

TERMS AND CONDITIONS FOR MERCHANT AGREEMENT

1. MERCHANT'S ACCEPTANCE OF PAYMENT INSTRUMENTS.

1.1 Exclusivity. During the term of this Agreement, Paymentech shall be Merchant's exclusive provider of all Transaction processing services (including, without limitation, the authorization, conveyance and settlement of Transactions), and Merchant shall not use the services of any bank, corporation, entity or person other than Paymentech for such services. Merchant shall submit to Paymentech Transaction Data generated from all of its Transactions via electronic data transmission according to Paymentech's formats and procedures throughout the term of this Agreement.

1.2 Certain Payment Acceptance Policies and Prohibitions.

- (a) Each Transaction must be evidenced by its own Transaction Receipt completed in accordance with Payment Brand Rules.
- (b) Merchant shall not require the Customer to pay the fees payable by Merchant under this Agreement.
- (c) Merchant shall never issue Refunds for Transactions by cash or a cash equivalent (e.g., check) unless required by law or permitted by the Payment Brand Rules.
- (d) Unless permitted by the Payment Brand Rules, Merchant shall not engage in any practice that unfavorably discriminates against or provides unequal treatment of any Payment Brand relative to any other Payment Brand.
- (e) Except where expressly permitted by law or the Payment Brand Rules, Merchant shall not set a dollar amount above or below which Merchant refuses to honor otherwise valid Payment Instruments.
- (f) Merchant shall examine each Payment Instrument physically presented at the point of sale to determine that the Payment Instrument presented is valid and has not expired. Merchant shall exercise reasonable diligence to determine that the authorized signature on any Payment Instrument physically presented at the point of sale corresponds to the Customer's signature on the Transaction Receipt.
- (g) With respect to any Transaction for which a Customer is not physically present at the point of sale, such as in any on-line, mail, telephone, pre-authorized or recurring Transaction, Merchant must (i) have notified Paymentech on its Application, or otherwise obtained Paymentech's prior written approval, of Merchant's intention to conduct such Transactions; and (ii) have appropriate procedures in place to ensure that each Transaction is made to a purchaser who actually is the Customer. Merchant acknowledges that under certain Payment Brand Rules, Merchant cannot rebut a Chargeback where the Customer disputes making the purchase and Merchant does not have an electronic record (e.g., "swiping" or "tapping" a Payment Instrument) or physical imprint of the Payment Instrument.
- (h) Merchant agrees to accept all categories of Visa and MasterCard Payment Instruments (i.e., debit and credit cards), unless Merchant has notified us on its Application or otherwise in writing of its election to accept one of the following "limited acceptance" options: (i) all Visa and MasterCard consumer credit cards and Visa and MasterCard commercial credit and debit cards; or (ii) Visa and MasterCard debit cards only (but no credit cards). Notwithstanding the election of one of the foregoing limited acceptance options, Merchant must honor all foreign bank-issued Visa or MasterCard Payment Instruments. If Merchant elects one of the limited acceptance categories: (Y) Merchant must display appropriate signage to indicate the limited acceptance category; and (Z) Paymentech, at its option, may process any Transactions submitted to Paymentech outside of the limited acceptance category, in which case such Transactions will be assessed the applicable interchange fees plus any additional fees/surcharges assessed by Paymentech or the Payment Brands.
- (i) Merchant shall not split a single Transaction into two or more Transactions to avoid or circumvent authorization limits or monitoring programs.
- (j) Merchant shall not accept Payment Instruments for the purchase of scrip.
- (k) Merchant shall not require a Customer to complete a postcard or similar device that includes the Customer's Payment Instrument account number, expiration date, or any other account data in plain view when mailed.
- (l) Merchant shall not add any tax or surcharge to Transactions, unless applicable law expressly requires a Merchant be permitted to impose the tax or surcharge. If any tax or surcharge amount is allowed, such amount shall be included in the Transaction amount and shall not be collected separately.
- (m) Merchant shall not request or use a Payment Instrument account number for any purpose except as payment for its goods or services, unless required by the Payment Brand Rules in order to support specific services offered by the Payment Brands.

1.3 Payment Brand Rules. Merchant agrees to comply with (a) all Payment Brand Rules as may be applicable to Merchant and in effect from time to time; and (b) such other procedures as Paymentech may from time to time prescribe for the creation or transmission of Transaction Data.

1.4 Requirements for Certain Transactions. As to all Transactions, Merchant represents and warrants that, to the best of its knowledge:

- (a) The Transaction Data (i) represents a payment for or Refund of a bona fide sale or lease of the goods, services, or both, which Merchant has provided in the ordinary course of its business, as represented in its Application; and (ii) is not submitted on behalf of a third party.
- (b) The Transaction Data represents an obligation of the Customer for the amount of the Transaction.
- (c) The Transaction is not for any purpose other than payment for the current Transaction. The Transaction does not represent the collection of a dishonored check or the collection or refinancing of an existing debt. The Transaction does not represent payment for a previous Transaction or charge incurred at the Merchant or a Transaction that was previously charged back by the Customer, irrespective of Customer consent or approval.
- (d) Except as specifically stated in Merchant's Application or otherwise approved in writing by Paymentech in advance, with respect to any prepayment for services or full prepayment for custom-ordered merchandise manufactured to the Cardholder's specifications, at the time Merchant accepts a Payment Instrument for any goods or services, the goods have been provided or shipped or the services actually rendered to the Customer. For approved prepayments, Merchant must advise the Customer (i) that payment is being made in advance of the shipment or provision of goods or services; and (ii) the time when shipment or provision of the goods or services is expected.
- (e) The Transaction Data is free from any material alteration not authorized by the Customer.
- (f) The amount charged for the Transaction is not subject to any dispute, setoff, or counterclaim.
- (g) Merchant has not disbursed or advanced any cash to the Customer (except as authorized by the Payment Brand Rules) or itself or to any of its representatives, agents, or employees in connection with the Transaction, nor has Merchant accepted payment for effecting credits to a Customer.
- (h) The goods or services related to each Transaction are Merchant's property or Merchant has the legal right to sell them.
- (i) Merchant has made no representation or agreement for the issuance of Refunds except as stated in Merchant's Refund Policy, which has been previously submitted to Paymentech in writing as provided in Section 3, and which is available to the Customer.
- (j) Any Transaction submitted to Paymentech to credit a Customer's account represents a Refund for a Transaction previously submitted to Paymentech.
- (k) Merchant has no knowledge or notice of information that would lead Merchant to believe that the enforceability or collectibility of the Transaction is in any manner impaired. Merchant has originated the Transaction and Transaction Data in compliance with this Agreement, applicable laws and all applicable Payment Brand Rules.
- (l) Unless specifically stated in its Application or otherwise approved in writing by Paymentech in advance, Merchant shall not accept Payment Instruments in connection with installment plans. If the Customer pays in installments or on a deferred payment plan, as previously approved by Paymentech, a Transaction Data record has been prepared separately for each installment transaction or deferred payment on the dates the Customer agreed to be charged. All installments and deferred payments, whether or not they have been submitted to Paymentech for processing, shall be deemed to be a part of the original Transaction.
- (m) Merchant has not submitted any Transaction that Merchant knows or should have known to be either fraudulent, illegal, damaging to the Payment Brand(s), not authorized by the Customer or otherwise in violation of any provision of this Agreement, applicable law, or Payment Brand Rules.
- (n) For recurring Transactions, Merchant must (i) obtain the Customer's consent to periodically charge the Customer on a recurring basis for the goods or services purchased; (ii) retain this permission for the duration of the recurring services and provide it upon request to Paymentech or the issuing bank of the Customer's Payment Instrument; and (iii) retain written documentation specifying the frequency of the recurring charge and the duration of time during which such charges may be made. Merchant shall not submit any recurring transaction after receiving: (i) a cancellation notice from the Customer; or (ii)

notice from Paymentech or any Payment Brand (via authorization code or otherwise) that the Payment Instrument is not to be honored. Merchant shall include in its Transaction Data the electronic indicator that the Transaction is a recurring Transaction.

1.5 Stored Value Card Transactions. As to all Stored Value Card Transactions, if any, in addition to any representations and warranties previously made, Merchant agrees to:

(a) comply with all applicable laws relating to Stored Value Card Transactions, and indemnify and hold Paymentech harmless from any loss, damage, or claim relating to or arising out of any failure to comply with applicable laws in connection therewith;

(b) be responsible for ensuring that all Stored Value Cards require activation at the point of sale;

(c) provide immediate written notification to Paymentech of any Stored Value Card fraud losses immediately;

(d) be solely responsible for any and all value adding and fraud losses and expenses relating to or arising from Merchant's Stored Value Card Transactions;

(e) discourage transportation of groups of sequentially numbered gift cards;

(f) deactivate or otherwise remove all value from Stored Value Cards that have been compromised; and

(g) be responsible for any fraudulent transactions involving Merchant's Stored Value Cards, including, without limitation, the unauthorized activation of Stored Value Cards, reloading of existing Stored Value Cards (whether pursuant to a manual telephone order or otherwise) with additional value, or the unauthorized replication of Stored Value Cards or Stored Value Card data for fraudulent Transactions.

2. AUTHORIZATIONS. Merchant is required to obtain an authorization code through Paymentech, in accordance with this Agreement, for each Transaction. Merchant acknowledges that authorization of a Transaction indicates that the Payment Instrument (a) contains a valid account number; and (b) has an available credit balance sufficient for the amount of the Transaction; but, it does not constitute a representation from Paymentech, a Payment Brand, or a card issuing bank that a particular Transaction is in fact a valid or undisputed Transaction entered into by the actual Customer. Paymentech reserves the right to refuse to process any Transaction Data presented by Merchant unless it includes a proper authorization.

3. REFUND AND ADJUSTMENT POLICIES AND PROCEDURES; PRIVACY POLICIES.

3.1 Refund Policy. Merchant is required to maintain a Refund Policy and to disclose such Refund Policy to Paymentech and Customers. Any material change in Merchant's Refund Policy must be submitted to Paymentech, in writing, not less than 14 days prior to the effective date of such change. Paymentech reserves the right to refuse to process any Transactions made subject to a revised Refund Policy of which Paymentech has not been notified in advance. To the extent that Merchant operates an electronic commerce website through which Transaction Data is generated, Merchant must include its Refund Policy on the website in accordance with Payment Brand Rules.

3.2 Procedure for Refund Transactions. If, under Merchant's Refund Policy, Merchant allows a Refund, Merchant shall prepare and deliver to Paymentech Transaction Data reflecting any such Refund within three (3) days of approving the Customer's request for such Refund. The amount of a Refund cannot exceed the amount shown as the total on the original Transaction Data except by the exact amount required to reimburse the Customer for shipping charges that the Customer paid to return merchandise. Merchant shall not accept any payment from a Customer as consideration for issuing a Refund. Merchant shall not give cash (or cash equivalent) refunds to a Customer in connection with a Transaction, unless required by law or permitted by the Payment Brand Rules.

3.3 Customer Data Protection Policies. To the extent that Merchant operates an electronic commerce website through which Transaction Data is generated, in addition to any requirements otherwise set forth in this Agreement, Merchant shall display the following on its website: (a) its Customer data privacy policy; (b) a description of its security capabilities and policy for transmission of Payment Instrument Information; and (c) the address of Merchant's fixed place of business (regardless of website or server locations). Furthermore, Merchant must offer its Customers a data protection method such as 3-D Secure or Secure Sockets Layer (SSL).

4. SETTLEMENT.

4.1 Submission of Transaction Data. Failure to transmit Transaction Data to Paymentech within one (1) business day following the day that such Transaction originated could result in higher interchange fees and other costs, as well as increased Chargebacks. Unless Merchant has notified Paymentech on its Application or Paymentech has otherwise agreed in writing in advance, Merchant shall not submit Transactions for processing until (a) the Transaction is completed; (b) the goods are delivered or shipped; (c) the services are performed; or (d) Merchant has obtained the Customer's consent for a recurring Transaction. Paymentech may from time to time contact Customers to verify that they have received goods or services for which Transactions have been submitted. Paymentech reserves the right to refuse to process any Transaction Data presented by Merchant if Paymentech reasonably believes that the Transaction may be uncollectible from the Customer or was prepared in violation of any provision of this Agreement, applicable law, or the Payment Brand Rules. For all Transactions, Paymentech will submit Merchant's Transaction Data to the applicable Payment Brands.

4.2 Merchant's Settlement Account. In order to receive funds from Paymentech, Merchant must designate and maintain one or more accounts used primarily for business purposes at a bank that is a member of the Automated Clearing House system or the Federal Reserve wire system (collectively referred to as "Settlement Account"). During the term of this Agreement, and thereafter until Paymentech notifies Merchant that all amounts due from Merchant under this Agreement have been paid in full, Merchant shall not close its Settlement Account without giving Paymentech at least five (5) days' prior written notice and substituting another Settlement Account. Merchant is solely liable for all fees, costs, and overdrafts associated with the Settlement Account. Merchant authorizes Paymentech to initiate electronic credit and debit entries and adjustments to the Settlement Account at any time without regard to the source of any monies in the Settlement Account, and this authority will remain in full force and effect until Paymentech notifies Merchant that all amounts due from Merchant under this Agreement have been paid in full. Paymentech will not be liable for any delays in receipt of funds or errors in Settlement Account entries caused by third parties, including, without limitation, delays or errors by the Payment Brands or Merchant's bank.

4.3 Conveyed Transactions. For Conveyed Transactions Merchant shall have a valid agreement in effect with the applicable Payment Brand. If Merchant submits Conveyed Transactions to Paymentech and Merchant does not have a valid agreement with the applicable Payment Brand, Paymentech may, but shall not be obligated to, submit such Transaction Data to the applicable Payment Brand and to share with them information about Merchant (from the Application or otherwise) as may be required to approve Merchant's acceptance of the Payment Brand's Payment Instrument. Payment of proceeds due Merchant for Conveyed Transactions shall be governed by the agreement Merchant has with the applicable Payment Brand, and Paymentech does not bear any responsibility for their performance thereunder, including, without limitation, the funding and settlement of Merchant's Conveyed Transactions.

4.4 Transfer of Transaction Settlement Funds. Subject to Section 4.3, for all Transactions, Paymentech will submit Merchant's Transaction Data to the applicable Payment Brand. Promptly after Paymentech receives funds for Settled Transactions from the Payment Brands, Paymentech will provisionally fund the Settlement Account. The proceeds payable to Merchant shall be equal to the amounts submitted by Merchant in connection with its Transaction Data minus the sum of the following: (a) all fees, charges, and other amounts described on Schedule A or that Merchant has otherwise agreed to pay; (b) all Refunds and Chargebacks; (c) all Reserve Account (as defined in Section 4.6) amounts; (d) all fees, charges, fines, assessments, penalties, or other liabilities that may be imposed on Paymentech or Member from time to time by the Payment Brands and all related costs and expenses incurred by Paymentech. Merchant agrees that all amounts are due and payable as provided in this Agreement. In the event Paymentech does not deduct such amounts from Merchant's proceeds when such amounts are due and payable, Merchant agrees to pay all such amounts to Paymentech immediately without any deduction or offset. Additionally, Paymentech may debit the Settlement Account or Merchant's Reserve Account for such amounts at any time.

4.5 Negative Amounts. Merchant shall maintain sufficient funds in the Settlement Account to prevent the occurrence of a negative balance. In the event that the proceeds from Merchant's Settled Transactions or the balance of Merchant's Settlement Account are not sufficient to pay amounts due under this

Agreement, in addition to any other rights and remedies Paymentech may have under this Agreement, Paymentech may pursue one or more of the following options:

- (a) demand and receive immediate payment for such amounts;
- (b) debit the Settlement Account for the amount of the negative balance;
- (c) apply funds held in the Reserve Account against the negative amount; and
- (d) withhold all or some of Merchant's Settlement funds and apply them against the negative amount.

Furthermore, if the amount represented by Merchant's Transaction Data in any day is negative due to Refunds or credits being submitted by Merchant in excess of its proceeds from Transactions, Merchant shall immediately provide Paymentech with sufficient funds to prevent the occurrence of a negative balance.

4.6 Reserve Account. At any time and from time to time Paymentech may temporarily suspend or delay payments to Merchant and/or designate an amount of funds that Paymentech must maintain in order to protect itself against anticipated risks, including, without limitation, risks associated with Chargebacks, fines, fees or penalties assessed against Paymentech or Member by any of the Payment Brands arising out of or relating to Merchant's Transactions, Chargebacks or failure to comply with the Payment Brand Rules or the Security Standards (all such risks herein referred to as "Anticipated Risks" and such funds being hereinafter referred to as the "Reserve Account"), which may be funded in the same manner as provided for negative balances in Section 4.5. The Reserve Account will contain sufficient funds to cover any unbilled processing costs plus Paymentech's estimated exposure based on reasonable criteria for Chargebacks, Refunds, unshipped goods and/or unfulfilled services, and all additional Anticipated Risks. Paymentech may (but is not required to) apply funds in the Reserve Account toward, and set off any funds that would otherwise be payable to Merchant against, the satisfaction of any amounts which are or may become due from Merchant pursuant to this Agreement. Funds in the Reserve Account will be held and controlled by Paymentech, will not bear interest, and may be commingled with other funds. Effective upon Paymentech's establishment of a Reserve Account, Merchant irrevocably grants to Paymentech a security interest in any interest Merchant may now have or later acquire in any and all funds, together with the proceeds thereof, that may at any time be in the Reserve Account and that would otherwise be payable to Merchant pursuant to the terms of this Agreement. Merchant agrees to execute and deliver to Paymentech such instruments and documents that Paymentech may reasonably request to perfect and confirm the security interest in the Reserve Account funds. Upon (i) satisfaction of all of Merchant's obligations under this Agreement; and (ii) Merchant's execution of documents reasonably requested by Paymentech in connection with the return of any Reserve Account funds, Paymentech will pay to Merchant any funds then remaining in the Reserve Account.

5. ACCOUNTING. Paymentech will supply a detailed statement reflecting the activity of Merchant's account(s) by online access (or otherwise if agreed to by both parties) and Merchant shall ensure that any online access to such statements is secure. If Merchant believes any adjustments should be made with respect to Merchant's Settlement Account, Merchant must notify Paymentech in writing within 90 days after any such adjustment is or should have been effected.

6. RETRIEVAL REQUESTS. In order to comply with Retrieval Requests, Merchant shall store and retain Transaction Data and Transaction Receipts in compliance with the Payment Brand Rules, including any time frames set forth therein. Within seven (7) days (or such shorter time as the Payment Brand Rules may require) of Paymentech sending Merchant a Retrieval Request, Merchant must provide to Paymentech, via certified or overnight mail or by confirmed fax, (a) written resolution of Merchant's investigation of such Retrieval Request; and (b) legible copies of any supporting documentation requested or required by the Retrieval Request. Merchant acknowledges that failure to fulfill a Retrieval Request timely and in accordance with Payment Brand Rules may result in an irreversible Chargeback.

7. CHARGEBACKS.

7.1 Chargeback Reasons. Merchant has full liability for all Chargebacks. Following are some of the most common reasons for Chargebacks:

- (a) Merchant fails to issue a Refund to a Customer upon the return or non-delivery of goods or services;
- (b) A required authorization/approval code was not obtained;
- (c) The Transaction Data was prepared incorrectly or fraudulently;
- (d) Paymentech did not receive Merchant's response to a Retrieval Request in accordance with Section 6;
- (e) The Customer disputes the Transaction or the authenticity of the signature on the Transaction Receipt, or claims that the Transaction is subject to a set-off, defense, or counterclaim;
- (f) The Customer refuses to make payment for a Transaction because, in the Customer's opinion, a claim or complaint has not been resolved or has been resolved in an unsatisfactory manner; or
- (g) The credit or debit card comprising the Payment Instrument was not actually presented at the time of the Transaction or Merchant failed to obtain an electronic record or physical imprint of such Payment Instrument, and the Customer denies making the purchase.

7.2 Response to Chargebacks. If Merchant has reason to dispute or respond to a Chargeback, then Merchant must do so by the date provided on the applicable Chargeback notice. Paymentech will not investigate or attempt to obtain a reversal or other adjustment to any Chargeback if Merchant has not timely responded to the notice.

7.3 Excessive Chargebacks. If Merchant is receiving an excessive amount of Chargebacks, as determined by the Payment Brands from time to time, in addition to Paymentech's other remedies under this Agreement, Paymentech may take one or more of the following actions: (a) review Merchant's internal procedures relating to acceptance of Payment Instruments and notify Merchant of new procedures Merchant should adopt in order to avoid future Chargebacks; (b) notify Merchant of a new rate Paymentech will charge to process Merchant's Chargebacks; or (c) establish a Reserve Account. Merchant also agrees to pay any and all penalties, fees, fines, and costs assessed against Merchant, Paymentech, and/or Member relating to Merchant's violation of this Agreement or the Payment Brand Rules with respect to Merchant's acceptance of Payment Instruments, its Transactions, or with respect to excessive Chargebacks under this Section.

7.4 Claims of Customers. Following a Chargeback, Merchant may resubmit applicable Transaction Data for a second presentment, but only in accordance with Payment Brand Rules. To the extent Paymentech has paid or may be called upon to pay a Chargeback or Refund for or on the account of a Customer and Merchant does not reimburse Paymentech as provided in this Agreement, then for the purpose of Paymentech obtaining reimbursement of such sums paid or anticipated to be paid, Paymentech has all of the rights and remedies of such Customer under applicable federal, state, or local laws and Merchant authorizes Paymentech to assert any and all such claims in its own name for and on behalf of any such Customer individually or all such Customers as a class.

8. DISPLAY OF PAYMENT BRAND MARKS. Merchant is prohibited from using the Payment Brand Marks, as defined below (sometimes referred to herein as "Marks"), other than as expressly authorized by Paymentech in writing or by the Payment Brands. Payment Brand Marks mean the brands, emblems, trademarks and/or logos that identify a Payment Brand. Additionally, Merchant shall not use the Payment Brand Marks other than to display decals, signage, advertising, and other forms depicting the Payment Brand Marks that are provided to Merchant (a) by the Payment Brands; (b) by Paymentech pursuant to this Agreement; or (c) as otherwise approved in writing by Paymentech. Merchant may use the Payment Brand Marks only to promote the services covered by the Marks by using them on decals, indoor and outdoor signs, advertising materials, and marketing materials; provided, that all such uses by Merchant must be approved by Paymentech and consistent with Payment Brand Rules. Merchant shall not use the Payment Brand Marks in any way that Customers could believe that the goods or services offered by Merchant are sponsored, endorsed, or guaranteed by the owners of the Payment Brand Marks.

Merchant recognizes that it has no ownership rights in the Payment Brand Marks. Merchant shall not assign the rights to use the Payment Brand Marks to any third party. Merchant's right to use the Payment Brand Marks hereunder terminates with the termination of this Agreement.

9. FEES; ADJUSTMENTS.

9.1 Schedule A. Merchant shall pay all applicable fees for all Transactions, which shall be calculated and payable pursuant to this Agreement. Merchant acknowledges that the fees stated in Schedule A are based upon the assumption that Merchant's Transactions will qualify for certain interchange rates as determined in each case by the applicable Payment Brand. If any of Merchant's Transactions fail to qualify for such interchange rates, Paymentech shall process each such Transaction at the applicable interchange rate determined by the applicable Payment Brand. Unless otherwise indicated on Schedule A, Merchant shall be solely responsible for all communication expenses required to facilitate the transmission of all Transaction Data to Paymentech. Fees payable under this Agreement that contain a fraction of a cent will be rounded up to the next full cent.

9.2 Price Adjustments. Fees set forth in this Agreement are based upon Merchant's annual volume, average Transaction size, and other information provided by Merchant or contained in this Agreement. Paymentech may modify the pricing provisions in this Agreement with 30 days' prior written notice to Merchant. Furthermore, the fees set forth on Schedule A and any additional pricing supplements may be adjusted to reflect increases by Payment Brands in interchange, assessments, or other Payment Brand fees, additional fees imposed by the Payment Brands, or increases in third party fees identified in this Agreement. Merchant shall pay all such fees, as so adjusted. Each such adjustment shall become effective upon the date the corresponding increase or additional fee is implemented by the Payment Brand or third party provider.

10. TERMINATION.

10.1 Term. This Agreement takes effect on the date it is accepted and agreed to by Paymentech (by signature or otherwise; the "Effective Date") and shall continue until terminated by either party as provided herein.

10.2 Merchant Termination. Subject to the terms of this Section 10.2, Merchant may terminate this Agreement at any time by providing thirty (30) days prior notice to Paymentech. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IF MERCHANT TERMINATES THE AGREEMENT WITHIN TWENTY FOUR (24) MONTHS OF THE EFFECTIVE DATE, MERCHANT MAY BE OBLIGATED TO REPAY, AS APPLICABLE, ANY PROMOTIONAL CONSIDERATION, WHICH SHALL BE DEFINED AS: (A) A PRORATED PORTION OF ANY SIGNING BONUS; (B) THE ESTIMATED RETAIL VALUE OF ANY FREE POINT OF SALE TERMINAL OR OTHER EQUIPMENT PROVIDED TO MERCHANT IN PROMOTION OF THIS AGREEMENT; AND (C) THE AMOUNT OR VALUE OF ANY OTHER PROMOTION EXTENDED TO MERCHANT IN CONSIDERATION OF THIS AGREEMENT. IN THE EVENT MERCHANT'S PAYMENT OF SUCH PROMOTIONAL CONSIDERATION IS LIMITED BY APPLICABLE LAW, THE AMOUNT PAYABLE TO PAYMENTECH PURSUANT TO THIS SECTION SHALL BE LIMITED TO THE MAXIMUM AMOUNT PERMITTED UNDER APPLICABLE LAW. ALL AMOUNTS OWED UNDER THIS SECTION 10.2 WILL BE FUNDED, TO THE EXTENT POSSIBLE, ACCORDING TO THE SAME METHODS FOR COLLECTING AMOUNTS DUE UNDER THIS AGREEMENT.

10.3 Paymentech Termination. Paymentech may terminate this Agreement at any time upon notice to Merchant as a result of any of the following events:

- (a) any transfer or assignment in violation of Section 15.4 of this Agreement;
- (b) irregular Transactions by Merchant, excessive Chargebacks, or any other circumstances which, in Paymentech's discretion, may increase Paymentech's or Member's exposure for Merchant's Chargebacks or otherwise present an Anticipated Risk to Paymentech;
- (c) any representation or warranty in this Agreement is breached in any material respect or was or is incorrect in any material respect when made or deemed to be made;
- (d) Merchant fails in any material respect to perform any of its obligations with respect to the funding or establishing of a Reserve Account, as detailed in Section 4.6;
- (e) material breach of Section 1.1;
- (f) Merchant fails in any material respect in performance or observance of any term, covenant, condition, or agreement contained in this Agreement, including, without limitation, compliance with Payment Brand Rules and Security Standards;
- (g) a case or other proceeding shall be commenced by or against Merchant in any court of competent jurisdiction seeking relief under the Bankruptcy Code or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up, or adjustment of debts, the appointment of a trustee, receiver, custodian, liquidator, or the like of Merchant, or of all or any substantial part of the assets, domestic or foreign, of Merchant, and such case or proceeding shall continue undismissed or unstayed for a period of 60 consecutive days, or an order granting the relief requested in such case or proceeding against Merchant (including, without limitation, an order for relief under the Bankruptcy Code) shall be entered;
- (h) Paymentech, in its sole reasonable discretion, deems Merchant to be financially insecure;
- (i) any Payment Brand (i) notifies Paymentech or Member that it is no longer willing to accept Merchant's Transaction Data; or (ii) requires Paymentech or Member to terminate or limit this Agreement;
- (j) Merchant or any person owning or controlling Merchant's business is listed in one or more databases of terminated or high risk merchants maintained by the Payment Brands;
- (k) Merchant engages in conduct that creates or could tend to create harm or loss to the goodwill of any Payment Brand, Paymentech, or Member;
- (l) for a period of more than 60 consecutive days, Merchant does not transmit Transaction Data to Paymentech; or
- (m) Merchant fails to comply with Section 15.15.

Furthermore, Paymentech may terminate this Agreement at anytime and for any reason upon thirty (30) days notice to Merchant. In addition to the remedies above and any rights Paymentech may have under this Agreement, Paymentech may suspend the processing of some or all of Merchant's Transactions upon: (a) receipt by Paymentech of notice that a Payment Brand intends to impose any fine or penalty as a result of excessive Chargebacks or Merchant's acts or omissions; or (b) receipt by Paymentech of objections or concerns expressed by a Payment Brand which render Paymentech's continued processing of Merchant's Transactions unduly burdensome, impractical, or risky. If this Agreement is terminated by Paymentech for Merchant's default hereunder, Merchant acknowledges that Paymentech may be required to report Merchant's business name and the names and other identification of its principals to the Payment Brands. Merchant expressly agrees and consents to such reporting in the event Merchant is terminated for any reason specified, and Merchant agrees to waive and hold Paymentech harmless from and against any and all claims which Merchant may have as a result of such reporting.

10.4 Active Account. Furthermore, Merchant hereby agrees that if Paymentech determines, in its sole discretion, that Merchant is not maintaining an Active account with Paymentech (as defined herein), Paymentech reserve the right to terminate this Agreement and, if such termination occurs within twenty four months of the Effective Date, collect from Merchant the PROMOTIONAL CONSIDERATION set forth in Section 10.2. For purposes of the foregoing sentence, a merchant account is considered "Active" if, among other things, Merchant goes no more than 90 consecutive days without remitting on-time payment of all minimum and monthly fees.

10.5 Account Activity After Termination; Termination Reserve. The provisions governing processing and settlement of Transactions, all related adjustments, fees and other amounts due from Merchant, and the resolution of any related Chargebacks, disputes, or other issues involving Transactions, will continue to apply even after termination of this Agreement, with respect to all Transactions made prior to such termination or after such termination, as described below. After termination of this Agreement for any reason whatsoever, Merchant shall continue to bear total responsibility for all Chargebacks, fees, fines, assessments, credits, and adjustments resulting from Transactions processed pursuant to this Agreement and all other amounts then due or which thereafter may become due to Paymentech under this Agreement or which may be due to Paymentech before or after such termination to either Paymentech or Member. If Merchant submits Transaction Data to Paymentech after the date of termination, Paymentech may, at its sole discretion and without waiving any of its rights or remedies under this Agreement, process such Transaction Data in accordance with and subject to all of the terms of this Agreement.

Upon notice of termination of this Agreement, Paymentech may estimate the aggregate dollar amount of anticipated Chargebacks, Refunds and Anticipated Risks that Paymentech reasonably anticipates subsequent to termination, and Merchant agrees to immediately deposit such amount in its Settlement Account, or Paymentech may withhold such amount from Merchant's settlement funds in order to establish a Reserve Account pursuant to and governed by the terms and conditions of this Agreement.

11. INDEMNIFICATION. Merchant agrees to indemnify Paymentech, Member, the Payment Brands, and their respective affiliates, officers, directors, employees, agents, and sponsoring banks from any losses, liabilities, and damages of any and every kind (including, without limitation, Paymentech's costs, expenses, and reasonable attorneys' fees) arising out of any claim, complaint, or Chargeback (a) made or claimed by a Customer with respect to any Transaction or Transaction Data submitted by Merchant; (b) caused by Merchant's noncompliance with this Agreement or the Payment Brand Rules (including without limitation any breach of a representation or warranty made by Merchant or Merchant's failure to comply with the Security Standards); (c) resulting from any voluntary or involuntary bankruptcy or insolvency proceeding by or against Merchant; or (d) related to Merchant's placement or the placement of any person owning or controlling Merchant's business in one or more databases of terminated or high risk merchants maintained by the Payment Brands. The indemnification provided for in this Section does not apply to any claim or complaint to the extent it is caused by Paymentech's own negligence or willful misconduct. The indemnification provided under this Section 11 shall survive the termination of this Agreement.

12. TRANSACTION DATA AND PAYMENT INSTRUMENT INFORMATION; PAYMENT CARD INDUSTRY COMPLIANCE.

12.1 Merchant financial information, Transaction Data, and other information that Merchant provides to Paymentech may be shared by Paymentech with its affiliates. Paymentech will not otherwise disclose or use such information for any purpose whatsoever other than (i) as necessary to process Merchant's Transactions or otherwise provide services and maintain Merchant's account pursuant to this Agreement; (ii) to detect, prevent, reduce, or otherwise address fraud, security, or technical issues; (iii) to enhance or improve Paymentech's products and services generally; or (iv) as otherwise required or permitted by the Payment Brands or applicable law. Paymentech may prepare, use, and/or share with third parties, aggregated, non-personally identifiable information derived from Transaction Data of all of Paymentech's customers or specific segments of Paymentech's customers.

12.2 Payment Card Industry Compliance. Merchant acknowledges and understands the importance of compliance with the Security Standards, such as those relating to the storage and disclosure of Transaction Data and Payment Instrument Information. Therefore, Merchant shall exercise reasonable care to prevent disclosure or use of Payment Instrument Information, other than (a) to Merchant's agents and contractors for the purpose of assisting Merchant in completing a Transaction; (b) to the applicable Payment Brand; or (c) as specifically required by law. Furthermore, Merchant acknowledges and understands that its use of any fraud mitigation or security enhancement solution (e.g. an encryption product or service), whether provided to Merchant by Paymentech or a third party, in no way limits Merchant's obligation to comply with the Security Standards or Merchant's liabilities set forth in this Agreement.

Merchant is allowed by the Payment Brand Rules to store only certain Payment Instrument Information (currently limited to the Customer's name, Payment Instrument account number, and expiration date) and is prohibited from storing additional Payment Instrument Information, including, without limitation, any security code data, such as CVV2, CVC2, and PIN data, and any magnetic stripe track data. Merchant shall store all media containing Payment Instrument Information in an unreadable format wherever it is stored and in an area limited to selected personnel on a "need to know" basis only. Prior to either party discarding any material containing Payment Instrument Information, the party will render the account numbers unreadable in accordance with the requirements of the Security Standards. If at any time Merchant determines or suspects that Payment Instrument Information has been compromised Merchant must notify Paymentech immediately and assist in providing notification to such parties as may be required by law or Payment Brand Rules, or as Paymentech otherwise reasonably deems necessary. Merchant information may be shared by Paymentech with its affiliates and with the Payment Brands subject to the provisions of this Agreement and Payment Brand Rules.

Merchant agrees to comply with all Security Standards, as defined in Section 17. Merchant further agrees to provide Paymentech, upon its request, with such tests, scans, and assessments of Merchant's compliance with Security Standards as may from time to time be required by the Payment Brands.

Merchant must notify Paymentech of its use of any Service Provider and, to the extent required by each Payment Brand all Service Providers must be (w) compliant with all Security Standards applicable to Service Providers; and (x) registered with and/or recognized by such Payment Brand(s) as being so compliant. Merchant agrees to exercise due diligence to ensure that all Service Providers, and any other agents, business partners, contractors, or subcontractors with access to Merchant's Payment Instrument Information, maintain compliance with the Security Standards. To the extent required by each Payment Brand, all Payment Applications, or software involved in processing, storing, receiving, or transmitting of Payment Instrument Information, shall be (y) compliant with all Security Standards applicable to such Payment Applications or software; and (z) registered with and/or recognized by such Payment Brand(s) as being so compliant.

Merchant understands that failure to comply with the Payment Brand Rules, including the Security Standards, or the compromise of any Payment Instrument Information, may result in assessments, fines, and/or penalties by the Payment Brands, and Merchant agrees to indemnify and reimburse Paymentech immediately for any such assessment, fine, or penalty imposed on Paymentech or the Member and any related loss, cost, or expense incurred by Paymentech or the Member. If any Payment Brand requires a forensic examination of Merchant or any of Merchant's Service Providers, agents, business partners, contractors, or subcontractors due to a Data Compromise Event or suspected event, Merchant agrees to cooperate with such forensic examination until it is completed, including, without limitation, the engagement of an examiner acceptable to the relevant Payment Brand. Notwithstanding the foregoing, the Payment Brands may directly, or demand that Paymentech, engage an examiner on behalf of the Merchant in order to expedite the investigation of the Data Compromise Event or suspected event. In either scenario, Merchant agrees to pay for all costs and expenses related to such forensic examination, including all of Paymentech's reasonable attorneys' fees and other costs relating to such forensic examination.

By executing this Agreement, Merchant represents that, in the event of its failure, including bankruptcy, insolvency, or other suspension of business operations, Merchant shall not sell, transfer, or disclose to third parties any materials that contain Transaction Data or Payment Instrument Information. Upon request, Merchant must return such information to Paymentech or provide Paymentech with acceptable proof of its destruction.

13. INFORMATION ABOUT MERCHANT AND MERCHANT'S BUSINESS.

13.1 Additional Financial Information. Upon five (5) days' written notice at any time, Merchant and each Guarantor (if any) agrees to furnish to Paymentech all reasonable financial statements and information as Paymentech may request relating to Merchant and each Guarantor, as well as their parents, subsidiaries and affiliated entities..

13.2 Audit Rights; Site Survey and Inspection. With prior notice and during Merchant's normal business hours, Paymentech's duly authorized representatives may visit Merchant's business premises and may examine Merchant's books and records that pertain to Merchant's Transactions or Merchant's compliance with this Agreement. Furthermore, Merchant may be contacted by Paymentech or a third party contracted by Paymentech who will need to gain access to Merchant's business operation to perform a site survey and inspection (the "Site Survey") in compliance with Payment Brand Rules. The Site Survey shall include, among other things, an interview with Merchant regarding the nature of Merchant's business, as well as photographs of Merchant's business operation. If Merchant is unavailable for the Site Survey as scheduled, Paymentech may suspend the settlement of Merchant's Transactions until a Site Survey can be completed and approved by Paymentech. In the event that Merchant fails to reasonably cooperate with the required Site Survey, or in the event the Site Survey is not approved by Paymentech, Paymentech may terminate this Agreement immediately upon notice to Merchant.

13.3 Other Information. Merchant agrees to provide Paymentech at least 30 days' prior written notice of its intent to change current product lines or services, Merchant's trade name, or the manner in which Merchant accepts Payment Instruments. If Paymentech determines such a change is material to its relationship with Merchant, Paymentech may refuse to process Transaction Data made subsequent to the change or terminate this Agreement. Merchant

agrees to provide Paymentech with prompt written notice if Merchant is the subject of any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Merchant's signature on this Agreement authorizes Paymentech to perform any credit check deemed necessary with respect to Merchant. Merchant will also provide Paymentech with prompt written notice of (i) any adverse change in Merchant's financial condition, (ii) any planned or anticipated liquidation or substantial change in the basic nature of Merchant's business, (iii) any transfer or sale of any substantial part (25% or more in value) of Merchant's total assets, or (iv) if Merchant or Merchant's parent is not a corporation whose shares are listed on a national securities exchange or on the over-the-counter market, any change in the control or ownership of Merchant or Merchant's parent. Merchant will also notify Paymentech of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of Merchant's total assets not later than three days after Merchant obtains knowledge of any such judgment, writ, warrant of attachment, execution or levy.

14. DISCLAIMER; LIMITATION OF DAMAGES. Subject to Section 5, Paymentech will, at its own expense, correct any Transaction Data to the extent that such errors have been caused by Paymentech or by malfunctions of Paymentech's processing systems. Under no circumstances will Paymentech's financial responsibility for its failure of performance under this Agreement exceed the total fees paid to Paymentech under this Agreement (net of Payment Brand fees, third party fees, interchange, assessments, penalties, and fines) for the six months prior to the time the liability arose. **EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT, AND EXCEPT WITH RESPECT TO MERCHANT'S FAILURE TO COMPLY WITH THE SECURITY STANDARDS, IN NO EVENT WILL ANY PARTY, ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AFFILIATES, BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR ANY LOSS, THEFT, DISAPPEARANCE, OR DAMAGE TO DATA TRANSMITTED ELECTRONICALLY IN CONNECTION WITH THIS AGREEMENT. ALL PARTIES ACKNOWLEDGE THAT THIS IS AN AGREEMENT FOR COMMERCIAL SERVICES. THE UNIFORM COMMERCIAL CODE DOES NOT APPLY AND PAYMENTECH AND MEMBER HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, MADE TO MERCHANT OR ANY OTHER PERSON, REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM, OR USAGE OF TRADE) OF ANY SERVICES PROVIDED UNDER THIS AGREEMENT OR ANY GOODS PROVIDED INCIDENTAL TO SUCH SERVICES.**

15. MISCELLANEOUS.

15.1 Taxes. Unless Merchant is otherwise exempt, and, if applicable, provides a valid exemption certificate, Merchant agrees to pay any taxes imposed on the services, equipment, supplies, and other property provided under this Agreement, and Merchant authorizes Paymentech to increase the amount collected from Merchant to reflect any and all assessments or increases in the sales, use, occupational, property, lease, or other taxes imposed on such sale or lease of services, tangible property, intellectual property, equipment, supplies, and other goods purchased.

15.2 Section Headings. The section headings of this Agreement are for convenience only and do not define, limit, or describe the scope or intent of this Agreement.

15.3 Assignment. Any transfer or assignment of this Agreement by Merchant, by operation of law, merger, or otherwise without Paymentech's prior written consent is null and void. In the event of such transfer or assignment, the party to whom the Agreement was transferred or assigned shall be bound to the terms and conditions of this Agreement to the same extent as if Paymentech, Member and such assignee or transferee, as the case may be, entered into an agreement identical to this Agreement on the effective date of such transfer or assignment. Furthermore, Merchant shall indemnify and hold Paymentech and Member harmless from all liabilities, Chargebacks, expenses, costs, fees, and fines arising in connection with the submission of Transaction Data to Paymentech by such transferee or assignee. For purposes of this Agreement any transfer of voting control of Merchant or its parent, or the sale of all or substantially all of Merchant's assets, shall be considered an assignment or transfer hereof. Upon notice to Merchant, another Payment Brand member may be substituted for Member under whose sponsorship this Agreement is performed and for whom Paymentech is acting as agent hereunder. Subject to Payment Brand Rules, Paymentech may assign or transfer this Agreement and its rights and obligations hereunder and may delegate its duties hereunder, in whole or in part, to any third party, whether in connection with a change in sponsorship, as set forth in the preceding sentence, or otherwise, without notice to or consent of Merchant. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party's assets or business, shall have any right to continue or to assume or to assign this Agreement.

15.4 Parties; Independent Contractor. This Agreement is binding upon and inures to the benefit of the parties and their respective heirs, administrators, representatives, and permitted successors and assigns. Merchant agrees that it is responsible for its employees' actions. In providing services to Merchant, Paymentech will not be acting in the capacity of agent, partner, or joint venturer; Paymentech is acting solely as an independent contractor.

15.5 Representations. Merchant represents and warrants that statements made on its Application are true as of the date of this Agreement. Merchant represents and warrants that its execution of and performance under this Agreement (a) in no way breaches, contravenes, violates, or in any manner conflicts with any of its other legal obligations, including, without limitation, its corporate charter or similar document or any agreement between Merchant and any third party or any affiliated entity; (b) has been duly authorized by all necessary action and does not require any consent or other action by or in respect of any third party; and (c) that the person signing this Agreement on behalf of Merchant is duly authorized to do so. Merchant shall perform its obligations under this Agreement in compliance with all applicable laws.

15.6 Publicity. Each party agrees that any other party may publicly disclose, through press releases or otherwise, the existence of the business relationship that is the subject of this Agreement. Any such disclosure may identify the parties by name but shall not, without the prior written consent of the non-disclosing party, include any of the terms of this Agreement.

15.7 Severability. Should any provision of this Agreement be determined to be invalid or unenforceable under any law, rule, or regulation, including any Payment Brand Rule, such determination will not affect the validity or enforceability of any other provision of this Agreement.

15.8 Waivers. No term or condition of this Agreement may be waived except pursuant to a written waiver executed by the party against whom such waiver is sought to be enforced.

15.9 Entire Agreement. The Payment Brand Rules, Application, taxpayer identification and certification documentation, and all schedules, supplements, and attachments to this Agreement are made a part of this Agreement for all purposes. This Agreement represents the entire understanding between Merchant and Paymentech with respect to the matters contained herein and supersedes any prior agreements between the parties. Merchant agrees that in entering into this Agreement it has not relied on any statement of Paymentech or its representatives. This Agreement shall prevail over any conflicting terms of any agreement governing the Settlement Account.

15.10 Notices. Except as otherwise provided in this Agreement, all notices must be given in writing and either hand delivered, faxed, mailed first class, postage prepaid, sent via electronic mail transmission, or sent via overnight courier (and will be deemed to be given when so delivered or mailed) to the addresses set forth below or to such other address as either party may from time to time specify to the other party in writing.

15.11 Governing Law; Waiver of Right to Contest Jurisdiction; Waiver of Jury Trial; Arbitration. This Agreement will be governed by and construed in accordance with the laws of the State of Texas without reference to conflict of law provisions. Any action, proceeding, arbitration hearing or mediation relating to or arising from this Agreement must be brought, held, or otherwise occur in Dallas County, Dallas, Texas. **PLEASE READ THIS PROVISION CAREFULLY. IT PROVIDES THAT ANY CLAIM MAY BE RESOLVED BY BINDING ARBITRATION. WITH BINDING ARBITRATION MERCHANT ACKNOWLEDGES AND AGREES THAT (i) MERCHANT IS GIVING UP ITS RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY CLAIM ALLEGED AGAINST PAYMENTECH, MEMBER, OR RELATED THIRD PARTIES; (ii) MERCHANT IS GIVING UP ITS RIGHT TO HAVE A COURT RESOLVE ANY CLAIM ALLEGED AGAINST PAYMENTECH, MEMBER OR RELATED THIRD PARTIES; (iii) MERCHANT IS GIVING UP ITS RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR**

IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT OR ARBITRATION FILED AGAINST PAYMENTECH, MEMBER AND/OR RELATED THIRD PARTIES. Any claim, dispute, or controversy ("Claim") by either Merchant, Paymentech or Member against the other, or against the officers, directors, employees, agents, parents, subsidiaries, affiliates, beneficiaries, agents, successors, or assigns of the other, arising from or relating in any way to this Agreement or to the relationship formed between the parties as a result of this Agreement, including Claims regarding the applicability of this arbitration clause or the validity of the entire Agreement, shall be resolved exclusively and finally by binding arbitration administered by the American Arbitration Association ("AAA"). All Claims are subject to arbitration, no matter what theory they are based on. This includes Claims based on contract, tort (including intentional tort), fraud, agency, Merchant, Paymentech's or Member's negligence, statutory or regulatory provisions, or any other source of law. Claims and remedies sought as part of a class action, private attorney general, or other representative action are subject to arbitration on an individual (non-class, non-representative) basis only, and the arbitrator may award relief only on an individual (non-class, non-representative) basis. Merchant and Paymentech will agree on another arbitration forum if the AAA ceases operations. The arbitration will be conducted before a single arbitrator and will be limited solely to the Claim between Merchant and Paymentech and/or Member. The arbitration, or any portion of it, will not be consolidated with any other arbitration and will not be conducted on a class-wide or class action basis. The prohibition against class action contained in this Section shall be non-severable from the remainder of this Section. If either party prevails in the arbitration of any Claim against the other, the non-prevailing party will reimburse the prevailing party for any fees it paid to the AAA in connection with the arbitration, as well as for any reasonable attorneys' fees incurred by the prevailing party in connection with such arbitration. Any decision rendered in such arbitration proceedings will be final and binding on the parties, and judgment may be entered in a court of competent jurisdiction. Rules and forms of the AAA may be obtained and Claims may be filed at any AAA office, www.adr.org, or 335 Madison Avenue, New York, NY 10017, telephone 1-800-778-7879. Any arbitration hearing at which Merchant appears will take place at a location within Dallas County, Dallas, Texas. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. This arbitration agreement applies to all Claims now in existence or that may arise in the future. Nothing in this Agreement shall be construed to prevent any party's use of (or advancement of any Claims, defenses, or offsets in) bankruptcy or repossession, replevin, judicial foreclosure or any other prejudgment or provisional remedy relating to any collateral, security, or other property interests for contractual debts now or hereafter owned by either party to the other. **IN THE ABSENCE OF THIS ARBITRATION AGREEMENT, MERCHANT AND PAYMENTECH MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR A JURY AND/OR TO PARTICIPATE OR BE REPRESENTED IN LITIGATION FILED IN COURT BY OTHERS (INCLUDING CLASS ACTIONS), BUT EXCEPT AS OTHERWISE PROVIDED ABOVE, THOSE RIGHTS, INCLUDING ANY RIGHT TO A JURY TRIAL, ARE WAIVED AND ALL CLAIMS MUST NOW BE RESOLVED THROUGH ARBITRATION.**

15.12 Force Majeure. Neither party will be liable for delays in processing or other nonperformance caused by such events as fires, telecommunications failures, utility failures, power failures, equipment failures, labor strife, riots, war, terrorist attack, nonperformance of Paymentech's vendors or suppliers, acts of God, or other causes over which the respective party has no reasonable control, except that nothing in this Section 15.12 will affect or excuse Merchant's liabilities and obligations for Chargebacks, refunds, or unfulfilled goods and services.

15.13 Amendment. Except as otherwise set forth in this Agreement, the Agreement may be amended at any time by Paymentech upon thirty (30) days' notice to Merchant. Notwithstanding the foregoing, in the event the terms of this Agreement must be amended pursuant to a change required by the Payment Brand Rules or any third party with jurisdiction over the matters described herein, such amendment will be effective immediately. Merchant's electronic signature or continued submission of Transactions to Paymentech following such notice will be deemed to be Merchant's acceptance of such amendment.

15.14 Counterparts and Electronic Signature. This Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. A signature received via facsimile or electronically via email shall be as legally binding for all purposes as an original signature.

15.15 Merchant Taxpayer Certification and Paymentech Reporting Obligations. Pursuant to 26 USC 6050W, Paymentech is a "payment settlement entity", obligated to collect and report certain taxpayer information to the United States Internal Revenue Service. Therefore, in conjunction with the execution of this Agreement, Merchant shall provide Paymentech with the appropriate taxpayer certification documentation, via Internal Revenue Service (IRS) Form W-9 (or the appropriate versions of Form W-8, if applicable). Merchant shall promptly notify Paymentech if there are any changes in this information. Paymentech may deduct withholding taxes, if any, from proceeds payable to Merchant or any entity that is a party to this agreement where required under Applicable Law. Paymentech may, in accordance with Applicable Law and from time to time during the term of this Agreement, request Merchant to recertify its taxpayer certification hereunder. Furthermore, Merchant shall be responsible for any penalties related to the reporting obligations of Paymentech hereunder to the extent such penalties accrue based on the actions or inactions of Merchant despite reasonable notice from Paymentech.

16. SURVIVAL. The provisions of Sections 4.2, 4.4, 4.5, 4.6, 5, 6, 7, 9, 10.2, 10.3, 10.4, 10.5, 11, 12, 14, 15, 16 and 17 shall survive the termination of this Agreement.

17. DEFINITIONS.

"Application" means a statement of Merchant's financial condition, a description of the characteristics of Merchant's business or organization, and related information Merchant has previously or concurrently submitted to Paymentech, including credit, financial and other business related information, to induce Paymentech to enter into this Agreement with Merchant and that has induced Paymentech to process Merchant's Transactions under the terms and conditions of this Agreement.

"Chargeback" means a reversal of a Transaction Merchant previously presented to Paymentech pursuant to Payment Brand Rules.

"Conveyed Transaction" means any Transaction conveyed to a Payment Brand for settlement by such Payment Brand directly to Merchant.

"Customer" means the person or entity to whom a Payment Instrument is issued or who is otherwise authorized to use a Payment Instrument.

"Data Compromise Event" means an occurrence that results, or could result, directly or indirectly, in the unauthorized access to or disclosure of Transaction Data and/or Payment Instrument Information.

"Effective Date" means the date the Agreement takes effect pursuant to Section 10.1.

"Merchant" means the legal entity identified in the Application and on the first and signature pages of this Agreement.

"Member" means JPMorgan Chase Bank, N.A. or other entity providing sponsorship to Paymentech as required by all applicable Payment Brands. Member is a principal party to this Agreement and Merchant's acceptance of Payment Brand products is extended by the Member.

"Payment Application" means a third party application used by merchant that is involved in the authorization or settlement of Transaction Data.

"Payment Brand" means any payment method provider whose payment method is accepted by Paymentech for processing, including, without limitation, Visa Inc., MasterCard International, Inc., Discover Financial Services, LLC, and other credit and debit card providers, debit network providers, gift card, and other stored value and loyalty program providers. Payment Brand also includes the Payment Card Industry Security Standards Council.

"Payment Brand Rules" means all bylaws, rules, programs, and regulations, as they exist from time to time, of the Payment Brands.

"Payment Instrument" or **"Payment Card"** means an account, or evidence of an account, authorized and established between a Customer and a Payment Brand, or representatives or members of a Payment Brand that Merchant accepts from Customers as payment for a good or service. Payment Instruments include, but are not limited to, credit and debit cards, stored value cards, loyalty cards, electronic gift cards, authorized account or access numbers, paper certificates, and credit accounts.

"Payment Instrument Information" means information related to a Customer or the Customer's Payment Instrument, that is obtained by Merchant from the Customer's Payment Instrument, or from the Customer in connection with his or her use of a Payment Instrument (e.g., a security code, a PIN number, credit limits, account balances, or the customer's zip code when provided as part of an address verification system). Without limiting the foregoing, such information may include a the Payment Instrument account number and expiration date, the Customer's name or date of birth, PIN data, security code data (such as CVV2 and CVC2), and any data read, scanned, imprinted, or otherwise obtained from the Payment Instrument, whether printed thereon, or

magnetically, electronically, or otherwise stored thereon. For the avoidance of doubt, the data elements that constitute Payment Instrument Information shall be treated according to their corresponding meanings as “cardholder data” and “sensitive authentication data” as such terms are used in the then current PCI DSS.

“**Paymenttech**” means Paymenttech, LLC, a Delaware limited liability company, having its principal office at 14221 Dallas Parkway, Dallas, Texas 75254.

“**Refund**” means any refund or credit issued for any reason, including, without limitation, for a return of merchandise or cancellation of services, and any adjustment of a Transaction.

“**Refund Policy**” means a written policy with regard to Refunds.

“**Retrieval Request**” means a request for information by a Customer or Payment Brand relating to a claim or complaint concerning a Transaction.

“**Security Standards**” means all rules, regulations, standards, or guidelines adopted or required by the Payment Brands or the Payment Card Industry Security Standards Council relating to privacy, data security, and the safeguarding, disclosure, and handling of Payment Instrument Information, including, without limitation, the Payment Card Industry Data Security Standards (“PCI DSS”), Visa’s Cardholder Information Security Program (“CISP”), Discover’s Information Security & Compliance Program, American Express’s Data Security Operating Policy, MasterCard’s Site Data Protection Program (“SDP”), Visa’s Payment Application Best Practices (“PABP”), the Payment Card Industry’s Payment Application Data Security Standard (“PA DSS”), MasterCard’s POS Terminal Security program, and the Payment Card Industry PIN Transmission Security program (PCI PTS), in each case as they may be amended from time to time.

“**Service Provider**” means any party that processes, stores, receives, transmits, or has access to Payment Instrument Information on Merchant’s behalf, including, without limitation, its agents, business partners, contractors, and subcontractors.

“**Settled Transaction**” means a Transaction conducted between a Customer and Merchant utilizing a Payment Instrument in which consideration is exchanged between the Customer and Merchant for the purchase of a good or service or the Refund of such purchase and the value for such Transaction is settled by the Payment Brand through Paymenttech to the Merchant.

“**Stored Value Card Transaction**” means a Transaction in which a Customer adds or redeems value to or from a stored value card, gift card, or loyalty Payment Instrument issued by or on behalf of Merchant.

“**Transaction**” means a transaction conducted between a Customer and Merchant utilizing a Payment Instrument in which consideration is exchanged between the Customer and Merchant.

“**Transaction Data**” means the written or electronic record of a Transaction, including, without limitation, an authorization code or settlement record, which is submitted to Paymenttech

“**Transaction Receipt**” means an electronic or paper record of a Transaction generated upon completion of a sale or Refund, a copy of which is presented to the Customer.