



COMMERCIAL ENTITY PROCESSING AGREEMENT

WHEREAS JPMORGAN CHASE BANK, N.A., a national banking association ("Member"), is a member of several Payment Brands, and, through **PAYMENTECH, LLC**, a Delaware limited liability company, having its principal office at 14221 Dallas Parkway, Dallas, Texas 75254 ("Paymenttech", "we", "our" or "us") is authorized to process the Transactions listed on Schedule A; and

WHEREAS _____ ("Merchant", "you" or "your") wishes to accept Payment Instruments from its Customers for the sale or lease of goods or services offered by Merchant;

ACCORDINGLY, in consideration of the mutual promises made and the mutual benefits to be derived from this Agreement, Paymenttech and Merchant agree to the following terms and conditions intending to be legally bound

1. Merchant's Acceptance of Payment Instruments.

1.1 Exclusivity. You will tender to us Transaction Data generated from all your Transactions via electronic data transmission according to our formats and procedures. You will not use the services of any bank, corporation, entity, or person other than Paymenttech for authorization or processing of Transactions throughout the term of this Agreement.

1.2 Certain Payment Acceptance Policies. Each Settled Transaction and Conveyed Transaction must be evidenced by a single Transaction Data record completed with (i) the Transaction date; (ii) a brief description of the goods or services sold, returned, or canceled; (iii) the price of the goods or services, including applicable taxes, or amount of any credit or adjustment; (iv) the Customer name; (v) your name in a manner recognizable to Customers; (vi) your address; (vii) a customer service telephone number; (viii) any applicable terms and conditions; (ix) the exact date any free trials end; and (x) any other information that the applicable Payment Brand may require. You shall not impose any surcharge or finance charge on a Transaction or otherwise require the Customer to pay the fees payable by you under this Agreement if prohibited by the applicable Payment Brand. You shall not engage in any practice that unfavorably discriminates against or provides unequal treatment of the use of any Payment Brand over any other Payment Brand. You shall not set a dollar amount above or below which you refuse to honor otherwise valid Payment Instruments in violation of Payment Brand Rules. With respect to any Settled Transaction or Conveyed Transaction for which a Payment Instrument is not physically presented, such as in any on-line, mail, telephone, pre-authorized or recurring Transaction, you must (i) have notified us on your application or otherwise in writing of your intention to conduct such Transactions and secured our agreement to accept them; and (ii) have reasonable procedures in place to ensure that each Transaction is made to a purchaser who actually is the Customer. Notwithstanding the foregoing, you acknowledge that under certain Payment Brand Rules, you cannot rebut a Chargeback where the Customer disputes making the purchase without an electronic record (for example, "swiping", or "tapping" a Payment Instrument) or physical imprint of the Payment Instrument.

1.3 Operating Guide; Payment Brand Rules. You agree to comply with the operating guide attached to this Agreement, as amended from time to time ("Operating Guide"), and all Payment Brand Rules as may be applicable to you and in effect from time to time as published (on a website or otherwise) by any Payment Brand or of which you have been otherwise informed, and such other procedures as we may from time to time prescribe for the creation or transmission of Transaction Data. We may modify and supplement the Operating Guide in order to comply with requirements imposed by the Payment Brand Rules. You acknowledge that you have received a copy of the Operating Guide at or prior to your execution of this Agreement and that you can also view the Operating Guide on-line at the Paymenttech website. To the extent that the Operating Guide is inconsistent with the Payment Brand Rules, the Payment Brand Rules shall prevail.

1.4 Requirements for Certain Transactions. As to all Settled Transactions and Conveyed Transactions you tender to us for processing, you represent and warrant that, to the best of your knowledge:

- (1) The Transaction Data represents payment or refund of payment, for the bona fide sale or lease of the goods, services, or both, which you have provided in the ordinary course of your business, and the Transaction Data is not submitted on behalf of a third party.
- (2) The Transaction Data represents an obligation of the Customer for the amount of the Transaction.
- (3) The Transaction Data does not involve any element of credit for payment of a previously dishonored Payment Instrument or for any other purpose than payment for a current transaction, and, except in the case of approved installment or pre-payment plans, the goods have been shipped or services actually rendered to the Customer.
- (4) The Transaction Data is free from any material alteration not authorized by the Customer.
- (5) The amount charged for the Transaction is not subject to any dispute, setoff, or counterclaim.
- (6) Neither you nor your employees has advanced any cash to the Customer (except as authorized by the Payment Brand Rules) or to yourself or to any of your representatives, agents, or employees in connection with the Transaction, nor have you accepted payment for effecting credits to a Customer.
- (7) The goods or services related to each Transaction are your sole property and you are free to sell them.
- (8) You have made no representations or agreements for the issuance of refunds except as it states in your return/cancellation policy, which has been previously submitted to us in writing as provided in Section 3.
- (9) Any credit transaction submitted to us represents a refund or adjustment to a Transaction previously submitted to Paymenttech.
- (10) You have no knowledge or notice of information that would lead you to believe that the enforceability or collectability of the subject Transaction Data is in any manner impaired. The Transaction Data is in compliance with all applicable laws, ordinances, and regulations. You have originated the Transaction Data in compliance with this Agreement and any applicable Payment Brand Rules.
- (11) For a Transaction where the Customer pays in installments or on a deferred payment plan, a Transaction Data record has been prepared separately for each installment transaction or deferred payment on the date(s) the Customer agreed to be charged. All installments and deferred payments, whether or not they have been submitted to us for processing, shall be deemed to be a part of the original Transaction.
- (12) You have not submitted any Transaction that you know or should have known to be either fraudulent or not authorized by the Customer or otherwise in violation of any provision of this Agreement or Payment Brand Rules.

2. Authorizations.

2.1 Obtaining Authorizations. You are required to obtain authorization/approval codes through Paymentech, in accordance with this Agreement, for all Transactions. You acknowledge that the authorization/approval code of a Transaction indicates **only** (i) that the Payment Instrument contains a valid account number; and (ii) that sufficient balance is available for the Transaction at the time the authorization is given, but it does not constitute a representation from us, 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.

2.2 Lack of Authorization. We reserve the right to refuse to process any Transaction Data presented by you (i) unless a proper authorization/approval code is recorded, (ii) if we reasonably determine that the Transaction Data is or will become uncollectible from the Customer to which the Transaction would otherwise be charged, or (iii) if we determine that the Transaction Data was prepared in violation of any provision of this Agreement or the Payment Brand Rules.

3. Refunds and Adjustments.

3.1 Disclosure of Refund Policy. You are required to maintain a fair policy with regard to the return or cancellation of merchandise or services and adjustment of Transactions. You are required to disclose your return/cancellation policy to us on your application. Your return or cancellation policy must also be disclosed to your customers.

3.2 Changes to Policy. Any change in your return or cancellation policy must be submitted to us in writing not less than 14 days prior to the effective date of such change. We reserve the right to refuse to process any Transaction Data made subject to a revised return or cancellation policy of which we have not been notified in advance.

3.3 Procedure for Refunds/Adjustments. If you allow a price adjustment, return of merchandise, or cancellation of services in connection with a Settled or Conveyed Transaction, you will prepare and deliver to us Transaction Data reflecting such refund or adjustment within 3 days of receiving the Customer's request for such refund or adjustment. The amount of the refund or adjustment cannot exceed the amount shown as the total on the original Transaction Data except by the exact amount required to reimburse the Customer for postage that the Customer paid to return merchandise. You are not allowed to accept cash or any other payment or consideration from a Customer in return for preparing a refund to be deposited to the Customer's account; nor may you give cash refunds to a Customer in connection with a Settled or Conveyed Transaction, unless permitted or required by law.

4. Settlement.

4.1 Submission of Transaction Data. You are required to transmit your Transaction Data to us no later than the next business day immediately following the day that such Transaction Data is originated. Failure to do so can result in higher interchange fees and other costs and increased Chargebacks. For debit card transactions that are credits to a Customer's account, you agree to transmit such Transaction Data to us within 24 hours of receiving the authorization for such credit. Unless otherwise indicated on Schedule A, you will be solely responsible for all communication expenses required to facilitate the transmission of all Transaction Data to us.

4.2 Merchant's Settlement Account. In order to receive funds from Paymentech, you have two available options: (1) you may designate and maintain an account at a bank that is a member of the Automated Clearing House ("ACH") system or the Federal Reserve wire system, or (2) you may designate the FBO (for the benefit of) account that is maintained by Member Services Provider (the designated account becoming your "Settlement Account"). During the term of this Agreement, and thereafter until we notify you that all monies due from you under this Agreement have been paid in full, you agree not to close your Settlement Account or change your designated Settlement Account without giving us at least 5 days' prior written notice and substituting another Settlement Account. You are solely liable for all fees and costs associated with your Settlement Account and for all overdrafts. You authorize Paymentech to initiate electronic credit and debit entries and adjustments to your Settlement Account at any time without regard to the source of any monies in the Settlement Account. This authority will remain in full force and effect until we notify you that all monies due from you under this Agreement have been paid in full. We will not be liable for any delays in receipt of funds or errors in Settlement Account entries caused by third parties, including, but not limited to, delays or errors by the Payment Brands or your bank.

4.3 Conveyed Transactions. To the extent that you submit any Conveyed Transactions for processing by Paymentech and you do not have a valid agreement in effect with the applicable Payment Brand, you hereby authorize us, at our option, to submit such transaction to the applicable Payment Brand, and to share with the applicable Payment Brand such information from your Merchant Application as may be required in order to approve your acceptance of such Payment Instrument as a method(s) of payment. Subject to such approval you agree to the applicable Payment Brand's standard terms and conditions with respect to such method(s) of payment. Upon your transmission of such Conveyed Transactions to us, we will forward the Conveyed Transaction to the appropriate Payment Brand. Payment of the proceeds due you will be governed by whatever agreement you have with that Payment Brand, and we do not bear any responsibility for their performance. If your agreement with a Payment Brand requires the Payment Brand's consent for us to perform the services contemplated by this Agreement, you are responsible for obtaining that consent.

4.4 Transfer of Settlement Funds. For all Settled Transactions, we will process your Transaction Data to facilitate the funds transfer between the various Payment Brands and you. Promptly after we receive credit for such Transaction Data, we will provide provisional credit to your Settlement Account for the proceeds. The proceeds payable to you shall be equal to the amounts received by us in connection with your Transaction Data minus the sum of the following: (i) all fees imposed by us or any third parties passed through to you, charges, and discounts set forth in Schedule A; (ii) all adjustments and Chargebacks; (iii) all equipment charges (if any); (iv) all Customer refunds, returns and adjustments; (v) all Reserve Account amounts; and (vi) any fees, charges, fines, assessments, penalties, or other liabilities that may be imposed on us or the Member from time to time by the Payment Brands and all related costs and expenses incurred by us. You agree that all amounts set forth above, and any other amounts are due and payable by you at the time the related services are rendered to you; that all Reserve Account amounts are due and payable by you upon establishment; and that the related Chargebacks, Customer refunds, and adjustments, fees, charges, fines, assessments, penalties, and all other liabilities are due and payable by you when we receive notice thereof from the Payment Brands or otherwise pursuant to Section 4.4 herein. In the event we do not deduct such amounts from the proceeds payable to you, you agree to pay all such amounts to us. Alternatively, at our option, we may debit the Settlement Account for such amounts. Without limiting the foregoing or our rights under Section 7.2 or Section 10, if a Payment Brand notifies us or the Member that it intends to impose any fine or penalty as a result of excessive Chargebacks or your acts or omissions (including, without limitation, your failure to fully comply with any Payment Brand Rules), we may suspend the processing of your Transactions.

4.5 Negative Amounts. To the extent the proceeds from Settled Transactions do not represent sufficient credits or the Settlement Account does not have a sufficient balance to pay amounts due or reasonably anticipated to become due under this Agreement, we may pursue one or more of the following options: (i) demand and receive immediate payment for such amounts; (ii) debit your Settlement Account for the amount of the negative balance; (iii) withhold your settlement payments until all amounts are paid; (iv) delay presentation of your refunds until you make a payment to us of a sufficient amount to cover the negative balance; and (v) pursue any other remedies we may have at law or in equity. Furthermore, if the amount represented by your Transaction Data in any day is negative due to refunds or credits being submitted by you in excess of your proceeds from

Transactions, you shall provide us with sufficient funds prior to the submission of the Transaction Data so as to prevent the occurrence of a negative balance.

4.6 Delinquency/Merchant Fraud. At any time and from time to time we may temporarily suspend or delay payments to you and/or designate an amount of funds that we must maintain in order to protect us against the risk of, among other things, existing, potential, or anticipated Chargebacks and to satisfy your other obligations under this Agreement (such funds being hereinafter referred to as the "Reserve Account"), which may be funded in the same manner as provided for negative balances in Section 4.5. The Reserve Account will contain sufficient funds to cover any unbilled processing costs plus our estimated exposure based on reasonable criteria for Chargebacks, returns, unshipped merchandise and/or unfulfilled services and all additional liabilities anticipated under this Agreement. We may (but are not required to) apply funds in the Reserve Account toward, and set off any funds that would otherwise be payable to you against the satisfaction of any amounts which are or may become due from you pursuant to this Agreement. The Reserve Account will be held and controlled by Paymentech, will not bear interest, and you will have no legal right or interest in the funds in the Reserve Account; provided, however, that upon satisfaction of all of your obligations under this Agreement, we will pay to you any funds then remaining in the Reserve Account. Any funds in the Reserve Account may be commingled with other funds, and need not be maintained in a separate account. Effective upon our establishment of a Reserve Account, you irrevocably grant to us a security interest in any interest you may now have or later acquire in any and all funds, together with the proceeds thereof, that may at any time be in our possession and would otherwise be payable to you pursuant to the terms of this Agreement. You agree to execute and deliver to us such instruments and documents (including, without limitation, security agreements and releases) that we may reasonably request (i) to perfect and confirm the security interest and right of setoff set forth in this Agreement; and (ii) in connection with any return of Reserve Account funds.

5. Accounting. We will supply a detailed statement reflecting the activity for your merchant account(s) by online access (or otherwise if we agree). We will not be responsible for any error that you do not bring to our attention within 90 days from the date of such statement.

6. Retrieval Requests.

6.1 Records. You agree to store original documentation or legible copies of each Transaction for at least 18 months from the date of such Transaction. You may not charge a fee to your Customers for the creation or storage of such copies. We may, at our discretion, require you to deliver copies of Transaction Data to us rather than storing it.

6.2 Response to Retrieval Requests. We will send you any Retrieval Request that we cannot satisfy with the information we have on file concerning any Settled Transaction. In response, you must provide us in writing by certified or overnight mail or by confirmed fax (or by other means as agreed to by Paymentech) the resolution of your investigation of such Retrieval Request and include legible copies of any documentation required by the Retrieval Request within 7 business days after we send it to you (or such shorter time as the Payment Brand Rules may require). You acknowledge that your failure to fulfill a Retrieval Request in accordance with Payment Brand Rules may result in an irreversible Chargeback.

7. Chargebacks.

7.1 Chargeback Reasons. You may receive a Chargeback from a Customer or a Payment Brand for a number of reasons under the Payment Brand Rules. The following are some of the most common reasons for Chargebacks, and in no way is this intended to be an exhaustive list of possible Chargeback reasons:

(13) Your failure to issue a refund to a Customer upon the return or non-delivery of goods or services.

(14) A required authorization/approval code was not obtained.

(15) The Transaction Data was prepared incorrectly or fraudulently.

(16) We did not receive your response to a Retrieval Request within 7 business days or any shorter time period required by the Payment Brand Rules.

(17) The Customer disputes the Transaction or the authenticity of the signature on the Transaction Data or Payment Instrument, or claims that the Transaction is subject to a set-off, defense, or counterclaim.

(18) The Customer refuses to make payment for a Transaction because, in the Customer's good faith opinion, a claim or complaint has not been resolved, or has been resolved in an unsatisfactory manner.

(19) The credit or debit card comprising the Payment Instrument was not actually presented at the time of the Settled or Conveyed Transaction or you failed to obtain an electronic record or physical imprint of such Payment Instrument, and the Customer denies making the purchase. The Merchant acknowledges that, under these circumstances, the fact that an authorization/approval code was obtained does not mean that a particular Transaction is a valid or undisputed transaction entered into by the actual Customer.

7.2 Excessive Chargebacks. If you are receiving an excessive amount of Chargebacks, as determined by the Payment Brands from time to time, in addition to our other remedies under this Agreement we may take the following actions: (i) review your internal procedures relating to acceptance of Payment Instruments and notify you of new procedures you could adopt in order to avoid future Chargebacks; (ii) notify you of a new rate we will charge you to process your Chargebacks; (iii) collect from you (pursuant to Section 4.6) an amount reasonably determined by us to be sufficient to cover anticipated Chargebacks and all related fees, expenses, and fines; or (iv) terminate the Agreement with written notice of termination. You also agree to pay any and all Payment Brand fees and fines assessed against you, Paymentech and/or Member relating to your violation of this Agreement, the Operating Guide, or the Payment Brand Rules with respect to your acceptance of Payment Instruments, your Transactions or with respect to excessive Chargebacks under this Section.

7.3 Claims of Customers. You have full liability if any Settled Transaction for which we have given your Settlement Account provisional credit is the subject of a Chargeback. Subsequently, you may resubmit applicable Transaction Data for a second presentment, but only in accordance with Payment Brand Rules. To the extent that we have paid or may be called upon to pay a Chargeback, refund or adjustment for or on the account of a Customer and you do not reimburse us as provided for in this Agreement, then for the purpose of our obtaining reimbursement of such sums paid or anticipated to be paid, we have all of the rights and remedies of such Customer under applicable federal, state, or local laws and you authorize us to assert any and all such claims in our 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 us 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 (i) by the Payment Brands; (ii) by us pursuant to this Agreement; or (iii) as otherwise approved in writing by us. 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 in writing and approved by us and consistent with Payment Brand Rules. Merchant shall not use the Payment Brand Marks in such a way that Customers could believe that the products or services offered by Merchant are sponsored 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 to any third party the rights to use the

Payment Brand Marks. Merchant's sublicense to use the Payment Brand Marks hereunder terminates simultaneously with the termination of this Agreement.

9. Fees.

9.1 Schedule A. You agree to pay us for the services as set forth in Schedule A in accordance with this Agreement. Unless otherwise expressly stated in Schedule A, your pricing is based on all Transactions qualifying under the Payment Brand Rules for the lowest Payment Brand interchange rates. For Transactions that do not qualify for the best rate, the Payment Brands may dictate that the Transaction is subject to a "downgrade", which will result in us charging you a higher rate than the qualified rate shown on Schedule A. Fees payable under this Agreement that contain a fraction of a cent will be rounded up to the next full cent.

9.2 Price Changes. You acknowledge that your pricing is based on your annual volume of Transactions, method of processing, type of business, and interchange qualification criteria as represented to us in your Application and restated on Schedule A. We may modify the pricing on Schedule A with 30 days' prior written notice. In addition, we may change our fees, charges, and discounts resulting from (i) changes in Payment Brand fees (such as interchange, assessments, and other charges); (ii) changes in pricing by any third party provider of a product or service used by you; or (iii) fees which are added by a Payment Brand or card issuer. Such new prices will be applicable to you as of the effective date established by the Payment Brand or third party provider.

10. Termination.

10.1 Term. This Agreement takes effect on the date it is executed by Paymentech and shall continue (i) for the initial term expiring five years from that date, and renewing for successive one-year terms unless a party gives notice of non-renewal of this Agreement in writing to the other party no more than 90 days and no less than 30 days prior to any expiration date or (ii) terminated by us by giving notice to you (such termination by us to be effective as of a date set forth in such notice or, if no such date is set forth, to be effective as of the date such notice is received by you). Also, we may terminate the Agreement if a Payment Brand notifies us that it is unwilling to continue accepting your Transaction Data.

10.2 Termination for Cause. If our services provided under this Agreement fail to conform to generally accepted standards for such services in the payment processing industry then your sole remedy for such failure shall be that: upon notice from you specifying the failure of performance, we will rectify such failure of performance. If we do not rectify our failure of performance within thirty days after receipt of notification, then you may terminate this Agreement upon thirty days' written notice to us. If you terminate the Agreement prior to the expiration of the term other than as set forth above, in order to compensate us for our lost revenue, you agree to pay as liquidated damages an amount calculated by multiplying the average monthly fees (net of Payment Brand interchange, assessments and fines) from the prior six months by the number of months remaining in the term of the contract. Such amount will be funded, to the extent possible, according to the same methods for collecting amounts due under Section 4.5 of this Agreement. We may terminate this Agreement at any time upon written notice to you as a result of any of the following events: (i) any noncompliance with this Agreement, the Payment Brand Rules or the Operating Procedures, (ii) any voluntary or involuntary bankruptcy or insolvency proceeding involving Merchant, (iii) Paymentech deems Merchant to be financially insecure, (iv) Merchant or any person owning or controlling Merchant's business is or becomes listed in the MATCH file (Member Alert to Control High-Risk Merchants) maintained by Visa and MasterCard or any Association notifies us that it is no longer willing to accept your Transaction Data. We may terminate you at any time without notice and may charge you the foregoing liquidated damages fee as a result of any of the following events: (i) you never transmit Transaction Data to us once a merchant account number is issued to you, or (ii) you do not transmit Transaction Data to us for a period of more than 90 consecutive days.

10.3 Account Activity After Termination. Termination does not affect either party's respective rights and obligations under this Agreement as to Transaction Data submitted before termination. If you submit Transaction Data to us after the date of termination, we may, at our sole discretion, and without waiving any of our 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 any termination of this Agreement, we may estimate the aggregate dollar amount of Chargebacks and other obligations, liabilities and expenses that we reasonably anticipate subsequent to termination, and you agree to immediately deposit such amount in your Settlement Account or as otherwise directed by us, or we may withhold such amount from your settlement funds in order to establish a Reserve Account pursuant to and governed by the terms and conditions of this Agreement.

11. Indemnity. You agree to indemnify Paymentech, Member, the Payment Brands, and their respective affiliates, officers, directors, employees, agents, and sponsoring banks from any losses, liabilities, and damages of any and every kind (including, without limitation, our costs, expenses and reasonable attorneys' fees) arising out of any claim, complaint, or Chargeback (i) made or claimed by a Customer with respect to any Transaction or Transaction Data submitted by you, (ii) caused by your noncompliance with this Agreement, the Operating Guide, or the Payment Brand Rules, including any breach of a representation or warranty made by you, (iii) resulting from any voluntary or involuntary bankruptcy or insolvency proceeding by or against you, or (iv) related to your placement or the placement of any person owning or controlling your business in the MATCH files maintained by Visa and MasterCard. The indemnification provided for in this Section does not apply to any claim or complaint to the extent it is caused by Paymentech's own negligence or willful misconduct. The indemnification provided under this Section 11 shall survive the termination of this Agreement.

12. No Disclosure of Customer Information. You will exercise reasonable care to prevent disclosure or use of Payment Instrument Information, other than (i) to your agents and contractors for the purpose of assisting you in completing a Transaction, (ii) to the applicable Payment Brand, or (iii) as specifically required by law.

You are 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 are 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. You will 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 and prior to either party discarding any material containing Payment Instrument Information, the party will destroy it in a manner rendering the account numbers unreadable. If at any time you determine that Payment Instrument Information has been compromised you will notify Paymentech immediately and assist in providing notification to such parties as may be required by law, by Payment Brand Rules, or as we otherwise reasonably deem necessary. Merchant information may be shared by us with our affiliates and with the Payment Brands subject to the provisions of this Agreement and Payment Brand Rules.

You agree to comply with all Security Standards, as defined in Section 17. You further agree provide us upon our request with such tests, scans and assessments of your compliance with Security Standards as required by the Payment Brands.

You must notify us of your use of any Service Provider and, to the extent required by each Payment Brand all Service Providers must be (i) compliant with all Security Standards applicable to Service Providers, and (ii) registered with and/or recognized by such Payment Brand(s) as being so compliant. You agree to exercise reasonable due diligence to ensure that all of your Service Providers, and any other agents, business partners, contractors, or subcontractors with access to Payment Instrument Information, maintain compliance with the Security Standards. To the extent required by each Payment Brand, all payment applications, or software involved in the processing, storing, receiving or transmittal of Payment Instrument Information, shall be (i) compliant with all Security Standards applicable to such payment applications or software, and (ii) registered with and/or recognized by such Payment Brand(s) as being so compliant. You understand that your failure to comply with the Payment Brand Rules, including the Security Standards, or the compromise of any Payment Instrument Information, may result in assessments, fines, and/or penalties by the Payment Brands, and you agree to indemnify and reimburse us immediately for any such assessment, fine, or penalty imposed on us or the Member and any related loss, cost or expense incurred by us or the Member. If any Payment Brand requires a forensic examination of you or any of your Service Providers, agents, business partners, contractors, or subcontractors due to a data security compromise event or suspected event, you agree to cooperate with such forensic examination (including, without limitation, the engagement of an examiner acceptable to the relevant Payment Brand) and agree to pay for all costs and expenses related to such forensic examination, including all of our attorneys' fees and other costs relating to such forensic examination.

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

13. Information About Merchant's Business.

13.1 Additional Financial Information. Each of Merchant and the undersigned Guarantors (if any) agrees to furnish to us upon 5 days' notice such financial statements and information concerning such Guarantors and Merchant and each of Guarantor's and Merchant's parents, subsidiaries, and affiliated entities as we may request.

13.2 Other Information. With prior notice and during your normal business hours, our duly authorized representatives may visit your business premises and may examine your books and records that pertain to your Transaction Data or your compliance with this Agreement. You agree to provide us at least 30 days' prior written notice of your intent to change your product line or services, or your trade name, or the manner in which you accept Payment Instruments. If we determine such a change is material to our relationship with you, we may refuse to process Transaction Data made subsequent to the change. You agree to provide us with prompt written notice if you are the subject of any voluntary or involuntary bankruptcy or insolvency petition or proceeding. You will also provide us with prompt written notice of (i) any adverse change in your financial condition, (ii) any planned or anticipated liquidation or substantial change the basic nature of your business, (iii) any transfer or sale of any substantial part (25% or more in value) of your total assets, or (iv) if you or your 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 you or your parent. You will also notify us of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of your total assets not later than three days after you obtain knowledge of any such judgment, writ, warrant of attachment, execution or levy.

14. Disclaimer; Limitation of Damages. Subject to Section 5, we will, at our own expense, correct any Transaction Data to the extent that such errors have been caused by us or by malfunctions of our processing systems. Under no circumstances will Paymentech's financial responsibility for our failure of performance under this Agreement exceed the total fees paid to us under this Agreement (net of Payment Brand fees, third party fees, interchange, assessments, and fines) for the six months prior to the time the liability arose. EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT, IN NO EVENT WILL ANY PARTY, ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AFFILIATES, BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR ANY LOSS, THEFT, DISAPPEARANCE, OR DAMAGE TO DATA TRANSMITTED ELECTRONICALLY IN CONNECTION WITH THIS AGREEMENT. **WHILE ALL PARTIES ACKNOWLEDGE THAT THIS IS AN AGREEMENT FOR SERVICES TO WHICH THE UNIFORM COMMERCIAL CODE DOES NOT APPLY, PAYMENTECH AND MEMBER HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS OR 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 you are otherwise exempt, you agree to pay any taxes imposed on the services, equipment, intellectual property, supplies, and other goods purchased or tangible property provided under this Agreement, and you authorize us to increase the amount we collect from you 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, or intellectual property, equipment, supplies, and other goods purchased.

15.2 Application and Credit Check. You represent and warrant that statements made on your Application for this Agreement are true as of the date of your execution of this Agreement. Your signature on this Agreement authorizes us to perform any credit check deemed necessary with respect to Merchant and its directors, officers, affiliates, principals, and guarantors (if applicable).

15.3 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.

15.4 Assignment. We may assign this Agreement to an entity qualified under Payment Brand Rules to perform our obligations under this Agreement. You cannot assign or transfer your rights or delegate your responsibilities under this Agreement without our prior written consent. Failure to obtain our consent may result in a termination of this Agreement.

15.5 Parties. This Agreement binds you and us and our respective heirs, representatives, successors (including those by merger and acquisition), and permitted assigns. You represent and warrant that your execution of and performance under this Agreement (i) in no way breaches, contravenes, violates, or in any manner conflicts with any of your other legal obligations, including, without limitation, your corporate charter or similar document or any agreement between you and any third party or any affiliated entity; (ii) 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 (iii) that the person signing this Agreement on your behalf is duly authorized to do so. In providing services to you, we will not be acting in the capacity of your agent, partner, or joint venturer; we are acting solely as an independent contractor. 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.

15.6 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.

15.7 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.

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

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

15.10 Governing Law; 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 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 DISPUTE MAY BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING.** Any claim, dispute, or controversy ("Claim") by either you or Paymentech 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 our relationship, 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 National Arbitration Forum, under its Code of Procedure in effect at the time the Claim is filed, except as otherwise provided below. 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, your or our 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. You and Paymentech will agree on another arbitration forum if the National Arbitration Forum ceases operations. The arbitration will be conducted before a single arbitrator and will be limited solely to the Claim between you and us. 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 National Arbitration Forum 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 National Arbitration Forum may be obtained and Claims may be filed at any National Arbitration Forum office, www.arbforum.com, or P.O. Box 50191, Minneapolis, Minnesota 55405, telephone 1-800-474-2371. Any arbitration hearing at which you appear 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, YOU AND WE 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.**

15.11 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 our vendors or suppliers, acts of God, or other causes over which the respective party has no reasonable control, except that nothing in this Section 15.11 will affect or excuse your liabilities and obligations for Chargebacks, refunds, or unfulfilled products and services.

15.12 Amendment. This Agreement may be amended at any time by Paymentech upon notice to you. Your electronic signature or continued submission of Transactions to us following such notice will be deemed to be your acceptance of such amendment.

15.13 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.

16. Survival. The provisions of Sections 4.2, 4.4, 4.5, 4.6, 6.1, 7, 10.3, 11, 12, 14, 15, and 17 shall survive the termination of this Agreement.

17. Definitions.

"**Application**" is a statement of your financial condition, a description of the characteristics of your business or organization, and related information you have previously or concurrently submitted to us, including credit and financial information, to induce us to enter into this Agreement with you and that has induced us to process your Transactions under the terms and conditions of this Agreement.

"**Chargeback**" is a reversal of a Transaction you previously presented to Paymentech pursuant to Payment Brand Rules.

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

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

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

"**Merchant**", "**you**", and "**your**" is the Merchant identified in the Application on the cover page of the Agreement.

"**Member**" is JPMorgan Chase Bank, N.A. or other entity providing sponsorship to Paymentech as required by all applicable Payment Brand.

"**Member Services Provider**" is Paymate Global, Inc. at 2105 Woodside Road, Woodside CA 94062 USA.

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

"**Payment Brand**" is any payment method provider whose payment method is accepted by Paymentech for processing, including, but not limited to, Visa, U.S.A., 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 Rules**" are the bylaws, rules, and regulations, as they exist from time to time, of the Payment Brands.

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

"Payment Instrument" is 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 you accept from Customers. 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, credit accounts and the like.

"Payment Instrument Information" is 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 (for example a security code, a PIN number, 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, CVC2, and any data read, scanned, imprinted, or otherwise obtained from the Payment Instrument, whether printed thereon, or magnetically, electronically or otherwise stored thereon.

"Paymentech", "we", "our", and "us" is Paymentech, LLC, a Delaware limited liability company, having its principal office at 14221 Dallas Parkway, Dallas, Texas 75254.

"Retrieval Request" is a request for information by a Customer or Payment Brand relating to a claim or complaint concerning a Transaction.

"Security Standards" are 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 but not limited to 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 Entry Device Standard, in each case as they may be amended from time to time.

"Service Provider" is any party that processes, stores or transmits Customer Information on your behalf, including, but not limited to your agents, business partners, contractors and subcontractors.

"Settled Transaction" is 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 return or refund of such purchase and the value for such Transaction is settled by the Payment Brand through Paymentech to the Merchant.

"Stored Value Transaction" is a Transaction in which a Customer adds or redeems value to or from a stored value and/or loyalty Payment Instrument issued by or on behalf of Merchant.

"Transaction" is a transaction conducted between a Customer and Merchant utilizing a Payment Instrument in which consideration is exchanged between the Customer and Merchant.

"Transaction Data" is the written or electronic record of a Transaction, including but not limited to an authorization code or settlement record.

Agreed and Accepted by:

[MERCHANT LEGAL NAME]

By (authorized signature)

Print Name and Title

Date

Address

City, State Zip

Agreed and Accepted by:

PAYMENTECH, LLC for itself and on behalf of
JPMORGAN CHASE BANK, N.A.

By: _____

Print Name: _____

Title: _____

Date: _____

Address: 4 Northeastern Boulevard, Salem, NH 03079

To Be Completed by Paymentech, LLC
Your Merchant Agreement Contract Number is: _____
Your Merchant Processing Identification Number will be provided at time of Processing Set Up