Merchant Application and Agreement

If you make any corrections, you MUST initial each change.

THIS SECTION IS FOR INTERNAL USE ONLY	*Rev. NAPSTAND 01/2012*
Application ID:	Sales Rep:
Rep Fax:	Rep Phone:

1. Merchant Business (Federal regulations require us to collect and retain information verifying a merchant's identity.)

"Doing Business As" (DBA) Information

Merchant DBA Name			Date Business Started (MM/YYYY)
DBA Street Address (No PO Box or Paid Mail Box)			Telephone #
City	State	Zip Code	Fax #
Name of Primary Contact		Merchant DBA Email Address	

Legal Information (If you are an Individual/Sole Proprietor, fill in this section with your personal information)

Merchant Legal Name		State of Formation	Federal Tax ID/EIN (sole prop use SSN)

Complete this section if different from DBA Information.

Legal Street Address			Telephone #
City	State	Zip Code	Fax #
Legal Email Address			

Business and IRS Information (Please check the type of business and how it is taxed)

☐ LLC ➡	**taxed as** ☐ S Corporation ☐ C Corporation ☐ Partnership ☐ Disregarded Entity[1]
☐ Individual/Sole Proprietor	[1] A *Disregarded Entity* is a business that is separate from its owner for legal purposes but the owner chooses to "disregard" that separation for federal income tax purposes. If an individual owns a Disregarded Entity, it is treated as a sole proprietor. If another legal entity owns it, it is treated as a branch or division of the owner.
☐ Partnership	
☐ Private Corporation **or** ☐ Public Corporation ➡	**taxed as** ☐ S Corporation ☐ C Corporation
☐ Government Agency **or** ☐ Non-Profit[2] ➡	**check if** ☐ Exempt from IRS backup withholding

[2] Non-profit companies need to submit form 501C and, if exempt from sales tax, should also submit their state tax exempt certificate.

2. Merchant Profile

Is your business home-based? ☐ Yes ☒ No	Has business ever been in bankruptcy? ☐ Yes ☐ No
If "Yes" above, where is the inventory located?	What is your type of business?
	☐ Retail ☐ Restaurant ☐ Lodging
What merchandise do you sell or services do you provide?	☐ Auto Rental ☐ Cash Advance ☐ Convenience Store/Gas
	☐ Other:
	☐ Internet (You are **required** to list **all** website addresses):
Is your business seasonal? ☐ Yes ☒ No	www.

3. Delivery of Statements, Chargeback Requests, and Retrieval Requests

Statements (Select **one** delivery method and **one** address only) — Chargeback and Retrieval Requests (Select **one** address only)

Email statements to	**Mail** statements to (see pricing)	Mail requests to	To have **retrievals** faxed instead of mailed, provide fax number below:
☐ Legal email address	☒ Legal address	☒ Legal address	
☐ DBA email address	☐ DBA address	☐ DBA address	

4. Sales Information

What is the estimated annual breakdown (in %) of your annual Payment Card Transactions?	
_____ %	Via mail or phone order
_____ %	Ecommerce – accepted on your website
_____ %	Card is swiped
_____ %	Card is present but keyed
100 %	**Total**

Do you ever charge a Customer on a recurring basis?   ☐ Yes   ■ No

If "Yes" above, how often will you charge?
☐ 30 Days   ☐ 60 Days   ☐ 90 Days   ☐ Annually
☐ Other:

If Customers are required to pay a deposit, what % of total sale?   _____ %

5. Ownership Information

If one or more individuals own your business,
➡ Complete section A or A and B for one or two who have greatest % of ownership.

If your business is a non-profit organization, publicly owned corporation, or governmental entity,
➡ Complete section C only.

If a parent company owns your business,
Enter the name of the legal entity(ies) in section A or A and B
➡ Provide name of Authorized Representative in Section C.
➡ Substitute the parent company Federal Tax ID into the SSN section.

If Authorized Representative signing this Application is not an owner
➡ Complete section C only.

A Name of Individual/Sole Proprietor or Parent Company	Percentage of Ownership: _____ %	Social Security #
Street Address (Individual/Sole Proprietor use home address) (No PO Box or paid mailbox)		Date of Birth
City	State / Zip Code	Telephone #

B Name of Individual/Sole Proprietor or Parent Company	Percentage of Ownership: _____ %	Social Security #
Street Address (Individual/Sole Proprietor use home address) (No PO Box or paid mailbox)		Date of Birth
City	State / Zip Code	Telephone #

| **C** Name of Authorized Representative	Title

6. Funding and Account Information

The Merchant must own the bank account you provide below. Chase Paymentech may:
- deposit into this account amounts owed to Merchant by Chase Paymentech, such as proceeds from Merchant's Payment Card Transactions
- debit this account for amounts Merchant owes to Chase Paymentech associated with its Merchant account, such as fees for processing Merchant's Payment Card Transactions
- debit this account for any negative amounts presented, such as refunds, returns or Chargebacks

Name of Bank	Designating this bank account for the purposes outlined above must not violate any of Merchant's organizational documents or any agreement to which the Merchant is a party.
Routing Number (always consists of 9 digits)	Account Number (number of digits will vary)

The image below shows where to find your Routing Number and Account Number. Do not use the internal routing number that begins with a 5.

Routing Number
(the 9 digits between the ⑊ symbols)

Account Number
(the digits left of the ⑊ symbol)

Check Number
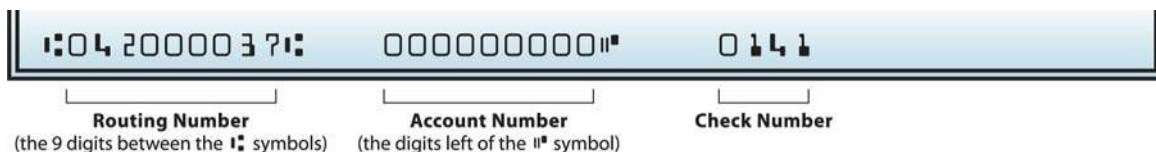
7. Payment and Processing Information

If you have previously accepted payment cards, please include your three (3) most recent monthly processing statements.

Please check all payment methods you wish to accept:	
☒ Visa ☒ MasterCard ☒ Discover/JCB ☐ PIN Debit	
☐ Voyager ☐ Wright Express ☐ Gift Card	

Current Payment Processor

Estimated Total Annual Visa/MC/Discover Sales Volume	$
Estimated Total Annual PIN Debit Sales Volume	$
Estimated Average Ticket Amount	$
Estimated Highest Transaction Amount	$
Has Merchant ever had a breach involving lost card data or received a notification for any violation of the Payment Brand Rules? ☐ Yes ☒ No	

8. American Express®

A. American Express Service Establishment Number (SE#)

If you have an American Express SE#, please provide it here:

Only Complete Section B if you do not have an American Express SE# and would like Chase Paymentech to request one for you.

B. Application for American Express Service Establishment Number (SE#)

Estimated Total Annual American Express Sales Volume	$	Estimated Average American Express Transaction Amount	$

American Express Fees – Unless otherwise indicated in this Section 8B, Merchant shall be charged industry-specific American Express Discount Rate listed to the right.	American Express Discount Rate %

If Merchant operates within one of the following categories, or fails to activate their American Express account, Merchant will not be charged the American Express Discount Rate. Instead, Merchant will be charged a flat monthly fee of **$7.95**.
• Internet / Physical Delivery Merchant
• Mail Order / Telephone Order
• Home-based Business

If Merchant is charged a flat monthly fee of $7.95, that fee will continue until Merchant's American Express volume exceeds $4,999 in a 12-month period.

At such time American Express will begin charging Merchant the applicable industry-specific American Express Discount Rate.

Also, based on Merchant's MCC and American Express's grouping of MCCs, the following additional fees will be applied to each American Express Transaction:
• Business to Business MCCs: **$0.15**
• Retail MCCs: **$0.10**
• Services, Wholesale, All Other MCCs not otherwise categorized: **$0.15**
• Restaurant: **$0.05** (**+ 0.30%** for hand-keyed or card not present transactions)

All American Express fees are subject to change by American Express.

FOR PAYMENTECH TO REQUEST AN AMERICAN EXPRESS NUMBER ON BEHALF OF THE MERCHANT THROUGH THE AMEX ESA PROGRAM:
By signing below, I represent that I have read and am authorized to sign and submit this application for the above entity which agrees to be bound by the American Express® Card Acceptance Agreement ("Agreement"), and that all information provided herein is true, complete and accurate. I authorize Paymentech and American Express Travel Related Services Company, Inc. ("American Express") and American Express's agents and Affiliates to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies, and disclose such information to their agents, subcontractors, Affiliates, and other parties for any purpose permitted by law. I authorize and direct Paymentech and American Express and American Express's agents and Affiliates to inform me directly, or through the entity above, of reports about me that they have requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I also authorize American Express to use the reports from consumer reporting agencies for marketing and administrative purposes. I understand that upon American Express's approval of the application, the entity will be provided with the Agreement and materials welcoming it to American Express's Card acceptance program. In addition, by signing this form, you authorize American Express and its agents and Affiliates to send you account information and exclusive offers and savings for your business via the information that you have provided, which includes your business email address. For information on how we use your information and protect your privacy, please visit us at www.americanexpress.com/privacy.

X _____   _____
      Signature   Date

9. Site Visit

If your business is selected for a site visit, Chase Paymentech, or a third party representing Chase Paymentech, will contact you at the number provided. You **MUST** assist with the site visit and Chase Paymentech **MUST** approve the results of the site visit.

The site visit includes, but is not limited to,
• an interview with you regarding the nature of your business, **and**
• photographs of your business operation.

If the site visit is not completed or the results of the site visit are not approved, Chase Paymentech may,
• decline your application for a merchant account
• withhold your funds, **or**
• terminate your Agreement with Chase Paymentech **and** close your Merchant account.

To help expedite the process, we **require** the following information:

Best phone # to contact you:	Preferred language:
	☐ English ☐ Spanish
Best time to reach you:	☐ Other:

10. IRS Certification

Under penalty of perjury, I certify that:

1. The number shown on this form (Section 1) is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest in dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person.

Certification Instructions

You must cross out and initial #2 above if you have been notified by the IRS that you are currently subject to backup withholding.

IRS Form W-9 instructions available upon request.

11. Authorized Representative(s)

The first four pages of this document are the Merchant's Application to establish a Merchant account with Paymentech, LLC ("Chase Paymentech") and JPMorgan Chase Bank, N.A. ("Member"). Once submitted, the Application belongs to Chase Paymentech and Member. Any set up fee paid by Merchant is non-refundable. The Application is subject to approval by Chase Paymentech and Member. If the Application is approved, Chase Paymentech will establish one or more Merchant account(s). All Merchant accounts will be governed by the entire Agreement, which includes: the Application, the Terms and Conditions, Schedule A (pricing), and any amendments, supplements or modifications provided to you.

As a person who submits the Application on behalf of Merchant and who signs this document on behalf of Merchant, I, the undersigned, certify that
- I am an owner, partner, officer or other authorized representative of the Merchant ("Authorized Representative")
- I have been duly authorized to
  - submit the Application, and all information contained therein, on behalf of the Merchant
  - sign the Application and Agreement on behalf of Merchant
  - legally bind the Merchant to the Agreement.

Through its Authorized Representative(s), Merchant
- represents and warrants that all information contained within the Application as well as any information submitted in conjunction with the Application is true, complete, and not misleading
- represents and warrants that it owns the bank account provided in Section 6
- represents and warrants that it has received a complete copy of the Agreement, including the Terms and Conditions for Merchant Agreement and Schedule A
- agrees to be legally bound by the Agreement
- understands that any unilateral changes to the pre-printed text of any part of the Agreement may result in Chase Paymentech declining Merchant's Application or terminating the Agreement
- agrees that Chase Paymentech, Member, or their designees, may
  - investigate and verify the credit and financial information of Merchant
  - obtain consumer and commercial credit reports on Merchant and its owner(s) from time to time
  - use consumer and commercial credit reports on Merchant and its owner(s) in connection with the establishment and maintenance of Merchant's account and Agreement
- agrees that Member and Chase Paymentech may share credit, financial information about Merchant and Chase Paymentech.

The Internal Revenue Service does not require your consent to any provision of this document other than the certification required to avoid backup withholding. (See Section 10 above).

Authorized Representative: Signer's name must appear in Section 5A, 5B, or 5C

X _____ _____ _____
    Signature   Print Name   Date

Authorized Representative: Signer's name must appear in Section 5A, 5B, or 5C

X _____ _____ _____
    Signature   Print Name   Date

12. Individual Guarantor(s)

The person(s) acting as individual guarantor(s) must have an ownership interest in Merchant and must be listed in Section 5 of this Application. As an individual(s) who agrees to be personally responsible for Merchant's account with Chase Paymentech (a "Guarantor"), I
- certify I have received and reviewed a complete copy of the Agreement, including the Application, Terms and Conditions, and Schedule A
- certify I have read the Agreement, including, without limitation, the "Personal Guaranty" section at the end of the Terms and Conditions
- agree to be bound as a Guarantor of the Merchant's obligations under the Agreement in accordance with the "Personal Guaranty" section of the Terms and Conditions
- certify that I have an ownership interest in Merchant

- agree that Chase Paymentech, Member, or their designees, may investigate and verify the credit and financial information about me and may obtain consumer credit reports on me from time to time
- agree that Chase Paymentech, Member, or their designees, may use such consumer credit reports in connection with establishing and maintaining the Merchant's account and Agreement
- agree that all business references, including financial institutions, may share my credit and financial information with Chase Paymentech

Guarantor:

X _____ _____ _____
    Signature   Print Name   Date

Guarantor:

X _____ _____ _____
    Signature   Print Name   Date

If any of the information provided in this Merchant Application and Agreement changes, you must notify Chase Paymentech of such change(s) as soon as possible.

Internal Use Only: Approved by Paymentech, LLC for itself and on behalf of JPMorgan Chase Bank, N.A.

_____ _____ _____
    Signature   Title   Date

TERMS AND CONDITIONS

1. **MERCHANT'S ACCEPTANCE OF PAYMENT INSTRUMENTS**.

1.1 Exclusivity. During the term of this Agreement, Chase 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 Chase Paymentech Transaction Data generated from all of its Transactions via electronic data transmission according to Chase 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 Chase Paymentech on its Application, or otherwise obtained Chase 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 Chase Paymentech 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) Chase Paymentech, at its option, may process any Transactions submitted to Chase 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 Chase 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 Chase 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 Chase Paymentech in advance, with respect to any prepayment for services or full prepayment for custom-ordered merchandise manufactured to the Customer'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 Chase Paymentech in writing as provided in Section 3, and which is available to the Customer.

(j) Any Transaction submitted to Chase Paymentech to credit a Customer's account represents a Refund for a Transaction previously submitted to

Chase 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 Chase 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 Chase 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 Chase 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 Chase 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 Chase 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 Chase 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 Chase 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 Chase 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 Chase 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. Chase 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 Chase Paymentech and Customers. Any material change in Merchant's Refund Policy must be submitted to Chase Paymentech, in writing, not less than 14 days prior to the effective date of such change. Chase Paymentech reserves the right to refuse to process any Transactions made subject to a revised Refund Policy of which Chase 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 Chase 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 Chase 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 Chase Paymentech on its Application or Chase 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. Chase Paymentech may from time to time contact Customers to verify that they have received goods or services for which Transactions have been submitted. Chase Paymentech reserves the right to refuse to process any Transaction Data presented by Merchant if Chase 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, Chase Paymentech will submit Merchant's Transaction Data to the applicable Payment Brands.

4.2 Merchant's Settlement Account. In order to receive funds from Chase Paymentech, and to the extent not already designated within the Application, 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 Chase 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 Chase 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 Chase 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 Chase Paymentech notifies Merchant that all amounts due from Merchant under this Agreement have been paid in full. Chase 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 Chase Paymentech and Merchant does not have a valid agreement with the applicable Payment Brand, Chase 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 Chase 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, Chase Paymentech will submit Merchant's Transaction Data to the applicable Payment Brand. Promptly after Chase Paymentech receives funds for Settled Transactions from the Payment Brands, Chase 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 Chase Paymentech or Member from time to time by the Payment Brands and all related costs and expenses incurred by Chase Paymentech. Merchant agrees that all amounts are due and payable as provided in this Agreement. In the event Chase 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 Chase Paymentech immediately without any deduction or offset. Additionally, Chase 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 Chase Paymentech may have under this Agreement, Chase 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 Chase Paymentech with sufficient funds to prevent the occurrence of a negative balance.

4.6 Reserve Account. At any time and from time to time Chase Paymentech may temporarily suspend or delay payments to Merchant and/or designate an amount of funds that Chase Paymentech must maintain in order to protect itself against anticipated risks, including, without limitation, risks associated with Chargebacks, fines, fees or penalties assessed against Chase 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 4.5The Reserve Account will contain sufficient funds to cover any unbilled processing costs plus Chase Paymentech's estimated exposure based on reasonable criteria for Chargebacks, Refunds, unshipped goods and/or unfulfilled services, and all additional Anticipated Risks. Chase 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 Chase Paymentech, will not bear interest, and may be commingled with other funds. Effective upon Chase Paymentech's establishment of a Reserve Account, Merchant irrevocably grants to Chase 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 Chase Paymentech such instruments and documents that Chase 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 Chase Paymentech in connection with the return of any Reserve Account funds, Chase Paymentech will pay to Merchant any funds then remaining in the Reserve Account.

5. ACCOUNTING. Chase 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 Chase 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 Chase Paymentech sending Merchant a Retrieval Request, Merchant must provide to Chase 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) Chase 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. Chase 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 Chase Paymentech's other remedies under this Agreement, Chase 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 Chase 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, Chase 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 Chase 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 Chase Paymentech as provided in this Agreement, then for the purpose of Chase Paymentech obtaining reimbursement of such sums paid or anticipated to be paid, Chase Paymentech has all of the rights and remedies of such Customer under applicable federal, state, or local laws and Merchant authorizes Chase 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 Chase 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 Chase Paymentech pursuant to this Agreement; or (c) as otherwise approved in writing by Chase 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 Chase 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, Chase 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 Chase 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. Chase 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 Chase 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 Chase 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 CHASE 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 Chase Paymentech Termination. Chase 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 15.3 of this Agreement;

   (b) irregular Transactions by Merchant, excessive Chargebacks, or any other circumstances which, in Chase Paymentech's discretion, may increase Chase Paymentech's or Member's exposure for Merchant's Chargebacks or otherwise present an Anticipated Risk to Chase 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) Chase Paymentech, in its sole reasonable discretion, deems Merchant to be financially insecure;

   (i) any Payment Brand (i) notifies Chase Paymentech or Member that it is no longer willing to accept Merchant's Transaction Data; or (ii) requires Chase 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, Chase Paymentech, or Member;

   (l) for a period of more than 60 consecutive days, Merchant does not transmit Transaction Data to Chase Paymentech; or

   (m) Merchant fails to comply with Section 15.15.

Furthermore, Chase 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 Chase Paymentech may have under this Agreement, Chase Paymentech may suspend the processing of some or all of Merchant's Transactions upon: (a) receipt by Chase 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 Chase Paymentech of objections or concerns expressed by a Payment Brand which render Chase Paymentech's continued processing of Merchant's Transactions unduly burdensome, impractical, or risky. If this Agreement is terminated by Chase Paymentech for Merchant's default hereunder, Merchant acknowledges that Chase 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 Chase 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 Chase Paymentech determines, in its sole discretion, that Merchant is not maintaining an Active account with Chase Paymentech (as defined herein), Chase 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 continues to make on-time payments of all amounts owed under the Agreement. If Merchant goes more than 90 consecutive days without making an on-time payment of all amounts owed under the Agreement, Chase Paymentech reserves the right to deem Merchant's account as not Active.

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 Chase Paymentech under this Agreement or which may be due to Chase Paymentech before or after such termination to either Chase Paymentech or Member. If Merchant submits Transaction Data to Chase Paymentech after the date of termination, Chase 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, Chase Paymentech may estimate the aggregate dollar amount of anticipated Chargebacks, Refunds and Anticipated Risks that Chase Paymentech reasonably anticipates subsequent to termination, and Merchant agrees to immediately deposit such amount in its Settlement Account, or Chase 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 Chase 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, Chase Paymentech's costs, expenses, and reasonable attorneys' fees) arising out of (a) Chase Paymentech's reliance on the information provided by Merchant, or Merchant's Authorized Representative, on the Application or in conjunction with the Application (including any information with respect to Merchant's financial condition); and (b) any claim, complaint, or Chargeback (i) made or claimed by a Customer with respect to any Transaction or Transaction Data submitted by Merchant; (ii) 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); (iii) resulting from any voluntary or involuntary bankruptcy or insolvency proceeding by or against Merchant; or (iv) 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 Chase 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, information related to Merchant's Transactions, and other information that Merchant provides to Chase Paymentech may be shared by Chase Paymentech with its affiliates. Chase Paymentech will not otherwise disclose or use such information 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 Chase Paymentech's products and services generally; or (iv) as required or permitted by the Payment Brands or applicable law. Chase Paymentech may prepare, use, and/or share with third parties, aggregated, non-personally identifiable information derived from Transaction Data of all of Chase Paymentech's customers or specific segments of Chase 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 Chase 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 Chase Paymentech immediately and assist in providing notification to such parties as may be required by law or Payment Brand Rules, or as Chase Paymentech otherwise reasonably deems necessary.

Merchant agrees to comply with all Security Standards, as defined in Section 17. Merchant further agrees to provide Chase 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 immediately notify Paymentech of its use of any Service Provider. Merchant shall ensure that, to the extent required by each Payment Brand, its Service Providers are (w) compliant with all applicable Security Standards; and (x) appropriately registered with, or otherwise recognized as being compliant with the Security Standards, by all applicable Payment Brands. 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 its failure, or the failure of any of its Service Providers, to comply with the Payment Brand Rules, including the Security Standards, or the compromise of any of Payment Instrument Information (whether such Payment Instrument Information is under the control of Merchant or its Service Provider), may result in assessments, fines, and/or penalties by the Payment Brands, and Merchant agrees to indemnify and reimburse Chase Paymentech immediately for any such assessment, fine, or penalty imposed on Chase Paymentech or the Member and any related loss, cost, or expense incurred by Chase Paymentech or the Member. If Chase Paymentech, in its sole discretion based on information provided by the Payment Brands or Payment Instrument issuers, or any Payment Brand requires a forensic examination of Merchant or any of Merchant's Service Providers due to a Data Compromise Event or suspected event, Merchant agrees to cooperate with, and cause all applicable Service Providers to cooperate with, such forensic examination within the time frame dictated by Chase Paymentech or the Payment Brand and until it is completed, including, without limitation, the engagement of an examiner acceptable to Chase Paymentech and/or the relevant Payment Brand. Notwithstanding the foregoing, the Payment Brands may directly, or demand that Chase Paymentech, engage an examiner on behalf of the Merchant or Merchant's Service Provider in order to expedite the investigation of the Data Compromise Event or suspected event. In either scenario, Merchant agrees to (aa) pay for all costs and expenses related to such forensic examination (including all of Chase Paymentech's reasonable attorneys' fees and other costs relating to such forensic examination), (bb) take all actions necessary to achieve compliance in accordance with the results set forth in the forensic report and in the timeframe dictated by Chase

Paymentech and/or the Payment Brand, and (cc) thereafter, take all actions necessary to maintain compliance with Payment Brand Rules and Security Standards.

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 Chase Paymentech or provide Chase 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 Chase Paymentech all reasonable financial statements and information as Chase Paymentech may request relating to Merchant and each Guarantor, as well as their parents, subsidiaries and affiliated entities.

13.2 Audit Rights; Site Visit; Website Inspection. With prior notice and during Merchant's normal business hours, Chase 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 Chase Paymentech or a third party contracted by Chase Paymentech who will need to gain access to Merchant's business operation to perform a site visit and inspection (the "Site Visit") in compliance with Payment Brand Rules. The Site Visit 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 Visit as scheduled, Chase Paymentech may suspend the settlement of Merchant's Transactions until a Site Visit can be completed and approved by Chase Paymentech. If Merchant operates an ecommerce website, Chase Paymentech is obligated under the Payment Brand Rules to investigate the contents of such website, either directly or through review of screen shots presented to Chase Paymentech by Merchant (the "Website Inspection"). Chase Paymentech may suspend the settlement of Merchant's Transactions until a Website Inspection can be completed and approved by Chase Paymentech. In the event that Merchant fails to reasonably cooperate with the required Site Visit and/or Website Inspection, or in the event the results of the Site Visit or the Website Inspection are not approved by Chase Paymentech, Chase Paymentech may terminate this Agreement immediately upon notice to Merchant.

13.3 Other Information. Merchant agrees to provide Chase 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 Chase Paymentech determines such a change is material to its relationship with Merchant, Chase Paymentech may refuse to process Transaction Data made subsequent to the change or terminate this Agreement. Merchant agrees to provide Chase 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 Chase Paymentech to perform any credit check deemed necessary with respect to Merchant. Merchant will also provide Chase Paymentech with prompt written notice of (i) any adverse change in Merchant's financial condition, (ii) any planned or anticipated liquidation or substantial change 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 Chase 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, Chase Paymentech will, at its own expense, correct any Transaction Data to the extent that such errors have been caused by Chase Paymentech or by malfunctions of Chase Paymentech's processing systems. Under no circumstances will Chase Paymentech's financial responsibility for its failure of performance under this Agreement exceed the total fees paid to Chase 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, REGARDLESS OF THE FORM OR ACTION AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR ANY LOSS, THEFT, DISAPPEARANCE, OR DAMAGE TO DATA TRANSMITTED ELECTRONICALLY IN CONNECTION WITH THIS AGREEMENT. ANY FINES, FEES, PENALTIES OR ASSESSMENTS IMPOSED BY THE PAYMENT BRANDS RELATED TO MERCHANT'S ACCEPTANCE OF PAYMENT INSTRUMENTS SHALL NOT BE DEEMED TO BE CONSEQUENTIAL DAMAGES. ALL PARTIES ACKNOWLEDGE THAT THIS IS AN AGREEMENT FOR COMMERCIAL SERVICES. THE UNIFORM COMMERCIAL CODE DOES NOT APPLY AND CHASE 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 Chase 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 Chase 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 Chase 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 Chase Paymentech and Member harmless from all liabilities, Chargebacks, expenses, costs, fees, and fines arising in connection with

the submission of Transaction Data to Chase 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 Chase Paymentech is acting as agent hereunder. Subject to Payment Brand Rules, Chase 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, Chase Paymentech will not be acting in the capacity of agent, partner, or joint venturer; Chase 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 an Authorized Representative. 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, Terms and Conditions, taxpayer identification and certification documentation, and all schedules, supplements, and attachments are made a part of this Agreement for all purposes. This Agreement represents the entire understanding between Merchant and Chase 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 Chase 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 Merchant's legal address set forth in the Application, to Chase Paymentech at: Attn: Legal Department, 14221 Dallas Parkway, Dallas, Texas 75254, 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 CHASE PAYMENTECH, MEMBER, OR RELATED THIRD PARTIES; (ii) MERCHANT IS GIVING UP ITS RIGHT TO HAVE A COURT RESOLVE ANY CLAIM ALLEGED AGAINST CHASE 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 CHASE PAYMENTECH, MEMBER AND/OR RELATED THIRD PARTIES.** Any claim, dispute, or controversy ("Claim") by either Merchant, Chase 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, Chase 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 Chase 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 Chase 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 CHASE 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 Chase 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 Chase 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 Chase 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 Chase Paymentech Reporting Obligations. Pursuant to 26 USC 6050W, Chase 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 Chase 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 Chase Paymentech if there are any changes in this information. Chase 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. Chase 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 Chase Paymentech hereunder to the extent such penalties accrue based on the actions or inactions of Merchant despite reasonable notice from Chase 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, 17 and Personal Guaranty 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 or its Authorized Representative(s), has previously or concurrently submitted to Chase Paymentech, including credit, financial and other business related information, to induce Chase Paymentech to enter into this Agreement with Merchant and that has induced Chase Paymentech to process Merchant's Transactions under the terms and conditions herein.
"***Authorized Representative***" means an owner, partner, officer or other agent of the Merchant that is duly authorized to enter into agreements on behalf of Merchant and to legally bind Merchant to such agreements
"***Chargeback***" means a reversal of a Transaction Merchant previously presented to Chase Paymentech pursuant to Payment Brand Rules.
"***Chase Paymentech***" or "***Paymentech***" means Paymentech, LLC, a Delaware limited liability company, having its principal office at 14221 Dallas Parkway, Dallas, Texas 75254.
"***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 Chase 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 Chase 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.

"***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 Chase Paymentech 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 Chase Paymentech

"***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.

Personal Guaranty. Each Guarantor whose name and signature appears in the Application (individually a "Guarantor" and collectively the "Guarantors") hereby, jointly and severally, unconditionally and irrevocably, guarantee the full, timely and continuing performance of each and every representation, warranty, covenant, agreement and obligation of Merchant now or hereafter arising under or in connection with the Agreement, including, without limitation, any indebtedness and other liabilities of Merchant created, at any time, under or in connection with the Agreement (the "Guaranteed Obligations"). Each Guarantor is familiar with, and has independently reviewed books and records regarding, the financial condition of Merchant and is familiar with the value of any and all collateral intended to be created as security for the payment of the Guaranteed Obligations. However, no Guarantor is relying on such financial condition or collateral, including, without limitation, the existence of a Reserve Account (if any) as an inducement to enter into this Personal Guaranty. Each Guarantor hereby unconditionally and irrevocably waives any and all notices, demands and other formalities, of every kind and description, including, without limitation, any (i) notice of acceptance of this Personal Guaranty, (ii) notice of the incurrence of any Guaranteed Obligation, (iii) notice of the occurrence of any breach or default relating to or in connection with the Agreement or (iv) demand for performance or payment, presentment, protest, notice of protest or proof of breach or default. This is an unconditional, irrevocable and continuing guaranty of payment and not a guaranty of collection. Each Guarantor hereby acknowledges and agrees that such Guarantor is liable for the Guaranteed Obligations as primary obligor and Chase Paymentech, Member or any other beneficiary of the Agreement, as the case may be, may exercise their respective rights and remedies hereunder against one or more Guarantors, whether or not first or ever exercising their respective rights and remedies hereunder or otherwise against Merchant or any other guarantor or obligor or enforcing or collecting any present or future collateral securing the Guaranteed Obligations. Each Guarantor hereby acknowledges and agrees that such Guarantor's obligations and liabilities pursuant to this Personal Guaranty shall in no way be discharged, released or in any way affected by (i) any action taken under or in connection with the Agreement or the Guaranteed Obligations, including, without limitation, any assignment, renewal, extension, compromise, indulgence, forbearance, waiver, acceleration, modification, amendment or other change granted to Merchant or any guarantor or obligor or otherwise related thereto, (ii) the taking, holding, exchange, enforcement, waiver or release of any security for the performance of the Guaranteed Obligations or this Personal Guaranty, (iii) the release, in whole or in part, of Merchant or any other guarantor or obligor from any obligation or liability, (iv) the substitution of any one or more of the Guarantors or the acquisition of additional guarantors, (v) any insolvency, bankruptcy or similar proceedings involving or affecting Merchant or any other guarantor or obligor, (vi) the death, dissolution or ceasing to exist (whether voluntary or involuntary) of Merchant or any other guarantor or obligor or (vii) any other act, omission or circumstance whatsoever that may in any manner vary the risks of such Guarantor or might otherwise constitute a legal or equitable defense or discharge of such Guarantor or any other guarantor or obligor. Each Guarantor hereby waives all defenses based on occurrences of the types described in clauses (i) through (vii) above. Each Guarantor hereby represents and warrants that such Guarantor has received, or will receive, direct or indirect benefit from the making of this Personal Guaranty and that the Guaranteed Obligations and such benefit has a value reasonably equivalent to or greater than the obligations and liabilities incurred pursuant to this Personal Guaranty. This Personal Guaranty shall be binding on each Guarantor and such Guarantor's heirs, administrators, legal representatives, successors and assigns, and shall inure to the benefit of Chase Paymentech, Member and any other beneficiary of the Agreement, as the case may be, and their respective heirs, administrators, legal representatives, successors, and assigns. Neither Guarantor may, without the prior written consent of Chase Paymentech, assign any of its rights, powers, duties, or obligations hereunder. The Guarantors jointly and severally agree to pay reasonable attorneys' fees and all other costs and expenses which may be incurred by Chase Paymentech in the enforcement of this Personal Guaranty.