

TERMS AND CONDITIONS FOR MERCHANT AGREEMENT

1. Merchant's Acceptance of Cards.

1.1 Exclusivity. You will tender to us Sales Data generated from all your Card 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 Paymentech for authorization or processing of Visa or MasterCard transactions throughout the term of this Agreement.

1.2 Certain Card Acceptance Policies. Each sale you make involving a Card must be evidenced by a single Sales Data record completed with (i) the transaction date; (ii) a brief description of the goods or services sold, returned, or cancelled; (iii) the price of the goods or services, including applicable taxes, or amount of any credit or adjustment; (iv) the Cardholder name; (v) your name in a manner recognizable to Cardholders; (vi) your address; (vii) a customer service telephone number; (viii) any applicable terms and conditions of the sale; (ix) the exact date any free trials end; and (x) any other information that the applicable Association may require. You shall not impose any surcharge or finance charge on the Card transaction or otherwise require the Cardholder to pay any fees payable by you under this Agreement. You shall not set a dollar amount above or below which you refuse to honor otherwise valid Cards. With respect to any transaction for which a Card is not physically presented, such as in any on-line, mail, telephone, or pre-authorized 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 Card sale is made to a purchaser who actually is the Cardholder or the authorized user of the Card. Notwithstanding the foregoing, you acknowledge that under the Association Rules, you cannot rebut a Chargeback where the Cardholder disputes making the purchase without an electronic record (for example, "swiping" or "tapping" a Card) or physical imprint of the Card.

1.3 Operating Guide; Association Rules. You agree to comply with the operating guide attached to this Agreement, as amended from time to time ("Operating Guide"), all Association Rules, and with such other procedures as we may from time to time prescribe for the creation or transmission of Sales Data. We may modify and supplement the Operating Guide in order to comply with requirements imposed by the Association 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 Chase Paymentech Solutions Internet website.

1.4 Requirements for Sales Data. As to each Sales Data you tender to us for processing, you represent and warrant that:

- (1) The Sales Data represents payment or refund of payment for the bona fide sale or lease of the goods, services, or both, that you have provided in the ordinary course of your business, and the Sales Data is not submitted on behalf of a third party.
- (2) The Card transaction represents an obligation of the Cardholder for the amount of the Card transaction.
- (3) The Sales Data does not involve any element of credit for payment of a previously dishonored check or for any other purpose except 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 Cardholder.
- (4) The Sales Data is free from any alteration not authorized by the Cardholder.
- (5) The amount charged for the Card transaction is not subject to any dispute, setoff, or counterclaim.
- (6) Neither you nor your employee has advanced any cash to the Cardholder (except as authorized by the Rules) or to yourself or to any of your representatives, agents, or employees in connection with the Card transaction, nor have you accepted payment for effecting credits to a Cardholder's account.
- (7) The goods described in each Sales Data submission 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 Card transaction previously submitted.
- (10) You have no knowledge or notice of information that would lead you to believe that the enforceability or collectibility of the subject Sales Data is in any manner impaired. The transaction is in compliance with all applicable laws, ordinances, and regulations. You have originated the Sales Data in compliance with this Agreement and the Association Rules.
- (11) For a Card sale where the Cardholder pays in installments or on a deferred payment plan, a Sales Data record has been prepared separately for each installment transaction or deferred payment on the date(s) the Cardholder 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 Card sale.

2. Authorizations.

2.1 Obtaining Authorizations. You are required to obtain authorization/approval codes for all Card transactions by contacting the center designated by Paymentech. You acknowledge that authorization/approval code of a Card transaction indicates only that credit is available for the Card transaction at the time the authorization is given, and it does not constitute a representation from us or from an Association that a particular Card transaction is in fact a valid or undisputed transaction entered into by the actual Cardholder or an authorized user of the Card.

2.2 Lack of Authorization. We reserve the right to refuse to process any Sales Data presented by you (i) if you do not record a proper authorization/approval code, (ii) if we determine that the Sales Data is or will become uncollectible from the Cardholder to which the transaction would otherwise be charged, or (iii) if we determine that the Sales Data was prepared in violation of any provision of this Agreement.

3. Refunds and Adjustments.

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

3.2 Changes to Policy. Any change in your return/cancellation policy must be submitted in writing to us not less than 14 days prior to the effective date of such change. We reserve the right to refuse to process any Sales Data made subject to a revised return/cancellation 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 Card sale, you will prepare and deliver to us Sales Data reflecting such refund or adjustment within 3 days of receiving the Cardholder's request for such refund/adjustment. The amount of the refund/adjustment cannot exceed the amount shown as the total on the original Sales Data except by the exact amount required to reimburse the Cardholder for postage that the Cardholder 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 Cardholder's account nor to give cash refunds to a Cardholder in connection with a Card sale, unless required by law.

4. Settlement.

4.1 Submission of Sales Data. You are required to transmit your Sales Data to us no later than the next business day immediately following the day that such Sales Data is originated. You will be solely responsible for all communication expenses required to accomplish the transmission of Sales Data. For debit Card transactions that are credits to a Cardholder's account, you agree to transmit such transactions to us within 24 hours of receiving the authorization for such transaction. Unless otherwise indicated on Schedule A, you will be solely responsible for all communication expenses required to accept the transmission of Sales Data.

4.2 Merchant's Settlement Account. In order to receive funds from Paymentech, you must maintain a Settlement Account at a bank that is a member of the Automated Clearing House ("ACH") system and the Federal Reserve wire system. You agree not to close your Settlement Account without giving us at least 5 days' prior written notice and substituting another Settlement Account. You are solely liable for all fees, costs, and expenses associated with your Settlement Account and for all overdrafts. You authorize Paymentech to initiate electronic credit and debit entries and adjustments to your bank 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 your bank that all monies due from you under this Agreement have been paid in full. We will not be liable for any of your losses or expenses whatsoever resulting from delays in receipt of funds or errors in Settlement Account entries caused by third parties, including, without limitation, delays or errors by either the Associations or your bank.

4.3 Travel and Entertainment Cards. You cannot submit any T&E Card transaction for processing by Paymentech unless you have a valid agreement in effect with the respective T&E Card company. For the T&E Card transactions designated on Schedule A, upon transmission of such Sales Data by you, we will forward the Sales Data to the appropriate T&E Card company. Except to the extent that we may provide funds settlement services for JCB transactions, payment of the proceeds due you will be governed by whatever agreement you have with that T&E Card company, and we do not bear any responsibility for their performance. If your agreement with a T&E Card company requires the T&E Card company's consent for us to perform the services contemplated by our Agreement, you are responsible for obtaining that consent.

4.4 Transfer of Settlement Funds. For all Card transactions, other than T&E Card transactions, we will process your Sales Data to facilitate the funds transfer between the various Associations and you for Card sales. Promptly after we receive credit for such Sales Data, we will provide provisional credit to the Settlement Account for the proceeds. The proceeds payable to you shall be equal to the amounts received by us in respect of your Sales Data minus the sum of the following: all fees, charges, and discounts set forth in Schedule A, all adjustments and Chargebacks, all equipment charges (if any), all Cardholder refunds, returns, and adjustments, all Reserve Account amounts, and any fees, charges, fines, assessments, penalties, or other liabilities that may be imposed on us or the Member from time to time by the Associations and all related costs and expenses incurred by us. You agree that all such fees, charges, discounts, adjustments, and all other amounts are due and payable by you at the time the related services are rendered to you; that all such Reserve Account amounts are due and payable by you upon our request; and that the related Chargebacks, Cardholder 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 Associations or otherwise pursuant to Section 4. 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.

4.5 Negative Amounts. To the extent Sales Data does 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; (v) collect any amount due or which may become due to us from any of your bank accounts without notice to you; and (vi) pursue any remedies we may have at law or in equity. Furthermore, if the amount represented by your Sales Data in any day is negative due to refunds/customer credits being submitted by you in excess of your sales, you are required to provide us with sufficient funds prior to the submission of the Sales 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 sub-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 may set off any funds that would otherwise be payable to the Merchant against, the satisfaction of any amounts which are or become due from Merchant pursuant to this Agreement. The Reserve Account will not bear interest, and you will have no right or interest in the funds 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 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 on-line access (or otherwise if we agree). We will not be responsible for any error that you do not bring to our attention within 45 days from date of such statement.

6. Retrieval Requests.

6.1 Records. You are required by the Associations to store original documentation of each Card transaction for at least 6 months from the date of the respective Card transaction, and to retain copies of all such Sales data for at least 18 months from the date of the respective Card transaction. You are not allowed to charge a fee for the creation or storage of such copies. We may, at our discretion, require you to deliver copies of Sales 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 Card 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 Association Rules may require and of which we notify you). You acknowledge that your failure to fulfill a Retrieval Request in accordance with Association Rules may result in an irreversible Chargeback.

7. Chargebacks.

7.1 Chargeback Reasons. You may receive a Chargeback from a Cardholder or Card issuer for a number of reasons under the Association Rules. The following are some of the most common reasons for Chargebacks:

- (1) Your failure to issue a refund to a Cardholder upon the return or non-delivery of goods or services.
- (2) An authorization/approval code was required and not obtained.
- (3) The Sales Data is prepared incorrectly or fraudulently.
- (4) We did not receive your response to a Retrieval Request within 7 business days or any shorter time period required by the Association Rules.
- (5) The Cardholder disputes the Card sale or the signature on the sale documentation, or claims that the sale is subject to a set-off, defense, or counterclaim.
- (6) The Cardholder refuses to make payment for a Card sale because in the Cardholder's good faith opinion, a claim or complaint has not been resolved, or has been resolved by you in an unsatisfactory manner.

(7) The Card was not actually presented at the time of the sale or you failed to obtain an electronic record or physical imprint of the Card, and the Cardholder 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 Card transaction is a valid or undisputed transaction entered into by the actual Cardholder or an authorized user of the Card.

7.2 Excessive Chargebacks. If we determine that you are receiving an excessive amount of Chargebacks, in addition to our other remedies under this Agreement we may take the following actions: (i) review your internal procedures relating to acceptance of Cards and notify you of new procedures you should 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 sub-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 Association fees and fines assessed against you or against Paymentech or Member relating to your violation of the Agreement, the Operating Guide, or the Association Rules with respect to your transactions or with respect to excessive Chargebacks under this Section.

7.3 Claims of Cardholder Customers. You have full liability if any Sales Data for which we have given the Settlement Account provisional credit is the subject of a Chargeback. Subsequently, you are allowed to resubmit applicable Sales Data for a second presentation, but only in accordance with Association Rules. To the extent that we have paid or may be called upon to pay a Chargeback or refund or adjustment for or on the account of a Cardholder and you do not reimburse us as provided 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 Cardholder 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 Cardholder customer individually or all such Cardholder customers as a class.

8. Advertising. Wherever you accept Cards, you will inform the public of the Cards that you honor. However, you may not indicate that any Association endorses your goods or services.

9. Fees.

9.1 Schedule A. You agree to pay us for our services as set forth in Schedule A in accordance with this Agreement. Unless otherwise expressly stated in Schedule A, such pricing is based on all transactions qualifying under the Association Rules for the lowest Association interchange rates. For Sales Data that does not qualify for the best rate, Association interchange fees provide for a "down-grade," and we will apply a higher rate than the qualifying 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. We may modify the pricing on Schedule A with 30 days' prior written notice. In addition, by giving written notice to you we may change our fees, charges, and discounts resulting from (i) changes in Association 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 an Association or card issuer. Such new prices will be applicable to you as of the effective date established by the Association or third party provider.

10. Termination.

10.1 Term. The initial term of this Agreement shall commence on the earlier of (i) our acceptance hereof (as evidenced by the execution of the Agreement by us) or (ii) 5 days after the Agreement is executed by the Merchant and submitted to Paymentech, and shall continue until either (i) terminated by you by giving at least 30 days' prior written notice to us 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).

10.2 Termination for Cause. If our services provided under this Agreement fail to conform to generally accepted standards for such services in the Card 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 30 days after receipt of written notification from you, then you may terminate this Agreement upon 30 days' written notice to us. If you terminate the Agreement within the first 3 years following the date of your execution of this Agreement, you agree to pay de-conversion fees of three hundred fifty dollars (\$350.00) for each Merchant location that has submitted Sales Data pursuant to this Agreement. Such amount will be funded, to the extent possible, according to the same methods for collecting amounts due under this Agreement. We may terminate this Agreement at any time for any reason upon written notice to you.

10.3 Account Activity After Termination. Termination does not affect either party's respective rights and obligations under this Agreement as to Sales Data submitted before termination. If you submit Sales Data to us after the date of termination, we may, at our discretion, process such Sales Data in accordance with 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, or we may withhold such amounts from your credits, 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 Associations, 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 Cardholder with respect to any Sales Data submitted by you, (ii) caused by your noncompliance with this Agreement, the Operating Guide, or the Association Rules, including any breach of a representation or warranty made by you, or (iii) resulting from any voluntary or involuntary bankruptcy or insolvency proceeding by or against you. 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 indemnity provided under this Section 11 shall survive the termination of this Agreement.

12. No Disclosure of Cardholder Information. We will exercise reasonable care to prevent disclosure or use of Card information, other than as permitted under the Association Rules. You will exercise reasonable care to prevent disclosure or use of Card information, other than (i) to your agents and contractors for the purpose of assisting you in completing a Card transaction, (ii) to the applicable Association, or (iii) as specifically required by law. You are prohibited from storing CVV2 or CVC2, magnetic stripe track data, and AVS and PIN data. Each party will store all media containing Card numbers in an area limited to selected personnel on a "need to know" basis only and prior to either party discarding any material containing Cardholder information, the party will destroy it in a manner rendering the Card account numbers unreadable. If at any time either party determines that Card account number information has been compromised, such party will notify the other party immediately and assist in providing notification to the proper parties, as we deem necessary. Merchant information may be shared by us with our affiliates subject to the provisions of this Agreement and Association Rules. You agree to comply with all security standards and guidelines that may be published from time to time by Visa, MasterCard, or any other Association, including, without limitation, the Visa U.S.A. Cardholder Information Security Program ("CISP"), the MasterCard Site Data Protection ("SDP"), and (where applicable) the VISA Payment Application Best Practices ("PABP") (described in more detail in the Operating Guide) (collectively, the "Security Guidelines"). All Service Providers you use must be recognized by Visa as CISP compliant service providers and payment applications you use must be recognized by VISA as compliant with PABP. You understand that failure to comply with the CISP, SDP or (where applicable) PABP requirements, or other Security Guidelines, or the compromise of any Card account information, may result in assessments, fines, and/or penalties by the Associations, and you agree to indemnify and reimburse us immediately for any assessment, fine, or penalty imposed on us or the Member due to any such event or your breach of this Section and any related loss, cost or expense incurred by us. You further agree to (i) exercise reasonable due diligence to ensure that all of your Service Providers, agents, business partners, contractors, and subcontractors maintain compliance with the Security Guidelines established by CISP, SDP, and (where applicable) PABP and (ii) provide us upon our request with evaluation of your compliance with Security Guidelines as required by the Associations. If any Association requires an audit 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 audit and agree to pay for all costs and expenses related to such audit, including all of our costs relating to such audit, including attorney's fees.

13. Information About Merchant's Business.

13.1 Additional Financial Information. Each of Merchant and the undersigned Guarantors 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 only that part of your books and records that pertain to your Sales Data and Card sales. 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 Cards. If we determine such a change is material to our relationship with you, we may refuse to process Sales 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 written notice of any adverse change in financial condition, intent to liquidate, substantially change the basic nature of your business, transfer or sell any substantial part (25% or more in value) of your total assets, or 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, change the control or ownership of Merchant or your parent, 30 days prior to such liquidation, change, transfer or sale taking place. 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 obtains 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 data in and to the extent that such errors have been caused by us or by malfunctions of our intellectual property or machines. 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 Association interchange, assessments, and fines) for the 6 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, MEMBER, AND PAYMENTECH'S SPONSORING BANK HEREBY DISCLAIM ANY AND ALL WARRANTIES WITH RESPECT TO THE SERVICES, PRODUCTS, AND EQUIPMENT PROVIDED HEREUNDER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE. THIS AGREEMENT IS A SERVICE AGREEMENT, AND EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, PAYMENTECH AND MEMBER DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO MERCHANT OR ANY OTHER PERSON, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES 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. 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.

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 cannot assign this Agreement without your prior written consent, except that we may assign this Agreement to an entity qualified under Association 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.

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 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, and we are acting 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 Association 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 Association 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. This Agreement shall prevail over the terms of any agreement governing the Settlement Account.

15.9 Notices. Except as otherwise provided in this Agreement, all notices must be given in writing and either hand delivered, faxed, or mailed first class, postage prepaid (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 the federal judicial district that includes 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, 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. 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.arb-forum.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 the federal judicial district that includes 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 or utility or power failures, equipment failures, labor strife, riots, war, 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.

16. Survival. The provisions of Sections 4.2, 4.4, 4.5, 4.6, 7, 10.3, 11, 14, 15.10, and 17 shall survive the termination of this Agreement.

17. Definitions.

17.1 "Application" is your statement of your financial condition and the characteristics of account that you have submitted to us on the cover pages of this Agreement and related information, to induce us to enter into this Agreement with you and that has induced us to process your Card transactions under the terms and conditions of this Agreement.

17.2 "Association" is Visa, U.S.A., Inc., MasterCard International, Inc., any debit networks or any other payment method provider.

17.3 "Association Rules" are the bylaws, rules, and regulations, as they exist from time to time, of the Associations.

17.4 "Card" is both (i) the plastic card or other evidence of the account and (ii) the account number, issued to a Cardholder, which you accept from your customers as payment for their purchases from you, which comprise the transactions with respect to which Paymentech agrees to process. **17.5 "Cardholder"** is the person to whom the Card is issued and who is entitled to use the Card.

17.6 "Chargeback" is a reversal of a Card sale you previously presented pursuant to Association Rules.

17.7 "Effective Date" means the date on which this Agreement takes effect pursuant to Section 10.1.

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

17.9 Paymentech, "we", "our", and "us" is Paymentech, L.P., a Delaware limited partnership, having its principal office at 1601 Elm Street, Dallas, Texas 75201, by and on behalf of JPMORGAN CHASE BANK, N.A.

17.10 "Retrieval Request" is a request for information by a Cardholder or Card issuer relating to a claim or complaint concerning a Card sale you have made.

17.11 "Sales Data" is the evidence and electronic record of a sale or lease transaction representing payment by use of a Card or of a refund/credit to a Cardholder.

17.12 "Service Provider" is any party that processes, stores, or transmits Cardholder information on your behalf.

17.13 "T&E Card" is a travel and entertainment Card, charge Card, or credit Card issued by American Express or Novus/Discover or such other Card (other than a MasterCard or Visa Card) with respect to which we may agree to process transactions now or in the future.

PERSONAL GUARANTY

To induce Paymentech to enter into the foregoing Agreement (as the same may hereafter be renewed, modified, extended, or amended, the "Agreement"), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the guarantors named on the cover page of the Agreement (each a "Guarantor" and collectively, the "Guarantors") jointly and severally, irrevocably, and unconditionally guarantee to Paymentech, L.P. ("Paymentech") and its successors and assigns the due and punctual payment of the "Indebtedness" (hereinafter defined). As used herein, the term "Indebtedness" means all indebtedness, obligations, and liabilities of the merchant identified on the cover page of the Agreement ("Merchant") to Paymentech at any time created or arising, including, without limitation, to all indebtedness, obligations, and liabilities of Merchant arising under the Agreement.

This Personal Guaranty is a guaranty of payment and not a guaranty of collection. Each Guarantor agrees that he or she is liable for the Indebtedness as primary obligor. Paymentech may proceed against one or more Guarantors whether or not Paymentech proceeds against Merchant, any other obligors, or any collateral securing the Indebtedness. This Personal Guaranty may not be revoked by any Guarantor and shall continue to be effective with respect to any Indebtedness arising or created after any attempted revocation.

Each Guarantor acknowledges that he or she is a principal owner of Merchant's business and will benefit from the services and financial accommodation provided by Paymentech to Merchant's business. 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 Indebtedness. However, no Guarantor is relying on such financial condition or collateral, including, without limitation, the Merchant's Reserve Account (as defined in Section 4.6 of the Agreement) if any, as an inducement to enter into this Personal Guaranty.

The obligations of each Guarantor hereunder shall be enforceable irrespective of the validity, legality, or enforceability of Merchant's obligations (including without limitation, the expiration of any applicable limitations period) and shall not in any way be affected by or conditional upon (i) any action taken under the Agreement or the exercise of any right or power thereby conferred; (ii) the bankruptcy or similar proceedings involving or affecting Merchant; (iii) any assignment, modification, alteration, or amendment of, or addition to, the Agreement whether with or without such Guarantor's knowledge or consent; (iv) any renewal, extension, increase, modification, alteration or rearrangement of all or any part of the Indebtedness; (v) any adjustment, indulgence, forbearance, or compromise that might be granted by Paymentech to Merchant or any Guarantor; or (vi) any other action, inaction, or circumstance whatsoever (with or without notice to or knowledge of or consent by such Guarantor) that may in any manner vary the risks of such Guarantor or might otherwise constitute a legal or equitable defense or discharge of any surety or guarantor. The Guarantor hereby waives all defenses based on occurrences of the types described in clauses (i) through (vi) above.

Guarantors authorize Paymentech, from time to time, without notice or demand and without affecting their liability hereunder, to (i) renew, compromise, extend, accelerate, or otherwise change the time for payment of, or otherwise change the terms of, the Indebtedness or the Agreement; (ii) take and hold security for the payment of the Indebtedness or this Personal Guaranty, and exchange, enforce, waive, and release any such security, or take additional security; (iii) apply such security or the proceeds thereof in such order or manner as Paymentech, in its discretion, may determine; (iv) release, in whole or in part, Merchant or any Guarantor from liability for the payment of the Guaranteed Debt; (v) substitute any one or more of the Guarantors or acquire additional guarantors; and (vi) to obtain and review such information (including without limitation, the reports of any consumer credit bureau) as Paymentech may deem necessary to confirm Guarantors' creditworthiness.

Guarantors hereby waive notice of (i) the incurrence by Merchant of any Indebtedness; (ii) acceptance of this Personal Guaranty Agreement; (iii) any renewal, modification, extension, or amendment of the Agreement or of any other instrument or document pertaining to all or any part of the Indebtedness; (iv) the occurrence of any breach or default under the Agreement; (v) Paymentech's transfer or disposition of the Indebtedness, or any part thereof; (vi) sale or foreclosure (or posting or advertising for sale or foreclosure) of any collateral for the Indebtedness; (vii) protest, proof of non-payment, or default by Merchant; and (viii) any other action at any time taken or omitted by Paymentech. Guarantors hereby waive all presentment; demands for performance or payment, protests, notices of protest, nonperformance, dishonor, default and non-payment, and all other notices or formalities.

This Personal Guaranty shall be binding on, and inure to the benefit of, the parties hereto and their respective heirs, administrators, legal representatives, successors, and assigns. Guarantors may not, without the prior written consent of Paymentech, assign any of their rights, powers, duties, or obligations hereunder. Guarantors jointly and severally agree to pay reasonable attorneys' fees and all other costs and expenses which may be incurred by Paymentech in the enforcement of this Personal Guaranty. Paymentech's rights hereunder shall be cumulative of any and all other rights that Paymentech may have against Guarantors.