

FleetCor may take such action for various reasons, including (but without limitation) if Customer does not use the Cards during any three (3) month time period. FleetCor may issue Customer or an Authorized User a different Card or Account number. Customer agrees to indemnify and hold FleetCor, its subsidiaries and affiliates harmless for any losses, damages or liability arising from a claim against any of the aforementioned for wrongful cancellation of an Authorized User's Card if Customer, or Customer's designee, is the party which requested cancellation of the Card. FleetCor may cancel a Card issued to an Authorized User, in which case FleetCor will notify Customer. Upon cancellation of any Authorized User's Card for whatever reason, Customer must obtain such Card and return it to FleetCor cut in half. If FleetCor agrees to reinstate the Account after a cancellation, the new Agreement FleetCor sends Customer (or, if FleetCor does not send Customer a new Agreement, this Agreement, as it may be amended) will govern the reinstated Account. "Account Reinstatement" is the process of removing any suspensions or returning the Account to good standing. All charges, fees, and previous obligations will remain the Customer's responsibility. When FleetCor reinstates the Account, FleetCor may reinstate any Cards issued in connection with the Account and bill Customer the applicable fees. However, nothing in this Agreement shall obligate us to monitor the use of any Card, and as described in this Agreement, you are solely responsible for the use of your Account and of any outstanding Card issued on your Account. We may also reissue a different Card, or Account number at any time.

**32. Refusal of the Card.** We are not responsible if a transaction on your Account is not approved, either by us or by a third party, even if you have sufficient credit available. We may limit the number of transactions that may be approved in one day. If we detect unusual or suspicious activity on your account, we may temporarily suspend your credit privileges until we can verify the activity, although we undertake no responsibility to monitor your card or to attempt to detect unauthorized or fraudulent activity.

**33. Tax Reporting Limitations.** Applicable taxes for fuel, maintenance and other non-fuel purchases are dependent on the information provided to us by the applicable merchant location. If you are a tax exempt organization, you may enter other agreements with us to accommodate tax exempt purchases of fuel. However, nothing in this Agreement shall allow even a tax exempt organization to exclude from its payments to us taxes included in your balance owed.

**34. Claims.** All claims for defective fuel, services, merchandise or maintenance must be made to the merchant operating the merchant location where such fuel, services, merchandise or maintenance was purchased (even if that merchant is Customer's). Any claim for defective fuel, services, merchandise or maintenance is waived by you unless made in writing to merchant, with a copy to us, within fifteen (15) days from the date of the purchase of the alleged defective fuel, services, merchandise or maintenance giving rise to the claim.

**35. WARRANTY DISCLAIMER.** WE DISCLAIM ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. ALL CARDS, ACCOUNTS, PRODUCTS, AND SERVICES ARE PROVIDED ON AN AS-IS BASIS.

**36. Safe Fueling Operation.** You must instruct all persons to whom you provide a Card for purchasing fuel in safe and proper fueling procedures. You must ensure that everyone using a Card issued on your Account is instructed in applicable safety measures and will comply with all applicable laws and safety notices.

**37. Maximum Lawful Rate.** Notwithstanding any other provision of this Agreement, in no event shall FleetCor require the payment or permit the collection of interest or other amounts in an amount or at a rate in excess of the amount or rate that is permitted by applicable law or in an amount or at a rate that would result in the receipt by the FleetCor of interest at a criminal rate, as the terms "interest" and "criminal rate" are defined under the *Criminal Code* (Canada). If from any circumstance whatever, fulfillment of any provision of this Agreement would result in exceeding the highest rate or amount permitted by applicable law for the collection or charging of interest, the obligation to be fulfilled shall be reduced to reflect the highest permitted rate or amount. If from any circumstance FleetCor shall ever receive anything of value as interest or deemed interest under this Agreement that would result in exceeding the highest lawful rate or amount of interest permitted by applicable law, the amount that would be excessive interest shall be applied to the reduction of the principal amount of the Account balance, and not to the payment of interest, or if the excessive interest exceeds the unpaid principal balance of the Account balance, the amount exceeding the unpaid balance shall, in our sole discretion, be refunded to the Customer or held by FleetCor as a prepayment of future amounts that may come due on the Account. In determining whether or not the interest paid or payable under any specified contingency exceeds the highest lawful rate, the Customer and FleetCor shall, to the maximum extent permitted by applicable law, (i) characterize any non-principal payment as an expense, fee or premium rather than as interest, (ii) exclude voluntary prepayments and their effects, (iii) amortize, prorate, allocate and spread the total amount of interest throughout the term of the Account balance so that interest does not exceed the maximum amount permitted by applicable law, and/or (iv) allocate interest between portions of the Account balance to the end that no portion shall bear interest at a rate greater than that permitted by applicable law. For the purposes of the *Criminal Code* (Canada), the effective annual rate of interest shall be determined in accordance with generally accepted actuarial practices and principles and if there is any dispute, the determination of a Fellow of the Canadian Institute of Actuaries appointed by FleetCor shall be conclusive.

**38. Limitation of Liability.** Operator and Issuing Bank shall not be liable to Customer for any loss or damages sustained by Customer as a result of delay in servicing a transaction request, delay resulting from equipment failure or transmission failure, act of God or any other cause not within the reasonable control of Operator or Issuing Bank. OPERATOR AND ISSUING BANK WILL HAVE NO LIABILITY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES OF ANY KIND, INCLUDING CLAIMS FOR LOSS OF PROFITS, WHETHER RESULTING DIRECTLY OR INDIRECTLY TO CUSTOMER, A GUARANTOR, CO-MAKER OR THIRD PARTIES, AND WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR RESULT FROM A BREACH OF THIS AGREEMENT. IN THE EVENT A COURT IN A FINAL, NON-APPEALABLE AWARD FINDS OPERATOR OR ISSUING BANK LIABLE FOR ANY DIRECT DAMAGES, OPERATOR AND ISSUING BANK'S LIABILITY IN THE AGGREGATE FOR SUCH DIRECT DAMAGES WILL NOT EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO OPERATOR FOR THE MONTH PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

**39. Indemnity.** The Customer agrees to hold OPERATOR and ISSUING BANK harmless from any and all liability resulting from (i) the use of the Cards or related services of OPERATOR or ISSUING BANK, by the Customer, its employees and/or agents; or (ii) the acts of any employees

or agents of the Customer, which acts shall include but are not limited to negligent or willful acts of such persons. For clarity, the Customer will not be required to indemnify OPERATOR for any losses arising from OPERATOR's breach of this Agreement.

**40. Miscellaneous.** (a) This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable in such Province, without regard to the choice of law rules of such Province. (b) Failure to insist upon strict compliance with any of the terms or conditions of this Agreement shall not be deemed a waiver of such term or condition, nor shall waiver or relinquishment of any right or power hereunder at any time be deemed a subsequent waiver or relinquishment of such right or power. The Customer undertakes to execute all such documents, and do all such acts as may be required by Operator to give effect to this Agreement and its intended purposes. (c) This Agreement, including the exhibits, schedules or addenda attached hereto and made a part hereof, constitutes the entire agreement of the parties with respect to its subject matter; supersedes all prior agreements and understandings, oral or written, of the parties with respect to this subject matter; and except as expressly set forth herein, may only be modified by a writing signed by Operator and the Customer. (d) Any provision of this Agreement that by its nature is intended to survive termination of this Agreement shall so survive and shall remain enforceable after such termination. (e) The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. (f) In case one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired hereby. (g) No provision of this Agreement shall be construed in favor of, or against, any particular party by reason of any presumption with respect to the drafting of this Agreement; both parties, having fully participated in the negotiation of this Agreement, hereby agree that this Agreement shall not be subject to the principle that a contract would be construed against the party which drafted the same. (h) This Agreement is for the benefit of Operator, its successors and assigns, and may be assigned by Operator without the consent of the Customer. The Customer may not transfer or assign this Agreement without the prior written consent of Operator. (i) The Customer acknowledges and agrees that electronic records and signatures and facsimile copies of signatures shall have the full legal effect of writing. (j) Unless otherwise stated, any reference to dollars means Canadian dollars. (k) It is the express wish of the parties that this document and any related documents be drawn up and executed in English. *Les Parties aux présentes ont expressément demandé que ce document et tous les documents s'y rattachant soient rédigés et signés en anglais.*

**41. Assignment or Sale of Account.** We reserve the right to assign any or all of our rights and obligations under this Agreement to a third party. Customer may not transfer or assign this Agreement or the Account without prior consent from FleetCor.

**42. Government Regulation.** Federal law requires all financial institutions to obtain, verify and record information that identifies the Customer (and any person to whom the Customer provides a Card) as part of Operator's initial and on-going customer review process. Therefore, Operator and Issuing Bank require various identifying information about the Customer (including without limitation name, corporate address, telephone number, and name of each director) and any person to whom the Customer provides a Card (including without limitation name, address, telephone number and date of birth). The Customer consents to the storing and processing of such personal information in the United States of America and acknowledges that access to such personal information shall be subject to local, state and federal laws of the United States of America. The Customer represents, warrants and covenants to Operator that the Customer: (a) has obtained, and will maintain throughout the term of this Agreement, the full right and authority (including by way of any consents required under privacy law and other applicable law) for any (i) transfer of personal information from the Customer to Operator and Issuing Bank, including personal information about any persons to whom the Customer provides a Card; and (ii) any other collection, use, transfer, disclosure or other processing by Operator or Issuing Bank of such information for the purposes contemplated under this Agreement; (b) is not currently and shall not become subject to any law, regulation or list of any government agency (including, without limitation, any designated persons listing maintained by the Office of the Superintendent of Financial Institutions or the Department of Foreign Affairs and Trade with respect to: (i) the *United Nations Act*, (ii) the *Criminal Code*; or (iii) any regulations made under either (i) and (ii) related to the prevention of money laundering and terrorist financing) that prohibits Operator or Issuing Bank from making any advance or extension of credit to the Customer or from otherwise conducting business with the Customer; and (c) shall provide to Operator, MasterCard and Issuing Bank, when requested, documentary and other evidence of the Customer's identity or the identity of any person to whom the Customer provides a Card, as required for appropriate parties to comply with any applicable law or regulation, including, without limitation: (i) the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (ii) any regulations made thereunder; and (iii) Operator's or Issuing Bank's "Anti-Money Laundering & Terrorist Financing Compliance Manual for Canadian Business".

Ultramar is a registered trademark, used under license. MasterCard is a registered trademark of MasterCard International, Incorporated. The Ultramar MasterCard® Corporate Card is issued by National Bank of Canada, pursuant to license by MasterCard International, Incorporated. FleetCor is a trademark of FleetCor Technologies Operating Company, LLC.

# ULTRAMAR MASTERCARD CORPORATE CARD AGREEMENT

## Terms and Conditions (For Commercial/Business Use Only)

This Fleet MasterCard Agreement (this "Agreement") sets forth the terms and conditions for use of the Ultramar MasterCard® Corporate Card Cards (each a "Card" and collectively "Cards") and the account established in connection with the Cards ("Account") operated by FleetCor Commercial Card Management (Canada), Ltd. ("FleetCor"). FleetCor and its agents, suppliers and contractors are sometimes hereafter referred to collectively as "Operator", "us" or "we". **Execution of any application form referencing this Agreement and/or use of the Account and any of the Cards constitutes acceptance of this Agreement and any subsequent use following any future changes to this Agreement constitutes acceptance of any changes made to the terms and conditions of this Agreement.** "Customer" means the business for which the Account has been established (also referred to as "you" in this agreement).