



U.S. SELECT GOVERNMENT MERCHANT PROCESSING AGREEMENT

THIS U.S. SELECT GOVERNMENT MERCHANT PROCESSING AGREEMENT (the “**Agreement**”) is entered into by and between **JPMorgan Chase Bank, N.A.**, a national banking association (“**Chase**”), **Paymentech, LLC**, a Delaware limited liability company also known as Chase Merchant Services, (“**CMS**”), and the City of Santa Clara, California, a chartered California municipal corporation (“**Merchant**”).

WHEREAS, Chase is a member of several Card Networks and CMS is authorized, through Chase, to process the Merchant’s Transactions; and

WHEREAS, Merchant wishes to accept Cards from its Customers as a method of payment for goods or services offered by Merchant;

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

1. General Services.

1.1 Services; Technical Discovery Process.

CMS agrees to provide authorization, conveyance, settlement and related services with respect to Merchant’s Transactions, together with those additional ancillary services identified or described in any schedule, addendum or amendment hereto (the “**Services**”). Except as otherwise agreed in writing between the parties, this Agreement shall apply only to Merchant’s Transactions originating in the U.S. The parties acknowledge that the pricing set forth in this Agreement, and CMS’ ability to provide the Services set forth herein is dependent upon satisfactory completion of a technical discovery process related to Merchant’s specific technical implementation requirements. In the event that such process reveals any significant costs, expenses, development requirements or technical obstacles not currently known to CMS and which materially impact CMS’ ability to implement and provide the Services for Merchant (or the cost to CMS of doing so), the parties agree to discuss such issues in good faith in an attempt to resolve such issues; provided, however, that in the event that such matters cannot be resolved in a manner satisfactory to the parties, either party shall be entitled to terminate the Agreement with no further obligation hereunder.

1.2 Compliance with Applicable Laws and Card Network Rules.

Merchant agrees to comply with all Card Network Rules for any Card accepted by Merchant. Merchant shall not, through act or omission, cause CMS or Chase to violate any Card Network Rules. Merchant shall perform its obligations under this Agreement in compliance with all applicable federal, state and local laws and regulations and shall not submit any Transaction that it knows to be illegal. Merchant acknowledges receipt of the ChaseNet Rules and agrees to abide by the ChaseNet Rules with respect to all Chase Transactions. CMS reserves the right to temporarily suspend funding or refuse to process any Transaction if we reasonably suspect that it was prepared in violation of any provision of this Agreement, applicable law, or the Card Network Rules. Merchant agrees to pay any and all fines, fees, penalties, liabilities, charges and other amounts which may be imposed or assessed by the Card Networks on Merchant, Chase or CMS as a result of Merchant’s actions, omissions, Transactions or Chargebacks, including without limitation, Merchant’s failure to comply with the Card Network Rules, ChaseNet Rules, this Agreement or Security Standards (the “**Card Network Liabilities**”). CMS shall provide Merchant with prompt written notification of any Card Network Liabilities of which it receives notification from the Card Networks. In the event that Merchant desires to contest or appeal any such Card Network Liabilities, and such contest or appeal is permitted under the applicable Card Network Rules, CMS shall reasonably assist and cooperate with Merchant, and reasonably advocate on Merchant’s behalf, in connection with such contest or appeal, provided, however, that Merchant shall be responsible for the payment of any appeal fees or other direct costs associated therewith.

1.3 Chase Pay.

In the event the parties desire for Merchant to implement Chase Pay and accept Chase Pay Transactions, the following provisions will apply:

- (a) Specifications and Requirements. CMS will provide or make available to Merchant all specifications and requirements for the implementation and use of Chase Pay (including, but not limited to, all technical requirements, transaction specifications (and required data elements), security requirements (including customer validation/authentication requirements for online and Merchant Application implementation), and Customer issue response protocols (including, but not limited to, requirements for notifying CMS of any material issues related to the acceptance of Chase Pay Transactions, and cooperating with CMS to resolve any such issues), and Merchant shall comply with all such specifications and requirements in connection with the development, testing, and implementation of Chase Pay.
- (b) Fraud Prevention. To the extent Merchant utilizes any fraud screening or prevention technologies, tools or other measures with respect to its Transactions, Merchant agrees to utilize the same technologies, tools or measures for its Chase Pay Transactions (to the extent such technologies, tools or measures can be reasonably applied to Chase Pay Transactions).
- (c) Marketing; Non-Discrimination. Upon CMS' request, Merchant and CMS will work together in good faith to agree upon a marketing plan designed to promote and drive awareness of acceptance of Chase Pay Transactions at Merchant's locations (such as agreed upon marketing plan, the "Marketing Plan"), and thereafter to implement such Marketing Plan. Merchant agrees that it will not in any way discourage Chase Pay usage or discriminate against or disadvantage Chase Pay or Chase Pay Transactions (relative to customers using, or Transactions involving, other payment methods). Chase shall be entitled to identify Merchant by name as a Chase Pay acceptor, including, without limitation within a directory of Chase Pay acceptors on Chase's website.
- (d) Chase Pay License. During the term of this Agreement, CMS hereby grants to Merchant a non-exclusive, non-transferable license to use, solely within the United States and solely for the purpose of enabling the use of the Chase Pay product, any software and/or other materials that have been provided or otherwise made available to Merchant by CMS for that purpose. For the avoidance of doubt, this license does not include any third party software (e.g., Apple iOS). Except as provided in this section, this Agreement does not transfer or grant any patent rights, copyrights, trade secrets or other licenses, expressed or implied, to Merchant. This license shall terminate if Merchant's right to use Chase Pay ceases for any reason.
- (e) Trademarks. Any party's use of the other party's trademarks or service marks under this Agreement shall be limited to the approved use, for the marketing, promotion, and administration of the acceptance of Chase Pay Transactions, and shall be in compliance with such other party's current brand guidelines, as the same may be provided by each party to the other from time to time. Notwithstanding the foregoing or anything else in this Agreement to the contrary, Chase shall be entitled to identify Merchant by name as a Chase Pay acceptor. Each party shall use commercially reasonable efforts to cease use of any marketing materials that incorporate the other party's (or its Affiliates') trademarks or service marks or that otherwise relate to acceptance of Chase Pay Transactions reasonably promptly after either (i) notice of withdrawal of approval of such marketing materials from the applicable party or (ii) termination or expiration of the Agreement.
- (f) Legal Compliance. Merchant shall reasonably cooperate to investigate, address or resolve any CMS or Chase inquiry or concern regarding Merchant's compliance with any applicable law with respect to this Agreement.

2. Authorization and Settlement.

2.1 Submission of Data.

Merchant shall submit all of its Transactions to CMS electronically in accordance with CMS' standard protocols, specifications, formats and procedures for the creation and transmission of data to CMS. CMS shall not be liable or responsible for (i) the authenticity, or accuracy, of transaction data received from Merchant, or (ii) the corruption, loss, alteration, theft, or destruction of Transactions or Transaction data, during transmission of such data to CMS (by Merchant or its Service Provider), and CMS shall be entitled to rely on data received from or on behalf of Merchant in the discharge of its obligations hereunder.

2.2 Authorizations.

Merchant shall obtain an authorization code through CMS for each Transaction and CMS reserves the right to refuse to process any Transaction presented by Merchant unless it includes a proper authorization. Merchant acknowledges that authorization of a Transaction does not constitute a representation from CMS, a Card Network, or a card-issuing bank that a particular Transaction is in fact valid or undisputed.

2.3 Merchant's Settlement Account.

Merchant shall designate and maintain one or more accounts to be used exclusively for business purposes and that are capable of receiving ACH or wire transfers and that permits CMS to debit and credit such account for amounts due under this Agreement (collectively referred to as "Settlement Account"). Merchant authorizes CMS or its authorized agent(s) to initiate electronic credit and debit entries (via ACH, wire transfer, or other means) to the Settlement Account, or to any other bank account designated by Merchant in writing, at any time and from time to time, for amounts due under this Agreement, without regard to the source of any monies therein, and this authority will remain in full force and effect until all amounts which are or may reasonably become due from Merchant under this Agreement have been paid in full. During the term of this Agreement, and for one hundred eighty (180) days thereafter or such longer period of time as CMS may notify Merchant is reasonably required for the payments of amounts due under this Agreement, Merchant shall not close or revoke its consent to debit its Settlement Account without giving CMS at least five (5) business days' prior written notice and designating another Settlement Account. Merchant shall be liable for all fees, costs, and overdrafts associated with the Settlement Account.

2.4 Transfer of Settlement Funds.

CMS shall submit Merchant's Transactions to the applicable Card Network (or, with respect to Transactions involving Eligible Chase Cards, to Chase for processing as Chase Transactions to the extent Schedule A sets forth pricing specific to Chase Transactions). Promptly after CMS receives funds for Merchant's Transactions from the applicable Card Network, CMS will fund the Settlement Account. Transactions received after the established cutoff time will be combined with the next business day's transactions. CMS 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 Card Networks or Merchant's bank. The funds payable to Merchant in this Section shall be equal to the total Transaction amounts 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 Chargebacks and Refunds; (c) any required Reserve Account amounts; (d) any Card Network Liabilities and (e) any and all amounts due and payable by Merchant to CMS or any Affiliate of CMS, whether or not Merchant or such Affiliate is in default in its obligations to CMS or such Affiliate. Merchant agrees that all fees and other amounts are due and payable at the time the Services are performed or such fees or amounts are incurred. In the event CMS does not deduct any such amounts from Merchant's proceeds when such amounts first become due and payable, CMS may collect such amounts in any manner set forth for the collection of amounts due, as set forth in this Agreement. Furthermore, Merchant agrees to reimburse CMS, Chase, the Card Network, 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, CMS' costs, expenses, and reasonable attorneys' fees) arising out of any claim, complaint, or Chargeback (a) made or claimed by a Customer with respect to any Transaction or Transaction data submitted by Merchant; (b) caused by Merchant's noncompliance with this Agreement or the Card Network Rules (including without limitation any breach of a representation or warranty made by Merchant or Merchant's failure to comply with the Security Standards); (c) resulting from any voluntary or involuntary bankruptcy or insolvency proceeding by or against Merchant; or (d) related to Merchant's placement or the placement of any person owning or controlling Merchant's business in one or more databases of terminated or high risk merchants maintained by the Card Networks. The obligations provided for in this Section shall survive termination of this Agreement and do not apply to any claim or complaint to the extent they are caused by CMS' own negligence or willful misconduct.

2.5 Collection of Amounts Due.

In addition to any other rights and remedies CMS may have under this Agreement, CMS may pursue one or more of the following options with respect to amounts due under this Agreement:

- (a) withhold all or some of Merchant's settlement funds (or any other funds that would otherwise be payable by CMS to Merchant) and apply them against the amounts due;
- (b) debit the Settlement Account for the amounts due;
- (c) request and receive prompt payment for such amounts; and
- (d) apply funds held in any existing Reserve Account against the amounts due.

2.6 Reserve Account.

If:

- (a) Merchant begins accepting payment in advance of the shipment of goods or fulfillment of services, or materially increases the amount of time between Merchant's acceptance of payment and the anticipated shipment or delivery of goods or fulfillment of services;
- (b) Merchant receives a number of Chargebacks in excess of one percent (1%) of its total number of Transactions over a period of sixty (60) or more consecutive days, or CMS is notified by any Card Network of Merchant's inclusion in any chargeback monitoring or similar risk-based program, or of any Card Network Liabilities to be assessed as a result of Merchant's Chargebacks;
- (c) CMS has received notification from any Card Network(s) or has otherwise become aware of any material violation of the Card Network Rule(s), causing CMS to believe that it is reasonably likely to be subject to Card Network Liabilities;
- (d) CMS reasonably suspects fraud or other illegal activity;
- (e) either party provides notification of non-renewal or termination of this Agreement, or this Agreement is terminated for any reason; or
- (f) required by CMS, and communicated to Merchant in writing prior to the execution of this Agreement, as a condition of CMS' entering into this Agreement;

then CMS may designate an amount of funds that shall be funded by Merchant and maintained by CMS to protect CMS against the reasonably anticipated risk associated with Merchant's account (such funds being hereinafter referred to as the "Reserve Account"). Any required Reserve Account shall be due upon request, and may be collected by CMS in any manner provided in this Agreement for the collection of amounts due. The amount of such Reserve Account shall not exceed the sum of (i) one month's average fees including without limitation, processing fees, interchange assessments and third-party fees collected by CMS; plus (ii) one month's average monthly Chargebacks multiplied by six; plus (iii) one month's average monthly Refunds multiplied by two; plus (iv) the aggregate value of Transactions, if any, submitted by Merchant to CMS with respect to goods and/or services not yet delivered to Customers; plus (v) the amount of any Card Network Liabilities reasonably anticipated by CMS. For purposes of this calculation, each monthly average shall be calculated over the immediately preceding consecutive twelve (12) month period (or, if CMS has not yet been processing for Merchant for twelve (12) consecutive months, such shorter period of time as CMS may have been processing for Merchant or the parties may otherwise agree). CMS may (but is not required to) apply funds in the Reserve Account toward, and set off any funds that would otherwise be payable by CMS to Merchant against, the satisfaction of any amounts due from Merchant pursuant to this Agreement. Funds in the Reserve Account will be held and controlled by CMS, will not bear interest, and may be commingled with other funds, (but will be accounted for separately). Merchant shall have no interest in the Reserve Account other than a contingent right to receive funds, as set forth below. Reserve Accounts (and CMS' right to require a Reserve Account after termination of this Agreement as set forth above) shall survive termination of the Agreement. Upon satisfaction of all of Merchant's reasonably anticipated obligations under this Agreement and the expiration of the applicable timeframes for Chargebacks (as set by the various Card Networks), CMS will return to Merchant any unused funds remaining in the Reserve Account. In addition, upon Merchant's request from time to time, but in no event more than once per month, CMS will review the risk associated with Merchant's account and as needed adjust the amount currently held in the Reserve Account and return to Merchant any funds in the Reserve Account which CMS no longer believes to be reasonably necessary to cover the remaining risk.

3. Reporting.

CMS will provide online access to reporting reflecting the activity of Merchant's account(s) and allowing Merchant to generate detailed statements of such activity. Merchant agrees that it has responsibility to monitor its account activity and that it waives all claims against CMS for any errors that are not reported to CMS within ninety (90) days from the posting of the activity in Merchant's online account report.

4. Future Deliverables; Refunds; Chargeback Liability.

4.1 Future Deliverables.

Unless CMS has agreed in writing in advance, Merchant shall not submit Transactions to CMS (including in connection with any installment sales or deferred payment plans) until (i) the goods are delivered or shipped or (ii) the services are performed. The foregoing restriction applies to installment sales, deferred payment plans and recurring transactions.

4.2 Refunds.

To the extent required by the Card Network Rules, Merchant shall maintain a written policy with regards to Refunds and shall disclose or make available such policy to its customers. Upon request, Merchant shall make such policy available to CMS. Merchant shall not accept any payment from a Customer as consideration for issuing a Refund. Except to the extent permitted by the Card Network Rules or expressly required by applicable law, Merchant shall not give cash (or cash equivalent) refunds to a Customer in connection with a prior Transaction. Unless otherwise required by the ChaseNet Rules or Card Network Rules, any Refunds shall be prepared and submitted to CMS within three (3) days of Merchant's approval of Customer's request for such Refund. Merchant shall have liability for all Refunds submitted by Merchant, its employees, agents or representatives, or by third parties using Merchant's identification number without Merchant's authorization, except where such third party obtained Merchant's identification number as a result of the negligence of CMS.

4.3 Chargeback Liability.

Merchant shall have full liability for all Chargebacks assessed to CMS in accordance with the applicable Card Network Rules; provided, however, that (i) in the event that any Chargeback is ultimately reversed in favor of Merchant, CMS shall refund Merchant for the amount thereof, and (ii) Merchant shall not be liable for Chargebacks resulting from consumer-initiated, fraudulent Chase Pay Transactions made at Merchant except to the extent that Merchant or any of its employees, Affiliates, agents, vendors or Service Providers is complicit in the fraudulent activity. For purposes of the foregoing, consumer-initiated fraudulent Chase Pay Transactions means sales that are initiated through activities such as the unauthorized use of a lost/stolen mobile device or other unauthorized use of a Chase Card to process a Chase Pay Transaction at Merchant. Merchant shall use reasonable efforts to provide CMS with all necessary data relating to the investigation and management of any reasonably suspected fraud or fraudulent Transactions that is reasonably requested by CMS (such data to be used by CMS and Chase for fraud protection and prevention purposes only).

5. Fees; Adjustments.

5.1 Schedule A.

Merchant shall pay all fees and amounts (e.g. interchange and assessments) set forth in this Agreement (including, without limitation, those set forth on Schedule A hereto). Unless otherwise indicated on Schedule A, Merchant shall be solely responsible for all communication expenses required to transmit Transactions to CMS. For each file or batch submitted by Merchant, CMS will group the Transaction data by Transaction characteristics, including, without limitation, type of Transaction, method of payment, and interchange qualification category. For each such group, CMS will calculate the applicable fees to two decimal places. The fees for each will be rounded to the nearest full cent using conventional mathematical rounding logic for currency.

5.2 Price Adjustments.

- (a) General. Fees set forth in this Agreement are based upon Merchant's annual volume, average Transaction size, as set forth in Schedule A, or in any amendment to this Agreement, and other information provided by Merchant. To the extent any of the foregoing proves to be materially inaccurate, CMS may modify Merchant's pricing set forth in this Agreement upon thirty (30) days' prior written notice; provided, however, that in such event, Merchant shall be entitled to terminate this Agreement by providing CMS with notice of termination no later than one hundred eighty (180) days after Merchant's receipt of notification of such increase. In addition, Merchant's fees may be adjusted to reflect (i) increases by Card Networks in interchange, assessments, (ii) other Card Network fees, additional fees imposed by the Card Networks, or (iii) increases in third party fees identified in this Agreement, Schedule A or as otherwise agreed by the parties in writing. Merchant shall pay all such fees, as so adjusted. Each such adjustment shall become effective upon the date the corresponding increase or additional fee is implemented by the Card Network or third party provider.

- (b) Chase Transaction Pricing. CMS shall be entitled at any time, upon thirty (30) days' written notice, to modify the pricing applicable to Merchant's Chase Transactions; provided, however, that in such event, Merchant shall be entitled to discontinue having its Eligible Chase Cards processed as Chase Transactions by providing CMS with notice thereof, in which case all Transactions involving Eligible Chase Cards shall be processed by CMS as normal Visa Transactions, subject to the pricing set forth in Schedule A for Visa Transactions, and subject to normal Visa interchange rates and network fee pass-through. For the purpose of reviewing, evaluating and (if applicable) modifying Merchant's Chase Transaction pricing, Merchant authorizes CMS to use Merchant's non-Chase Transaction processing data and pricing, including, without limitation, the qualification levels and interchange rates applicable to its non-Chase Transactions.

5.3 Custom Interchange Rates.

Merchant agrees that CMS will not be responsible for honoring or implementing any custom interchange rate(s) which Merchant may have negotiated, or may in the future negotiate, directly with the Card Networks (a "Custom Rate") unless Merchant notifies CMS of such rate in writing and CMS agrees in writing to implement such Custom Rate. Merchant agrees that implementation of any Custom Rate may require time and development work, and, as a condition of doing so, CMS may require Merchant to pay a development fee (to be mutually agreed between the parties). In addition, Merchant agrees to notify CMS in writing of any published tier interchange rates and/or any industry-specific interchange programs (such as those for the utility and debt repayment industries) in which Merchant believes it is eligible to participate, and CMS shall not be responsible for implementing any such rates or programs unless it has been so notified by Merchant.

6. Termination.

6.1 Term.

This Agreement takes effect upon the date on which it first becomes signed by all parties hereto (i.e. the date on which the last party to the Agreement signs), and continues for three (3) years from such date. Unless otherwise terminated by either party as provided in this Agreement, this Agreement will automatically renew for successive one-year terms. Either party may give notice of non-renewal of this Agreement in writing no more than ninety (90) days and no less than thirty (30) days prior to any expiration date.

6.2 Events of Default.

In the event that either party fails in any material respect to comply with any provision, term, warranty, condition, covenant, or agreement contained in this Agreement, including, without limitation, the Card Network Rules and Security Standards, or any representation in this Agreement is or was false or incorrect in any material respect when made (any such event, an "Event of Default"), and such party fails to cure such Event of Default within thirty (30) days of its receipt of written notification from the non-defaulting party specifying such Event of Default, then the non-defaulting party shall be entitled to terminate this Agreement upon written notice of termination; provided, however, that no cure period shall be allowed, and CMS shall be entitled to terminate this Agreement immediately, in the event that Merchant fails in any material respect to perform any of its obligations with respect to the funding or establishing of a Reserve Account, as detailed in Section 0 above.

6.3 Other Termination Events.

In addition, CMS shall be entitled to terminate this Agreement immediately upon written notice to Merchant in the event of any of the following:

- (a) Merchant is placed in any Chargeback monitoring or similar risk-based program designated by any Card Network for merchants with high levels of Chargebacks or presenting high levels of risk, and are not removed from such program by the applicable Card Network within ninety (90) days;
- (b) CMS reasonably determines Merchant, based on its financial statements, payment record with creditors, and other relevant factors, to be financially insecure and unlikely to be able to meet its obligations under this Agreement;
- (c) any Card Network: (i) notifies CMS or Chase that it is no longer willing to accept Merchant's Transactions; (ii) requires CMS or Chase to terminate or limit this Agreement or Merchant's ability to accept Cards; or (iii) imposes unduly burdensome, costly or impractical conditions or requirements relating to Merchant or Merchant's transactions;

- (d) a party or any individual entity or organization holding any material ownership interest in such party or any officer or director of such party, is determined at any time to be an individual, entity, or organization (i) with whom the other parties are prohibited from dealing by any United States law, regulation or executive order, including names appearing on the U.S. Department of Treasury's Office of Foreign Asset Control's Specially Designated Nationals and Blocked Persons List, or (ii) that is listed in one or more databases of terminated or high risk merchants maintained by the Card Networks;
- (e) Merchant (i) ceases to exist (other than as a result of a permitted assignment or sale by such party) or to conduct its normal and customary business operations, or (ii) is convicted of or pleads no contest to a felony charge;
- (f) CMS reasonably believes that Merchant (i) is involved in a material violation of applicable law or other domestic or foreign law or regulation; (ii) has or is engaged in bribery, fraud, money laundering or corruption; or (iii) has otherwise become the subject of public disrepute, contempt, or scandal that CMS reasonably determines may cause a material adverse impact on the reputation and goodwill of CMS, Chase, or any Card Network, regardless of whether such controversy relates to this Agreement;
- (g) Merchant is in material breach or default of any term, condition, covenant, representation, or warranty contained in any credit facility, loan document or other agreement between Merchant and Chase or any Affiliate of Chase (and such breach is not cured in any applicable cure period provided in such document);
- (h) Merchant does not transmit Transactions to CMS for a period of more than one hundred eighty (180) consecutive days; or
- (i) Merchant issues Bearer Shares or Merchant is a Bearer Share Company.

6.4 Budget Appropriations.

Upon thirty (30) days written notice, Merchant, if it is a government entity, may terminate this Agreement in the event that funds are not appropriated/allocated by Merchant for the expenses associated with credit card processing for any fiscal year. However, Merchant will continue to be responsible for any liabilities, commitments or obligations arising from payment transactions processed pursuant to this Agreement prior to the effective date of termination.

6.5 Account Activity After Termination.

After termination of this Agreement, Merchant shall continue to be liable for Chargebacks, Refunds, fees, Card Network Liabilities, credits, and adjustments resulting from or relating to Transactions processed pursuant to this Agreement. If Merchant submits Transactions to CMS after the date of termination, CMS may, but is not required to process such Transactions in accordance with and subject to all of the terms of this Agreement.

7. Indemnification.

CMS agrees to indemnify and hold harmless Merchant and its Affiliates, officers, directors, employees, and agents from any losses, liabilities, and damages of any and every kind (including, without limitation, Merchant's costs, expenses, and reasonable attorneys' fees) arising out of any third party claim or complaint relating to: (a) CMS' noncompliance with Card Network Rules, the Security Standards; (b) a Data Compromise Event of CMS or its service providers; (c) any voluntary or involuntary bankruptcy or insolvency proceeding by or against CMS; or, (d) CMS' violation of applicable federal, state and local laws and regulations. This indemnification does not apply to any claim or complaint to the extent caused by Merchant's own negligence, recklessness or willful misconduct. The indemnification provided under this Section shall survive termination and is subject to the limitation of liability set forth in Section 11 of this Agreement.

8. Confidential Information; Use of Data; Card Industry Compliance.

8.1 Confidentiality.

- (a) Each party has made and will continue to make available to the other party information that is not generally known to the public and at the time of disclosure is identified as, or would reasonably be understood by the receiving party to be, proprietary or confidential ("**Confidential Information**"). Confidential Information may be disclosed in oral, written, visual, electronic or other form. Information meeting the definition of Confidential Information that is disclosed by a party during the term of this Agreement and that is not otherwise subject to a separate nondisclosure agreement between

the parties will be considered Confidential Information, even if the information is unrelated to this Agreement or the Services to be provided hereunder. Each party's Confidential Information includes its: (i) business plans, strategies, forecasts, projects and analyses; (ii) financial information and fee structures (including CMS' pricing and pricing proposals); (iii) business processes, methods and models; (iv) employee, customer, dealer, business partner and supplier information; (v) hardware and system designs, architectures, structure and protocols; (vi) product and service specifications; and (vii) the terms of this Agreement. The following information shall be deemed the Confidential Information of CMS: (x) any SOC1 (Disclosure of Service Organization Control Report No. 1), SSAE-16 or SSAE-18 (Statement on Standards for Attestation Engagements No. 16 or No. 18) report provided by CMS; (xi) any attestation of compliance or similar letter or report provided by CMS with respect to its compliance with the Security Standards; (xii) any data and information (including data analytics and attribution data) about Chase Customers provided to Merchant by CMS or any of its Affiliates; (xiii) Card Information associated with a Chase Card or Chase Customer; and (xiv) the fact that any Customer(s) is/are a Chase Customer. For Transactions that are processed under this Agreement, information (other than Card Information associated with a Chase Card) that is customarily part of the payment transaction (e.g., transaction date and amount) may be utilized by each of the parties subject to the Security Standards, Card Network Rules and ChaseNet Rules, as applicable, and shall not be deemed the Confidential Information of any party.

- (b) Except as otherwise permitted under this Agreement or with the prior written consent of the disclosing party, the receiving party will not disclose, transmit or otherwise disseminate in any manner whatsoever any Confidential Information of the disclosing party to any third party. The receiving party will use the same care and discretion to avoid disclosure, publication or dissemination of any Confidential Information received from the disclosing party as the receiving party uses with its own similar information that it does not wish to disclose, publish or disseminate (but in no event less than a reasonable degree of care). CMS and Chase may disclose Merchant's Confidential Information: (i) to the Card Networks in connection with the processing of Transactions and the provision of ancillary services (including services made available directly through the Card Networks such as Address Verification and Account Updater, if used by Merchant) and activity for which such disclosure is otherwise required (e.g., Retrieval Requests, Chargeback adjudication, fraud detection and prevention); (ii) to its or its subcontractors' employees, consultants or agents for the purpose of performing its obligations under this Agreement and only to those who are obligated to maintain the confidentiality of Merchant's Confidential Information upon terms similar to those contained in this Agreement; and (iii) as may be necessary by reason of legal, accounting or regulatory requirements.
- (c) The obligations set forth in this Section do not apply to any Confidential Information that the receiving party can demonstrate: (i) the receiving party possessed prior to disclosure by the disclosing party, without an obligation of confidentiality; (ii) is or becomes publicly available without breach of this Agreement by the receiving party; (iii) is or was independently developed by the receiving party without the use of any Confidential Information of the disclosing party; or (iv) is or was received by the receiving party from a third party that does not have an obligation of confidentiality to the disclosing party or its Affiliates. Either party may disclose the terms of this Agreement to potential parties to acquisition, divestiture or similar transactions to facilitate due diligence and closing of the transaction, provided that potential party is subject to written non-disclosure obligations and limitations on use only for the prospective or closed transaction, each party to that transaction using commercially reasonable efforts to limit the extent of the disclosure.
- (d) If the receiving party is legally required to disclose any Confidential Information of the disclosing party in connection with any legal or regulatory proceeding, the receiving party will, if lawfully permitted to do so, endeavor to notify the disclosing party within a reasonable time prior to disclosure and to allow the disclosing party a reasonable opportunity to seek appropriate protective measures or other remedies prior to disclosure and/or waive compliance with the terms of this Agreement. If these protective measures or other remedies are not obtained, or the disclosing party waives compliance with the terms of this Agreement, the receiving party may disclose only that portion of that Confidential Information that it is, according to the opinion of counsel, legally required to disclose and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to that Confidential Information. However, nothing contained in this Agreement will restrict CMS' or Chase's ability to disclose Merchant's Confidential Information to regulatory or governmental bodies asserting jurisdiction over CMS or its Affiliates.

8.2 Use of Data.

- (a) General. Certain Merchant Confidential Information, including without limitation, financial information, information related to Merchant's Transactions, and other information that Merchant provides to CMS may be shared by CMS or Chase with its Affiliates and the Card Networks. Except as otherwise agreed by the parties in writing, CMS shall not otherwise use or disclose such information other than, (i) as necessary to process Merchant's Transactions or otherwise provide services and maintain Merchant's account pursuant to this Agreement; (ii) for CMS' and Chase's internal and

operational purposes; (iii) to monitor, detect, prevent, reduce, or otherwise address fraud, risk, security, or technical issues; (iv) to enhance or improve CMS' and Chase's products and services generally; or (v) as required or permitted by the Card Networks or applicable law. CMS and Chase may use and/or share with third parties information derived from Transactions provided that it is either aggregated or de-identified (meaning that reasonable steps have been taken to ensure that the information does not identify Merchant and does not identify any individual person).

- (b) Referral Partner. If applicable, CMS may also share and exchange such information with any Referral Partner (as defined below), as reasonably necessary to administer any referral or similar program between Referral Partner and CMS. This may include the sharing or exchanging of Merchant information for the purposes of calculating any referral fees payable in connection with, and otherwise implementing and maintaining such program, and, in some cases, servicing and managing Merchant's account. The information that may be shared or otherwise exchanged may include Merchant's name, identification/account number, transaction volume, card summary, status with CMS (e.g. the existence and terms of this Agreement, whether Merchant's application was accepted or declined, and whether this Agreement has terminated or expired), Merchant's status with Referral Partner (e.g. membership or participation in any Referral Partner organization or program), and such other information that is reasonably necessary for the purposes described above. Merchant understands and agrees that CMS shall not be responsible for Referral Partner's subsequent use or disclosure of such information.

8.3 Payment Card Industry Compliance.

- (a) Each party agrees to comply with all applicable Security Standards.
- (b) Merchant further agrees to provide CMS, upon its request, with such tests, scans, and assessments of Merchant's compliance with Security Standards as may from time to time be required by the Card Network Rules in order for CMS to confirm or validate Merchant's compliance with the Security Standards.
- (c) Merchant understands that its or its Service Providers failure to comply with the Card Network Rules, including the Security Standards, may result in Card Network Liabilities for which Merchant shall be responsible.
- (d) Merchant shall immediately notify CMS of its use of any Service Provider(s), and Merchant is responsible for ensuring that any and all Service Providers and third-party payment software or applications used by Merchant to transmit, store or process Card Information, are compliant with all applicable Security Standards and appropriately registered with, or otherwise recognized as being compliant with the Security Standards, by all applicable Card Networks.
- (e) If a forensic examination of Merchant or any of Merchant's Service Providers is required pursuant to the Card Network Rules, Merchant agrees to engage an approved PCI Forensic Investigator ("PFI") (a list of which is available from the PCI Council), and cause such forensic examination to be completed within the timeframe required by the Card Network Rules, and cooperate with the PFI in connection therewith. Notwithstanding the foregoing, the Card Networks may directly engage, or demand that CMS engage, an examiner on behalf of the Merchant in order to expedite the investigation of a Data Compromise Event, and/or may require CMS to investigate such Data Compromise Event. Merchant agrees to pay for all costs and expenses related to any required forensic examination and all liabilities associated with any Data Compromise Event. Furthermore, if Merchant is undergoing a forensic investigation at the time this Agreement is executed, Merchant shall fully cooperate with the investigation and agrees to continue so cooperating until the investigation is completed.

8.4 Access to Information.

Merchant shall be responsible for ensuring that only employees and representatives with a need to know shall have access to Card Information. Merchant may, from time to time, designate certain employees or representatives for which CMS shall provide access (via login credentials or otherwise) to Merchant reporting, which may include access to Card Information. Merchant shall be responsible for any unauthorized access to such information or any unauthorized transactions submitted, utilizing the login credentials of Merchant's employees and representatives. In the event that any employee or other representative previously designated by Merchant to CMS for purposes of allowing such access, Merchant agrees to notify CMS promptly in the event such representative ceases to be employed by or associated with Merchant, or otherwise no longer has a reasonable business need to retain such access.

9. Information About Merchant and Merchant's Business.

9.1 Additional Financial Information.

Upon five (5) business days' written notice, Merchant agrees to furnish to CMS (i) complete audited financial statements of Merchant (or such lesser format financial statements of Merchant as CMS may agree to accept) from the most recently completed

fiscal year if such request occurs more than one hundred twenty (120) days after the end of such fiscal year, and otherwise from the fiscal year immediately prior thereto, and (ii) its most recently prepared interim financial statements.

9.2 Other Information.

Merchant agrees to provide CMS at least thirty (30) days' prior written notice of: (i) any significant changes to the nature of its business, product lines or services; (ii) Merchant beginning to accept payment in advance of the shipment of goods or fulfillment of services, or materially increasing the amount of time between acceptance of payment and the anticipated delivery or shipment of goods or fulfillment of services; (iii) any sale of all or substantially all of the assets of Merchant; or (iv) 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 acquiring voting control of Merchant. If CMS determines such a change is material to its relationship with Merchant, CMS may refuse to process Transactions made subsequent to the change or terminate this Agreement. Merchant agrees to provide CMS with prompt written notice if Merchant is the subject of any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Merchant agrees to provide CMS with any additional information CMS may request pertaining to Merchant's business or Transactions in connection with any CMS inquiries or investigation concerning suspected fraud or fraudulent Transactions.

10. ChaseNet and Chase Pay Availability.

CMS reserves the right, at any time upon thirty (30) days' prior written notice, to discontinue the processing of Merchant's eligible Transactions as Chase Transactions, in which case Transactions involving Eligible Chase Cards (i.e. Transactions which would otherwise have been processed as Chase Transactions and/or Chase Pay Transactions) shall thereafter be processed as normal Visa Transactions subject to Visa pricing as set forth on Schedule A and normal Visa interchange rates and network fee pass-through. In addition, CMS and Chase reserve the right to change, terminate, discontinue or suspend (for any period of time) any or all functionality associated with Chase Pay (including without limitation, the ability of Merchant to accept and processing Chase Pay Transactions) at any time upon reasonable prior written notice to Merchant.

11. Limitations of Liability; Disclaimer of Warranties.

Under no circumstances will CMS' and Chase's combined financial liabilities arising out of or related to this Agreement exceed the total fees paid to CMS under this Agreement (net of Card Network and other third party fees including, without limitation, interchange, assessments, and Card Network Liabilities) for the six months prior to the time the liability arose; provided, however, that such limitation shall not apply with respect to CMS' indemnity obligations with respect to a Data Compromise Event pursuant to [Section 7.1\(b\)](#). EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT, IN NO EVENT WILL ANY PARTY, ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AFFILIATES, BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR LOST PROFITS, REGARDLESS OF THE FORM OF ACTION AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ANY CARD NETWORK LIABILITIES SHALL BE DEEMED TO BE DIRECT DAMAGES. ALL PARTIES ACKNOWLEDGE THAT THIS IS AN AGREEMENT FOR COMMERCIAL SERVICES. THE UNIFORM COMMERCIAL CODE DOES NOT APPLY AND CMS AND CHASE 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.

12. Miscellaneous.

12.1 Taxes.

The fees described in this Agreement are exclusive of all taxes. Unless Merchant is otherwise exempt, and, if applicable, provides a valid exemption certificate, Merchant agrees to pay all applicable taxes and similar charges however designated (other than taxes assessed on CMS' net income) including sales, use, property, lease, excise, goods and services, value added, gross receipts and like taxes ("Taxes") which are imposed by any governmental authority related to the Services, equipment, supplies, software, intellectual property and other goods provided under this Agreement. Merchant also agrees to pay any Taxes imposed on interchange, assessments or other third party fees collected by CMS pursuant to this Agreement. Merchant authorizes CMS to increase the amount collected from Merchant to reflect any and all such Taxes and any assessments or increases in the Taxes imposed on such sale or lease of the Services, equipment, supplies, software, intellectual property and other goods provided under this

Agreement. CMS may deduct withholding taxes, if any, from proceeds payable to Merchant where required under applicable law and will provide to Merchant documentation required to be provided to Merchant under applicable law.

12.2 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.

12.3 Assignment; Other Events.

- (a) CMS may not transfer or assign this Agreement, in whole or in part, without the prior written consent of Merchant, not to be unreasonably withheld, except that such prior written consent shall not be required in connection with: (i) the transfer of all or substantially all of the merchant acquiring business of CMS (whether by merger, stock sale, asset sale or otherwise); (ii) an internal reorganization resulting in an assignment or transfer to an Affiliate of CMS; or (iii) as permitted under the Card Network Rules, the substitution of another Card Network member for Chase, as the member bank under whose sponsorship the Services are provided.
- (b) Merchant may not transfer or assign this Agreement without the prior written consent of CMS, not to be unreasonably withheld subject to CMS' standard credit and risk underwriting policies and procedures (which shall in no event be deemed unreasonable).

12.4 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' and Service Provider's actions. In providing services to Merchant, CMS will not be acting in the capacity of agent, partner, or joint venturer; CMS is acting solely as an independent contractor.

12.5 Representations.

- (a) Merchant represents and warrants that all written information that it has or will submit to CMS, including without limitation statements made on its Application and any subsequent addendums, are true, complete and not misleading as of the date the statements were or will be made. Merchant further represents and warrants that only its authorized representatives will submit written information to CMS. Merchant represents and warrants that it is not a Bearer Share Company and that it will not issue Bearer Shares.
- (b) CMS and Merchant each represent and warrant that its execution of and performance under this Agreement: (i) 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 with any third party or affiliated entity; (ii) has been duly authorized by all necessary action and does not require any consent or other action by or in respect of any third party; and (iii) that the person signing this Agreement is duly authorized to do so.

12.6 Publicity.

Except to the extent required by applicable law, neither party shall make press releases or similar public statements regarding the business relationship that is the subject of this Agreement, without the prior written consent of the other. Neither party shall use the other party's name or trademarks, except as otherwise provided in this Agreement, without the other party's prior written permission.

12.7 Severability.

Should any provision of this Agreement be determined to be invalid or unenforceable under any applicable law, rule, regulation, or Card Network Rule, such determination will not affect the validity or enforceability of any other provision of this Agreement.

12.8 Waivers.

No term or condition of this Agreement may be waived, and failure by either party to enforce any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term or condition, except pursuant to a written waiver executed by the party against whom such waiver is sought to be enforced.

12.9 Entire Agreement.

The Application, taxpayer identification and certification documentation, and all schedules, supplements, exhibits and attachments to this Agreement are made a part of this Agreement for all purposes. This Agreement represents the entire understanding between Merchant, Chase and CMS 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 CMS, Chase or their representatives. This Agreement shall prevail over any conflicting terms of any agreement governing the Settlement Account. In the event that any of the terms and conditions of this Agreement contradicts or conflict with the terms and conditions of Merchant's previously submitted Request for Proposal ("RFP") or CMS' or Chase's subsequent response to Merchant's RFP, the terms and conditions of this Agreement shall control.

12.10 Notices.

Except as otherwise provided in this Agreement, all notices shall be given in writing and either hand delivered, mailed first class, postage prepaid (return receipt requested), transmitted electronically by email, or sent via overnight courier (with package tracking capability) (and will be deemed to be given when so delivered or mailed) to the addresses set forth below or to such other address as either party may from time to time specify to the other party in writing.

12.11 Governing Law; Waivers of Right to Contest Jurisdiction; Immunity and Jury Trial.

This Agreement will be governed by and construed in accordance with the laws of the State in which Merchant has its primary residence without reference to conflict of law provisions; unless otherwise mandated by applicable law. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS EITHER OF THEM MAY HAVE TO CONTEST JURISDICTION OR VENUE. MERCHANT WAIVES ANY IMMUNITY (SOVEREIGN OR OTHERWISE) THAT IT MAY HAVE IN CONNECTION WITH THIS AGREEMENT. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

12.12 Force Majeure.

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

12.13 Amendment.

Except as otherwise set forth in this Agreement, the Agreement may be amended only by written agreement of the parties. Notwithstanding the foregoing, in the event the terms of this Agreement must be amended pursuant to a change required by the Card Network Rules or required for compliance with applicable law, such amendment will be effective upon written notice to Merchant.

12.14 Counterparts and Electronic Signature.

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

12.15 Prohibition of Unlawful Internet Gambling.

Merchant understands and agrees that the use of the Services to conduct transactions (including, without limitation, the acceptance or receipt of settlement proceeds or other funds related to such transactions) that are related, directly or indirectly, to unlawful Internet gambling is strictly prohibited by CMS and Chase. The term "unlawful Internet gambling," as used in this Notice, shall have its meaning set forth in 12 C.F.R. Section 233.2(bb). Merchant agrees not to engage in, submit for processing or facilitate any Transactions under this Agreement that directly or indirectly involve or are related to unlawful Internet gambling.

13. Offshoring.

Certain services may be performed by CMS or any of its affiliates, including affiliates, branches or units located in any country in which CMS conducts business or has a service provider. Merchant authorizes CMS to transfer Merchant's information to such affiliates, branches or units at such locations as CMS deems appropriate. CMS reserves the right to store, access, or view data in locations it deems appropriate for the services provided.

14. Survival.

The terms that expressly or by their nature contemplate performance after the termination or expiration of this Agreement shall survive and continue in full force and effect. For the avoidance of doubt the provisions relating to Authorization and Settlement, Refunds, Chargebacks, Termination, Indemnification, Confidentiality, Use of Data and Limitation of Liability shall survive termination.

15. Definitions.

"*Affiliate*" of any Person shall mean (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) any officer or director of such Person, and (c) with respect to Chase, any entity administered or managed by Chase, or an Affiliate or investment advisor thereof and which is engaged in making, purchasing, holding or otherwise investing in commercial loans. A Person shall be deemed to be "controlled by" any other Person if such Person possesses, directly or indirectly, power to direct or cause the direction of the management and policies of such Person whether by contract, ownership of voting securities, membership interests or otherwise.

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

"*Bearer Shares*" means securities that are not registered on the books of the issuing corporation and thus payable to any possessor of the shares.

"*Bearer Share Company*" means a type of company which, unlike registered share companies, issues its securities as Bearer Shares.

"*Card*" means a physical or virtual credit or debit card, or any evidence thereof (e.g. account number, access number, token, code, payment credential, or other form factor or access device), or any device, mobile application, digital wallet or other technology, medium or method (regardless of form) used to access an account or account number through which Card Network payment services are delivered, authorized and established between a Customer and a Card Network, or representatives or members of a Card Network that Merchant accepts from Customers as payment for goods or services.

"*Card Information*" means information related to a Customer or the Customer's Card, that is obtained by Merchant from the Customer's Card, or provided by the Customer in connection with his or her use of a Card, including, without limitation, Card account numbers and expiration dates, security codes (e.g. CVV2, CVC2, etc.), PIN numbers, credit limits, account balances, or Customer billing address, phone numbers, or zip codes (when provided solely as part of an identity verification system), and any

data read, scanned, imprinted, or otherwise obtained from the Card, whether printed thereon, or magnetically, electronically, or otherwise stored thereon. For the avoidance of doubt, information about Customers which is not specific to Customer's Card and which is voluntarily provided to Merchant by Customers for purposes of shipping or delivering goods or services, Customer's participation in a loyalty program, mailing list, special offers, or similar purposes (e.g., Customer's name, mailing address, phone number, email address, birthdate or age), shall not be deemed Card Information.

"Card Network" means any payment card network provider whose payment method is accepted by CMS for processing, including, without limitation, Visa Inc., MasterCard International, Inc., Discover Financial Services, LLC, American Express, Pulse, and STAR.

"Card Network Rules" means all bylaws, rules, programs, regulations, specifications, and manuals, as they exist from time to time, of the Card Networks. With respect to the Chase Transactions, the ChaseNet Rules are the applicable Card Network Rules.

"Chargeback" means a reversal of a Transaction Merchant previously presented to CMS pursuant to Card Network Rules.

"Chase Card" means a Card issued by Chase or its Affiliates and used to access a line of credit, prepaid account, or deposit account, issued or maintained by Chase or its Affiliates.

"Chase Customer" means any person or entity to whom a Chase Card is issued or who is otherwise authorized to use a Chase Card.

"Chase Pay" means Chase's proprietary payment method allowing Chase Customers to use their Eligible Chase Cards to purchase goods or services from merchants by using a Chase Pay-branded "payment button" incorporated into or embedded in Merchant's online and/or mobile ecommerce websites, and/or the Merchant Application, in each case together with all associated Chase software, code, applications, technical specifications, application program interface, software development kit, and related tools and materials.

"Chase Pay Transaction" means a Chase Transaction which is facilitated by use of Chase Pay and processed by CMS pursuant to this Agreement.

"Chase Transaction" means a Transaction utilizing an Eligible Chase Card and which is processed over the ChaseNet platform.

"ChaseNet" means Chase's payment processing platform(s) where Transactions involving Eligible Chase Cards are processed directly between Merchant and Chase, bypassing the traditional Card Network "interchange" system.

"ChaseNet Rules" means the Chase Merchant Program Requirements, as amended, revised and updated from time to time, which set forth the rules and requirements applicable to the acceptance of Chase Transactions.

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

"Data Compromise Event" means an occurrence that results, or may have resulted, directly or indirectly, in the unauthorized access to or disclosure of Card Information in the possession or control of a party to this Agreement or its service providers.

“Eligible Chase Card” means a Chase Card of a type that Chase, in its sole discretion, has determined to be eligible for use in Chase Transactions processed over ChaseNet generally. Unless CMS has notified Merchant otherwise in writing (or the parties have agreed in writing to Chase Transaction pricing specific to another Card type, e.g. PIN debit), Eligible Chase Cards shall be limited to consumer and small business Chase Cards for which a Visa-branded credit or signature debit card has been issued.

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

“Merchant Application” means any software application developed by or on behalf of Merchant that provides various services and capabilities for Merchant’s customers including the ability purchase or otherwise effect payment for Merchant goods or services.

“Person” shall mean any natural person, partnership, limited liability company, corporation, trust, joint venture, joint stock company, association, unincorporated organization, government or agency or political subdivision thereof, or other entity, whether acting in an individual, fiduciary or other capacity.

“Referral Partner” is a third party that has entered into a (i) formal referral relationship with CMS pursuant to which it referred Merchant to CMS for payment processing services and/or (ii) preferred pricing program with CMS. The Referral Partner may be paid a fee by CMS for the referral of Merchant to CMS. In addition, the Referral Partner may be involved in the servicing and maintenance of Merchant’s account. Referral partners may include, as applicable, without limitation, financial institutions, Merchant’s franchisor, independent sales organizations, trade associations or groups and service providers.

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

“Reserve Account” shall have the meaning set forth in [Section 2.6](#).

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

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

“Transaction” means any transaction conducted between a Customer and Merchant utilizing a Card in which consideration is exchanged between the Customer and Merchant.

“U.S.” means the forty-eight (48) contiguous states of the United States, District of Columbia, Alaska and Hawaii. For the avoidance of doubt, all other United States possessions and territories are excluded, except as may otherwise be provided in an addendum hereto.

IN WITNESS WHEREOF, the undersigned parties have duly executed this Agreement.

Agreed and Accepted by:

Agreed and Accepted by:

Merchant Legal Name

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

By (authorized signature)

Print Name and Title

Date

Address

8181 Communications Pkwy, Bldg. B, Floor 05
Address

City, State Zip

Plano, Texas 75024
City, State Zip

V. 14254

To Be Completed By Paymentech, LLC

Merchant Agreement Contract Number is: _____
Merchant Processing Identification Number Will Be Provided At Time of Processing Set Up



Schedule A to Merchant Agreement

Credit Assumptions			
Transaction - Related Assumptions			
Annual Payment Transaction Volume	14,567	Average Transaction Amount	\$730.00
1. Processing Fees - (Fees applied to every transaction)			
Transaction Fees & Authorization Fees			
Rate	Visa Settled Transactions		0.0800%
	MasterCard Settled Transactions		0.0800%
	American Express Conveyed Transactions		0.0800%
	Diners Settled Transactions		0.0800%
	Discover Settled Transactions		0.0800%
	JCB Settled Transactions		0.0800%
	Voyager Conveyed Transactions		0.0800%
	WEX Conveyed Transactions		0.0800%
Per Auth	Visa Authorizations		\$0.0800
	MasterCard Authorizations		\$0.0800
	American Express Authorizations		\$0.0800
	Diners Authorizations		\$0.0800
	Discover Settled Authorizations		\$0.0800
	JCB Authorizations		\$0.0800
	Voyager Conveyed Authorizations		\$0.0800
	WEX Conveyed Authorizations		\$0.0800
2. Per Incidence Fees – charged every time your account incurs one of the below items			
Per Incidence Fees – Authorization & Voice Authorization Related			
Visa Auth Reversal - Visa authorization reversal misuse prevention			\$0.0800
MC Auth Reversal - MasterCard authorization reversal misuse prevention			\$0.0800
Audio Response Unit Authorization – Charged when voice auth is handled by automated system			\$0.5000
Voice Authorization - Charged when you call the Voice Auth phone number to authorize a credit card			\$0.6500
Voice AVS Request - Charged to speak to voice operator for each Voice Address Verification request			\$0.6500
Voice Authorization Reversal - Charged for each voice authorization reversal			\$0.6500
Voice AVS Authorization - Charged per each voice Address Verification Service authorization			\$1.75
Voice Operator Assist - Charged for each voice operator assistance			\$1.75
Per Incidence Fees – Chargeback Related			
Visa or MasterCard Chargeback/Dispute Fee			\$2.50
Diners Settled Chargeback/Dispute Fee			\$2.50
Discover Settled Chargeback/Dispute Fee			\$2.50
JCB Chargeback/Dispute Fee			\$2.50
Visa or MasterCard Re-presentation Dispute Response Fee			\$2.50
Diners Settled Re-presentation Dispute Response Fee			\$2.50
Discover Settled Re-presentation Dispute Response Fee			\$2.50
JCB Chargeback Re-presentation Dispute Response Fee			\$2.50
Visa or MasterCard Pre-Arbitration & Compliance Dispute Denied			\$10.00
Diners Pre-Arbitration & Compliance Dispute Denied			\$10.00
Discover Pre-Arbitration & Compliance Dispute Denied			\$10.00
JCB Pre-Arbitration & Compliance Dispute Denied			\$10.00
Visa or MasterCard Collection Letter			\$10.00
Diners Collection Letter			\$10.00
Discover Collection Letter			\$10.00
JCB Collection Letter			\$10.00
Per Incidence Fees – Funding Related			
ACH Transfer Fee - Charged for each ACH (transmission of funds) sent to your account			No Charge
Wire Transfer Fee - Per each funding via wire transfer			\$10.00
Per Incidence Fees – Miscellaneous Transaction Related			
Rejected Transaction			\$0.0800
Point of Sale Terminal Item Authorized			\$0.0800
Point of Sale Terminal Item Authorized Wireless			\$0.0800
Point of Sale Terminal Item Authorized TCP/IP			\$0.0800
Point of Sale Terminal Item Authorized Special/Misc.			\$0.0800
Point of Sale Terminal Item Authorized Frame Relay			\$0.0800
Point of Sale Terminal Item Authorized Lease Line			\$0.0800
Point of Sale Terminal Item Authorized Netconnect TCP/IP			\$0.0800
Point of Sale Terminal Item Deposited			No Charge
Point of Sale Terminal Reject Transaction			\$0.0800

3. One Time and Periodic Fees		
One Time Fees		
Paymentech Gateway Setup Fee		\$50.00
E-Commerce Setup Fee (CyberSource)		\$50.00
Monthly Fees		
Monthly Paymentech Gateway Fee (per division)		\$20.00
4. Other Fees		
Per Incidence Fees – Statement & Supply Related		
Monthly Fax/Mail Reporting Fee - Charged each month Paymentech faxes or mails statements (whether at the request of Merchant or because delivery to a valid email address has failed)		\$50.00
Postage, Supplies, Equipment & Other Services – service fees will be charged at the time of order		Current Market
5. Payment Brand Fees – Assessed on each transaction. The Payment Brands assess fees on each transaction processed through their network(s). These fees, generically referred to herein as Payment Brand Fees, consist of interchange fees, assessments, data usage fees, and access fees.		
Payment Brand Fees - Interchange Fees. Paymentech will "pass through" to merchant an amount equal to the applicable interchange rate established by the Payment Brands.		
Visa		Pass-Through
MasterCard		Pass-Through
Diners		Pass-Through
Discover Settled		Pass-Through
JCB		Pass-Through
Voyager (Settled)		2.95%
Payment Brand Fees – Assessments. Paymentech will "Pass through" to merchant an amount equal to the applicable assessment rate established by the Payment Brands. For your convenience, the current assessment rates are set forth below.		
Visa Assessments - Debit Transactions		0.130%
Visa Assessments - Credit Transactions		0.140%
MasterCard Assessments (Credit transactions < \$1,000.00 and all Debit transactions)		0.130%
MasterCard Assessments (Credit transactions > \$1,000.00)		0.140%
Discover, Diners, & JCB Assessments		0.130%
Payment Brand Fees - Data Usage Fees		
	Credit	Debit
Visa Domestic Sales Auth (APF) (Charged per Authorization & per Refund)	\$0.0195	\$0.0155
Visa Intl Sales Auth (APF) (Charged per Authorization & per Refund)	\$0.0395	\$0.0355
MasterCard Network Access and Brand Usage (NABU) Fee (Charged per Authorization and per Refund)	\$0.0195	\$0.0195
Discover, Diners, & JCB Card Data Usage Fee	\$0.0195	\$0.0195
Visa Financial Transaction Fee		\$0.0018
VI Reporting & Data Transfer		\$0.0002
MC Reporting & Infrastructure		\$0.0003
MasterCard File Transmission Fee per transaction ³		\$0.0014

Payment Brand Fees – Access Fees. Paymentech will “Pass through” to merchant an amount equal to the applicable access fee/rate established by the Payment Brands. For your convenience, the current access fees/rates are set forth below.		
MC Acquiring License Fee ²	Charged on MasterCard Gross Sales volume. See Additional information under Payment Brand Fees below.	0.004%
MC Digital Enablement/Card Not Present Fee	Charged on MasterCard Card Not Present Gross Sales volume.	0.010%
MC Humanitarian Program Fee	Applies to transactions qualifying at the MasterCard Humanitarian card interchange category. When this fee applies, other MC Payment Brand fees will be waived.	0.250%
American Express Opt Blue Card Not Present Fee	Charged on American Express Card Not Present Gross Sales volume.	0.300%
American Express Opt Blue Application-initiated Fee	Charged on American Express transactions initiated by a digital wallet application.	0.300%
Discover, Diners, or JCB Network Authorization Fee	Charged by Discover on all authorizations for card transactions that are settled through the Discover Network	\$0.0025
MC Auth Access Fee – AVS Card Present	Charged by MasterCard when a merchant uses the address verification service to validate a cardholder address	\$0.0100
MC Auth Access Fee – AVS Card not present		\$0.0100
MC Auth Access Fee	Charged by MasterCard when an authorization is reversed or the authorization is provided by MasterCard if the card issuer is not available	\$0.0050
MC Card Validation Code 2 Fee	Charged by MasterCard when a merchant submits the Card Validation Code 2 (CVC2) in an authorization request	\$0.0025
MC SecureCode Transaction Fee	Charged on MasterCard SecureCode transactions that are sent for verification	\$0.0300
MC Account Status Fee - Intra-regional	Charged by MasterCard or Visa when a merchant uses this service to do an inquiry that a card number is valid	\$0.0250
MC Account Status Fee - Inter-regional		\$0.0300
Visa Zero \$ Acct Verification Fee		\$0.0250
MC Processing Integrity Fee - Pre Authorization	Charged when a card is authorized but not deposited and the authorization is not reversed in a timely manner. *the minimum fee amount for a Final Authorization is \$0.04	
Pre Authorization		\$0.0450
Final Authorization*		0.250%
Visa Misuse of Authorization Fee		\$0.0930
Visa Zero Floor Limit Fee	Charged when a transaction is deposited but never authorized	\$0.2000
Visa Transaction Integrity Fee - Credit	Charged on Visa transactions that do not meet qualification standards for Custom Payment Service (CPS) categories.	\$0.1000
Visa Transaction Integrity Fee - Debit/Prepaid		\$0.1000
MC Ineligible Chargeback Blocking Fee	Charged when a fraud related Chargeback is blocked by MasterCard.	\$3.00
MasterCard Cross Border Assessment Fee	Charged by MasterCard, Visa, American Express, Discover, Diners and JCB on foreign bank issued cards	0.600%
Visa International Service Assessment Fee		1.000%
Discover, Diners, & JCB International Service Fee		0.800%
MC International Support Fee		0.850%
Visa Interregional Acquiring Fee (IAF) (other MCCs)	Additional fee charged by Visa, MasterCard, Discover, Diners and JCB on foreign bank issued cards	0.450%
Visa Interregional Acquiring Fee (IAF) (high risk MCCs)		0.900%
Discover, Diners, & JCB International Processing Fee		0.500%
Visa Partial Auth Non-Participation Fee	Applies to Petroleum merchants using automated fuel pumps that do not support Partial Authorization.	\$0.0100
MC Global Wholesale Travel Transaction Program B2B Fee	Applies to Travel merchants for transactions qualifying at the MasterCard Commercial Business-to-Business interchange category.	1.570%
Visa Global B2B Virtual Payment Service Fee	Applies to Travel merchants for transactions qualifying at the Visa Global B2B Virtual Payments interchange category.	1.550%
MC Freight Program Fee	Applies to Freight transactions qualifying at the Freight Program interchange category	0.500%

6. Periodic Fees

Monthly Fees	
Visa Fixed Acquirer Network Fee - Visa Fixed Acquirer Network Fee is a monthly fee assessed by Visa per tax ID based on Merchant Category Code (MCC), dollar volume, number of merchant locations, and whether the physical Visa card is present or not present at the time of the transaction. This fee can vary monthly.	Pass-Through
MasterCard Merchant Location Fee – MasterCard Merchant Location Fee of \$1.25 will be applicable for each month with \$200.00 or more in MasterCard volume. This fee will be assessed quarterly based on the previous 3 months activity.	\$1.25

Payment Brand Fees

A substantial amount of the fees that we charge for processing Transactions consists of charges that we must pay to the Payment Brands and card issuing banks (or that are otherwise charged to us by the Payment Brands and card issuing banks) under the Payment Brand Rules. These charges (collectively referred to in this Schedule A as "Payment Brand Fees") include, but are not limited to, interchange, assessments, file transmission fees, processing fees, network access fees, and cross border fees. Whether a particular Payment Brand Fee applies is based on several factors, like the type of Payment Instrument presented, specific information contained within the Transaction, how and when the Transaction is processed, and the merchant's domicile and industry.

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

Additional information about significant Payment Brand Fees (Interchange and Assessments), can be found at:
<https://merchantservices.chase.com/support/managing-your-account/interchange-and-assessment-understanding>

2. In some cases, it is not possible to allocate the associated expenses from the payment networks directly to transaction counts or volume, so Chase Merchant Services produces a rate that is based on the associated expense from the payment networks and applies that expense accordingly.

**MasterCard assesses a file transmission fee based on the number of bytes of data contained in a transmitted file. Because file size may vary from transaction to transaction, the parties acknowledge that it is not possible to accurately translate the byte based fee into a consistently accurate transaction-based fee.

In light of the foregoing, the parties have agreed that Merchant shall pay Paymentech ("Chase") a fee in the amount stated above for each transaction submitted under this Agreement. Such fee shall be deemed to be the file transmission fee imposed by MasterCard on each transaction for all purposes of this Agreement, and Paymentech ("Chase") may change the amount of such fee in accordance with the terms of this Agreement in the event MasterCard changes the amount or calculation of its file transmission fee.

Amount due 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 the terms of the Agreement, including, without limitation, the "Termination" section.

Agreed and Accepted by:

City of Santa Clara	
Merchant Legal Name	Address
Printed Name	Title (Print of Type)
Authorized Representative Signature:	
X Signature	Date

(Internal Use Only) Agreed and Accepted by:

Paymentech, LLC for itself and on behalf of JPMorgan Chase Bank, N.A.	
Merchant Legal Name	8181 Communications Pkwy Plano, TX 75024 Address
Printed Name	Title (Print of Type)
Authorized Representative Signature:	
X Signature	Date



J.P.Morgan

Schedule A - PIN Debit

PIN Debit Assumptions

Transaction - Related Assumptions			
Annual PIN Debit Transactions	58	Avg. PIN Debit Transaction Amount	\$905.00

1. Debit Processing Fees - (Fees applied to every transaction)

Transaction Fees & Authorization Fees			
PIN Debit Online Authorization			\$0.0800
PIN Debit Settled Transactions			No Charge
PIN Debit Settled Transactions %			0.08000%

2. Per Incidence Fees – charged every time your account incurs one of the below items

Per Incidence Fees – Miscellaneous Transaction Related			
PIN Debit Authorization Reversal			\$0.0800
PIN Debit Adjustment Fee			\$2.5000
PIN Debit Re-presentation Fee			\$2.5000
PIN Debit Reject Fee			\$0.0800
PIN Debit Point of Sale Terminal Item Authorized			\$0.0800
PIN Debit Point of Sale Terminal Item Authorized Wireless			\$0.0800
PIN Debit Point of Sale Terminal Item Authorized TCP/IP			\$0.0800
PIN Debit Point of Sale Terminal Item Authorized Special/Misc.			\$0.0800
PIN Debit Point of Sale Terminal Item Authorized Frame Relay			\$0.0800
PIN Debit Point of Sale Terminal Item Authorized Lease Line			\$0.0800
PIN Debit Point of Sale Terminal Item Authorized Netconnect TCP/IP			\$0.0800
PIN Debit Point of Sale Terminal Item Deposited			No Charge
Point of Sale Terminal Reject Transaction			\$0.0800

3. One Time and Periodic Fees

One Time Fees			
Not Applicable			N/A

Network Processing Fees – (Applied to every transaction) – All Network fees/Interchange are subject to change from time to time as mandated by the Debit Networks. These rates and fees are “Passed-Through” at cost.

PIN Debit Network Fees / Interchange			Pass-Through
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Agreed and Accepted by:

City of Santa Clara	_____	_____
Merchant Legal Name		Address
_____	_____	_____
Printed Name		Title (Print of Type)
Authorized Representative Signature:		
X	_____	_____
Signature		Date

(Internal Use Only) Agreed and Accepted by:

Paymentech, LLC for itself and on behalf of JPMorgan Chase Bank, N.A.	_____	8181 Communications Pkwy Plano, TX 75024
Merchant Legal Name		Address
_____	_____	_____
Printed Name		Title (Print of Type)
Authorized Representative Signature:		
X	_____	_____
Signature		Date