

**NORTH BEACH WATER DISTRICT
PACIFIC COUNTY, WASHINGTON**

RESOLUTION 16-2016

A RESOLUTION OF THE NORTH BEACH WATER DISTRICT OF PACIFIC COUNTY, WASHINGTON, APPROVING A CONTRACT WITH XPRESS BILL PAY TO PROCESS DEBIT/CREDIT CARD AND WEB BASED PAYMENTS.

WHEREAS, the District desires to provide reliable and convenient Automated Clearing House (ACH) services to its ratepayers for making online and telephone payments; and

WHEREAS, Xpress Bill Pay, based on criteria established by the District, provides comprehensive and reliable ACH services at market rates;

NOW, THEREFORE, THE NORTH BEACH WATER DISTRICT BOARD OF COMMISSIONERS, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1 To approve the Contract with Xpress Bill Pay attached hereto and incorporated herein as "EXHIBIT A".

Section 2 To approve the "Merchant Application Agreement with Chase Paymentech" attached hereto and incorporated herein as "EXHIBIT B".

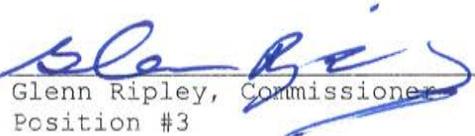
Section 3 To approve the "Schedule A to Merchant Agreement with Chase Paymentech" attached hereto and incorporated herein as "EXHIBIT C".

Section 4 To approve the "Government Owned Addendum with Chase Paymentech" attached hereto and incorporated herein as "EXHIBIT D".

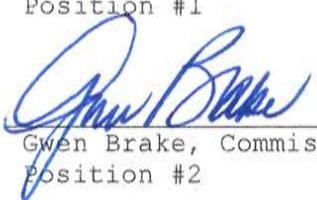
Section 5 To approve the "Setup Disclosure Authorization Addendum" with Chase Paymentech attached hereto and incorporated herein as "EXHIBIT E".

ADOPTED BY THE NORTH BEACH WATER DISTRICT BOARD OF COMMISSIONERS, PACIFIC COUNTY, WASHINGTON THIS 16th DAY OF MAY, 2016

Brian Sheldon, Commissioner
Position #1



Glenn Ripley, Commissioner
Position #3



Gwen Brake, Commissioner
Position #2

"EXHIBIT A"



Gateway and Administrative Service Agreement

This Gateway and Administrative Service Agreement is entered into this ___ day of _____, 20___, by and between **Xpress Solutions, Inc.** ("Xpress") and **North Beach Water District, WA** ("Customer") upon such terms and conditions as are set forth below.

WHEREAS, Customer desires Xpress, and Xpress agrees to provide, Automated Clearing House (ACH) and other services to Customer as indicated in and subject to the terms and conditions of, this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and the receipt of consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

- 1.0 **Term and Renewal:** The Initial Term (the "Initial Term") of this Agreement shall be thirty-six (36) months from the date of this Agreement. This Agreement shall automatically renew for an additional twelve (12) months at the end of the Initial Term or any subsequent renewal term by the Customer upon the receipt by Xpress of the applicable Fees and under the same terms and conditions set forth herein, so long as the Customer is not and has not been in default in any term or condition of this Agreement. If Customer is a political subdivision, the parties agree that an automatic renewal cannot occur if Customer's governing board does not budget for payment of the Fees set forth in Section 2.0 in any given fiscal year of Customer.
- 2.0 **Fees and Payments:** Customer shall pay to Xpress a one-time set-up Fee, monthly maintenance, support, and hosting Fees, and various transaction Fees as set forth in Exhibit A (collectively the "Fees"). Xpress reserves the right to change the Fees at any time so long as Customer is provided no less than 30 days advance notice of a change. Customer authorizes Xpress to initiate an electronic ACH Debit Entry from Customer's bank account provided in Exhibit C on or about the 5th day of each month for the amount of all Fees that accrued during the prior month for any service, support, or maintenance Fee that is due as described in Exhibit A. If there are insufficient funds in Customer's account to cover the Debit, Xpress will contact customer for resolution which will include resubmission up to 3 times. This authorization may be revoked only by notifying Xpress in writing, which revocation shall take effect no later than five (5) business days after receipt by Xpress. Any outstanding Fees that are not paid when due shall bear interest at the rate of 18% per annum until the outstanding balance and all accrued interest are paid in full.
- 3.0 **Services Provided; Obligations of Customer to ODFI:** Transactions are placed through Xpress as a third party sender of ACH transactions with Customer as the "originator" of those transactions under the Rules and Regulations described below. Xpress will send all transactions through an Originating Depository Financial Institution (ODFI) all in accordance with the terms of this Agreement, the Operating Rules of the National Automated Clearing House Association (NACHA) and the applicable Federal Regulations governing ACH transactions including, without limitation, the Electronic Funds Transfer Act and Regulation E (collectively the "Rules and Regulations"). Entry or Entries shall mean either a Credit Entry or a Debit Entry. Customer agrees to comply with Xpress's requests for record retention and signature authorization. Customer hereby grants to Xpress or its designee the right to audit these authorizations and Customer's record retention compliance, at no expense to Xpress.

Customer hereby agrees to, and otherwise assumes, all obligations under the Rules and Regulations as an originator to the ODFI with respect to all Entries, which includes without limitation the unconditional obligation of Customer to pay and indemnify the ODFI for all Entries that are returned by any Receiving Depository Financial Institution (RDFI) for whatever reason.

In addition to the other services referenced in this Agreement, Xpress will provide Customer with an internet payment system. Xpress has developed a web interface that can be used for payment of accounts using credit cards, or electronic funds transfers (EFT). Xpress acts as a payment gateway interface for Customer's account

holders (the "End Users") to make payments. Xpress will facilitate the acquisition of the necessary merchant service accounts for credit cards. Xpress will provide the EFT and Lockbox services directly using its established banking relationships. Customer hereby authorizes Xpress to endorse checks and other payment items on behalf of Customer into an Xpress deposit account and deposit funds as necessary for the clearing of payments received for Customer. Xpress reserves the right to invest idle funds in its possession for the sole benefit of Xpress. Only merchant service accounts and electronic funds transfer accounts that are certified by Xpress may be used.

- 4.0 Support Services and Service Levels: Xpress will provide technical support services, including telephone, email (seven days a week), or other technology support implemented by Xpress, from 7:00 am to 6:00 pm (MST or MDT) for customers within the continental United States. The maximum response time for service shall not exceed 5:00 pm (Customer local time) of the next business day following the request for service by Customer. This support will be limited to the actual use of the Xpress internet payment system.
- 5.0 Software or Hardware: Customer will not receive any hardware or software from Xpress under this Agreement except as specified in Exhibit B. Customer will use its own computers and agrees to have internet services through an internet service provider. Customer agrees that the computers it uses will have sufficient memory and capacity to run at least Internet Explorer 8 or Mozilla Fire Fox 2.0.
- 6.0 Debit Authorization: Customer, as originator under the Rules and Regulations, hereby authorizes Xpress, or its designees, to initiate Debit and/or Credit Entries to Customer's bank account in accordance with this Agreement. Xpress' authority will remain in full force and effect until either (a) 90 days after Xpress has received written notification from Customer of the termination of this Agreement to provide Xpress reasonable opportunity to act upon any outstanding liabilities; or (b) all obligations of the Customer to Xpress that have arisen from this Agreement have been paid in full, including, but not limited to, those obligations described in this Agreement.
- 7.0 Submitting Entries: Entries shall be submitted by the Customer to Xpress using the Xpress software, as provided by Xpress. Entries received by Xpress by 3:00 p.m. MST, shall be processed through Xpress the same day for next business day settlement.
- 8.0 Accepting Transactions: Xpress will accept all completed batches from the Customer. Xpress is responsible for accepting and processing only those Entries that have been received in a proper format and on a timely basis. Any Entry returned to Xpress will be re-presented in accordance with the Rules and Regulations.
- 9.0 Returned Entries: Xpress will apply returned Entries to Customer's account when they are received. All returns will be processed and available through Xpress software or by other means as agreed to by Xpress and the Customer. With respect to each Notification of Change ("NOC") Entry or Corrected Notification of Change ("Corrected NOC") Entry transmitted by Xpress, the parties shall ensure that changes requested by the NOC or Corrected NOC are made by, or on behalf of, the Customer within six (6) banking days of Xpress receipt of the NOC information from the ODFI or prior to initiating another Entry to the Receiver's account, whichever is later.
- 10.0 Reports: Xpress will provide a detailed report of all funds transfers collected as a result of any and all funds transfers. All reporting will be via the Internet.
- 11.0 Limits of Xpress Liability: Xpress will be responsible for Xpress' performance in processing ACH services as a third party sender of ODFI transactions in accordance with the terms of this Agreement, and the other applicable Rules and Regulations. Xpress does not accept responsibility for errors, acts or the failure of others to act, including, and among other entities, banks, communications carriers or clearing houses through which Entries may be originated or Xpress receives or transmits information, and no such entity shall be deemed Xpress' agent. Xpress shall not be responsible nor bear any loss, liability or delay caused by fires, earthquakes, wars, civil disturbances, power surges or failures, acts of government or God, labor disputes, failures in communication networks, legal constraints or other events beyond Xpress' control.

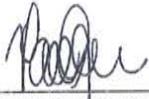
- 12.0 Representations and Warranties Regarding End Users: Customer warrants that it will provide Xpress with relevant billing information for End Users. Customer agrees to indemnify and hold Xpress harmless from any claim or liability relating to any inaccuracy in billing information provided to Xpress. Customer further represents and warrants with respect to all Entries processed for Customer by Xpress that: (a) Each End User has authorized the debiting and/or crediting of his, her, or its account, (b) each Entry is for an amount agreed to by the End User, (c) each Entry is in accordance with the Rules and Regulations and properly authorized in all other respects. Customer agrees to defend, indemnify, and hold Xpress and all its agents harmless for any losses, liabilities, legal action costs or expenses incurred by Xpress as a result of any breach of these representations and warranties either intentionally or unintentionally by Customer. Customer shall cease initiating Entries immediately upon receiving actual or constructive notice of the termination or revocation by the End User of authority.
- 13.0 Regulatory Compliance: Customer will use its best efforts, and bears the final responsibility to ensure that Customer's policies and procedures meet the requirements of all applicable Rules and Regulations pertaining to ACH transactions of any kind. Xpress must and will also comply with all Rules and Regulations pertaining to ACH transactions. Without limiting the obligations of Customer to the ODFI under this Agreement and the Rules and Regulations for the payment of all returned Entries, Customer agrees to execute an origination agreement with the ODFI if required by the Rules and Regulations.
- 14.0 Record Keeping: Customer agrees to keep full and accurate data and records of its utilization of Xpress services and of the transactions giving rise to billing information for at least two (2) years after the date of the relevant transaction, or such longer period as required by the Rules and Regulations. Customer understands that Xpress and the ODFI will be required to participate in certain audits of Customer in connection with the credit card and electronic funds transfer services provided by Xpress. Customer agrees to cooperate with Xpress and ODFI in the performance of such audits, including providing information reasonably required in the course of such audits.
- 15.0 Compliance: Customer represents and warrants that all products and services offered, sold, or provided by Customer are offered, sold, or provided in compliance with all applicable laws and regulations. Customer agrees to comply with Xpress's Acceptable Use Policy as required by the Payment Card Industry Data Security Standard (PCI DSS) as provided in Exhibit D. Xpress will meet or exceed all applicable compliance requirements as required by current and future Payment Card Industry (PCI) rules of operation as well as the Rules and Regulations.
- 16.0 Termination: This Agreement may be terminated by either party upon not less than 30 days written notice to the other party specifying the effective date thereof. In the event this Agreement is terminated by Customer through no fault of Xpress, Xpress shall be paid for all services performed up to the date of termination.
- 17.0 Governing Law; Attorney' Fees: This Agreement shall be governed by and construed under the laws of the State of Utah. In the event suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as a court may adjudge reasonable as attorneys' fees at trial, on any appeal, and on any petition for review, in addition to other sums provided by law.
- 18.0 Independent Contractors: Both Customer and Xpress are acting hereunder as independent contractors and under no circumstances shall any of the employees of one party be deemed the employees of the other for any purpose. This Agreement shall not be construed as authority for either party to act for the other party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other, except to the extent and for the purposes provided for herein.
- 19.0 No Warranty: Xpress makes no warranty, expressed or implied, including warranties of merchantability and fitness for a particular purpose. Xpress shall have no liability with respect to its obligations under this agreement for consequential, special, direct, exemplary, punitive, or incidental damages to customer or to third parties dealing with customer even if Xpress has been advised of the possibility of such damages.

- 20.0 Entire Agreement: This Agreement and the exhibits hereto constitute the entire understanding and agreement among the parties with respect to the subject matter hereof, and there are no other agreements or understandings among the parties other than those contained herein. In the event any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect the validity of the remainder of this Agreement.
- 21.0 Successors and Assigns; Third Party Beneficiary: This Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, successors and assigns. Neither party may assign its interest under this Agreement without the prior written consent of the other. The parties hereby agree that the ODFI with respect to any Entry, including Bank of American Fork, a Utah state bank, shall have the right as a third-party beneficiary, in the event of a default under this Agreement or the agreement between Xpress and the ODFI, to enforce this Agreement directly and independently against Customer including the enforcement of Customer's liability to the ODFI as an originator under the Rules and Regulations.
- 22.0 Waiver: Failure of either party at any time to require performance of any provision of this Agreement shall not limit the parties' right to enforce the provision. Waiver of any breach of any provision shall not be waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

By signing below, Customer and Xpress shall be legally bound and agree to the terms of this Agreement and all of its Attachments.

Accepted by:

Xpress Solutions Inc.

BY:  _____
(Authorized Signature)

Paul Grincer

(Print or Type Name)

TITLE: Operations Manager

DATE: 05/08/2015

Accepted by:

North Beach Water District

BY: _____
(Authorized Signature)

(Print or Type Name)

TITLE: _____

DATE: _____

EXHIBIT A

FEES

Initial Configuration Fees

1. Initial Setup Configuration and Development	See BIAS
Online Payment Module	
Auto Pay Module	
Card Swipe Module	

Recurring Monthly Fees

3. Gateway Fees:	
Credit Card Processing (per transaction)	\$ 0.30
EFT Online Payments (per transaction)	\$ 0.40
EFT Returned Items	
(Invalid account number or unable to locate account)	\$ 5.00
(NSF or Closed Account)	\$ 10.00
(Customer Stop Payment)	\$ 25.00
Bank Bill Pay (per transaction)	\$ 0.20
Lock Box Service (per transaction)	* \$ 0.48
Integrated Remote Deposit (per transaction)	* \$ 0.30
800 Operator Assisted Payment (per call)	* \$ 1.95
800 IVR Assisted Payments (per call)	* \$ 1.95
XBP Deposit Account Withdrawals	
(6 free per month then \$3.25)	
4. Monthly Support & Hosting	\$ 75.00
(\$0.015 per billing statement hosted. Minimum \$75.00)	minimum
5. Monthly Account Keeping Fee	\$ 19.00
(Waived if you keep a \$25,000.00 minimum balance in your Xpress Deposit Account)	

* if service is activated

EXHIBIT B
OPTIONAL EQUIPMENT LIST PRICE LIST

Card Swipes

USB Magnetic Stripe Credit Card Reader	\$ 75.00
USB Keyboard with Integrated Magnetic Credit Card Swipe	\$ 99.00

Printers

Star Micronics 40 Column Thermal Printer (Tear Bar, Gray Color, USB Connection)	\$ 240.74
Star Micronics 40 Column Thermal Printer (Tear Bar, Black Color, USB Connection)	\$ 304.40
Star Micronics 40 Column Thermal Printer (Auto Cutter, Gray Color, USB Connection)	\$ 252.50
Star Micronics 40 Column Thermal Printer (Auto Cutter, Putty Color, USB Connection)	\$ 261.43
Star Micronics 40 Column Thermal Printer (Auto Cutter, White Color, USB Connection)	\$ 323.21
Star Micronics 40 Column Thermal Printer (Auto Cutter, Black Color, USB Connection)	\$ 322.50
Star Micronics 40 Column Thermal Printer (Auto Cutter, Grey Color, Ethernet Connection)	\$ 336.96

Check Scanners

Panini VisionX 50 Check Scanner	\$ 945.00
Panini VisionX 75 Check Scanner	\$ 1,145.00
Panini VisionX 100 Check Scanner	\$1,345.00

Miscellaneous

FMC Checkmate Check Jogger	\$ 249.00
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** Please note: prices subject to change at any time without further notice.*

EXHIBIT C
CUSTOMER ACCOUNT INFORMATION

Please provide the following information regarding Customer's bank account to which the debit entries will be directed for the payment of the Fees:

Name on Account: _____

Account Type: _____

Routing Number: _____

Account Number: _____

Bank Name: _____

EXHIBIT D
ACCEPTABLE USE POLICY

Introduction

The Acceptable Use Policy (AUP) was created by Xpress Solutions and its subsidiaries (the "Company") to protect its network, including, without limitation, the products and services which the Company offers and the related Internet Data Center Services (as defined in the Master Services Agreement) it provides (collectively, the "Xpress Solutions Network"). The Company reserves the right, in its sole discretion, to interpret and apply this AUP. The Company reserves the right to modify this AUP at any time, effective upon posting at www.xpressbillpay.com/aup.asp.

Purpose/Scope

The purpose of this AUP is to help protect the Company's network, each of the Company's clients and third-party users of the Internet, generally from harassing, deceptive, irresponsible and/or illegal activities.

The scope of this policy is all the Company's clients.

Policy

This AUP governs the usage of the Company's network by any person (regardless of whether that person is a Customer). Each person utilizing the Company network in any manner is responsible for complying with this AUP, and for providing assistance to the Company in furtherance of the objectives hereof, as the Company may request from time to time. The Company's Clients will be held solely responsible for the actions (or inactions) of any of their customers, downstream users, or third-party agents that use the Company's Network.

1.1 Prohibited Actions

It shall be prohibited by this AUP to utilize the Company network in any manner which, in the sole discretion of the Company, is (A) illegal, disruptive, harassing or deceptive, or (B) a risk to the Company's network, its stability or security, or (C) inconsistent with this AUP and/or the Company's Rules and Regulations and/or any rules or policies of upstream Company network service providers. Set forth below, is a non-exclusive list of certain actions, omissions, etc., which are expressly prohibited under this AUP:

- Transmitting, distributing or storing any material in violation of applicable law, code or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret, protective order, contract, or other intellectual property right used without proper authorization. Also prohibited is material that is obscene, libelous, defamatory, constitutes an illegal threat, and/or violates export control laws
- Sending unsolicited bulk email messages and/or other advertising material to individuals who did not specifically request such material. This includes, but is not limited to, messages sent as email, "Spam," ICQ traffic, instant message traffic, GSM/GPRS data, or posting the same or similar message to one or more newsgroups (excessive cross-posting or multiple-posting). The Company's accounts or services may not be used to solicit customers from, or collect replies to, messages sent from another Internet Service Provider where those messages violate this AUP or the policy of the other provider. The Company reserves the right, in its sole discretion, to determine whether commercial email on the Company's Network complies with this AUP.
- Utilizing the Company's network (or any relay, proxy or other network element in conjunction with the Company network) to (A) forge the signature, IP address or other identifying mark or code of any other person, (B) impersonate or assume the identity or any other person, or (C) engage in any other activity (including "spoofing") to attempt to deceive or mislead other persons regarding the true identity of the user, including system identification information.

- Unauthorized attempts by a user to gain access to any account or computer resource not belonging to that user (e.g., "hacking" or "cracking"). This includes providing, or assisting in the provision of names, passwords or access codes to persons not authorized to receive such materials by the operator of the system requiring the password or access code.
- Obtaining or attempting to obtain service by any means or device with intent to avoid payment, violate policies or violate law. If a user is restricted or terminated from the Company's network, it is prohibited for a customer to make such services available to such user in an indirect manner.
- Unauthorized access, alteration, destruction, or any attempt thereof, of any information of the Company or any of the Company's clients or end-users by any means or device. This includes any deliberate or other attempt or activity to distribute or post any virus, worm, Trojan horse, or computer code intended to disrupt services, destroy data, destroy or damage equipment, or disrupt the operation of the Company's network or the network of a third-party;
- Knowingly engaging in any activities that will cause a denial-of-service (e.g., synchronized number sequence attacks) to users whether on the Company's network or on another provider's network.
- Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP or the AUP of any other Internet Service Provider, which includes, but is not limited to, the facilitation of the means to send e-mail spam, initiation of pinging, flooding, mail-bombing, denial of service attacks, and piracy of software.
- Using the Company's network in any manner which interferes with the use of the Company's network by other customers or authorized users.
- Utilize the Company's network in any manner that might subject the Company to unfavorable regulatory action, subject the Company to any liability for any reason, or adversely affect the Company's public image, reputation or goodwill, including, without limitation, sending or distributing obscene, hateful, vulgar, racially, ethnically or otherwise objectionable materials as determined by the Company in its sole discretion.
- Using the Company's network to host, access, promote or otherwise distribute any child pornography or obscenity.
- Causing or allowing the Company's network and/or the customer, its IP space or other elements of identification to be placed on so-called "SPAM Block Lists," "Spam Early Warning Systems," or other directories of spam or unsolicited bulk email originators and/or network abusers. It shall be incumbent upon each of the Company's Clients to monitor and modify their usage, and that of their users and customers, to insure compliance with this AUP generally, and also of this provision specifically.

1.2 Enforcement

The Company reserves the right, with or without notice, to restrict, block, modify or terminate services to any Client or user upon the threat or occurrence of a violation to the AUP. The Company reserves the right to cooperate with any court, law enforcement agency, investigator or network service provider in the investigation of threats to the integrity, stability, reliability and/or legality of the products and services offered by the Company and of any violations to the AUP.

1.3 Client Duties

Each Client is obligated to assist the Company in the investigation of any threatened, alleged or actual violation of this AUP. The Client shall cooperate with designees of the Company in this regard. Clients of the Company are responsible for immediately reporting to the Company any issue which could compromise the stability, service or security of any user or system connected to the Company's network.

1.4 Client Password Policy

The Company's clients are required to follow the payment industry's user identification (User ID) and password best practices to protect the Company's sensitive credit card data. Client User IDs and passwords must meet the following requirements:

- User IDs must be unique to an individual and forever connected with a single user to whom it has been assigned.
- User must never share their IDs and/or passwords.
- Users must choose easily remembered passwords that are, at the same time, difficult for unauthorized parties to guess.
- Passwords are required to have a minimum of seven (7) characters.
- Passwords must meet strong password requirements. Passwords will contain both alphabetic and numeric characters. Passwords will also utilize upper and lower case letters and symbols.

1.5 Reports and Complaints

Any reports or complaints about the use or misuse of the Company's products or services should be directed to:

Xpress Solutions, Inc.
387 S 520 W, Suite 110
Lindon, UT 84042
800-768-7295
security@xpressbillpay.com

1.6 Digital Millennium Copyright Act

Xpress Solutions, Inc. maintains a separate policy on the handling of complaints under the Digital Millennium Copyright Act, which is incorporated into this AUP hereby and which may be viewed at www.xpressbillpay.com/copyright.

1.7 Handling Charges

The Company reserves the right to assess a handling fee, at its usual emergency project labor rate, to respond to abuse complaints incurred by the Company relating to a client and/or to handle, address, clean up and/or correct damage done to the operation of the Company's Network and business operations supported thereby. The fees will be billed in one (1) hour minimum increments. The Company hereby agrees to waive such fee for the first instance per customer of any such complaint, but shall impose the fee from and after the second such complaint.

"EXHIBIT C"

CHASE Schedule A to Merchant Agreement

Paymenttech Merchant: NORTH BEACH WATER DISTRICT

NAPFINSCHEDULEAICPT2 20150701 V3.15.3

Assumptions		
Transaction related assumptions		
Payment Transaction Sales Volume	\$566,500	
Average Transaction Amount	\$45.00	
PIN Debit / EBT Transactions	0	
Conveyed Transactions	N/A	
Safetech Encrypted Items	N/A	
Other assumptions		
Number of locations	1	
Authorization / Capture %	105.0%	
Chargebacks as % of Sales Transactions	0.0300%	
Billing Frequency	Monthly	
Target Qualification Level:		
MasterCard:	Utilities	MUTC
Visa:	CPS Utility	VUTC
Discover:	PSL Utilities - Core	D158

1. Fees applied on every transaction

Payment Brand Interchange & any incremental discount rate % – MasterCard, Visa and Discover assess an Interchange Rate, Interchange Fee, Assessment Fee and Network Fee for each transaction. These rates and fees will be passed through at cost. Payment Brand Interchange rates can be accessed by visiting the Learning & Resources section of Chase Paymenttech's website, and selecting "Understanding Interchange"

MasterCard, Visa & Discover Interchange Rates	as set by each Payment Brand
MasterCard, Visa & Discover Incremental Discount Rate	0.2500%
PIN Debit and/or EBT Network Fees	All standard PIN Debit Network Fees will be assessed
PIN Debit – Incremental Discount Rate	N/A
JCB (Japanese Credit Bureau)	N/A
Voyager Discount Rate (if settled)	N/A

Payment Brand Assessments		
MasterCard	Credit transactions < \$1000 and all Debit transactions	0.120%
	Credit transactions > \$1000	0.130%
Visa	Debit transactions	0.110%
	Credit transactions	0.130%
Discover		0.110%

Payment Brand Network Fees	Credit	Debit
MasterCard Network Access & Brand Usage Fee (NABU)	\$0.0195	\$0.0195
Visa Auth Processor Fee (APF)	\$0.0195	\$0.0155
Discover Data Usage Fee	\$0.0185	\$0.0185

Transaction Fees	
MasterCard per transaction	N/A
Visa per transaction	N/A
Discover per transaction	N/A
JCB per transaction	N/A
American Express per transaction	N/A
PIN Debit per transaction	\$0.2000
EBT per transaction	N/A
Check Verification – Scan per transaction	N/A
Voyager per transaction	N/A
Wright Express per transaction	N/A
Hosted Pay Page per transaction	N/A

Authorization Fees	
MasterCard per authorization	\$0.1500
Visa per authorization	\$0.1500
Discover per authorization	\$0.1500
JCB per authorization	N/A
American Express per authorization	\$0.1500
Voyager per authorization	N/A
Wright Express per authorization	N/A
Private Label per authorization	N/A
Dial Backup authorization surcharge	\$0.0100

Encryption Fees	
Safetech Encryption per transaction	N/A
Safetech Tokenization per transaction	N/A

Customer Initials	X _____	Please initial to acknowledge page 1 of the Schedule A pricing sheet
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2. One Time and Periodic Fees

One Time Fees		Monthly Fees		Monthly Fees – Pass Thru	
Account Setup Fee	N/A	Monthly Service Fee ¹	\$5.00	Visa Fixed Acquirer Network Fee ⁴	Varies
Rush Fee	N/A	Monthly Minimum Fee ²	\$25.00		
Terminal Reprogram Fee	N/A	Monthly Helpdesk Fee	N/A		
PIN Debit Setup Fee	N/A	Online Reporting Tool	N/A		
PIN Pad Encryption Fee	N/A	Safetech Encryption ³	N/A		
Annual Fees					
				Annual Fee	N/A
Internet Product: NetConnect					
Setup fee	\$79.95	Monthly fee	N/A		
Third Party Setup fee	N/A	Third Party Monthly fee	N/A		

- 1 – Monthly service fees will be debited for the first time in the month after your account has been set up. These fees will be debited regardless of whether you are processing transactions through your account.
- 2 – If the total of all fees each month in section 1, 3 and 4 do not equal the Monthly Minimum Fee, your account will be debited for the difference.
- 3 – If Merchant obtains point of sale device(s) from Chase Paymentech for use with Safetech Encryption, the following additional fees shall be assessed: (a) a one-time fee of \$10.90 per device; and (b) an encryption injection fee of \$34.95 per device per occurrence. These assessments are in addition to the above Safetech Encryption Fee(s). If Merchant obtains point of sale device(s) from a third party, additional fees may apply. Merchant acknowledges and understands that its use of any fraud mitigation or security enforcement solution (e.g. an encryption product or service), whether provided to merchant by Paymentech or a third party, in no way limits Merchant's obligation to comply with the Security Standards or Merchant's liabilities set forth in this Agreement.
- 4 – Visa Fixed Acquirer Network Fee is a monthly fee assessed by Visa based on Merchant Category Code (MCC), dollar volume, number of merchant locations, number of Tax IDs, and whether the physical Visa card is present or not present at the time of the transaction. This fee can vary monthly.

3. Per Incidence Fees

Per Incidence Fees: Charged every time your account incurs one of the below items				
Statement Fee (Email / ROL)	N/A	No charge if statements are sent to a valid email address or accessed by Merchant through Resource Online, as elected by Merchant on the Application.		
Statement Fee (Mail)	\$5.00	Charged each month Chase Paymentech mails a statement (whether at the request of Merchant or because delivery to a valid email address has failed)		
Statement Fee (Reprint)	N/A	Charged for each archived statement you request to have printed		
Supplies: Billed Per Order	N/A	Charges for supply orders vary based on the items ordered		
Chargeback Fee	\$10.00	Charged when a cardholder or card-issuing bank formally protests a charge		
Voice Authorization Fee	\$0.65	Charged when you call the Voice Authorization phone number to authorize a credit card		
AVS Fee – Electronic	N/A	Charge for each electronic address verification authorization		
Batch Settlement Fee	N/A	Charged for each batch of transaction(s) you submit for settlement		
ACH fee	N/A	Charged for each ACH (transmission of funds) sent to your account		
ACH Return Fee	\$25.00	Charged when Chase Paymentech is unable to debit fees from your account		
Dynamic Debit Surcharge Fee	N/A	Charged for each PIN Debit transaction routed with the Dynamic Routing product		
PIN Debit Injection Fee	\$40.00	Charged when merchant elects PIN Debit processing and applies to each device not purchased from Chase Paymentech.		
Statement Type:	Resource Online	No Statement / No Recap	Statement Frequency:	N/A

Customer Initials	x _____	Please initial to acknowledge page 2 of the Schedule A pricing sheet
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4. Payment Brand Fees – Per Incidence		
MC Acquiring License Fee *	0.0040%	Charged on MasterCard Gross Sales volume. See additional information under Payment Brand Charges section on page 4.
MC Digital Enablement / Card Not Present Fee	0.010%	Charged on MasterCard Card Not Present Gross Sales volume.
DI Network Authorization Fee	\$0.0025	Charged by Discover on all authorizations for card transactions that are settled through the Discover Network
MC Auth Access Fee – AVS Card Present	\$0.010	Charged by MasterCard when a merchant uses the address verification service to validate a cardholder address
MC Auth Access Fee – AVS Card Not Present	\$0.010	
MC Auth Access Fee	\$0.005	Charged by MasterCard when an authorization is reversed or the authorization is provided by MasterCard if the card issuer is not available.
MC Card Validation Code 2 Fee	\$0.0025	Charged by MasterCard when a merchant submits the Card Validation Code 2 (CVC2) in an authorization request
MC Account Status Fee (Intra-regional)	\$0.025	Charged by MasterCard or Visa when a merchant uses this service to do an inquiry that a card number is valid
MC Account Status Fee (Inter-regional)	\$0.03	
Visa Zero \$ Account Verification Fee	\$0.025	
MC Processing Integrity Fee	\$0.055	Charged when a card is authorized but not deposited and the authorization is not reversed in a timely manner
Visa Misuse of Authorization Fee	\$0.048	
Visa Zero Floor Limit Fee	\$0.10	Charged when a transaction is deposited but never authorized
Visa Transaction Integrity Fee	\$0.10	Applies to Visa Debit & Prepaid transactions that do not meet qualification criteria for Custom Payment Service (CPS) categories
MC Cross Border Assessment Fee	0.60%	Charged by MasterCard, Visa and Discover on foreign bank issued cards.
Visa International Service Assessment Fee	0.80%	
Discover International Service Fee	0.55%	
MC International Support Fee	0.85%	Additional fee charged by MasterCard, Visa and Discover on foreign bank issued cards.
Visa Interregional Acquiring Fee	0.45%	
Discover International Processing Fee	0.40%	
Visa Partial Auth Non-Participation Fee	\$0.01	Applies to Petroleum merchants using automated fuel pumps that do not support Partial Authorization
MC Global Wholesale Travel Transaction Program B2B Fee	1.57%	Applies to Travel merchants for transactions qualifying at the MasterCard Commercial Business-to-Business interchange category.

5. Other Fees			
Fee Description	Amount	Fee Description	Amount

Customer Initials	x _____	Please initial to acknowledge page 3 of the Schedule A pricing sheet
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Equipment Swap Fees		
Type	Description	Fee
Replacement Fee (swap)	In warranty - Terminals, Printers, & Pinpads ¹	\$50.00
Replacement Fee (swap)	Out of warranty - Terminals, Printers, & Pinpads: Replacement (swap) fees vary based on Manufacturer and Model and will fall within the specified range to the right	\$100 - \$500
Injection Fee (swap)	Safetech Encryption Injection	\$34.95
Restocking Fee	Return equipment for any reason other than repair	\$150.00
Late Fee	For all equipment returned late, or not returned	\$500.00

1) New Equipment Warranty timeframes

5 years – Verifone Vx520, Vx820 PIN Pad, 1000SE PIN Pad; Ingenico ICT250

1 year – all other new equipment

In warranty coverage applies only to new equipment purchased or leased from Chase Paymentech

Amount payable upon Termination

In addition to the other amounts due under this Agreement (including without limitation, the fees and charges described in this Schedule A), you may owe an amount in the event you terminate this Agreement. Whether you will owe that amount, and how much you will owe, will be determined in accordance with Section 10 of the Merchant Agreement.

Payment Brand Charges

Part of the fees that we charge you for processing your transactions consist of fees we pay to the Payment Brands. These charges, called "Payment Brand Charges", include, but are not limited to, interchange rates, assessments, file transmission fees, access fees, and international and cross border fees. Therefore, in addition to the rates set forth above, you also will be charged Payment Brand Charges. Payment Brand interchange rates can be accessed online by visiting the Learning & Resources section of Chase Paymentech's website, and selecting "Understanding Interchange".

Please note that Chase Paymentech may, from time to time, elect not to charge you for certain existing, new or increased Payment Brand Charges. If we elect not to charge you, we still reserve the right to begin charging you for existing, new or increased Payment Brand Charges at any time in the future, upon notice to you. No such Payment Brand Charges will be imposed retroactively.

* MasterCard assesses the MasterCard Acquiring License Fee annually to each Acquirer based on the total annual volume of MasterCard-branded sales (excluding Maestro PIN debit volume) of its U.S. domiciled merchants. To fairly distribute the fee across all Chase Paymentech MasterCard-accepting merchants, a rate of 0.004% will be applied to all of your MasterCard gross sales transactions.

6. Authorized Signature	
Authorized Representative Signature: Must appear on Merchant Application section 11	
_____	_____
Printed Name	Title
X _____	_____
Signature	Date

Please ensure you have initialed pages 1, 2 and 3

2. Merchant Profile

Is your business home-based? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	What is your business industry type? <input checked="" type="checkbox"/> Retail <input type="checkbox"/> Restaurant <input type="checkbox"/> Lodging <input type="checkbox"/> Auto Rental <input type="checkbox"/> Cash Advance <input type="checkbox"/> Convenience Store/Gas <input type="checkbox"/> Other: <input type="checkbox"/> Internet - list all websites on which you accept payments and provide a customer service email address: www. www. Customer Service Email Address:
If "Yes" above, where is the inventory located?	
What merchandise do you sell or services do you provide? WATER UTILITY	
Is your business seasonal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Has business ever been in bankruptcy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

3. Reporting, Statements, Chargeback Requests, and Retrieval Requests

Reporting and Statements – you may access transaction history and monthly statements online via Resource Online, or have your monthly statements emailed to you.		Chargeback and Retrieval Requests
<input checked="" type="checkbox"/> Resource Online. Set up a Resource Online account and use the following email address as the user login: OFFICEMANAGER@NORTHBACHWATER.C	<input checked="" type="checkbox"/> Email Statements to the: <input checked="" type="checkbox"/> Legal email address <input type="checkbox"/> DBA email address	Mail Chargeback and Retrieval Requests to <input checked="" type="checkbox"/> Legal address <input type="checkbox"/> DBA address

4. Sales Information

What is the estimated annual breakdown (in %) of your annual Payment Card Transactions? _____ 10 % Via mail or phone order _____ 80 % Payments accepted on your website _____ 10 % Card is swiped _____ % Card is present but keyed 100 % Total	Do you ever charge a Customer on a recurring basis? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes" above, how often will you charge? <input type="checkbox"/> 30 Days <input type="checkbox"/> 60 Days <input type="checkbox"/> 90 Days <input type="checkbox"/> Annually <input type="checkbox"/> Other: If Customers are required to pay a deposit, what % of total sale? %
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5. Ownership Information

- If your business is privately owned by one or more individuals (e.g. LLC, Sole Prop, Partnership, or Private Corporation),**
- ➔ Complete sections A and B for the owners with the greatest % of ownership.
 - ➔ All owners listed below must sign the Application and Agreement in Section 11 and 12.
- If your business is a non-profit organization, publicly owned corporation, or government entity,**
- ➔ Complete section C only
 - If a parent company owns your business,**
 - ➔ Enter name and address of the legal entity(ies) in section A or A and B
 - ➔ Provide the name of an Authorized Representative in Section C.
 - ➔ Substitute the parent company's Federal Tax ID for the Social Security #.

A Name of Individual/Sole Proprietor or Parent Company	Percentage of Ownership: %	Social Security #
Street Address (Individual/Sole Proprietor use home address) (No PO Box or paid mailbox)		Date of Birth
City	State	Zip Code
Telephone #		
Previous Address (Provide if at current/listed address less than a year) Please provide full address... Street Address, City, State, Zip		

B Name of Individual/Sole Proprietor or Parent Company	Percentage of Ownership: %	Social Security #
Street Address (Individual/Sole Proprietor use home address) (No PO Box or paid mailbox)		Date of Birth
City	State	Zip Code
Telephone #		
Previous Address (Provide if at current/listed address less than a year) Please provide full address... Street Address, City, State, Zip		

C Name of Authorized Representative (applies only to Non-Profits, Public Corp or Govt. Entity)	Title
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All American Express fees are set by American Express and are subject to change by American Express. The fees set forth herein are only quotes, based upon the then-current American Express pricing guidelines, which may be modified from time to time.

If Merchant operates an internet/physical delivery, mail order/telephone order, or home-based business, Merchant will not be charged the American Express Discount Rate. Instead, Merchant will be charged a flat monthly fee of \$7.95. If Merchant is charged a flat monthly fee, for any reason, that fee will continue until Merchant's American Express volume exceeds \$4,999 in a 12-month period. At such time American Express will begin charging Merchant the applicable industry-specific American Express Discount Rate.

Except for Education merchants within MCC 7032, 8211, 8220 and 8351, an Inbound fee of 0.40% will be applied to any charge made using an American Express Card, including a Prepaid Card, issued by an issuer located outside of the United States.

American Express Authorization

By signing below, I represent that I have read and am authorized to sign and submit this application for the above entity which agrees to be bound by the American Express® Card Acceptance Agreement ("American Express Agreement"), and that all information provided herein is true, complete and accurate. I authorize Paymentech and American Express Travel Related Services Company, Inc. ("American Express") and American Express's agents and Affiliates to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies, from time to time, and disclose such information to their agents, subcontractors, Affiliates, and other parties for any purpose permitted by law. I authorize and direct Chase Paymentech and American Express and American Express's agents and Affiliates to inform me directly, or inform the entity above, about the contents of reports about me that they have requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I also authorize American Express to use the reports on me from consumer reporting agencies for marketing and administrative purposes. I am able to read and understand the English language. Please read the American Express Privacy Statement at <http://www.americanexpress.com/privacy> to learn more about how American Express protects your privacy and how American Express uses your information. I understand that I may opt out of marketing communications by visiting this website or contacting American Express at 1-(800)-528-5200. I understand that in the event I decline to receive marketing communications from American Express, I may continue to receive messages from American Express regarding American Express Services.

I understand that upon American Express' approval of the application, the entity will be provided with the American Express Agreement and materials welcoming it either to American Express' program for Chase Paymentech to perform services for American Express or to American Express' standard Card acceptance program which has different servicing terms (e.g. different speeds of pay). I understand that if the entity does not qualify for the Chase Paymentech servicing program that the entity may be enrolled in American Express' standard Card acceptance program, and the entity may terminate the American Express Agreement. By accepting the American Express Card for the purchase of goods and/or services, or otherwise indicating its intention to be bound, the entity agrees to be bound by the American Express Agreement.

X

Signature

Print Name

Title

Date

9. Site Visit

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

The site visit includes, but is not limited to,

- an interview with you regarding the nature of your business, and
- photographs of your business operation.

If the site visit is not completed or the results of the site visit are not approved, Chase Paymentech may,

- decline your application for a merchant account
- withhold your funds, or
- terminate your Agreement with Chase Paymentech and close your Merchant account.

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

Best phone # to contact you:	Preferred language: <input type="checkbox"/> English <input type="checkbox"/> Spanish <input type="checkbox"/> Other:
Best time to reach you:	

10. IRS Certification

Under penalty of perjury, I certify that:

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

Certification Instructions

You must cross out and initial #2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. IRS Form W-9 instructions are available upon request.

(Continues on next page)

11. Authorized Representative(s)

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

I, the undersigned, certify:

- that I am an owner, partner, officer or other authorized representative of the Merchant ("Authorized Representative"); and
- that I am duly authorized to enter into agreements on behalf of Merchant and to legally bind Merchant to such agreements.

Furthermore, by signing below as an owner of Merchant, I authorize Chase Paymentech, Member, or their designees to:

- investigate and verify personal credit and financial information about me; and
- obtain and use consumer credit reports on me from time to time in connection with establishing Merchant's account and maintaining the Agreement.

By submitting this Application and Agreement, Merchant, through the undersigned Authorized Representative:

- represents and warrants that the person submitting this Application is duly authorized to enter into agreements on behalf of Merchant and to legally bind Merchant to such agreements;
- represents and warrants that all information contained within the Application as well as any information submitted in conjunction with the Application is true, complete, and not misleading;
- represents and warrants that it owns the bank account provided in Section 6 and the account is being maintained solely for business purposes and not for personal, family or household purposes;
- represents and warrants that it has received a complete copy of the Agreement, including the Terms and Conditions for Merchant Agreement and Schedule A and agrees to be legally bound by the Agreement;
- understands that any unilateral changes to the pre-printed text of any part of the Agreement may result in Chase Paymentech declining Merchant's Application or terminating the Agreement
- agrees that Chase Paymentech, Member, or their designees, may:
 - investigate and verify the credit and financial information of Merchant; and
 - obtain credit reports on Merchant from time to time and use them in connection with establishing Merchant's account and maintaining the Agreement; and
- agrees that Member and Chase Paymentech may share credit, financial information about Merchant and Chase Paymentech.

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

Owner / Authorized Representative: Signer's name must appear in Section 5

X _____
Signature Print Name Date

Owner / Authorized Representative: Signer's name must appear in Section 5

X _____
Signature Print Name Date

12. Individual Guarantor(s)

The person(s) acting as individual guarantor(s) must have an ownership interest in Merchant and must be listed in Section 5 of this Application. As an individual(s) who agrees to be personally responsible for Merchant's account with Chase Paymentech (a "Guarantor"), I

- certify I have received and reviewed a complete copy of the Agreement, including the Application, Terms and Conditions, and Schedule A
- certify I have read the Agreement, including, without limitation, the "Personal Guaranty" section at the end of the Terms and Conditions
- agree to be bound as a Guarantor of the Merchant's obligations under the Agreement in accordance with the "Personal Guaranty" section of the Terms and Conditions
- certify that I have an ownership interest in Merchant
- agree that Chase Paymentech, Member, or their designees, may investigate and verify the credit and financial information about me and may obtain consumer credit reports on me from time to time
- agree that Chase Paymentech, Member, or their designees, may use such consumer credit reports in connection with establishing and maintaining the Merchant's account and Agreement
- agree that all business references, including financial institutions, may share my credit and financial information with Chase Paymentech

Guarantor:

X _____
Signature Print Name Date

Guarantor:

X _____
Signature Print Name Date

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

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

Signature Title Date

TERMS AND CONDITIONS

The Terms and Conditions together with the Application, pricing Schedules A and A-1 (if applicable), and any other documents referenced herein form the legal agreement between you ("Merchant"), Paymentech, LLC ("Chase Paymentech"), and JPMorgan Chase Bank, N.A. ("Member") for processing your Payment Card Transactions. Chase Paymentech has agreed to acquire and process your Payment Card Transactions as well as pay you the amount of each Payment Card Transaction subject to the terms of this Agreement. You agree to pay us for the Services performed and to comply with the Payment Brand Rules, Security Standards, operating procedures and all applicable laws, as further described in this Agreement.

1. MERCHANT'S ACCEPTANCE OF PAYMENT CARDS.

1.1 Exclusivity.

During the term of this Agreement, Merchant *shall*:

- (a) use *exclusively* Chase Paymentech for the Services; and
- (b) submit all Transaction Data to Chase Paymentech in compliance with all specified formats and procedures.

1.2 Payment Card Acceptance Policies and Prohibitions.

Merchant *shall*:

- (a) notify Chase Paymentech, on its Application or otherwise in writing, of all of Merchant's Payment Card acceptance methods (e.g. card-present, card-not-present, recurring transactions, etc.);
- (b) accept all categories of Visa and MasterCard Payment Cards, unless Merchant has notified Chase Paymentech on its Application or otherwise in writing of Merchant's election to accept one of the following "limited acceptance" options:
 - i. Visa and MasterCard *consumer credit (but not debit) cards* and Visa and MasterCard *commercial credit and debit cards only*; or
 - ii. Visa and MasterCard *debit cards only*;
- (c) honor all foreign bank-issued Visa or MasterCard Payment Cards;
- (d) publicly display appropriate signage to indicate all Payment Cards accepted by Merchant, including any limited acceptance categories;
- (e) examine each Payment Card (credit, debit, etc.) presented at the point of sale to ensure the Payment Card is valid, has not expired and that the Customer's signature on the Transaction Receipt corresponds to the authorized signature on the back of the Payment Card;
- (f) in situations where the Payment Card is not physically presented to Merchant at the point of sale (e.g. on-line, mail order, telephone order, pre-authorized, or recurring transactions), have appropriate procedures in place to ensure that each Transaction is made only to the Customer;
- (g) provide the Customer with a Transaction Receipt for each Transaction. All Transaction Receipts must conform to Payment Brand Rules; and
- (h) prominently and clearly inform Customers of its identity so that the Customer can distinguish Merchant.

Except to the extent permitted by law or the Payment Brand Rules, Merchant *shall not*:

- (i) set a dollar amount above or below which Merchant refuses to honor otherwise valid Payment Cards;
- (j) issue a Refund in cash or a cash equivalent (e.g. checks) for any Transaction originally conducted using a Payment Card;
- (k) request or use a Payment Card account number for any purpose other than to process a payment for goods or services sold; or
- (l) add any tax or surcharge to a Transaction; if any tax or surcharge amount is imposed, Merchant must have notified Paymentech and the Payment Brands at least thirty days before, such amount must be included in the Transaction amount, shall not be collected separately, and Merchant's surcharging practices must comply with applicable laws and Payment Brand Rules.

Merchant *shall not*:

- (m) require a Customer to complete a postcard or similar device that includes Payment Instrument Information in plain view when mailed;
- (n) require the Customer to pay the fees payable by Merchant under this Agreement;
- (o) split a single Transaction into two or more Transactions to avoid or circumvent authorization limits or monitoring programs; and
- (p) accept Payment Cards for the purchase of scrip, as defined by the Payment Brand Rules.

Merchant *may*:

- (q) request or encourage a Customer to use a Payment Card other than the Payment Card initially presented by the Customer, unless prohibited by the Payment Brand Rules or applicable law

1.3 Payment Brand Rules.

Merchant agrees to comply with:

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

1.4 Requirements for Certain Transactions.

Merchant represents and warrants that each Transaction:

- (a) represents payment for or Refund of a bona fide sale or lease of the goods, services, or both, which Merchant has the legal right to sell and which is provided by Merchant in the ordinary course of its business, as represented in its Application;
- (b) is not submitted on behalf of a third party;
- (c) represents a current obligation of the Customer solely for the amount of the Transaction;
- (d) does not represent the collection of a dishonored check or the collection or refinancing of an existing debt;
- (e) represents goods that have been provided or shipped, or services that have actually been rendered, to the Customer;
- (f) is free from any material alteration not authorized by the Customer;

- (a) the parties agree that Paymentech and Member will treat Merchant's qualifying Chase Card transactions as Chase Transactions, and the provisions of this Agreement governing Chase Transactions shall apply. The parties acknowledge and agree that only those transactions that conform to the Chase Merchant Services Specifications will qualify as Chase Transactions;
- (b) Merchant acknowledges receipt of, or access to, the Chase Requirements and agrees to abide by the Chase Requirements. The Chase Requirements are confidential and Merchant may not disclose the Chase Requirements to any third party without the prior written consent of Paymentech and Member; and
- (c) the amounts due for Chase Transactions are set forth on Schedule A attached hereto.

10. TERM AND TERMINATION.

10.1 Term. This Agreement starts on the day it is accepted and agreed to by Chase Paymentech (the "Effective Date"). This Agreement will continue in full force and effect until it is terminated by Merchant under Section 10.2, or by Chase Paymentech under Section 10.3.

10.2 Merchant Termination. Subject to the terms of this Section 10.2, Merchant may terminate this Agreement at any time by giving thirty (30) days' prior notice to Chase Paymentech.

PLEASE READ THIS PROVISION CAREFULLY. IT APPLIES DURING THE FIRST 24 MONTHS IF: MERCHANT (A) TERMINATES THIS AGREEMENT, OR (B) FAILS TO MAINTAIN AN ACTIVE ACCOUNT; AND MERCHANT RECEIVED A PROMOTIONAL CONSIDERATION FROM CHASE PAYMENTECH.

Merchant may be obligated to repay all, or a prorated portion of, any Promotional Consideration Merchant received when it signed up with Chase Paymentech. A Promotional Consideration is:

- (a) a signing bonus;
- (b) a free point of sale terminal or other equipment;
- (c) the waiver of any applicable fees; or
- (d) any other item of value, which was extended to Merchant in consideration of entering into this Agreement.

In the event Merchant's repayment of the Promotional Consideration is limited by applicable law, the amount owed to Chase Paymentech is limited to the maximum amount permitted under applicable law. Any amount owed to Chase Paymentech under this Section 10.2 or Section 10.4 will be funded in the same manner as provided for negative balances in Section 4.5.

10.3 Chase Paymentech Termination. Chase Paymentech may terminate this Agreement at any time by giving thirty (30) days' prior notice to Merchant. Furthermore, Chase Paymentech may terminate this Agreement *immediately* if:

- (a) Merchant is determined to have excessive Chargebacks;
- (b) Chase Paymentech determines, in its reasonable discretion, that Merchant's Transactions present increased or excessive Anticipated Risks;
- (c) any representation or warranty in the Agreement, including the Application or Schedule A, is determined to be incorrect in any respect when made or deemed to be made;
- (d) Merchant fails to comply with any term, covenant, condition, or agreement contained in this Agreement;
- (e) a case or other proceeding is commenced by or against Merchant in any court of competent jurisdiction seeking relief under the Bankruptcy Code or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up, or adjustment of debts, the appointment of a trustee, receiver, custodian, liquidator, or the like of Merchant, or of all or any substantial part of the assets, domestic or foreign, of Merchant, and such case or proceeding continues undismissed or unstayed for a period of 60 consecutive days, or an order granting the relief requested in such case or proceeding against Merchant (including, without limitation, an order for relief under the Bankruptcy Code) is entered;
- (f) Chase Paymentech, in its reasonable discretion, deems Merchant to be financially insecure;
- (g) any Payment Brand:
 - i. notifies Chase Paymentech or Member that it is no longer willing to accept Merchant's Transaction Data; or
 - ii. requires Chase Paymentech or Member to terminate or limit this Agreement or Merchant's ability to accept Payment Cards from Customers;
- (h) Merchant or any person owning or controlling Merchant's business is listed in one or more databases of terminated or high risk merchants maintained by the Payment Brands; or
- (i) Merchant engages in conduct that
 - i. creates or could tend to create harm or loss to the goodwill of any Payment Brand, Chase Paymentech, or Member; or
 - ii. causes Paymentech or Member to violate the Payment Brand Rules or applicable law; or
 - iii. results in Paymentech's, Member's, or Merchant's participation in a risk-based program under the Payment Brand Rules.

If this Agreement is terminated by Chase Paymentech, Merchant acknowledges that Chase Paymentech may be required to report Merchant's business name, and information about its principals, to the Payment Brands, and Merchant expressly agrees and consents to such reporting.

10.4 Active Account. Merchant's account will be considered "Active" as long as Merchant continues to make on-time payments of all amounts owed under the Agreement. But, if Merchant goes more than 90 consecutive days without making an on-time payment of amounts due under the Agreement, Chase Paymentech *may*:

- (a) consider the Merchant's account as *not* Active;
- (b) terminate this Agreement immediately; and
- (c) subject to Section 10.2, collect all or a prorated portion of any Promotional Consideration.

10.5 Post Termination. The termination of this Agreement will not affect either party's rights or obligations with respect to Transactions submitted prior to termination. Therefore, the provisions governing processing and settlement of Transactions, all related adjustments, fees, and other amounts due from Merchant, and the resolution of any related Chargebacks, disputes, or other issues involving Transactions, will continue to apply for all Transactions made prior to termination.

Upon termination of this Agreement, Merchant shall:

- (a) continue to be responsible for all Chargebacks, fees, fines, assessments, credits, and adjustments resulting from Transactions processed pursuant to this Agreement before termination; and
- (b) be responsible for all amounts then due or which thereafter may become due to Chase Paymentech or Member under this Agreement.

Upon termination or notice of termination of this Agreement, Paymentech may, in its sole discretion and without waiving any of its rights or remedies under this Agreement:

- (a) establish a Reserve Account; and
- (b) process Transaction Data submitted by Merchant after termination in accordance with and subject to all of the terms of this Agreement.

11. INDEMNIFICATION. Merchant agrees to indemnify Chase Paymentech, Member, the Payment Brands, and their respective affiliates, officers, directors, employees, agents, and sponsoring banks from any losses, liabilities, and damages of any and every kind (including, without limitation, Chase Paymentech's costs, expenses, and reasonable attorneys' fees) arising out of or related to:

- (a) Chase Paymentech's reliance on the information provided by Merchant, or Merchant's Authorized Representative, on the Application or in conjunction with the Application (including any information with respect to Merchant's financial condition);
- (b) any assessment, fine, or penalty imposed on Chase Paymentech or the Member, and any related loss, cost, or expense incurred by Chase Paymentech or the Member; and
- (c) any claim, complaint, or Chargeback:
 - i. made or claimed by a Customer with respect to any Transaction or Transaction Data submitted by Merchant;
 - ii. caused by Merchant's noncompliance with this Agreement, applicable law, or the Payment Brand Rules (including, without limitation, any breach of a representation or warranty made by Merchant or Merchant's failure to comply with the Security Standards);
 - iii. resulting from any voluntary or involuntary bankruptcy or insolvency proceeding by or against Merchant; or
 - iv. related to Chase Paymentech's reporting of Merchant, or any person owning or controlling Merchant's business, to the Payment Brands for inclusion in one or more databases of terminated or high risk merchants maintained by the Payment Brands.

The indemnification provided for in this Section does not apply to any claim or complaint to the extent it is caused by Chase Paymentech's own gross negligence or willful misconduct. The indemnification provided for in this Section shall survive termination and is subject to the limitation of liability set forth in Section 14.

12. TRANSACTION DATA, PAYMENT CARD INFORMATION AND PAYMENT CARD INDUSTRY COMPLIANCE.

Merchant acknowledges that its:

- (a) failure, or the failure of any of its Service Providers, to comply with the Payment Brand Rules, including the Security Standards, or the compromise of any of Transaction Data or Payment Card Information (whether such Payment Card Information is under the control of Merchant or its Service Provider) may result in assessments, fines, and penalties by the Payment Brands and termination of this Agreement; and
- (b) use of any fraud mitigation or security enhancement solution (e.g. an encryption product or service), whether provided to Merchant by Chase Paymentech or a third party, in no way limits Merchant's obligation to comply with the Security Standards or Merchant's liabilities set forth in this Agreement.

Merchant shall not:

- (c) disclose Payment Card Information, except:
 - i. to select employees, agents, and contractors on a "need to know" basis, solely for the purpose of assisting Merchant in completing a Transaction or otherwise complying with this Agreement; or
 - ii. as specifically required by the Security Standards, Payment Brand Rules, applicable law, or government/regulatory demand;
- (d) use Payment Card Information, except:
 - i. to complete a Transaction; or
 - ii. as specifically permitted by this Agreement, the Security Standards, Payment Brand Rules, or applicable law; and
- (e) sell, transfer, or disclose to third parties any materials that contain Transaction Data or Payment Card Information in the event of Merchant's failure, including bankruptcy, insolvency, or other suspension of business operations.

Merchant shall:

- (f) comply with the Security Standards, Payment Brand Rules, and all applicable laws relating to the security, storage, and disclosure of Transaction Data and Payment Card Information;
- (g) provide Chase Paymentech, upon its request, with all tests, scans, and assessments evidencing Merchant's compliance with the Security Standards, Payment Brand Rules, and applicable laws;
- (h) store and discard Transaction Data, Payment Card Information, and all media containing Payment Card Information in compliance with Payment Brand Rules and Security Standards;
- (i) notify Chase Paymentech immediately if Merchant determines or suspects that Transaction Data or Payment Card Information has been compromised and assist Chase Paymentech in providing notification to all interested parties as may be required by law or Payment Brand Rules, or as Chase Paymentech otherwise reasonably deems necessary;
- (j) notify Chase Paymentech immediately of its use of any Service Provider and Payment Application;
- (k) ensure that all Service Providers and Payment Applications used by Merchant:

- i. comply with the Security Standards;
 - ii. are recognized by the Payment Brands as being compliant with the Security Standards; and
 - iii. are registered with each applicable Payment Brand as a third party service provider for a Paymenttech customer.
- (l) provide, or cause its Service Provider to provide, Paymenttech with the information it needs to register the Service Provider with the Payment Brands;
 - (m) cause its Service Provider to cooperate with Paymenttech in completing registration with the Payment Brands;
 - (n) pay, or cause its Service Provider to pay, all amounts required by the Payment Brands to register the Service Provider;
 - (o) ensure that all EMV chip-capable terminals used by Merchant appear on the EMV co-approved terminal list maintained by the Payment Brands;
 - (p) reimburse Chase Paymenttech immediately for any assessment, fine, or penalty imposed on Chase Paymenttech or the Member and any related loss, cost, or expense incurred by Chase Paymenttech or the Member related to or arising from Merchant's acceptance of Payment Cards;
 - (q) cooperate with, and cause all applicable Service Providers to cooperate with, any forensic examination or other audit required by the Payment Brands, Chase Paymenttech or Member because of a Data Compromise Event;
 - (r) pay for all costs and expenses related to a forensic examination or other audit required by the Payment Brands, Chase Paymenttech, or Member (including all of Chase Paymenttech's reasonable attorneys' fees and other costs related to the forensic exam or audit);
 - (s) take all actions necessary to achieve and maintain compliance in accordance with the results of, and in the time frame set forth in, a forensic examination or audit report from Chase Paymenttech, the Payment Brands, or Member; and
 - (t) upon request, return all materials that contain Transaction Data or Payment Card Information to Chase Paymenttech or provide Chase Paymenttech with acceptable proof of its destruction.

Chase Paymenttech may:

- (u) share Merchant's financial information, information related to Merchant's Transactions, and other information provided by Merchant with Chase Paymenttech's affiliates and the Payment Brands;
- (v) use or disclose information related to Merchant's Transactions:
 - i. as necessary to process Merchant's Transactions or otherwise provide Services and maintain Merchant's account pursuant to this Agreement;
 - ii. to detect prevent, reduce, or otherwise address fraud, security, or technical issues;
 - iii. to enhance or improve Chase Paymenttech's products and Services generally; or
 - iv. as required or permitted by the Payment Brands or applicable law;
- (w) prepare, use, or share with third parties, aggregated, non-personally identifiable information derived from Transaction Data of all of Chase Paymenttech's customers or specific segments of Chase Paymenttech's customers;
- (x) require, in its sole discretion, or based on information provided by the Payment Brands, a forensic examination of Merchant or Merchant's Service Providers due to a Data Compromise Event or suspected event;
- (y) require Merchant or Merchant's Service Provider to engage a forensic examiner in order to expedite the investigation of the Data Compromise Event or suspected event. Alternatively, Chase Paymenttech may engage a forensic examiner on Merchant's or Merchant's Service Provider's behalf; and
- (z) investigate a Data Compromise Event of Merchant, if permitted under the Payment Brand Rules.

13. INFORMATION ABOUT MERCHANT AND MERCHANT'S BUSINESS.

13.1 Additional Financial Information. Upon five (5) days' written notice at any time, Merchant, and each Guarantor (if any), agrees to furnish to Chase Paymenttech all financial statements and information as Chase Paymenttech may reasonably request. Merchant's and each Guarantor's signature on this Agreement authorizes Chase Paymenttech to perform any credit check deemed necessary with respect to Merchant and each Guarantor, as applicable.

13.2 Audit Rights; Site Visit; Website Inspection. With prior notice and during Merchant's normal business hours, Chase Paymenttech's duly authorized representatives may visit Merchant's business premises and may examine Merchant's books and records that pertain to Merchant's Transactions or Merchant's compliance with this Agreement. Furthermore, Merchant may be contacted by Chase Paymenttech or a third party contracted by Chase Paymenttech who will need to gain access to Merchant's business operation to perform a site visit and inspection (the "Site Visit") in compliance with Payment Brand Rules. The Site Visit will include, among other things, an interview with Merchant regarding the nature of Merchant's business, as well as photographs of Merchant's business operation. If Merchant is unavailable for the Site Visit as scheduled, Chase Paymenttech may suspend the settlement of Merchant's Transactions until a Site Visit can be completed and approved by Chase Paymenttech. If Merchant operates an ecommerce website, Chase Paymenttech is obligated under the Payment Brand Rules to investigate the contents of such website, either directly or through review of screen shots presented to Chase Paymenttech by Merchant (the "Website Inspection"). Chase Paymenttech may suspend the settlement of Merchant's Transactions until a Website Inspection can be completed and approved by Chase Paymenttech. In the event that Merchant fails to reasonably cooperate with the required Site Visit or Website Inspection, or in the event the results of the Site Visit or the Website Inspection are not approved by Chase Paymenttech, Chase Paymenttech may terminate this Agreement immediately upon notice to Merchant.

13.3 Notification to Chase Paymenttech of Merchant's Changes.

- (a) Merchant agrees to provide Chase Paymenttech at least 30 days' prior written notice of its intent to change current product lines or services, Merchant's trade name or legal name, or the manner in which Merchant accepts Payment Cards. If Chase Paymenttech determines such a change is material to its relationship with Merchant, Chase Paymenttech may refuse to process Transaction Data made subsequent to the change, temporarily suspend payment of settlement funds, or terminate this Agreement.
- (b) Merchant agrees to provide Chase Paymenttech with prompt written notice:
 - i. if Merchant is the subject of any voluntary or involuntary bankruptcy or insolvency petition or proceeding; or
 - ii. of any:
 - a. adverse change in Merchant's financial condition;
 - b. planned or anticipated liquidation or substantial change in the basic nature of Merchant's business;

- (g) or the amount thereof, is not subject to any dispute, setoff, or counterclaim;
- (h) if such Transaction represents a credit to a Customer's Payment Card, is a Refund for a Transaction previously submitted to Chase Paymentech; and
- (i) complies with the terms of this Agreement, applicable laws and all applicable Payment Brand Rules.

Furthermore, Merchant represents and warrants that Merchant has *not*

- (j) disbursed or advanced any cash to the Customer (except as authorized by the Payment Brand Rules) for itself or to any of its representatives, agents, or employees in connection with the Transaction;
- (k) accepted payment for effecting credits to a Customer or a Customer's Payment Card;
- (l) made any representation or agreement for the issuance of Refunds except as stated in Merchant's Refund Policy;
- (m) been provided with any information that would lead Merchant to believe that the enforceability or collectibility of the Transaction is in any manner impaired; and
- (n) submitted any Transaction that Merchant knows or should have known to be either fraudulent, illegal, damaging to the Payment Brand(s), not authorized by the Customer, or otherwise in violation of any provision of this Agreement, applicable law, or Payment Brand Rules.

For Transactions stemming from recurring billing, installment plans, deferred payment plans, or prepayment plans, Merchant *shall*:

- (o) obtain permission from Chase Paymentech prior to submitting such Transactions for processing under this Agreement;
- (p) for approved prepayments, advise the Customer:
 - i. that payment is being made in advance of the shipment or provision of goods or services; and
 - ii. the time when shipment or provision of the goods or services is expected;
- (q) obtain the Customer's consent to periodically charge the Customer's Payment Card on a recurring or periodic basis for the goods or services purchased, and:
 - i. retain this permission for the duration of the recurring services and provide it upon request to Chase Paymentech or the issuing bank of the Customer's Payment Card; and
 - ii. retain written documentation specifying the frequency of the recurring charge and the duration of time during which such charges may be made;
- (r) prepare and submit for processing separate Transaction Data for each recurring, installment, or deferred payment only on the dates the Customer agreed to be charged and include in the Transaction Data the electronic indicator that the Transaction is a recurring one; and
- (s) not submit such Transactions after receiving:
 - i. a cancellation notice from the Customer; or
 - ii. notice from Chase Paymentech or any Payment Brand (via authorization code or otherwise) that the Payment Card is not to be honored.

2. AUTHORIZATIONS. Merchant is required to obtain an authorization code through Chase Paymentech for each Transaction. Chase Paymentech reserves the right to refuse to process any Transaction Data presented by Merchant unless it includes a proper authorization. If required by the Payment Brand Rules, each authorization request must include the Payment Card's expiration date.

Merchant acknowledges:

- (a) that authorization of a Transaction indicates only that the Payment Card contains a valid account number and has an available balance sufficient for the amount of the Transaction; and
- (b) that authorization of a Transaction does not constitute a representation from Chase Paymentech, a Payment Brand, or a card issuing bank that a particular Transaction is, in fact, valid or undisputed by the actual Customer.

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

3.1 Refund Policy. Chase Paymentech reserves the right to refuse to process any Transaction made subject to a Refund Policy of which Chase Paymentech has not been notified in advance.

Merchant *shall*:

- (a) maintain a Refund Policy (e.g. "NO REFUNDS", "REFUNDS WITH ORIGINAL RECEIPT WITHIN 30 DAYS OF ORIGINAL SALE") in accordance with the Payment Brand Rules;
- (b) disclose all Refund Policies to Chase Paymentech and to Merchant's Customers; and
- (c) submit to Chase Paymentech, in writing, any material change in Merchant's Refund Policy not less than 14 days prior to the effective date of such change.

3.2 Procedure for Refund Transactions.

If Merchant allows a Refund, Merchant *shall*:

- (a) prepare and deliver to Chase Paymentech Transaction Data reflecting any such Refund within three (3) days of approving the Customer's request for such Refund;
- (b) not permit the amount of a Refund to exceed the amount shown as the total on the original Transaction Receipt except by the exact amount required to reimburse the Customer for shipping charges that the Customer paid to return merchandise;
- (c) not accept any payment from a Customer as consideration for issuing a Refund; and
- (d) not give cash (or cash equivalent) refunds to a Customer in connection with a Transaction, unless required by law or permitted by the Payment Brand Rules.

3.3 Customer Data Protection Policies for Ecommerce Merchants.

If Merchant operates an electronic commerce website through which Transactions are generated, in addition to any requirements otherwise set forth in this Agreement, Merchant *shall*:

- (a) display the following on each electronic commerce website:
 - i. Merchant's name and the name that will appear on the Customer's Payment Card statement
 - ii. its Customer data privacy policy;
 - iii. a description of its security capabilities and policy for transmission of Payment Instrument Information; and
 - iv. the address of Merchant's fixed place of business (regardless of website or server locations); and
- (b) offer its Customers a data protection method such as 3-D Secure or Secure Sockets Layer (SSL).

4. SETTLEMENT.

4.1 Submitting Transaction Data. If Merchant fails to send Transaction Data to Chase Paymentech within one (1) business day after the day of the Transaction, higher interchange fees, additional costs, and increased Chargebacks could occur. Chase Paymentech may from time to time contact Customers to verify that they have received goods or services for which Transactions have been submitted. Chase Paymentech reserves the right to refuse to process any Transaction Data presented by Merchant if Chase Paymentech believes that the Transaction amount cannot be collected from the Customer or was prepared in violation of any provision of this Agreement, applicable law, or the Payment Brand Rules.

4.2 Merchant's Settlement Account. In order to receive funds from Chase Paymentech, Merchant must designate (via the Application or otherwise) and maintain one or more bank account(s) at a bank that is a member of the Automated Clearing House system or the Federal Reserve wire system. All such designated bank accounts are collectively referred to herein as "Settlement Account". Merchant's Settlement Account must be established and maintained solely for business purposes and shall not be used for personal, family or household purposes. Chase Paymentech will not be liable for any delays in receipt of funds or errors in Settlement Account entries caused by third parties, including, without limitation, delays or errors by the Payment Brands or Merchant's bank.

During the term of this Agreement, and thereafter until Chase Paymentech notifies Merchant that all amounts due from Merchant under this Agreement have been paid in full, Merchant:

- (a) **shall not** close its Settlement Account without giving Chase Paymentech at least five (5) days' prior written notice and substituting another Settlement Account;
- (b) is solely liable for all fees, costs, and overdrafts associated with the Settlement Account; and
- (c) authorizes Chase Paymentech, or its authorized agent(s) to initiate electronic credit and debit entries and adjustments to the Settlement Account, or any other bank account designated by Merchant in writing, at any time without regard to the source of any monies in the Settlement Account.

4.3 Conveyed Transactions. Conveyed Transactions are Transactions that Merchant submits to Chase Paymentech, but which are then conveyed to one or more third parties or Payment Brands for settlement and funding directly by them to Merchant (e.g. American Express Transactions). For Conveyed Transactions Merchant must have a valid agreement in effect with the applicable third party or Payment Brand. Payment of proceeds due Merchant for Conveyed Transactions will be governed by such agreement, and Chase Paymentech does not bear any responsibility or liability for performing or failing to perform any term, condition, or covenant under Merchant's agreement with any third party concerning Conveyed Transactions, including, without limitation, the funding and settlement of Merchant's Conveyed Transactions. If Merchant submits Conveyed Transactions to Chase Paymentech and Merchant does not have a valid agreement with the applicable third party or Payment Brand, Chase Paymentech may, but is not obligated to, convey such Transaction Data to the applicable third party or Payment Brand and to share with them information about Merchant (from the Application or otherwise) as may be required to approve Merchant's acceptance of the Conveyed Transaction.

4.4 Funding Merchant for Settled Transactions. Subject to Section 4.3, for all Transactions, Chase Paymentech will submit Merchant's Transaction Data to the applicable Payment Brand. Promptly after Chase Paymentech receives funds for Settled Transactions from the Payment Brands, Chase Paymentech will provisionally fund Merchant's Settlement Account.

The dollar amount payable to Merchant for Settled Transactions will be equal to the amount submitted by Merchant in connection with its sale Transactions **minus** the sum of the following:

- (a) all fees, charges, and other amounts described on Schedule A or that Merchant has otherwise agreed to pay;
- (b) all Refund Transactions and Chargebacks;
- (c) all Reserve Account amounts (as defined in Section 4.6); and
- (d) all fees, charges, fines, assessments, penalties, or other liabilities (and all related costs and expenses incurred by Chase Paymentech) that may be imposed on Chase Paymentech or Member from time to time by the Payment Brands.

In the event Chase Paymentech does not deduct amounts owed by Merchant from Merchant's proceeds when such amounts are due and payable, Merchant agrees to pay all such amounts to Chase Paymentech immediately without any deduction or offset. Chase Paymentech may debit Merchant's Settlement Account for any such amounts.

4.5 Negative Amounts. Merchant shall maintain sufficient funds in the Settlement Account to prevent the occurrence of a negative balance. In the event that the proceeds from Merchant's Settled Transactions or the balance of Merchant's Settlement Account are not sufficient to pay amounts due from Merchant under this Agreement, Chase Paymentech may, in addition to any other rights and remedies under this Agreement, pursue any one or more of the following:

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

4.6 Reserve Account. To protect itself against Anticipated Risks arising out of or relating to Merchant's acceptance of Payment Instruments, Chase Paymentech may, from time to time, temporarily suspend or delay payment to Merchant of amounts due under this Agreement, or designate an amount of funds that Paymentech must maintain, and establish an account with such funds (the "Reserve Account").

Anticipated Risks include, but are not limited to, risks associated with:

- (a) a material breach of the Agreement by Merchant;
- (b) providing Services to Merchant in light of Merchant's financial condition or payment history with creditors;
- (c) Chargebacks;
- (d) Refunds;
- (e) unshipped goods or unfulfilled services;
- (f) fines, fees, or penalties assessed or reasonably anticipated to be assessed against Chase Paymentech or Member by any of the Payment Brands arising out of or relating to Merchant's:
 - i. acceptance of Payment Cards;
 - ii. acts or omissions;
 - iii. Chargebacks; or
 - iv. failure to comply with the Payment Brand Rules or Security Standards
- (g) Merchant's failure to respond to an inquiry, or request for information, from Paymentech, Member or the Payment Brands;
- (h) objections or concerns expressed by a Payment Brand that makes it unduly burdensome, impractical or risky to continue processing Merchant's Transactions; and
- (i) all anticipated trailing activity arising from Merchant's Transactions after termination of this Agreement.

The Reserve Account:

- (j) shall contain sufficient funds to cover:
 - i. any unbilled processing costs; and
 - ii. Chase Paymentech's estimated exposure based on Anticipated Risks;
- (k) may be funded in the same manner as provided for negative balances in Section 4.5(a) – (d);
- (l) will be held and controlled by Chase Paymentech (and funds therein may be comingled with other funds); and
- (m) will not bear interest.

Upon the establishment of a Reserve Account, Merchant shall:

- (n) irrevocably grant to Chase Paymentech a security interest in any interest Merchant may now have or later acquire in any and all funds, together with the proceeds thereof, that may at any time be in the Reserve Account and that would otherwise be payable to Merchant pursuant to the terms of this Agreement; and
- (o) execute and deliver to Chase Paymentech such instruments and documents that Chase Paymentech may reasonably request to perfect and confirm the security interest in the Reserve Account funds.

Chase Paymentech:

- (p) may (but is not required to) apply funds in the Reserve Account toward, and set off any funds that would otherwise be payable to Merchant against, the satisfaction of any amounts which are or may become due from Merchant pursuant to this Agreement; and
- (q) will pay to Merchant any funds remaining in the Reserve Account after Merchant:
 - i. satisfies all of its obligations under this Agreement; and
 - ii. executes all documents reasonably requested by Chase Paymentech in connection with the return of any Reserve Account funds.

5. ACCOUNTING.

5.1 Statements and Reporting. Chase Paymentech will supply a detailed statement (or online access thereto) reflecting the activity of Merchant's account(s). If Merchant accesses account statements via the internet, Merchant must ensure that such online access is secure.

5.2 Adjustments. If Merchant believes any adjustments should be made to its Settlement Account, Merchant must notify Chase Paymentech in writing within 90 days after any such adjustment is or should have been made. Chase Paymentech has no obligation to research or affect changes to Merchant's Settlement Account which are not brought to Chase Paymentech's attention within 90 days after Merchant received its activity statement.

6. RETRIEVAL REQUESTS. A Retrieval Request is a request for information by a Customer or Payment Brand relating to a claim or complaint concerning a Transaction submitted by Merchant. Because a Retrieval Request requires Merchant to provide Chase Paymentech with specific Transaction information, Merchant must store and retain Transaction Data and Transaction Receipts, but must do so solely in compliance with the Payment Brand Rules and the Security Standards. Merchant acknowledges that failure to fulfill a Retrieval Request timely and in accordance with Payment Brand Rules may result in an irreversible Chargeback. If Chase Paymentech receives a Retrieval Request, Chase Paymentech will forward the same to Merchant.

Upon receiving a Retrieval Request, Merchant shall:

- (a) respond to the Retrieval Request within the time frame provided; and
- (b) include with Merchant's response the following documentation:
 - i. a written resolution of Merchant's investigation of the Retrieval Request; and
 - ii. legible copies of any supporting documentation requested or required by the Retrieval Request.

7. CHARGEBACKS.

7.1 Chargeback Reasons. Merchant is liable for all Chargebacks. Some of the most common reasons for Chargebacks include:

- (a) Merchant fails to issue a Refund to a Customer after the Customer returns or does not receive goods or services;

- (b) Merchant did not obtain an authorization/approval code, as required under Section 2;
- (c) The Transaction Data was prepared incorrectly or fraudulently;
- (d) Chase Paymentech did not receive Merchant's response to a Retrieval Request in accordance with Section 6;
- (e) The Customer disputes the Transaction or the authenticity of the signature on the Transaction Receipt, or claims that the Transaction is subject to a set-off, defense, or counterclaim;
- (f) The Customer refuses to make payment for a Transaction because, in the Customer's opinion, a claim or complaint has not been resolved or has been resolved in an unsatisfactory manner; and
- (g) The Customer disputes making the Transaction and the Payment Card was not physically presented at the time of the Transaction. In this case Merchant acknowledges that if the Merchant does not have an electronic record or physical imprint of the Payment Card, the Payment Brand Rules may not allow the Merchant to challenge the Chargeback.

7.2 Responding to Chargebacks. If Merchant has reason to dispute or respond to a Chargeback, then Merchant must do so by the date provided on the applicable Chargeback notice. If Merchant misses the Chargeback due date, Chase Paymentech has no obligation to investigate or attempt to obtain a reversal or other adjustment to any Chargeback on Merchant's behalf. Upon receiving a Chargeback, Merchant may resubmit the applicable Transaction Data for a second presentment if permitted by the Payment Brand Rules.

7.3 Excessive Chargebacks. If Merchant is receiving an excessive amount of Chargebacks, in addition to Chase Paymentech's other remedies under this Agreement, Chase Paymentech may do any one or more of the following:

- (a) review Merchant's internal procedures relating to acceptance of Payment Cards and notify Merchant of new procedures Merchant should adopt in order to avoid future Chargebacks;
- (b) notify Merchant of a new rate Chase Paymentech will charge to process Merchant's Chargebacks;
- (c) require Merchant to replace any magnetic-strip-only point of sale terminal or electronic cash registered with an EMV chip-capable terminal, if required under the Payment Brand Rules
- (d) establish a Reserve Account; or
- (e) terminate the Agreement in accordance with Section 10.3.

Merchant understands that having excessive Chargebacks may result in assessments, fines, fees, and penalties by the Payment Brands. Merchant agrees to reimburse Chase Paymentech immediately for any such assessments, fines, fees, and penalties imposed on Chase Paymentech or the Member and any related loss, cost, or expense incurred by Chase Paymentech or the Member.

8. DISPLAY OF PAYMENT BRAND MARKS. Payment Brand Marks are the brands, emblems, trademarks, and logos that identify a Payment Brand. Merchant has no ownership rights in the Payment Brand Marks and cannot assign its right to use the Payment Brand Marks under this Agreement to any third party.

Merchant shall:

- (a) use the Payment Brand Marks only as expressly permitted by the Payment Brand Rules;
- (b) use the Payment Brand Marks only to promote the services covered by the Marks;
- (c) **not** use the Payment Brand Marks in any way that could cause Customers to believe that the goods or services offered by Merchant are sponsored, endorsed, or guaranteed by Chase Paymentech, Member or the Payment Brands; and
- (d) cease using the Payment Brand Marks when this Agreement terminates.

9. FEES AND ADJUSTMENTS; CHASE TRANSACTIONS.

9.1 Schedule A. Merchant:

- (a) shall pay all applicable fees for all Transactions, which are calculated and payable pursuant to this Agreement and which may be adjusted from time to time in accordance with Section 9.2;
- (b) acknowledges that the fees payable under this Agreement and stated in Schedule A:
 - i. are based upon Merchant's annual volume, average Transaction size, and other information provided by Merchant or contained in this Agreement;
 - ii. are based upon the assumption that Merchant's Transactions will qualify for certain interchange rates as determined in each case by the applicable Payment Brand; If any of Merchant's Transactions fail to qualify for such interchange rates, Chase Paymentech will process each such Transaction at the applicable interchange rate determined by the applicable Payment Brand; and
 - iii. will be rounded up to the next full cent to the extent they contain a fraction of a cent; and
- (c) is solely responsible for all communication expenses required to facilitate the transmission of all Transaction Data to Chase Paymentech.

9.2 Adjustments. The fees owed by Merchant under this Agreement (under Schedule A or any additional pricing supplement) may be adjusted at any time:

- (a) with thirty (30) days' prior written notice;
- (b) to reflect increases in interchange, assessments, or other Payment Brand fees;
- (c) to reflect additional fees imposed by the Payment Brands; or
- (d) to reflect increases in, or additions to, third party fees.

All adjustments hereunder will be effective either upon the date set forth in the written notice or upon the date the corresponding increase or additional fee is implemented by the Payment Brand or third party provider.

9.3 Chase Transactions. If, and only if, Schedule A attached to this Agreement sets forth the fees specifically for Chase Transactions, then, in addition to all other obligations under this Agreement, the following apply:

- c. transfer or sale of any substantial part (25% or more in value) of Merchant's total assets;
- d. judgment, writ, warrant of attachment, execution, or levy against any substantial part (25% or more in value) of Merchant's total assets not later than three days after Merchant obtains knowledge of any such judgment, writ, warrant of attachment, execution, or levy; or
- e. change in the control or ownership of Merchant or Merchant's parent if Merchant or Merchant's parent is not a corporation whose shares are listed on a national securities exchange or on an over-the-counter market.

13.4 Referral Sources. Merchant may have been referred to Chase Paymentech for the execution of this Agreement by a third party who has entered into a formal referral relationship with Chase Paymentech (a "Referral Partner"). If that is the case, Chase Paymentech will be the sole provider of the services necessary to authorize, process, and settle all of Merchant's Transactions in accordance with the terms and conditions of the Agreement; however, Referral Partner may be involved in the servicing and maintenance of Merchant's merchant account. Therefore, notwithstanding anything to the contrary in the Agreement, Merchant hereby authorizes Chase Paymentech to share Merchant's financial information, information related to Merchant's Transactions (including Payment Instrument Information) and any other information that Merchant provides to Chase Paymentech with Referral Partner. Merchant understands and agrees that Chase Paymentech will not be responsible for Referral Partner's subsequent use or disclosure of such information.

14. DISCLAIMER; LIMITATION OF DAMAGES. Subject to Section 5, Chase Paymentech will, at its own expense, correct any Transaction Data to the extent that such errors have been caused by Chase Paymentech or by malfunctions of Chase Paymentech's processing systems. However, Chase Paymentech shall not be liable or responsible for the authenticity, accuracy, corruption, damage to, tampering with, or failure to receive any Transaction Data transmitted in any form or format to Chase Paymentech by, or on behalf of, Merchant, and Chase Paymentech shall be entitled to rely on data it receives from, or on behalf of, Merchant in the discharge of its obligations hereunder.

PLEASE READ THIS PROVISION CAREFULLY

UNDER NO CIRCUMSTANCES WILL CHASE PAYMENTECH'S LIABILITY ARISING OUT OF OR RELATED TO ITS PERFORMANCE OF SERVICES UNDER THIS AGREEMENT EXCEED THE TOTAL FEES PAID TO CHASE PAYMENTECH BY MERCHANT UNDER THIS AGREEMENT (NET OF PAYMENT BRAND FEES, THIRD PARTY FEES, INTERCHANGE, ASSESSMENTS, PENALTIES, AND FINES) FOR THE SIX (6) MONTHS PRIOR TO THE TIME THE LIABILITY AROSE.

IN NO EVENT WILL ANY PARTY, ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AFFILIATES, BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, REGARDLESS OF THE FORM OR ACTION AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

ANY FINES, FEES, PENALTIES, ASSESSMENTS OR OTHER AMOUNTS IMPOSED BY THE PAYMENT BRANDS SHALL BE DIRECT DAMAGES AND SHALL NOT BE DEEMED TO BE SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES.

ALL PARTIES ACKNOWLEDGE THAT THIS IS AN AGREEMENT FOR COMMERCIAL SERVICES. THE UNIFORM COMMERCIAL CODE DOES NOT APPLY AND CHASE PAYMENTECH AND MEMBER HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, MADE TO MERCHANT OR ANY OTHER PERSON, REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM, OR USAGE OF TRADE) OF ANY SERVICES PROVIDED UNDER THIS AGREEMENT OR ANY GOODS PROVIDED INCIDENTAL TO SUCH SERVICES.

15. MISCELLANEOUS.

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

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

15.3 Assignment; Other Events.

- (a) Merchant may not transfer or assign this Agreement without the prior written consent of Chase Paymentech. Any transfer or assignment of this Agreement by Merchant, by operation of law, merger, or otherwise, without Chase Paymentech's prior written consent is null and void, and Merchant is fully responsible with respect to all Transactions submitted by the purported assignee/transferee, and for any and all related liabilities, Chargebacks, expenses, costs, fines, fees or penalties arising from such Transactions. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of Merchant's assets or business, has any right to continue or to assume or to assign this Agreement.
- (b) Merchant agrees to provide Chase Paymentech with not less than 30 days' prior written notice of:
 - i. any sale of all or substantially all of the assets of Merchant; or
 - ii. any person or entity becoming the beneficial owner, directly or indirectly, of securities representing more than fifty percent (50%) of the combined voting power of Merchant's securities, or otherwise acquires voting control of the Merchant.
- (c) Upon notice to Merchant, another Payment Brand member may be substituted for Member under whose sponsorship this Agreement is performed and for whom Chase Paymentech is acting as agent hereunder. Subject to Payment Brand Rules, Chase Paymentech may assign or transfer this Agreement and its rights and obligations hereunder and may delegate its duties hereunder, in whole or in part, to any third party, whether in connection with a change in sponsorship, as set forth in the preceding sentence, or otherwise, without notice to or consent of Merchant.

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

15.5 Representations. Merchant agrees to perform its obligations under this Agreement in compliance with all applicable laws. Merchant represents and warrants that statements made on its Application are true as of the date of this Agreement. Merchant represents and warrants that its execution of and performance under this Agreement:

- (a) in no way breaches, contravenes, violates, or in any manner conflicts with any of its other legal obligations, including, without limitation, its corporate charter or similar document or any agreement between Merchant and any third party or any affiliated entity;
- (b) has been duly authorized by all necessary action and does not require any consent or other action by or in respect of any third party; and
- (c) that the person signing this Agreement on behalf of Merchant is an Authorized Representative.

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

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

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

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

15.10 Notices. Except as otherwise provided in this Agreement, all notices must be given in writing and either hand delivered, faxed, mailed first class, postage prepaid, sent via electronic mail transmission, or sent via overnight courier (and will be deemed to be given when so delivered or mailed) to Merchant's legal address set forth in the Application, to Chase Paymentech at: Attn: Legal Department, 14221 Dallas Parkway, Dallas, Texas 75254, or to such other address as either party may from time to time specify to the other party in writing. Notices provided in writing on Merchant's monthly statement(s) are sufficient for formal notice under the terms of this Section 15.10.

15.11 Governing Law; Waiver of Right to Contest Jurisdiction; Waiver of Jury Trial; Arbitration. This Agreement will be governed by and construed in accordance with the laws of the State of Texas without reference to conflict of law provisions. Any action, proceeding, arbitration hearing or mediation relating to or arising from this Agreement must be brought, held, or otherwise occur in Dallas County, Dallas, Texas.

PLEASE READ THIS PROVISION CAREFULLY. IT PROVIDES THAT ANY CLAIM MAY BE RESOLVED BY BINDING ARBITRATION.

WITH BINDING ARBITRATION MERCHANT ACKNOWLEDGES AND AGREES THAT:

- (a) MERCHANT IS GIVING UP ITS RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY CLAIM ALLEGED AGAINST CHASE PAYMENTECH, MEMBER, OR RELATED THIRD PARTIES;
- (b) MERCHANT IS GIVING UP ITS RIGHT TO HAVE A COURT RESOLVE ANY CLAIM ALLEGED AGAINST CHASE PAYMENTECH, MEMBER OR RELATED THIRD PARTIES; AND
- (c) MERCHANT IS GIVING UP ITS RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT OR ARBITRATION FILED AGAINST CHASE PAYMENTECH, MEMBER, AND RELATED THIRD PARTIES.

IN THE ABSENCE OF THIS ARBITRATION AGREEMENT, MERCHANT AND CHASE PAYMENTECH MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR A JURY AND 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.

Any claim, dispute, or controversy ("Claim") by either Merchant, Chase Paymentech or Member against the other, or against the officers, directors, employees, agents, parents, subsidiaries, affiliates, beneficiaries, agents, successors, or assigns of the other, arising from or relating in any way to this Agreement or to the relationship formed between the parties as a result of this Agreement, including Claims regarding the applicability of this arbitration clause or the validity of the entire Agreement, shall be resolved exclusively and finally by binding arbitration administered by the American Arbitration Association ("AAA"). All Claims are subject to arbitration, no matter what theory they are based on. This includes Claims based on contract, tort (including intentional tort), fraud, agency, Merchant, Chase Paymentech's or Member's negligence, statutory or regulatory provisions, or any other source of law. Claims and remedies sought as part of a class action, private attorney general, or other representative action are subject to arbitration on an individual (non-class, non-representative) basis only, and the arbitrator may award relief only on an individual (non-class, non-representative) basis. Merchant and Chase Paymentech will agree on another arbitration forum if the AAA ceases operations. The arbitration will be conducted before a single

arbitrator and will be limited solely to the Claim between Merchant and Chase Paymentech and/or Member. The arbitration, or any portion of it, will not be consolidated with any other arbitration and will not be conducted on a class-wide or class action basis. The prohibition against class action contained in this Section shall be non-severable from the remainder of this Section. If either party prevails in the arbitration of any Claim against the other, the non-prevailing party will reimburse the prevailing party for any fees it paid to the AAA in connection with the arbitration, as well as for any reasonable attorneys' fees incurred by the prevailing party in connection with such arbitration. Any decision rendered in such arbitration proceedings will be final and binding on the parties, and judgment may be entered in a court of competent jurisdiction. Rules and forms of the AAA may be obtained and Claims may be filed at any AAA office, www.adr.org, or 335 Madison Avenue, New York, NY 10017, telephone 1-800-778-7879. Any arbitration hearing at which Merchant appears will take place at a location within Dallas County, Dallas, Texas. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. This arbitration agreement applies to all Claims now in existence or that may arise in the future. Nothing in this Agreement shall be construed to prevent any party's use of (or advancement of any Claims, defenses, or offsets in) bankruptcy or repossession, replevin, judicial foreclosure, or any other prejudgment or provisional remedy relating to any collateral, security, or other property interests for contractual debts now or hereafter owned by either party to the other.

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

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

15.14 Counterparts; Electronic Signatures under the Uniform Electronic Transactions Act. 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. Electronic Signatures, as defined by the Uniform Electronic Transactions Act, retain all the legal effect and enforceability of an original signature.

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

15.16 Member Obligations. While the Payment Brand Rules impose certain obligations on Member (the "Member Obligations"), Paymentech has the authority to perform the Member Obligations on behalf of Member, and, unless otherwise specifically set forth in the Agreement, Paymentech shall be solely responsible for performance of the Member Obligations under the terms of this Agreement.

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

17. TERMS USED IN THE APPLICATION AND THESE TERMS AND CONDITIONS.

Application	a statement of Merchant's financial condition, a description of the characteristics of Merchant's business or organization, and related information Merchant or its Authorized Representative(s), has previously or concurrently submitted to Chase Paymentech, including credit, financial, and other business related information, to induce Chase Paymentech to enter into this Agreement with Merchant and that has induced Chase Paymentech to process Merchant's Transactions under the terms and conditions herein
Authorized Representative	an owner, partner, officer, or other agent of the Merchant that is duly authorized to enter into agreements on behalf of Merchant and to legally bind Merchant to such agreements
Chargeback	a reversal of a Transaction Merchant previously presented to Chase Paymentech pursuant to Payment Brand Rules
Chase	JPMorgan Chase Bank, N.A. or Chase Bank U.S.A., N.A.
Chase Card	a consumer or small business debit or credit card issued in the United States by Chase whose transactions are capable of processing over the Visa, Inc. network
Chase Customer	the person to whom or entity to which a Chase Card is issued or who is otherwise authorized to use a Chase Card
Chase Merchant Services Specifications	the required formats and procedures provided by Paymentech or otherwise made available to Merchant for Merchant's transactions to be accepted as Chase Transactions
Chase Paymentech or Paymentech	Paymentech, LLC, a Delaware limited liability company, having its principal office at 14221 Dallas Parkway, Dallas, Texas 75254

Chase Requirements	the Chase Merchant Services Program Requirements governing Chase Transactions, as may be amended from time to time, provided to or made available to Merchant
Chase Transactions	a United States transaction, excluding a PIN debit transaction, conducted between a Chase Customer and Merchant utilizing a Chase Card which is processed directly between Merchant and Chase through Paymentech
Conveyed Transaction	any Transaction conveyed to a Payment Brand for settlement by such Payment Brand directly to Merchant
Customer	the person or entity to whom a Payment Instrument is issued or who is otherwise authorized to use a Payment Instrument, including a Chase Customer
Data Compromise Event	An occurrence that results, or could result, directly or indirectly, in the unauthorized access to or disclosure of Transaction Data or Payment Instrument Information
Effective Date	The day this Agreement is accepted and agreed to by Chase Paymentech, as set forth in Section 10.1
EMV	Europay, MasterCard and Visa
Guarantor	The person(s) identified in the Application as having an ownership interest in Merchant and who agree to be personally responsible for Merchant's obligations to Chase Paymentech under this Agreement
Merchant	The legal entity identified in the Application and whose name and signature appears on this Agreement
Member	JPMorgan Chase Bank, N.A. or other entity providing sponsorship to Chase Paymentech as required by all applicable Payment Brands. Member is a principal party to this Agreement and Merchant's acceptance of Payment Brand products is extended by the Member
Payment Application	a third party application used by merchant that is involved in the authorization or settlement of Transaction Data
Payment Brand	Any payment method provider whose payment method is accepted by Chase Paymentech for processing, including: <ul style="list-style-type: none"> • Visa Inc.; • MasterCard International, Inc.; • Discover Financial Services, LLC; and • any other credit and debit card providers, debit network providers, gift card, and other stored value and loyalty program providers. Payment Brand also includes the Payment Card Industry Security Standards Council and the Electronic Payment Association (frequently referred to as "NACHA")
Payment Brand Rules	All bylaws, rules, programs, regulations, specifications, and manuals, as they exist from time to time, of the Payment Brands, and, to the extent applicable, the Chase Requirements
Payment Instrument or Payment Card	An account, or evidence of an account, authorized and established between a Customer and a Payment Brand, or representatives or members of a Payment Brand that Merchant accepts from Customers as payment for a good or service, including a Chase Card Payment Instruments include, credit and debit cards, stored value cards, loyalty cards, electronic gift cards, authorized account or access numbers, paper certificates, and credit accounts. Use of the term Payment Instrument or Payment Card throughout this Agreement includes any Payment Card with an embedded microcomputer EMV chip.
Payment Card Information or Payment Instrument Information	Information related to a Customer or the Customer's Payment Card that is obtained by Merchant from the Customer's Payment Card, or from the Customer in connection with his or her use of a Payment Card). Such information may include, but is not limited to: <ul style="list-style-type: none"> • the Payment Card account number and expiration date; • the Customer's name or date of birth; • PIN data, security code data (such as CVV2 and CVC2); and • and any data read, scanned, imprinted, or otherwise obtained from the Payment Instrument, whether printed thereon, or magnetically, electronically, or otherwise stored thereon. For the avoidance of doubt, the data elements that constitute Payment Card Information are treated according to their corresponding meanings as "cardholder data" and "sensitive authentication data" as such terms are used in the then current PCI DSS.
Refund	Any refund or credit issued for any reason, including, without limitation, for a return of merchandise or cancellation of services and any adjustment of a Transaction
Refund Policy	A written policy with regard to Refunds
Retrieval Request	A request for information by a Customer or Payment Brand relating to a claim or complaint concerning a Transaction
Security Standards	All rules, regulations, standards, or guidelines adopted or required by the Payment Brands or the Payment Card Industry Security Standards Council relating to privacy, data security, and the safeguarding, disclosure, and handling of Payment Instrument Information, including, without limitation, the Payment Card Industry Data Security Standards ("PCI DSS"), Visa's Cardholder Information Security Program ("CISP"), Discover's Information Security & Compliance Program ("DISC"), American Express's Data Security Operating Policy, MasterCard's Site Data Protection Program ("SDP"), Visa's Payment Application Best Practices ("PABP"), the Payment Card Industry's Payment Application Data Security Standard ("PA DSS"), MasterCard's POS Terminal Security program, and the Payment Card Industry PIN Transmission Security program (PCI PTS), in each case as they may be amended from time to time
Services	All Transaction processing services provided by Chase Paymentech, including, without limitation, authorization, conveyance, settlement, and funding of all Transactions, as provided for in this Agreement or any subsequent agreement between the parties. The Services may also include the provision of or access to monthly statements or reporting tools, as well as assistance with Merchant's Chargebacks.
Service Provider	Any party that processes, stores, receives, transmits, or has access to Payment Instrument Information on Merchant's behalf, including, without limitation, its agents, business partners, contractors, and subcontractors
Settled Transaction	A Transaction conducted between a Customer and Merchant utilizing a Payment Instrument in which consideration is exchanged

	between the Customer and Merchant for the purchase of a good or service or the Refund of such purchase and the value for such Transaction is settled by the Payment Brand through Chase Paymentech to the Merchant
Stored Value Card Transaction	A Transaction in which a Customer adds or redeems value to or from a stored value card, gift card, or loyalty Payment Card issued by or on behalf of Merchant
Transaction	A transaction conducted between a Customer and Merchant utilizing a Payment Instrument in which consideration is exchanged between the Customer and Merchant, including a Chase Transaction
Transaction Data	The written or electronic record of a Transaction, including, without limitation, an authorization code or settlement record, which is submitted to Chase Paymentech
Transaction Receipt	An electronic or paper record of a Transaction generated upon completion of a sale or Refund, a copy of which is presented to the Customer

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

"EXHIBIT D"



Government Owned Addendum (Municipal Utilities, Municipalities, Gov't Agencies)

Rev. GOV 07/2015

This Addendum supplements the Merchant Application And Agreement executed and submitted by _____ ("Merchant"). As such, this Addendum shall (i) be deemed incorporated into and a part of Merchant's Application to establish a Merchant account with Paymentech, LLC and JPMorgan Chase Bank, N.A. and (ii) in accordance with such Merchant Application and Agreement, constitute a part of the entire Agreement governing all Merchant accounts.

FUNCTION

Merchant is a Government Entity. Function of Merchant.

Authorized Representative

<p>I, the undersigned, certify:</p> <ul style="list-style-type: none">• that I am an officer or other authorized representative of the Merchant ("Authorized Representative") and• that I am duly authorized to enter into agreements on behalf of Merchant and to legally bind Merchant to such agreements.• that I am duly authorized to submit this Addendum and all information contained herein on behalf of the Merchant.	<p>By submitting this Addendum, Merchant, through the undersigned Authorized Representative</p> <ul style="list-style-type: none">• represents and warrants that the person submitting this Addendum is duly authorized to enter into agreements on behalf of Merchant and to legally bind Merchant to such agreements.• represents and warrants that all information contained within this Addendum is true, complete and not misleading.
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Authorized Representative:

X _____

Signature	Print Name	Date
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"EXHIBIT E"



Setup Disclosure Authorization Addendum
Authorization to send data to a Third Party
 NAPSL3RDPTY 20120816 V3.0

1. Merchant Information

Merchant Legal Name (the "Merchant")	Application ID	MID
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2. Third Party Information

Third Party Name (the "Third Party") Xpress Solutions Inc.			
Address 387 S 520 W Suite 110	City Lindon	State UT	Zip 84042

3. Terms and Conditions

THIS SETUP DISCLOSURE AUTHORIZATION ADDENDUM (the "Addendum") is entered into by and between **Paymentech, LLC**, a Delaware limited liability company ("Paymentech"), and Merchant as of the date signed by Merchant below.

1. **Effect.** This Addendum supplements, and is hereby incorporated into and made a part of, that certain Merchant Application and Agreement, dated effective as of _____, between Paymentech and Merchant (the "Merchant Agreement"). Except as otherwise defined herein, capitalized terms used herein shall have the meaning assigned to them in the Merchant Agreement. This Addendum shall supplement (and, as necessary, amend) the Merchant Agreement. Except to the extent they conflict with, or are inconsistent with, this Addendum, Merchant shall remain obligated to comply with all portions of the Merchant Agreement, including, without limitation, the Payment Brand Rules, and all schedules and attachments to the Merchant Agreement.

2. **Setup Disclosure Authorization.** Merchant is utilizing the services of the third-party supplier, vendor or VAR set forth above (the "Third Party"), and in connection with the services to be provided thereby, desires for Paymentech to provide the Third Party with certain information relating to Merchant's card processing account with Paymentech, including, but not limited to, confidential password and login information belonging to Merchant (the "Information"). Merchant understands and acknowledges that the misuse or unauthorized disclosure of the Information by the Third Party could allow unauthorized persons to access Merchant's account, conduct unauthorized transactions on Merchant's account, or otherwise cause Merchant substantial harm for which Paymentech shall not be responsible or liable. Merchant hereby authorizes Paymentech to disclose the information to the Third Party, and hereby agrees to waive, release and hold harmless Paymentech from any and all claims existing now or arising hereafter, caused by, arising out of or in any way relating to such disclosure by Paymentech and/or any use, misuse or unauthorized disclosure of the Information by the Third Party or any other third party which may obtain such information directly (or indirectly through one or more intermediaries) from Merchant or the Third Party.

3. **Miscellaneous.** With exception of the Merchant Agreement, which is incorporated herein and made a part hereof by reference, this Addendum (including all schedules, riders and exhibits attached thereto) embodies the parties' final, complete and exclusive agreement with respect to the subject matter. This Addendum shall supersede all prior and contemporaneous agreements, understandings and representations, written or oral. Any waiver, amendment, or modification of this Addendum, or any of its terms, must be in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No waiver by either party of any breach of this Addendum shall be deemed a waiver of any other breach or any subsequent breach; nor shall such waiver affect either party's right thereafter to enforce any provision of this Addendum or to exercise any right or remedy in the event of any other default.

4. Signature

Name (please print):	Title
X _____	_____
Signature	Date

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