



Item No. 9K

# AGENDA ITEM REQUEST FORM

## Finance

Department Submitting Request

*Doug Haag*

Dept Head's Signature

**REGULAR**  
**COMMISSION MTG**  
**Meeting Dates - 7:00 PM**

**DEADLINE TO**  
**Town Clerk**

**ROUNDTABLE**  
**MEETING**  
**Meeting Dates - 7:00 PM**

**DEADLINE TO**  
**Town Clerk**

- Feb 22, 2011
- Mar 22, 2011

- Feb 11 (5:00 pm)
- Mar 11 (5:00 pm)

- Feb 8, 2011
- Mar 8, 2011

- Jan 28 (5:00 pm)
- Feb 25 (5:00 pm)

- Presentation
- Reports
- Consent
- Ordinance
- Resolution
- Quasi Judicial
- Old Business
- New Business

**SUBJECT TITLE: Bid Award and Budget Amendment for Credit Card Processing Fees**

**EXPLANATION:** At the December 7th meeting, the Commission approved the purchase of five (5) new parking stations. The new pay stations are equipped to accept credit cards and we have ordered the retrofitting of the two existing pay station in the El Prado Parking Lot so they will also accept credit cards.

In order to accept credit card payments, the Town has to contract with a credit card processor to handle all our credit card transactions through a central clearing house.

We followed the procurement policy for expenditures under \$15,000 by soliciting three written quotes because the fees paid to the credit card processor will be far below \$15,000. However, as we worked through the selection process we have come to realize that the credit card processor will also be passing through to us the credit card companies' transaction fees because they serve as a clearing house for the credit card companies. The processing company's fee is estimated to be \$4,000 annually, but when you add in the credit card companies' fees which are passed through, the estimated total rises to \$13,500. As the number and value of our credit card transactions increases, the transaction and credit fees paid are likely to exceed \$15,000.

We received quotes from First Data, Merchant Data Systems (the Florida League of Cities uses them), and from Chase Paymentech for credit card processing services. The total estimated annual fees from the low bidder – Chase Paymentech – are \$13,500 with the majority of the fees coming from VISA and Master Card. We chose not to accept Discover and American Express at this time due to their higher fees. Chase Paymentech's fee is \$0.04 per transaction and the credit card companies' fees are about \$0.09 on the average \$2.00 transaction. The net revenue to the Town on a \$2.00 credit card transaction will be about \$1.91. Assuming we become operational with the new pay stations by April 1, we will have six months of expenses or about \$6,750 this fiscal year assuming that credit card usage is less than 45% of all transaction.

These estimates do not assume additional parking revenues. Although others cities have experienced increased revenues after installing pay stations, we do not have any experience on which to base new revenue estimate. But because we do believe revenues will increase, it is likely that the fees paid through Chase Paymentech will eventually exceed \$15,000 and, for that reason, we suggest that the Commission approve this agreement and waive the Purchasing policy which would requires that we issue an RFP for procurements that exceed \$15,000.



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In addition, the credit card processing fees are expenses to us and we need to make an appropriation in the Parking Fund budget for them. Please note that our only option for a source of funds for this cost is to reduce the amount of the budgeted transfer from the Parking Fund to the General Fund.

We very much appreciate the assistance Commissioner Sasser provided in helping us evaluate this procurement. His knowledge of the industry was invaluable.

### RECOMMENDATION:

- a) Approve the three year agreement with Chase Paymentech and waive the procurement policy for procurements that exceed \$15,000.
- b) Approve a budget amendment in the Parking Fund in the amount of \$6,750 for the estimated fees for the remainder of this fiscal year.

### EXHIBITS:

- Merchant Application and Agreement
- Merchant Operating Guide
- Schedule A – Assumptions and Fees
- Schedule B – Estimated Total Fees

### FISCAL IMPACT AND APPROPRIATION OF FUNDS:

Transfer To: 310-545.000-500.345	\$6,750
Transfer From: 310-581.100-500.912	\$6,750

Reviewed by Town Attorney  
 Yes     No

Town Manager Initials CA

Reviewed by the Town Attorney who will comment on some of the provisions required by Chase Paymentech at the Commission meeting.

February 15, 2011

Chase Paymentech – Outstanding Contract Issues

Conference call with Peter Kemp and Peter Strickland on Tuesday, February 15, 2011. They were able to clarify a number of issues below but the bottom-line is that this is their standard agreement and they will not modify it. This is because many of the terms and conditions are dictated by the credit card companies and also based on the early termination fee of \$350 being minimal. They do have a Select Agreement for larger users such as TJ Maxx but the early termination penalties are much higher and the minimum term is 5 years.

Reference	Description	Issue/Proposed Resolution	Explanation/Final Resolution
Pg 4	Paragraph entitled 'For Merchant and Individual Guarantors'	Strike all references re: individual guarantors as they are not applicable or add addendum re: same	If the no one signs as a Guarantor, than this language is not applicable.
Pg 4	Paragraph entitled 'Personal Guaranty'	Strike entire paragraph as it is not applicable or add addendum re: same	If the no one signs as a Guarantor, than this language is not applicable.
Pg 5	1.2 Certain Payment Acceptance Policies and Prohibitions	Where are the Payment Brand Rules that are mentioned several times here?	The Payment Brand Rules are promulgated by the credit card companies and apply to all merchants such as LBTS. Chase Paymentech can provide us a copy. These cannot be changed.
Pg 6	1.5 Stored Card Transactions	Does this apply – is LBTS storing any transactions? Also, delete/modify (a) re: indemnification	This does not apply to LBTS as it pertains to gift card products which we will not be utilizing.
Pg 6	2. Authorizations	Does this apply? LBTS is not obtaining authorization codes?	An authorization code is automatically assigned to every transaction. This is in part for the merchants protection in the event there is a disputed charge and we can use the authorization code to prove that the transaction was submitted and approved.
Pg 6	3.1 Refund Policy	Is it acceptable to adopt a policy that states there are no refunds?	Yes, this is acceptable.
Pg 6	4.1 Submission of Transaction Data	Does this apply? Is LBTS storing data? i.e. LBTS is submitting data real-time via internet	Yes, these are Payment Rules that apply to all merchants. Visa and MasterCard base their rates on receiving timely data from merchants. Based on LBTS scenario of small transaction fees this will likely not apply.
Pg 7	8. Display of Payment Brand Marks	Not clear what this means – i.e. LBTS can't advertise credit card companies?	Actually, we are required to post a notice that we accept credit cards and display it prominently. As

			I recall an earlier conversation, Chase Paymentech will assist in this area.
Pg 8	9.2 Price Adjustments	LBTS requires that it accept the proposed fees before they can be implemented	These are the pass-thru fees from the credit card companies and the language cannot be changed. Chase Paymentech fees will not change for 3 years.
Pg 8	10.2 Merchant Termination	Clarify what is the \$350.00 early termination penalty <i>for each location?</i> (is this every meter? i.e. need some kind of reasonable basis to terminate without cause due to price increase, customer service issues, etc)	The \$350 is per Merchant, not per meter. Each meter will be identified thru a unique Terminal ID for monitoring and reporting purposes.
Pg 9	11. Indemnification	Need to strike this entire paragraph or LBTS will provide revised language	Language cannot be changed.
Pg 9	12.1 Merchant financial information	Delete item (iv) re: what is this ? Too vague	This language is deliberately open-ended to allow Chase Paymentech the ability to implement any regulatory changes that might be required by law. As with all of these items, the language cannot be changed. An example provided is that last year the IRS required that Chase Paymentech report the credit card volumes for all of their merchants.
Pg 9	12.2 Payment Card Industry Compliance	See second paragraph re: is LBTS storing anything – i.e. name, account number & expiration date?	All parties are subject to PCIC to assure that all hardware, software, telecommunications, etc. meets PCIC standards. In our case, Digital Payment Technologies would be most responsible for PCIC.
Pg 9	12.2 Payment Card Industry Compliance	See fifth paragraph re: delete merchant indemnification sentence	Language cannot be changed
Pg 10	15.3 Assignment	Delete third sentence beginning with <i>'Furthermore, Merchant shall indemnify...'</i>	Language cannot be changed
Pg 10	15.6 Publicity	Cannot agree to last sentence as LBTS is subject to Sunshine Laws and all contracts are public record	Chase Paymentech recommended that we obtain blanket written consent to avoid SunShine law issues.
Pg 10	15.11 Governing Law	Change venue to Broward County, FL	Language cannot be changed
Pg 11	15.12 Force Majeure	Delete item re: non-performance of Paymentech's vendors or suppliers as this is not really Force Majeure	This language applies to both parties re: if one of our vendors such as Digital Payment Technologies or Verizon have a major unanticipated system failure that neither Chase Paymentech or LBTS have any control over.
Pg 11	15.13 Amendment	Need to modify re: any amendments must be accepted and signed by LBTS; i.e. right to terminate if disapprove.	See the last sentence of this section re: what constitutes acceptance.

The documents in this section may be difficult to read, so paper copies have been provided for you in your mail box located in Town Hall.

Thank You

## **Merchant Application and Agreement**



# MERCHANT APPLICATION AND AGREEMENT

Rev. 1/2011	INTERNAL USE ONLY: APPLICATION ID	
SALES REP	SALES ID	REP PHONE
RE\$OURCE ONLINE? <input type="checkbox"/> YES <input type="checkbox"/> NO	IF YES, LOG-ON EMAIL:	

**1** **MERCHANT BUSINESS INFORMATION** - FEDERAL REGULATIONS REQUIRE THAT WE COLLECT AND RETAIN FOR OUR RECORDS INFORMATION TO VERIFY MERCHANT IDENTITY

MERCHANT "DOING BUSINESS AS" <b>TOWN OF LAUDERDALE-BY-THE-SEA</b>		DATE OPEN FOR BUSINESS (MM/YYYY) <b>03-01-2011 (EST)</b>	
DBA / PHYSICAL ADDRESS (NO PO BOX OR PAID MAIL BOX) <b>4501 OCEAN DRIVE</b>	CITY <b>LAUDERDALE-BY-THE-SEA</b>	STATE <b>FL</b>	ZIP CODE <b>33308</b>
TELEPHONE # <b>954-776-0576</b>	FAX # <b>954-776-1857</b>	PRIMARY MERCHANT CONTACT <b>RALPH BENTLEY</b>	
MERCHANT DBA EMAIL ADDRESS <b>ATM@LBTS-FL.GOV</b>			
MERCHANT LEGAL NAME <b>TOWN OF LAUDERDALE-BY-THE-SEA</b>		FEDERAL TAX ID / EIN <b>59-6002670</b>	
TYPE OF OWNERSHIP <input type="checkbox"/> SOLE OWNERSHIP <input type="checkbox"/> PARTNERSHIP <input checked="" type="checkbox"/> GOVERNMENT AGENCY <input type="checkbox"/> LLC* <input type="checkbox"/> PRIVATE CORPORATION			
<input type="checkbox"/> PUBLIC CORPORATION <input type="checkbox"/> NON-PROFIT <input type="checkbox"/> OTHER: *IF LLC, TAXED AS: <input type="checkbox"/> CORPORATION <input type="checkbox"/> DISREGARDED ENTITY <input type="checkbox"/> PARTNERSHIP			
STATE OF FORMATION <b>FL</b>	DATE OF FORMATION (MM/DD/YYYY) <b>1947</b>	TRADING SYMBOL	
LEGAL ADDRESS <b>4501 OCEAN DRIVE</b>	CITY <b>LAUDERDALE-BY-THE-SEA</b>	STATE <b>FL</b>	ZIP CODE <b>33308</b>
TELEPHONE # <b>954-776-0576</b>	FAX # <b>954-776-1857</b>	LEGAL EMAIL ADDRESS <b>ATM@LBTS-FL.GOV</b>	

**2** **MERCHANT PROFILE**

IS YOUR BUSINESS HOME BASED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS YOUR BUSINESS SEASONAL? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	# YEARS AT ABOVE DBA LOCATION <b>45</b>
IF "YES", WHERE IS INVENTORY LOCATED?		
TYPE OF BUSINESS <input type="checkbox"/> RETAIL <input type="checkbox"/> INTERNET <input type="checkbox"/> RESTAURANT <input type="checkbox"/> LODGING <input type="checkbox"/> CONVENIENCE STORE WITH GAS <input type="checkbox"/> AUTO RENTAL <input type="checkbox"/> CASH ADVANCE		
<input checked="" type="checkbox"/> OTHER: <b>PARKING METERS</b>		
LIST ALL WEBSITE ADDRESSES: <b>www.lauderdalebythesea-fl.gov</b>		
DESCRIBE THE MERCHANDISE SOLD OR SERVICES PROVIDED BY MERCHANT <b>PARKING METER TICKETS</b>		
ADVERTISING METHODS (please attach sample materials) <input type="checkbox"/> YELLOW PAGES AD <input type="checkbox"/> CATALOG <input type="checkbox"/> DIRECT MAIL <input type="checkbox"/> TV / RADIO <input type="checkbox"/> NEWSPAPER / MAGAZINES		
<input type="checkbox"/> REFERRAL <input type="checkbox"/> INTERNET <input type="checkbox"/> EMAIL <input type="checkbox"/> INSERTS <input type="checkbox"/> INFOMERCIALS <input type="checkbox"/> RETAIL STORE <input type="checkbox"/> OUTBOUND TELEMARKETING		
<input type="checkbox"/> INBOUND TELESERVICES <input type="checkbox"/> MULTI-LEVEL MARKETING <input type="checkbox"/> OTHER:		
HAS MERCHANT EVER FILED FOR BANKRUPTCY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	FILING STATE	CHAPTER FILED
	FILING DATE	EMERGENCE DATE

**3** **STATEMENT, CHARGEBACK & RETRIEVAL REQUEST INFORMATION**

<input checked="" type="checkbox"/> EMAIL STATEMENTS TO: <b>ATM@LBTS-FL.GOV</b>	<input checked="" type="checkbox"/> MAIL STATEMENTS TO: <input checked="" type="checkbox"/> LEGAL ADDRESS <input type="checkbox"/> DBA / PHYSICAL ADDRESS <input type="checkbox"/> OTHER:
MAIL CHARGEBACK REQUESTS TO: <input checked="" type="checkbox"/> LEGAL ADDRESS <input type="checkbox"/> DBA / PHYSICAL ADDRESS <input type="checkbox"/> OTHER:	
<input checked="" type="checkbox"/> MAIL RETRIEVAL REQUESTS TO: <input checked="" type="checkbox"/> LEGAL ADDRESS <input type="checkbox"/> DBA / PHYSICAL ADDRESS <input type="checkbox"/> OTHER:	<input type="checkbox"/> FAX RETRIEVAL REQUESTS TO:

**4** **SALES, RETURN & REFUND POLICIES**

% ANNUAL PAYMENT CARD TRANSACTIONS GENERATED BY (total must = 100%):	MAIL / PHONE %	INTERNET %	CARD SWIPE %	HAND KEYED & FACE TO FACE %	
WILL THE CARDHOLDER BE CHARGED ON A RECURRING BASIS? <input type="checkbox"/> YES <input type="checkbox"/> NO					
IF "YES", PLEASE INDICATE THE FREQUENCY OF THE CHARGES: <input type="checkbox"/> 30 DAYS <input type="checkbox"/> 60 DAYS <input type="checkbox"/> 90 DAYS <input type="checkbox"/> ANNUALLY <input type="checkbox"/> OTHER:					
% CUSTOMER ORDERS DELIVERED IN (total must = 100%)	0 DAYS %	1 - 7 DAYS %	8 - 14 DAYS %	15 - 30 DAYS %	>30 DAYS %
PAYMENT CARD TRANSACTIONS ARE SUBMITTED FOR PROCESSING <input type="checkbox"/> ON DATE OF ORDER <input type="checkbox"/> ON DATE OF DELIVERY <input type="checkbox"/> OTHER:					
# OF DAYS TO PREPARE SHIPMENTS FOR DELIVERY, FROM DATE OF ORDER	ARE CUSTOMERS REQUIRED TO PAY A DEPOSIT? <input type="checkbox"/> YES <input type="checkbox"/> NO				
	IF "YES", WHAT % OF THE TOTAL SALE IS REQUIRED? %				
WHAT % OF PRODUCT / SERVICE DOES CUSTOMER RECEIVE AT TIME OF PURCHASE %					
REFUND POLICY (check one) <input type="checkbox"/> NO REFUND <input type="checkbox"/> STORE CREDIT <input type="checkbox"/> MC / VISA CREDIT <input type="checkbox"/> MERCHANDISE EXCHANGE <input type="checkbox"/> OTHER (please attach policy)					

**5** **FULFILLMENT PROFILE** - COMPLETE THIS SECTION IF YOUR SALES ARE GENERATED BY MAIL, TELEPHONE OR INTERNET ORDERS AND IF A FULFILLMENT HOUSE SHIPS THE PRODUCT.

NAME OF FULFILLMENT HOUSE	WHO OWNS THE MAJORITY OF YOUR INVENTORY?		
	<input type="checkbox"/> MERCHANT <input type="checkbox"/> FULFILLMENT HOUSE		
ADDRESS	CITY	STATE	ZIP

<b>DELIVERY TIME FRAME</b>	<b>DELIVERY METHOD</b>
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<b>6</b>	<b>OWNER &amp; OFFICER INFORMATION</b> - LIST THE TWO OWNERS WITH THE LARGEST SHARE OF OWNERSHIP. IF MERCHANT IS OWNED BY ONE OR MORE INDIVIDUALS PLEASE PROVIDE EACH INDIVIDUAL'S INFORMATION. IF MERCHANT IS OWNED BY ONE OR MORE LEGAL ENTITIES PLEASE PROVIDE EACH ENTITY'S INFORMATION.		
1. NAME (individual or entity)		SSN # (if an individual) FEIN # (if an entity)	% OF OWNERSHIP %
IF AN ENTITY IS LISTED ABOVE, PLEASE PROVIDE THE NAME AND TITLE OF ONE (1) AUTHORIZED REPRESENTATIVE			
ADDRESS		CITY	STATE ZIP
PHONE #	DATE OF BIRTH	DRIVER'S LICENSE #	STATE
HAS THIS INDIVIDUAL / ENTITY EVER MANAGED OR OWNED ANOTHER BUSINESS THAT ACCEPTED PAYMENT CARDS? <input type="checkbox"/> YES <input type="checkbox"/> NO			
IF "YES", PLEASE PROVIDE: PREVIOUS BUSINESS NAME		CITY	STATE
HAS THIS INDIVIDUAL / ENTITY EVER FILED FOR BANKRUPTCY? <input type="checkbox"/> YES <input type="checkbox"/> NO			
IF "YES", PLEASE PROVIDE CHAPTER FILED		STATE	FILING DATE EMERGENCE DATE
2. NAME (individual or entity)		SSN # (if an individual) FEIN # (if an entity)	% OF OWNERSHIP %
IF AN ENTITY IS LISTED ABOVE, PLEASE PROVIDE THE NAME AND TITLE OF ONE (1) AUTHORIZED REPRESENTATIVE			
ADDRESS		CITY	STATE ZIP
PHONE #	DATE OF BIRTH	DRIVER'S LICENSE #	STATE
HAS THIS INDIVIDUAL / ENTITY EVER MANAGED OR OWNED ANOTHER BUSINESS THAT ACCEPTED PAYMENT CARDS? <input type="checkbox"/> YES <input type="checkbox"/> NO			
IF "YES", PLEASE PROVIDE: PREVIOUS BUSINESS NAME		CITY	STATE
HAS THIS INDIVIDUAL / ENTITY EVER FILED FOR BANKRUPTCY? <input type="checkbox"/> YES <input type="checkbox"/> NO			
IF "YES", PLEASE PROVIDE CHAPTER FILED		STATE	FILING DATE EMERGENCE DATE
IF OWNER #1 OR OWNER #2 IS NOT EXECUTING THIS APPLICATION AND AGREEMENT, PLEASE PROVIDE THE NAME AND TITLE OF THE PERSON SIGNING ON BEHALF OF MERCHANT: NAME TITLE			
<b>7</b>	<b>FUNDING INFORMATION / ACCOUNT AUTHORIZATION AND AUTHORITY</b>		
<p><b>!</b> The undersigned represents and warrants that he/she is an authorized representative of the above listed Merchant and is authorized to enter into this Application and Agreement on behalf of the Merchant. Merchant, through its authorized representative, hereby authorizes Paymentech and its affiliates and subsidiaries to initiate credit and debit entries to the Account(s) indicated below on a recurring basis and without regard to the source of any monies in the Account(s). Merchant agrees to comply with the National Automated Clearing House Associations' Rules for electronic payments at all times. This authority will remain in full force and effect until Paymentech notifies Merchant that all monies due from Merchant under the Agreement have been paid in full.</p>			
SIGNATURE <b>X</b>		ACCOUNT TYPE <input checked="" type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS	
BANK <b>SUNTRUST BANK</b>		NAME AS IT APPEARS ON BANK ACCOUNT <b>TOWN OF LAUDERDALE-BY-THE-SEA GENERAL FUND</b>	
ROUTING #	<b>0 6 1 0 0 0 1 0 4</b>	ACCT #	<b>0 6 8 0 0 0 0 0 8 0 1 5</b>
<b>7A</b>	<b>BANK / LENDING REFERENCES</b>		
BANK <b>SUNTRUST BANK</b>		NAME AS IT APPEARS ON BANK ACCOUNT <b>TOWN OF LAUDERDALE-BY-THE-SEA GENERAL FUND</b>	
CONTACT NAME <b>DAVID ROSS</b>		CONTACT PHONE #	
ROUTING #	<b>0 6 1 0 0 0 1 0 4</b>	ACCT #	<b>0 6 8 0 0 0 0 0 8 0 1 5</b>
<b>8</b>	<b>MERCHANT PROCESSING HISTORY / PROFILE</b> - IF YOU HAVE PREVIOUSLY ACCEPTED PAYMENT CARDS, PLEASE PROVIDE YOUR THREE (3) MOST RECENT MONTHLY PROCESSING STATEMENTS		
MERCHANT'S REQUESTED METHODS OF PAYMENT <input checked="" type="checkbox"/> VISA <input checked="" type="checkbox"/> MASTERCARD <input type="checkbox"/> DISCOVER/JCB <input type="checkbox"/> REVOLUTION MONEY <input type="checkbox"/> WRIGHT EXPRESS <input type="checkbox"/> VOYAGER <input type="checkbox"/> PIN DEBIT <input type="checkbox"/> ELECTRONIC CHECK (ECP) <input type="checkbox"/> GIFT CARD			
TOTAL ANNUAL VISA / MASTERCARD VOLUME \$		TOTAL ANNUAL DISCOVER VOLUME \$	
TOTAL ANNUAL PIN DEBIT SALES VOLUME \$		TOTAL ANNUAL ECP SALES VOLUME \$	
AVERAGE TICKET AMOUNT <b>\$2.00</b>		HIGHEST TRANSACTION AMOUNT <b>\$TBD</b>	
CURRENT PAYMENT PROCESSOR <b>NONE</b>		REASON FOR LEAVING CURRENT PROCESSOR <b>NA</b>	
HAS MERCHANT SUFFERED A DATA BREACH INVOLVING A LOSS OF PAYMENT CARD OR CARDHOLDER INFORMATION IN THE PAST 12 MONTHS? <input type="checkbox"/> YES <input type="checkbox"/> NO			
IF "YES", PLEASE EXPLAIN IN DETAIL IN A SEPARATELY ATTACHED LETTER			
HAS MERCHANT EVER RECEIVED A NOTIFICATION FROM THE PAYMENT BRANDS FOR ANY VIOLATION OF THE PAYMENT BRAND RULES? <input type="checkbox"/> YES <input type="checkbox"/> NO			
HAS MERCHANT OR ANY OF MERCHANT'S OWNERS/OFFICERS EVER BEEN PLACED ON M.A.T.C.H (Member Alert to Control High Risk Merchants)? <input type="checkbox"/> YES <input type="checkbox"/> NO			
IF "YES" TO EITHER, PLEASE EXPLAIN IN DETAIL IN A SEPARATELY ATTACHED LETTER			
DOES MERCHANT CONTRACT WITH ANY THIRD PARTY THAT STORES, PROCESSES, TRANSMITS OR HAS ACCESS TO PAYMENT CARD DATA ON YOUR BEHALF? <input type="checkbox"/> YES <input type="checkbox"/> NO			
IF "YES", PLEASE PROVIDE NAME(S) AND CONTACT INFORMATION IN A SEPARATELY ATTACHED DOCUMENT			
<b>9</b>	<b>AMERICAN EXPRESS®</b>		
DOES MERCHANT CURRENTLY HAVE AN AMERICAN EXPRESS SE #? <input type="checkbox"/> YES <input type="checkbox"/> NO		IF "NO" AND YOU WOULD LIKE CHASE PAYMENTECH TO REQUEST AN AMERICAN EXPRESS SE # ON YOUR BEHALF, PLEASE COMPLETE SECTION <b>9A</b>	
IF "YES", PLEASE PROVIDE CURRENT SE#			

<b>▶ 9A AMERICAN EXPRESS® CARD ACCEPTANCE</b>	
TOTAL ANNUAL AMERICAN EXPRESS SALES VOLUME \$	AVERAGE AMERICAN EXPRESS TRANSACTION AMOUNT \$
<input type="checkbox"/> AMERICAN EXPRESS DISCOUNT RATE %	<input type="checkbox"/> AMERICAN EXPRESS MONTHLY FLAT RATE <b>\$7.95</b>
<input type="checkbox"/> MONTHLY GROSS PAY	<input type="checkbox"/> RETAIL = <b>\$0.10</b> TRANSACTION FEE + <b>*0.30%</b> CNP DOWNGRADE
<input type="checkbox"/> DAILY GROSS PAY	<input type="checkbox"/> SERVICES, WHOLESALE & ALL OTHER = <b>\$0.15</b> TRANSACTION FEE
<input type="checkbox"/> PAY FREQUENCY (3/15/30)	<input type="checkbox"/> RESTAURANT = <b>\$0.05</b> TRANSACTION FEE + <b>*0.30%</b> CNP DOWNGRADE
<b>*A 0.30% CNP DOWNGRADE FEE WILL BE CHARGED FOR ANY TRANSACTION WHERE THE CARD IS NOT PRESENTED AT THE TIME OF THE TRANSACTION</b>	
FOR PAYMENTECH TO REQUEST AN AMERICAN EXPRESS NUMBER ON BEHALF OF THE MERCHANT THROUGH THE AMEX ESA PROGRAM: By signing below, I represent that I have read and am authorized to sign and submit this application for the above entity which agrees to be bound by the American Express® Card Acceptance Agreement ("Agreement"), and that all information provided herein is true, complete and accurate. I authorize Paymentech and American Express Travel Related Services Company, Inc. ("American Express") and American Express's agents and Affiliates to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies, and disclose such information to their agents, subcontractors, Affiliates, and other parties for any purpose permitted by law. I authorize and direct Paymentech and American Express and American Express's agents and Affiliates to inform me directly, or through the entity above, of reports about me that they have requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I also authorize American Express to use the reports from consumer reporting agencies for marketing and administrative purposes. I understand that upon American Express's approval of the application, the entity will be provided with the Agreement and materials welcoming it to American Express's Card acceptance program. In addition, by signing this form, you authorize American Express and its agents and Affiliates to send you account information and exclusive offers and savings for your business via the information that you have provided, which includes your business email address. For information on how we use your information and protect your privacy, please visit us at <a href="http://www.americanexpress.com/privacy">www.americanexpress.com/privacy</a> .	
SIGNATURE <input checked="" type="checkbox"/>	DATE

This Merchant Application and Agreement and the attached Terms and Conditions for Merchant Agreement (collectively referred to herein as the "Agreement") are entered into by and among JPMORGAN CHASE BANK, N.A. ("Member"), PAYMENTECH, LLC, a Delaware limited liability company ("Paymentech"), and the MERCHANT identified herein ("Merchant"). Paymentech will be the sole provider to Merchant of the services necessary to authorize, process and settle all of Merchant's Transactions set forth in Schedule A and pursuant to the terms and conditions of the Agreement. If a third party referred to us for the services provided under this Agreement, such third party may be a party to the Agreement, but has no rights with respect to Merchant except as provided in such third party's agreement with us. **AS PART OF YOUR APPLICATION, MERCHANT MAY BE CONTACTED BY PAYMENTECH OR A THIRD PARTY CONTRACTED BY PAYMENTECH WHO WILL NEED TO GAIN ACCESS TO MERCHANT'S BUSINESS OPERATION TO PERFORM A SITE SURVEY AND INSPECTION ("SITE SURVEY") IN COMPLIANCE WITH PAYMENTECH BRAND RULES. THE SITE SURVEY SHALL INCLUDE, AMONG OTHER THINGS, AN INTERVIEW WITH MERCHANT REGARDING THE NATURE OF MERCHANT'S BUSINESS, AS WELL AS PHOTOGRAPHS OF MERCHANT'S BUSINESS OPERATION. IF MERCHANT IS UNAVAILABLE FOR THE SITE SURVEY AS SCHEDULED, PAYMENTECH MAY SUSPEND THE SETTLEMENT OF MERCHANT'S TRANSACTIONS UNTIL A SITE SURVEY CAN BE COMPLETED AND APPROVED BY PAYMENTECH. IF MERCHANT FAILS TO REASONABLY COOPERATE WITH THE REQUIRED SITE SURVEY, OR IF THE SITE SURVEY IS NOT APPROVED BY PAYMENTECH, PAYMENTECH MAY TERMINATE THIS AGREEMENT IMMEDIATELY UPON NOTICE TO MERCHANT.**

**FOR MERCHANT AND INDIVIDUAL GUARANTORS** - As the person signing below on behalf of the business designated on the above Application ("Merchant"), I certify that I am an owner, partner or officer of the Merchant and have been duly authorized to sign this Merchant Application and Agreement on behalf of the Merchant. Merchant and each guarantor signing below ("Guarantor") hereby acknowledge that they have each received and read (1) the Terms and Conditions for Merchant Agreement, and (2) Schedule A (Pricing). Merchant agrees to be bound by the terms and conditions contained in those documents, and each Guarantor hereby agrees to be bound as a Guarantor of the Merchant's obligations under this agreement, according to the Personal Guaranty contained in the Terms and Conditions for Merchant Agreement. Merchant hereby authorizes Paymentech to credit and debit Merchant's designated bank account(s) in accordance with this Agreement. Merchant represents and warrants that all information on this Application, and the related information submitted in conjunction with the Application, is true, complete and not misleading. The Application now belongs to Paymentech and Member. Merchant understands that the application fee is non-refundable. Merchant and each Guarantor hereby authorizes and agrees that Paymentech, Member, or their designees, may investigate and verify the credit and financial information of Merchant and any individual Guarantor and may obtain consumer and commercial credit reports on the Guarantors and Merchant from time to time. If the Application is approved, subsequent consumer and business credit reports may be required or used in connection with the maintenance, updating, renewal or extension of the Agreement. The Merchant and each Guarantor agree that all business references, including banks, may release any and all credit and financial information to Paymentech. **ANY UNILATERAL ALTERATION TO THE PREPRINTED TEXT OR LINE ENTRIES OF THIS AGREEMENT SHALL BE OF NO EFFECT WHATSOEVER, AND AT PAYMENTECH'S SOLE DISCRETION, MAY RENDER THIS AGREEMENT INVALID.**

**PERSONAL GUARANTY** - To induce Paymentech and Member to enter into the Agreement (as the same may hereafter be renewed, modified, extended, or amended, the "Agreement"), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the guarantors named herein and who are signing below (each a "Guarantor" and collectively, the "Guarantors"), jointly and severally, irrevocably, and unconditionally guarantee to Paymentech, and its successors and assigns the due and punctual payment of the Indebtedness. As used herein, the term "Indebtedness" means all indebtedness, obligations, and liabilities of the merchant identified herein to Paymentech at any time created or arising, including, without limitation, to all indebtedness, obligations, and liabilities of Merchant arising under the Agreement. This Personal Guaranty is a guaranty of payment and not a guaranty of collection. Each Guarantor agrees that he or she is liable for the Indebtedness as primary obligor. Paymentech may proceed against one or more Guarantors whether or not Paymentech proceeds against Merchant, any other obligors, or any collateral securing the Indebtedness. This Personal Guaranty may not be revoked by any Guarantor and shall continue to be effective with respect to any Indebtedness arising or created after any attempted revocation. Each Guarantor acknowledges that he or she will benefit from the services and financial accommodation provided by Paymentech to Merchant's business. Each Guarantor is familiar with, and has independently reviewed books and records regarding, the financial condition of Merchant and is familiar with the value of any and all collateral intended to be created as security for the payment of the Indebtedness. However, no Guarantor is relying on such financial condition or collateral, including, without limitation, the Merchant's Reserve Account (as defined in the Agreement) if any, as an inducement to enter into this Personal Guaranty. The obligations of each Guarantor hereunder shall be enforceable irrespective of the validity, legality, or enforceability of Merchant's obligations (including without limitation, the expiration of any applicable limitations period) and shall not in any way be affected by or conditional upon (i) any action taken under the Agreement or the exercise of any right or power thereby conferred; (ii) the bankruptcy or similar proceedings involving or affecting Merchant; (iii) any assignment, modification, alteration, or amendment of, or addition to, the Agreement whether with or without such Guarantor's knowledge or consent; (iv) any renewal, extension, increase, modification, alteration or rearrangement of all or any part of the Indebtedness; (v) any adjustment, indulgence, forbearance, or compromise that might be granted by Paymentech to Merchant or any Guarantor; or (vi) any other action, inaction, or circumstance whatsoever (with or without notice to or knowledge of or consent by such Guarantor) that may in any manner vary the risks of such Guarantor or might otherwise constitute a legal or equitable defense or discharge of any surety or guarantor. The Guarantor hereby waives all defenses based on occurrences of the types described in clauses (i) through (vi) above. Guarantors authorize Paymentech, from time to time, without notice or demand and without affecting their liability hereunder, to (i) renew, compromise, extend, accelerate, or otherwise change the time for payment of, or otherwise change the terms of, the Indebtedness or the Agreement; (ii) take and hold security for the payment of the Indebtedness or this Personal Guaranty, and exchange, enforce, waive, and release any such security, or take additional security; (iii) apply such security or the proceeds thereof in such order or manner as Paymentech, in its discretion, may determine; (iv) release, in whole or in part, Merchant or any Guarantor from liability for the payment of the guaranteed debt; (v) substitute any one or more of the Guarantors or acquire additional guarantors; and (vi) to obtain and review such information (including without limitation, the reports of any consumer credit bureau) as Paymentech may deem necessary to confirm Guarantors' creditworthiness. Guarantors hereby waive notice of (i) the incurrence by Merchant of any Indebtedness; (ii) acceptance of this Personal Guaranty; (iii) any renewal, modification, extension, or amendment of the Agreement or of any other instrument or document pertaining to all or any part of the Indebtedness; (iv) the occurrence of any breach or default under the Agreement; (v) Paymentech's transfer or disposition of the Indebtedness, or any part thereof; (vi) sale or foreclosure (or posting or advertising for sale or foreclosure) of any collateral for the Indebtedness; (vii) protest, proof of non-payment, or default by Merchant; and (viii) any other action at any time taken or omitted by Paymentech. Guarantors hereby waive all presentment demands for performance or payment, protests, notices of protest, nonperformance, dishonor, default and non-payment, and all other notices or formalities. This Personal Guaranty shall be binding on, and inure to the benefit of, the parties hereto and their respective heirs, administrators, legal representatives, successors, and assigns. Guarantors may not, without the prior written consent of Paymentech, assign any of their rights, powers, duties, or obligations hereunder. Guarantors jointly and severally agree to pay reasonable attorneys' fees and all other costs and expenses which may be incurred by Paymentech in the enforcement of this Personal Guaranty. Paymentech's rights hereunder shall be cumulative of any and all other rights that Paymentech may have against Guarantors.

**MERCHANT SIGNATURES**

MERCHANT LEGAL NAME TOWN OF LAUDERDALE-BY-THE-SEA  
 (the Legal Name provided here should match the Merchant Legal Name set forth in Section 1)

X \_\_\_\_\_ DATE \_\_\_\_\_ X \_\_\_\_\_ DATE \_\_\_\_\_  
 PRINT NAME AND TITLE \_\_\_\_\_ PRINT NAME AND TITLE \_\_\_\_\_

**GUARANTOR(S) SIGNATURES**

X \_\_\_\_\_ DATE \_\_\_\_\_ X \_\_\_\_\_ DATE \_\_\_\_\_  
 PRINT NAME \_\_\_\_\_ PRINT NAME \_\_\_\_\_

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

APPROVED BY:  \_\_\_\_\_ TITLE \_\_\_\_\_ DATE \_\_\_\_\_

## TERMS AND CONDITIONS FOR MERCHANT AGREEMENT

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

**1.1 Exclusivity.** During the term of this Agreement, Paymentech shall be Merchant's exclusive provider of all Transaction processing services (including, without limitation, the authorization, conveyance and settlement of Transactions), and Merchant shall not use the services of any bank, corporation, entity or person other than Paymentech for such services. Merchant shall submit to Paymentech Transaction Data generated from all of its Transactions via electronic data transmission according to Paymentech's formats and procedures throughout the term of this Agreement.

### 1.2 Certain Payment Acceptance Policies and Prohibitions.

- (a) Each Transaction must be evidenced by its own Transaction Receipt completed in accordance with Payment Brand Rules.
- (b) Merchant shall not require the Customer to pay the fees payable by Merchant under this Agreement.
- (c) Merchant shall never issue Refunds for Transactions by cash or a cash equivalent (e.g., check) unless required by law or permitted by the Payment Brand Rules.
- (d) Unless permitted by the Payment Brand Rules, Merchant shall not engage in any practice that unfavorably discriminates against or provides unequal treatment of any Payment Brand relative to any other Payment Brand.
- (e) Except where expressly permitted by law or the Payment Brand Rules, Merchant shall not set a dollar amount above or below which Merchant refuses to honor otherwise valid Payment Instruments.
- (f) Merchant shall examine each Payment Instrument physically presented at the point of sale to determine that the Payment Instrument presented is valid and has not expired. Merchant shall exercise reasonable diligence to determine that the authorized signature on any Payment Instrument physically presented at the point of sale corresponds to the Customer's signature on the Transaction Receipt.
- (g) With respect to any Transaction for which a Customer is not physically present at the point of sale, such as in any on-line, mail, telephone, pre-authorized or recurring Transaction, Merchant must (i) have notified Paymentech on its Application, or otherwise obtained Paymentech's prior written approval, of Merchant's intention to conduct such Transactions; and (ii) have appropriate procedures in place to ensure that each Transaction is made to a purchaser who actually is the Customer. Merchant acknowledges that under certain Payment Brand Rules, Merchant cannot rebut a Chargeback where the Customer disputes making the purchase and Merchant does not have an electronic record (e.g., "swiping" or "tapping" a Payment Instrument) or physical imprint of the Payment Instrument.
- (h) Merchant agrees to accept all categories of Visa and MasterCard Payment Instruments (i.e., debit and credit cards), unless Merchant has notified us on its Application or otherwise in writing of its election to accept one of the following "limited acceptance" options: (i) all Visa and MasterCard consumer credit cards and Visa and MasterCard commercial credit and debit cards; or (ii) Visa and MasterCard debit cards only (but no credit cards). Notwithstanding the election of one of the foregoing limited acceptance options, Merchant must honor all foreign bank-issued Visa or MasterCard Payment Instruments. If Merchant elects one of the limited acceptance categories: (Y) Merchant must display appropriate signage to indicate the limited acceptance category; and (Z) Paymentech, at its option, may process any Transactions submitted to Paymentech outside of the limited acceptance category, in which case such Transactions will be assessed the applicable interchange fees plus any additional fees/surcharges assessed by Paymentech or the Payment Brands.
- (j) Merchant shall not split a single Transaction into two or more Transactions to avoid or circumvent authorization limits or monitoring programs.
- (k) Merchant shall not accept Payment Instruments for the purchase of scrip.
- (l) Merchant shall not require a Customer to complete a postcard or similar device that includes the Customer's Payment Instrument account number, expiration date, or any other account data in plain view when mailed.
- (m) Merchant shall not add any tax or surcharge to Transactions, unless applicable law expressly requires a Merchant be permitted to impose the tax or surcharge. If any tax or surcharge amount is allowed, such amount shall be included in the Transaction amount and shall not be collected separately.
- (n) Merchant shall not request or use a Payment Instrument account number for any purpose except as payment for its goods or services, unless required by the Payment Brand Rules in order to support specific services offered by the Payment Brands.

**1.3 Payment Brand Rules.** Merchant agrees to comply with (a) all Payment Brand Rules as may be applicable to Merchant and in effect from time to time; and (b) such other procedures as Paymentech may from time to time prescribe for the creation or transmission of Transaction Data.

**1.4 Requirements for Certain Transactions.** As to all Transactions, Merchant represents and warrants that, to the best of its knowledge:

- (a) The Transaction Data (i) represents a payment for or Refund of a bona fide sale or lease of the goods, services, or both, which Merchant has provided in the ordinary course of its business, as represented in its Application; and (ii) is not submitted on behalf of a third party.
- (b) The Transaction Data represents an obligation of the Customer for the amount of the Transaction.
- (c) The Transaction is not for any purpose other than payment for the current Transaction. The Transaction does not represent the collection of a dishonored check or the collection or refinancing of an existing debt. The Transaction does not represent payment for a previous Transaction or charge incurred at the Merchant or a Transaction that was previously charged back by the Customer, irrespective of Customer consent or approval.
- (d) Except as specifically stated in Merchant's Application or otherwise approved in writing by Paymentech in advance, with respect to any prepayment for services or full prepayment for custom-ordered merchandise manufactured to the Cardholder's specifications, at the time Merchant accepts a Payment Instrument for any goods or services, the goods have been provided or shipped or the services actually rendered to the Customer. For approved prepayments, Merchant must advise the Customer (i) that payment is being made in advance of the shipment or provision of goods or services; and (ii) the time when shipment or provision of the goods or services is expected.
- (e) The Transaction Data is free from any material alteration not authorized by the Customer.
- (f) The amount charged for the Transaction is not subject to any dispute, setoff, or counterclaim.
- (g) Merchant has not disbursed or advanced any cash to the Customer (except as authorized by the Payment Brand Rules) or itself or to any of its representatives, agents, or employees in connection with the Transaction, nor has Merchant accepted payment for effecting credits to a Customer.
- (h) The goods or services related to each Transaction are Merchant's property or Merchant has the legal right to sell them.
- (i) Merchant has made no representation or agreement for the issuance of Refunds except as stated in Merchant's Refund Policy, which has been previously submitted to Paymentech in writing as provided in Section 3, and which is available to the Customer.
- (j) Any Transaction submitted to Paymentech to credit a Customer's account represents a Refund for a Transaction previously submitted to Paymentech.
- (k) Merchant has no knowledge or notice of information that would lead Merchant to believe that the enforceability or collectibility of the Transaction is in any manner impaired. Merchant has originated the Transaction and Transaction Data in compliance with this Agreement, applicable laws and all applicable Payment Brand Rules.
- (l) Unless specifically stated in its Application or otherwise approved in writing by Paymentech in advance, Merchant shall not accept Payment Instruments in connection with installment plans. If the Customer pays in installments or on a deferred payment plan, as previously approved by Paymentech, a Transaction Data record has been prepared separately for each installment transaction or deferred payment on the dates the Customer agreed to be charged. All installments and deferred payments, whether or not they have been submitted to Paymentech for processing, shall be deemed to be a part of the original Transaction.
- (m) Merchant has not submitted any Transaction that Merchant knows or should have known to be either fraudulent, illegal, damaging to the Payment Brand(s), not authorized by the Customer or otherwise in violation of any provision of this Agreement, applicable law, or Payment Brand Rules.
- (n) For recurring Transactions, Merchant must (i) obtain the Customer's consent to periodically charge the Customer on a recurring basis for the goods or services purchased; (ii) retain this permission for the duration of the recurring services and provide it upon request to Paymentech or the issuing bank of the Customer's Payment Instrument; and (iii) retain written documentation specifying the frequency of the recurring charge and the duration of time during which such charges may be made. Merchant shall not submit any recurring transaction after receiving: (i) a cancellation notice from the Customer; or (ii) notice from Paymentech or any Payment Brand (via authorization code or otherwise) that the Payment Instrument is not to be honored. Merchant shall include in its Transaction Data the electronic indicator that the Transaction is a recurring Transaction.

**1.5 Stored Value Card Transactions.** As to all Stored Value Card Transactions, if any, in addition to any representations and warranties previously made, Merchant agrees to:

- (a) comply with all applicable laws relating to Stored Value Card Transactions, and indemnify and hold Paymentech harmless from any loss, damage, or claim relating to or arising out of any failure to comply with applicable laws in connection therewith;
- (b) be responsible for ensuring that all Stored Value Cards require activation at the point of sale;
- (c) provide immediate written notification to Paymentech of any Stored Value Card fraud losses immediately;
- (d) be solely responsible for any and all value adding and fraud losses and expenses relating to or arising from Merchant's Stored Value Card Transactions;
- (e) discourage transportation of groups of sequentially numbered gift cards;
- (f) deactivate or otherwise remove all value from Stored Value Cards that have been compromised; and
- (g) be responsible for any fraudulent transactions involving Merchant's Stored Value Cards, including, without limitation, the unauthorized activation of Stored Value Cards, reloading of existing Stored Value Cards (whether pursuant to a manual telephone order or otherwise) with additional value, or the unauthorized replication of Stored Value Cards or Stored Value Card data for fraudulent Transactions.

**2. AUTHORIZATIONS.** Merchant is required to obtain an authorization code through Paymentech, in accordance with this Agreement, for each Transaction. Merchant acknowledges that authorization of a Transaction indicates that the Payment Instrument (a) contains a valid account number; and (b) has an available credit balance sufficient for the amount of the Transaction; but, it does not constitute a representation from Paymentech, a Payment Brand, or a card issuing bank that a particular Transaction is in fact a valid or undisputed Transaction entered into by the actual Customer. Paymentech reserves the right to refuse to process any Transaction Data presented by Merchant unless it includes a proper authorization.

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

**3.1 Refund Policy.** Merchant is required to maintain a Refund Policy and to disclose such Refund Policy to Paymentech and Customers. Any material change in Merchant's Refund Policy must be submitted to Paymentech, in writing, not less than 14 days prior to the effective date of such change. Paymentech reserves the right to refuse to process any Transactions made subject to a revised Refund Policy of which Paymentech has not been notified in advance. To the extent that Merchant operates an electronic commerce website through which Transaction Data is generated, Merchant must include its Refund Policy on the website in accordance with Payment Brand Rules.

**3.2 Procedure for Refund Transactions.** If, under Merchant's Refund Policy, Merchant allows a Refund, Merchant shall prepare and deliver to Paymentech Transaction Data reflecting any such Refund within three (3) days of approving the Customer's request for such Refund. The amount of a Refund cannot exceed the amount shown as the total on the original Transaction Data except by the exact amount required to reimburse the Customer for shipping charges that the Customer paid to return merchandise. Merchant shall not accept any payment from a Customer as consideration for issuing a Refund. Merchant shall not give cash (or cash equivalent) refunds to a Customer in connection with a Transaction, unless required by law or permitted by the Payment Brand Rules.

**3.3 Customer Data Protection Policies.** To the extent that Merchant operates an electronic commerce website through which Transaction Data is generated, in addition to any requirements otherwise set forth in this Agreement, Merchant shall display the following on its website: (a) its Customer data privacy policy; (b) a description of its security capabilities and policy for transmission of Payment Instrument Information; and (c) the address of Merchant's fixed place of business (regardless of website or server locations). Furthermore, Merchant must offer its Customers a data protection method such as 3-D Secure or Secure Sockets Layer (SSL).

**4. SETTLEMENT.**

**4.1 Submission of Transaction Data.** Failure to transmit Transaction Data to Paymentech within one (1) business day following the day that such Transaction originated could result in higher interchange fees and other costs, as well as increased Chargebacks. Unless Merchant has notified Paymentech on its Application or Paymentech has otherwise agreed in writing in advance, Merchant shall not submit Transactions for processing until (a) the Transaction is completed; (b) the goods are delivered or shipped; (c) the services are performed; or (d) Merchant has obtained the Customer's consent for a recurring Transaction. Paymentech may from time to time contact Customers to verify that they have received goods or services for which Transactions have been submitted. Paymentech reserves the right to refuse to process any Transaction Data presented by Merchant if Paymentech reasonably believes that the Transaction may be uncollectible from the Customer or was prepared in violation of any provision of this Agreement, applicable law, or the Payment Brand Rules. For all Transactions, Paymentech will submit Merchant's Transaction Data to the applicable Payment Brands.

**4.2 Merchant's Settlement Account.** In order to receive funds from Paymentech, Merchant must designate and maintain one or more accounts used primarily for business purposes at a bank that is a member of the Automated Clearing House system or the Federal Reserve wire system (collectively referred to as "Settlement Account"). During the term of this Agreement, and thereafter until Paymentech notifies Merchant that all amounts due from Merchant under this Agreement have been paid in full, Merchant shall not close its Settlement Account without giving Paymentech at least five (5) days' prior written notice and substituting another Settlement Account. Merchant is solely liable for all fees, costs, and overdrafts associated with the Settlement Account. Merchant authorizes Paymentech to initiate electronic credit and debit entries and adjustments to the Settlement Account at any time without regard to the source of any monies in the Settlement Account, and this authority will remain in full force and effect until Paymentech notifies Merchant that all amounts due from Merchant under this Agreement have been paid in full. Paymentech will not be liable for any delays in receipt of funds or errors in Settlement Account entries caused by third parties, including, without limitation, delays or errors by the Payment Brands or Merchant's bank.

**4.3 Conveyed Transactions.** For Conveyed Transactions Merchant shall have a valid agreement in effect with the applicable Payment Brand. If Merchant submits Conveyed Transactions to Paymentech and Merchant does not have a valid agreement with the applicable Payment Brand, Paymentech may, but shall not be obligated to, submit such Transaction Data to the applicable Payment Brand and to share with them information about Merchant (from the Application or otherwise) as may be required to approve Merchant's acceptance of the Payment Brand's Payment Instrument. Payment of proceeds due Merchant for Conveyed Transactions shall be governed by the agreement Merchant has with the applicable Payment Brand, and Paymentech does not bear any responsibility for their performance thereunder, including, without limitation, the funding and settlement of Merchant's Conveyed Transactions.

**4.4 Transfer of Transaction Settlement Funds.** Subject to Section 4.3, for all Transactions, Paymentech will submit Merchant's Transaction Data to the applicable Payment Brand. Promptly after Paymentech receives funds for Settled Transactions from the Payment Brands, Paymentech will provisionally fund the Settlement Account. The proceeds payable to Merchant shall be equal to the amounts submitted by Merchant in connection with its Transaction Data minus the sum of the following: (a) all fees, charges, and other amounts described on Schedule A or that Merchant has otherwise agreed to pay; (b) all Refunds and Chargebacks; (c) all Reserve Account (as defined in Section 4.6) amounts; (d) all fees, charges, fines, assessments, penalties, or other liabilities that may be imposed on Paymentech or Member from time to time by the Payment Brands and all related costs and expenses incurred by Paymentech. Merchant agrees that all amounts are due and payable as provided in this Agreement. In the event Paymentech does not deduct such amounts from Merchant's proceeds when such amounts are due and payable, Merchant agrees to pay all such amounts to Paymentech immediately without any deduction or offset. Additionally, Paymentech may debit the Settlement Account or Merchant's Reserve Account for such amounts at any time.

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

- (a) demand and receive immediate payment for such amounts;

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

Furthermore, if the amount represented by Merchant's Transaction Data in any day is negative due to Refunds or credits being submitted by Merchant in excess of its proceeds from Transactions, Merchant shall immediately provide Paymentech with sufficient funds to prevent the occurrence of a negative balance.

**4.6 Reserve Account.** At any time and from time to time Paymentech may temporarily suspend or delay payments to Merchant and/or designate an amount of funds that Paymentech must maintain in order to protect itself against anticipated risks, including, without limitation, risks associated with Chargebacks, fines, fees or penalties assessed against Paymentech or Member by any of the Payment Brands arising out of or relating to Merchant's Transactions, Chargebacks or failure to comply with the Payment Brand Rules or the Security Standards (all such risks herein referred to as "Anticipated Risks" and such funds being hereinafter referred to as the "Reserve Account"), which may be funded in the same manner as provided for negative balances in Section 4.5. The Reserve Account will contain sufficient funds to cover any unbilled processing costs plus Paymentech's estimated exposure based on reasonable criteria for Chargebacks, Refunds, unshipped goods and/or unfulfilled services, and all additional Anticipated Risks. Paymentech may (but is not required to) apply funds in the Reserve Account toward, and set off any funds that would otherwise be payable to Merchant against, the satisfaction of any amounts which are or may become due from Merchant pursuant to this Agreement. Funds in the Reserve Account will be held and controlled by Paymentech, will not bear interest, and may be commingled with other funds. Effective upon Paymentech's establishment of a Reserve Account, Merchant irrevocably grants to Paymentech a security interest in any interest Merchant may now have or later acquire in any and all funds, together with the proceeds thereof, that may at any time be in the Reserve Account and that would otherwise be payable to Merchant pursuant to the terms of this Agreement. Merchant agrees to execute and deliver to Paymentech such instruments and documents that Paymentech may reasonably request to perfect and confirm the security interest in the Reserve Account funds. Upon (i) satisfaction of all of Merchant's obligations under this Agreement; and (ii) Merchant's execution of documents reasonably requested by Paymentech in connection with the return of any Reserve Account funds, Paymentech will pay to Merchant any funds then remaining in the Reserve Account.

**5. ACCOUNTING.** Paymentech will supply a detailed statement reflecting the activity of Merchant's account(s) by online access (or otherwise if agreed to by both parties) and Merchant shall ensure that any online access to such statements is secure. If Merchant believes any adjustments should be made with respect to Merchant's Settlement Account, Merchant must notify Paymentech in writing within 90 days after any such adjustment is or should have been effected.

**6. RETRIEVAL REQUESTS.** In order to comply with Retrieval Requests, Merchant shall store and retain Transaction Data and Transaction Receipts in compliance with the Payment Brand Rules, including any time frames set forth therein. Within seven (7) days (or such shorter time as the Payment Brand Rules may require) of Paymentech sending Merchant a Retrieval Request, Merchant must provide to Paymentech, via certified or overnight mail or by confirmed fax, (a) written resolution of Merchant's investigation of such Retrieval Request; and (b) legible copies of any supporting documentation requested or required by the Retrieval Request. Merchant acknowledges that failure to fulfill a Retrieval Request timely and in accordance with Payment Brand Rules may result in an irreversible Chargeback.

**7. CHARGEBACKS.**

**7.1 Chargeback Reasons.** Merchant has full liability for all Chargebacks. Following are some of the most common reasons for Chargebacks:

- (a) Merchant fails to issue a Refund to a Customer upon the return or non-delivery of goods or services;
- (b) A required authorization/approval code was not obtained;
- (c) The Transaction Data was prepared incorrectly or fraudulently;
- (d) Paymentech did not receive Merchant's response to a Retrieval Request in accordance with Section 6;
- (e) The Customer disputes the Transaction or the authenticity of the signature on the Transaction Receipt, or claims that the Transaction is subject to a set-off, defense, or counterclaim;
- (f) The Customer refuses to make payment for a Transaction because, in the Customer's opinion, a claim or complaint has not been resolved or has been resolved in an unsatisfactory manner; or
- (g) The credit or debit card comprising the Payment Instrument was not actually presented at the time of the Transaction or Merchant failed to obtain an electronic record or physical imprint of such Payment Instrument, and the Customer denies making the purchase.

**7.2 Response to Chargebacks.** If Merchant has reason to dispute or respond to a Chargeback, then Merchant must do so by the date provided on the applicable Chargeback notice. Paymentech will not investigate or attempt to obtain a reversal or other adjustment to any Chargeback if Merchant has not timely responded to the notice.

**7.3 Excessive Chargebacks.** If Merchant is receiving an excessive amount of Chargebacks, as determined by the Payment Brands from time to time, in addition to Paymentech's other remedies under this Agreement, Paymentech may take one or more of the following actions: (a) review Merchant's internal procedures relating to acceptance of Payment Instruments and notify Merchant of new procedures Merchant should adopt in order to avoid future Chargebacks; (b) notify Merchant of a new rate Paymentech will charge to process Merchant's Chargebacks; or (c) establish a Reserve Account. Merchant also agrees to pay any and all penalties, fees, fines, and costs assessed against Merchant, Paymentech, and/or Member relating to Merchant's violation of this Agreement or the Payment Brand Rules with respect to Merchant's acceptance of Payment Instruments, its Transactions, or with respect to excessive Chargebacks under this Section.

**7.4 Claims of Customers.** Following a Chargeback, Merchant may resubmit applicable Transaction Data for a second presentment, but only in accordance with Payment Brand Rules. To the extent Paymentech has paid or may be called upon to pay a Chargeback or Refund for or on the account of a Customer and Merchant does not reimburse Paymentech as provided in this Agreement, then for the purpose of Paymentech obtaining reimbursement of such sums paid or anticipated to be paid, Paymentech has all of the rights and remedies of such Customer under applicable federal, state, or local laws and Merchant authorizes Paymentech to assert any and all such claims in its own name for and on behalf of any such Customer individually or all such Customers as a class.

**8. DISPLAY OF PAYMENT BRAND MARKS.** Merchant is prohibited from using the Payment Brand Marks, as defined below (sometimes referred to herein as "Marks"), other than as expressly authorized by Paymentech in writing or by the Payment Brands. Payment Brand Marks mean the brands, emblems, trademarks and/or logos that identify a Payment Brand. Additionally, Merchant shall not use the Payment Brand Marks other than to display decals, signage, advertising, and other forms depicting the Payment Brand Marks that are provided to Merchant (a) by the Payment Brands; (b) by Paymentech pursuant to this Agreement; or (c) as otherwise approved in writing by Paymentech. Merchant may use the Payment Brand Marks only to promote the services covered by the Marks by using them on decals, indoor and outdoor signs, advertising materials, and marketing materials; provided, that all such uses by Merchant must be approved by Paymentech and consistent with Payment Brand Rules. Merchant shall not use the Payment Brand Marks in any way that Customers could believe that the goods or services offered by Merchant are sponsored, endorsed, or guaranteed by the owners of the Payment Brand Marks. Merchant recognizes that it has no ownership rights in the Payment Brand Marks. Merchant shall not assign the rights to use the Payment Brand Marks to any third party. Merchant's right to use the Payment Brand Marks hereunder terminates with the termination of this Agreement.

## **9. FEES; ADJUSTMENTS.**

**9.1 Schedule A.** Merchant shall pay all applicable fees for all Transactions, which shall be calculated and payable pursuant to this Agreement. Merchant acknowledges that the fees stated in Schedule A are based upon the assumption that Merchant's Transactions will qualify for certain interchange rates as determined in each case by the applicable Payment Brand. If any of Merchant's Transactions fail to qualify for such interchange rates, Paymentech shall process each such Transaction at the applicable interchange rate determined by the applicable Payment Brand. Unless otherwise indicated on Schedule A, Merchant shall be solely responsible for all communication expenses required to facilitate the transmission of all Transaction Data to Paymentech. Fees payable under this Agreement that contain a fraction of a cent will be rounded up to the next full cent.

**9.2 Price Adjustments.** Fees set forth in this Agreement are based upon Merchant's annual volume, average Transaction size, and other information provided by Merchant or contained in this Agreement. Paymentech may modify the pricing provisions in this Agreement with 30 days' prior written notice to Merchant. Furthermore, the fees set forth on Schedule A and any additional pricing supplements may be adjusted to reflect increases by Payment Brands in interchange, assessments, or other Payment Brand fees, additional fees imposed by the Payment Brands, or increases in third party fees identified in this Agreement. Merchant shall pay all such fees, as so adjusted. Each such adjustment shall become effective upon the date the corresponding increase or additional fee is implemented by the Payment Brand or third party provider.

## **10. TERMINATION.**

**10.1 Term.** This Agreement takes effect on the date it is executed by Paymentech (by signature or otherwise) and shall continue for three (3) years from that 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 90 days and no less than 30 days prior to any expiration date.

**10.2 Merchant Termination.** Merchant may terminate this Agreement for cause if Paymentech's services provided under this Agreement fail to conform to generally accepted standards for such services in the payment processing industry. In such event, Merchant's sole remedy for such failure shall be that, upon written notice from Merchant specifying the failure of performance, Paymentech will rectify such failure of performance. If Paymentech does not rectify its failure of performance within thirty days after receipt of written notification, then Merchant may terminate this Agreement upon thirty days' written notice to Paymentech. **NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IF MERCHANT TERMINATES THE AGREEMENT PRIOR TO THE EXPIRATION OF THE THEN CURRENT OTHER THAN IN ACCORDANCE WITH THE PROCEDURE SET FORTH ABOVE, MERCHANT AGREES TO PAY EARLY TERMINATION FEES EQUAL TO THREE HUNDRED AND FIFTY DOLLARS (\$350.00) FOR EACH MERCHANT LOCATION ("TERMINATION FEES") AS OF THE DATE OF TERMINATION. IN THE EVENT THE PAYMENT OF SUCH TERMINATION FEE IS LIMITED BY APPLICABLE LAW, THE AMOUNT PAYABLE TO PAYMENTECH PURSUANT TO THIS SECTION SHALL BE LIMITED TO THE MAXIMUM AMOUNT PERMITTED UNDER APPLICABLE LAW. SUCH AMOUNTS WILL BE FUNDED, TO THE EXTENT POSSIBLE, ACCORDING TO THE SAME METHODS FOR COLLECTING AMOUNTS DUE UNDER THIS AGREEMENT.**

**10.3 Paymentech Termination.** Paymentech may terminate this Agreement at any time upon written notice to Merchant as a result of any of the following events:

- (a) any transfer or assignment in violation of Section 15.4 of this Agreement;
- (b) irregular Transactions by Merchant, excessive Chargebacks, or any other circumstances which, in Paymentech's discretion, may increase Paymentech's or Member's exposure for Merchant's Chargebacks or otherwise present an Anticipated Risk to Paymentech;
- (c) any representation or warranty in this Agreement is breached in any material respect or was or is incorrect in any material respect when made or deemed to be made;
- (d) Merchant fails in any material respect to perform any of its obligations with respect to the funding or establishing of a Reserve Account, as detailed in Section 4.6;
- (e) material breach of Section 1.1;
- (f) Merchant fails in any material respect in performance or observance of any term, covenant, condition, or agreement contained in this Agreement, including, without limitation, compliance with Payment Brand Rules and Security Standards;
- (g) a case or other proceeding shall be commenced by or against Merchant in any court of competent jurisdiction seeking relief under the Bankruptcy Code or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up, or adjustment of debts, the appointment of a trustee, receiver, custodian, liquidator, or the like of Merchant, or of all or any substantial part of the assets, domestic or foreign, of Merchant, and such case or proceeding shall continue undismissed or unstayed for a period of 60 consecutive days, or an order granting the relief requested in such case or proceeding against Merchant (including, without limitation, an order for relief under the Bankruptcy Code) shall be entered;
- (h) Paymentech, in its sole reasonable discretion, deems Merchant to be financially insecure;
- (i) any Payment Brand (i) notifies Paymentech or Member that it is no longer willing to accept Merchant's Transaction Data; or (ii) requires Paymentech or Member to terminate or limit this Agreement;
- (j) Merchant or any person owning or controlling Merchant's business is listed in one or more databases of terminated or high risk merchants maintained by the Payment Brands;
- (k) Merchant engages in conduct that creates or could tend to create harm or loss to the goodwill of any Payment Brand, Paymentech, or Member;
- (l) for a period of more than 60 consecutive days, Merchant does not transmit Transaction Data to Paymentech; or
- (m) Merchant fails to comply with Section 15.15.

In addition to the remedies above and any rights Paymentech may have under this Agreement, Paymentech may suspend the processing of some or all of Merchant's Transactions upon: (a) receipt by Paymentech of notice that a Payment Brand intends to impose any fine or penalty as a result of excessive Chargebacks or Merchant's acts or omissions; or (b) receipt by Paymentech of objections or concerns expressed by a Payment Brand which render Paymentech's continued processing of Merchant's Transactions unduly burdensome, impractical, or risky. If this Agreement is terminated by Paymentech for Merchant's default hereunder, Merchant acknowledges that Paymentech may be required to report Merchant's business name and the names and other identification of its principals to the Payment Brands. Merchant expressly agrees and consents to such reporting in the event Merchant is terminated for any reason specified, and Merchant agrees to waive and hold Paymentech harmless from and against any and all claims which Merchant may have as a result of such reporting.

**10.4 Active Account.** Furthermore, Merchant hereby agrees that if Paymentech determines, in its sole discretion, that Merchant is not maintaining an Active account with Paymentech (as defined herein), Paymentech reserve the right to terminate this Agreement and charge Merchant the TERMINATION FEE set forth in Section 10.2. For purposes of the foregoing sentence, a merchant account is considered "Active" if, among other things, Merchant goes no more than 90 consecutive days without remitting on-time payment of all minimum and monthly fees. In addition to any TERMINATION FEE due under this Agreement, if Merchant fails to maintain an Active account or Merchant terminates this Agreement prior to the end of the initial term, Merchant may be obligated to repay, among other things, a prorated portion of any signing bonus and/or the estimated retail value of any terminal provided to Merchant in promotion of this Agreement.

**10.5 Account Activity After Termination; Termination Reserve.** The provisions governing processing and settlement of Transactions, all related adjustments, fees and other amounts due from Merchant, and the resolution of any related Chargebacks, disputes, or other issues involving Transactions, will continue to apply even after termination of this Agreement, with respect to all Transactions made prior to such termination or after such termination, as described below. After termination of this Agreement for any reason whatsoever, Merchant shall continue to bear total responsibility for all Chargebacks, fees, fines, assessments, credits, and adjustments resulting from Transactions processed pursuant to this Agreement and all other amounts then due or which thereafter may become due to Paymentech under this Agreement or which may be due to Paymentech before or after such termination to either Paymentech

or Member. If Merchant submits Transaction Data to Paymentech after the date of termination, Paymentech may, at its sole discretion and without waiving any of its rights or remedies under this Agreement, process such Transaction Data in accordance with and subject to all of the terms of this Agreement.

Upon notice of termination of this Agreement, Paymentech may estimate the aggregate dollar amount of anticipated Chargebacks, Refunds and Anticipated Risks that Paymentech reasonably anticipates subsequent to termination, and Merchant agrees to immediately deposit such amount in its Settlement Account, or Paymentech may withhold such amount from Merchant's settlement funds in order to establish a Reserve Account pursuant to and governed by the terms and conditions of this Agreement.

**11. INDEMNIFICATION.** Merchant agrees to indemnify 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, Paymentech's 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 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); (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 Payment Brands. The indemnification provided for in this Section does not apply to any claim or complaint to the extent it is caused by Paymentech's own negligence or willful misconduct. The indemnification provided under this Section 11 shall survive the termination of this Agreement.

**12. TRANSACTION DATA AND PAYMENT INSTRUMENT INFORMATION; PAYMENT CARD INDUSTRY COMPLIANCE.**

**12.1** Merchant financial information, Transaction Data, and other information that Merchant provides to Paymentech may be shared by Paymentech with its affiliates. Paymentech will not otherwise disclose or use such information for any purpose whatsoever other than (i) as necessary to process Merchant's Transactions or otherwise provide services and maintain Merchant's account pursuant to this Agreement; (ii) to detect, prevent, reduce, or otherwise address fraud, security, or technical issues; (iii) to enhance or improve Paymentech's products and services generally; or (iv) as otherwise required or permitted by the Payment Brands or applicable law. Paymentech may prepare, use, and/or share with third parties, aggregated, non-personally identifiable information derived from Transaction Data of all of Paymentech's customers or specific segments of Paymentech's customers.

**12.2 Payment Card Industry Compliance.** Merchant acknowledges and understands the importance of compliance with the Security Standards, such as those relating to the storage and disclosure of Transaction Data and Payment Instrument Information. Therefore, Merchant shall exercise reasonable care to prevent disclosure or use of Payment Instrument Information, other than (a) to Merchant's agents and contractors for the purpose of assisting Merchant in completing a Transaction; (b) to the applicable Payment Brand; or (c) as specifically required by law. Furthermore, Merchant acknowledges and understands that its use of any fraud mitigation or security enhancement solution (e.g. an encryption product or service), whether provided to Merchant by Paymentech or a third party, in no way limits Merchant's obligation to comply with the Security Standards or Merchant's liabilities set forth in this Agreement.

Merchant is allowed by the Payment Brand Rules to store only certain Payment Instrument Information (currently limited to the Customer's name, Payment Instrument account number, and expiration date) and is prohibited from storing additional Payment Instrument Information, including, without limitation, any security code data, such as CVV2, CVC2, and PIN data, and any magnetic stripe track data. Merchant shall store all media containing Payment Instrument Information in an unreadable format wherever it is stored and in an area limited to selected personnel on a "need to know" basis only. Prior to either party discarding any material containing Payment Instrument Information, the party will render the account numbers unreadable in accordance with the requirements of the Security Standards. If at any time Merchant determines or suspects that Payment Instrument Information has been compromised Merchant must notify Paymentech immediately and assist in providing notification to such parties as may be required by law or Payment Brand Rules, or as Paymentech otherwise reasonably deems necessary. Merchant information may be shared by Paymentech with its affiliates and with the Payment Brands subject to the provisions of this Agreement and Payment Brand Rules.

Merchant agrees to comply with all Security Standards, as defined in Section 17. Merchant further agrees to provide Paymentech, upon its request, with such tests, scans, and assessments of Merchant's compliance with Security Standards as may from time to time be required by the Payment Brands.

Merchant must notify Paymentech of its use of any Service Provider and, to the extent required by each Payment Brand all Service Providers must be (w) compliant with all Security Standards applicable to Service Providers; and (x) registered with and/or recognized by such Payment Brand(s) as being so compliant. Merchant agrees to exercise due diligence to ensure that all Service Providers, and any other agents, business partners, contractors, or subcontractors with access to Merchant's Payment Instrument Information, maintain compliance with the Security Standards. To the extent required by each Payment Brand, all Payment Applications, or software involved in processing, storing, receiving, or transmitting of Payment Instrument Information, shall be (y) compliant with all Security Standards applicable to such Payment Applications or software; and (z) registered with and/or recognized by such Payment Brand(s) as being so compliant.

Merchant understands that failure to comply with the Payment Brand Rules, including the Security Standards, or the compromise of any Payment Instrument Information, may result in assessments, fines, and/or penalties by the Payment Brands, and Merchant agrees to indemnify and reimburse Paymentech immediately for any such assessment, fine, or penalty imposed on Paymentech or the Member and any related loss, cost, or expense incurred by Paymentech or the Member. If any Payment Brand requires a forensic examination of Merchant or any of Merchant's Service Providers, agents, business partners, contractors, or subcontractors due to a Data Compromise Event or suspected event, Merchant agrees to cooperate with such forensic examination until it is completed, including, without limitation, the engagement of an examiner acceptable to the relevant Payment Brand. Notwithstanding the foregoing, the Payment Brands may directly, or demand that Paymentech, engage an examiner on behalf of the Merchant in order to expedite the investigation of the Data Compromise Event or suspected event. In either scenario, Merchant agrees to pay for all costs and expenses related to such forensic examination, including all of Paymentech's reasonable attorneys' fees and other costs relating to such forensic examination.

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

**13. INFORMATION ABOUT MERCHANT AND MERCHANT'S BUSINESS.**

**13.1 Additional Financial Information.** Upon five (5) days' written notice at any time, Merchant and each Guarantor (if any) agrees to furnish to Paymentech all reasonable financial statements and information as Paymentech may request relating to Merchant and each Guarantor, as well as their parents, subsidiaries and affiliated entities..

**13.2 Audit Rights; Site Survey and Inspection.** With prior notice and during Merchant's normal business hours, Paymentech's duly authorized representatives may visit Merchant's business premises and may examine Merchant's books and records that pertain to Merchant's Transactions or Merchant's compliance with this Agreement. Furthermore, Merchant may be contacted by Paymentech or a third party contracted by Paymentech who will need to gain access to Merchant's business operation to perform a site survey and inspection (the "Site Survey") in compliance with Payment Brand Rules. The Site Survey shall include, among other things, an interview with Merchant regarding the nature of Merchant's business, as well as photographs of Merchant's business operation. If Merchant is unavailable for the Site Survey as scheduled, Paymentech may suspend the settlement of Merchant's Transactions until a Site Survey can be completed and approved by Paymentech. In the event that Merchant fails to reasonably cooperate with the required Site Survey, or in the event the Site Survey is not approved by Paymentech, Paymentech may terminate this Agreement immediately upon notice to Merchant.

**13.3 Other Information.** Merchant agrees to provide Paymentech at least 30 days' prior written notice of its intent to change current product lines or services, Merchant's trade name, or the manner in which Merchant accepts Payment Instruments. If Paymentech determines such a change is material to its relationship with Merchant, Paymentech may refuse to process Transaction Data made subsequent to the change or terminate this Agreement. Merchant agrees to provide Paymentech with prompt written notice if Merchant is the subject of any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Merchant's signature on this Agreement authorizes Paymentech to perform any credit check deemed necessary with respect to Merchant. Merchant will also provide Paymentech with prompt written notice of (i) any adverse change in Merchant's financial condition, (ii) any planned or anticipated liquidation or substantial change the basic nature of Merchant's business, (iii) any transfer or sale of any substantial part (25% or more in value) of Merchant's total assets, or (iv) if Merchant or Merchant's parent is not a corporation whose shares are listed on a national securities exchange or on the over-the-counter market, any change in the control or ownership of Merchant or Merchant's parent. Merchant will also notify Paymentech of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of Merchant's total assets not later than three days after Merchant obtains knowledge of any such judgment, writ, warrant of attachment, execution or levy.

**14. DISCLAIMER; LIMITATION OF DAMAGES.** Subject to Section 5, Paymentech will, at its own expense, correct any Transaction Data to the extent that such errors have been caused by Paymentech or by malfunctions of Paymentech's processing systems. Under no circumstances will Paymentech's financial responsibility for its failure of performance under this Agreement exceed the total fees paid to Paymentech under this Agreement (net of Payment Brand fees, third party fees, interchange, assessments, penalties, and fines) for the six months prior to the time the liability arose. **EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT, AND EXCEPT WITH RESPECT TO MERCHANT'S FAILURE TO COMPLY WITH THE SECURITY STANDARDS, IN NO EVENT WILL ANY PARTY, ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AFFILIATES, BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR ANY LOSS, THEFT, DISAPPEARANCE, OR DAMAGE TO DATA TRANSMITTED ELECTRONICALLY IN CONNECTION WITH THIS AGREEMENT. ALL PARTIES ACKNOWLEDGE THAT THIS IS AN AGREEMENT FOR COMMERCIAL SERVICES. THE UNIFORM COMMERCIAL CODE DOES NOT APPLY AND 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 Paymentech to increase the amount collected from Merchant to reflect any and all assessments or increases in the sales, use, occupational, property, lease, or other taxes imposed on such sale or lease of services, tangible property, intellectual property, equipment, supplies, and other goods purchased.

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

**15.3 Assignment.** Any transfer or assignment of this Agreement by Merchant, by operation of law, merger, or otherwise without Paymentech's prior written consent is null and void. In the event of such transfer or assignment, the party to whom the Agreement was transferred or assigned shall be bound to the terms and conditions of this Agreement to the same extent as if Paymentech, Member and such assignee or transferee, as the case may be, entered into an agreement identical to this Agreement on the effective date of such transfer or assignment. Furthermore, Merchant shall indemnify and hold Paymentech and Member harmless from all liabilities, Chargebacks, expenses, costs, fees, and fines arising in connection with the submission of Transaction Data to Paymentech by such transferee or assignee. For purposes of this Agreement any transfer of voting control of Merchant or its parent, or the sale of all or substantially all of Merchant's assets, shall be considered an assignment or transfer hereof. Upon notice to Merchant, another Payment Brand member may be substituted for Member under whose sponsorship this Agreement is performed and for whom Paymentech is acting as agent hereunder. Subject to Payment Brand Rules, Paymentech may assign or transfer this Agreement and its rights and obligations hereunder and may delegate its duties hereunder, in whole or in part, to any third party, whether in connection with a change in sponsorship, as set forth in the preceding sentence, or otherwise, without notice to or consent of Merchant. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party's assets or business, shall have any right to continue or to assume or to assign this Agreement.

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

**15.5 Representations.** Merchant represents and warrants that statements made on its Application are true as of the date of this Agreement. Merchant represents and warrants that its execution of and performance under this Agreement (a) in no way breaches, contravenes, violates, or in any manner conflicts with any of its other legal obligations, including, without limitation, its corporate charter or similar document or any agreement between Merchant and any third party or any affiliated entity; (b) has been duly authorized by all necessary action and does not require any consent or other action by or in respect of any third party; and (c) that the person signing this Agreement on behalf of Merchant is duly authorized to do so. Merchant shall perform its obligations under this Agreement in compliance with all applicable laws.

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

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

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

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

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

**15.11 Governing Law; Waiver of Right to Contest Jurisdiction; Waiver of Jury Trial; Arbitration.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas without reference to conflict of law provisions. Any action, proceeding, arbitration hearing or mediation relating to or arising from this Agreement must be brought, held, or otherwise occur in Dallas County, Dallas, Texas. **PLEASE READ THIS PROVISION CAREFULLY. IT PROVIDES THAT ANY CLAIM MAY BE RESOLVED BY BINDING ARBITRATION. WITH BINDING ARBITRATION MERCHANT ACKNOWLEDGES AND AGREES THAT (i) MERCHANT IS GIVING UP ITS RIGHT TO HAVE A TRIAL BY JURY TO**

RESOLVE ANY CLAIM ALLEGED AGAINST PAYMENTECH, MEMBER, OR RELATED THIRD PARTIES; (ii) MERCHANT IS GIVING UP ITS RIGHT TO HAVE A COURT RESOLVE ANY CLAIM ALLEGED AGAINST PAYMENTECH, MEMBER OR RELATED THIRD PARTIES; (iii) MERCHANT IS GIVING UP ITS RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT OR ARBITRATION FILED AGAINST PAYMENTECH, MEMBER AND/OR RELATED THIRD PARTIES. Any claim, dispute, or controversy ("Claim") by either Merchant, 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, 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 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 Paymentech and/or Member. The arbitration, or any portion of it, will not be consolidated with any other arbitration and will not be conducted on a class-wide or class action basis. The prohibition against class action contained in this Section shall be non-severable from the remainder of this Section. If either party prevails in the arbitration of any Claim against the other, the non-prevailing party will reimburse the prevailing party for any fees it paid to the AAA in connection with the arbitration, as well as for any reasonable attorneys' fees incurred by the prevailing party in connection with such arbitration. Any decision rendered in such arbitration proceedings will be final and binding on the parties, and judgment may be entered in a court of competent jurisdiction. Rules and forms of the AAA may be obtained and Claims may be filed at any AAA office, www.adr.org, or 335 Madison Avenue, New York, NY 10017, telephone 1-800-778-7879. Any arbitration hearing at which Merchant appears will take place at a location within Dallas County, Dallas, Texas. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. This arbitration agreement applies to all Claims now in existence or that may arise in the future. Nothing in this Agreement shall be construed to prevent any party's use of (or advancement of any Claims, defenses, or offsets in) bankruptcy or repossession, replevin, judicial foreclosure or any other prejudgment or provisional remedy relating to any collateral, security, or other property interests for contractual debts now or hereafter owned by either party to the other. **IN THE ABSENCE OF THIS ARBITRATION AGREEMENT, MERCHANT AND PAYMENTECH MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR A JURY AND/OR TO PARTICIPATE OR BE REPRESENTED IN LITIGATION FILED IN COURT BY OTHERS (INCLUDING CLASS ACTIONS), BUT EXCEPT AS OTHERWISE PROVIDED ABOVE, THOSE RIGHTS, INCLUDING ANY RIGHT TO A JURY TRIAL, ARE WAIVED AND ALL CLAIMS MUST NOW BE RESOLVED THROUGH ARBITRATION.**

**15.12 Force Majeure.** Neither party will be liable for delays in processing or other nonperformance caused by such events as fires, telecommunications failures, utility failures, power failures, equipment failures, labor strife, riots, war, terrorist attack, nonperformance of 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 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 Paymentech following such notice will be deemed to be Merchant's acceptance of such amendment.

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

**15.15 Merchant Taxpayer Certification and Paymentech Reporting Obligations.** Pursuant to 26 USC 6050W, Paymentech is a "payment settlement entity", obligated to collect and report certain taxpayer information to the United States Internal Revenue Service. Therefore, in conjunction with the execution of this Agreement, Merchant shall provide 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 Paymentech if there are any changes in this information. 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. 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 Paymentech hereunder to the extent such penalties accrue based on the actions or inactions of Merchant despite reasonable notice from Paymentech.

**16. SURVIVAL.** The provisions of Sections 4.2, 4.4, 4.5, 4.6, 5, 6, 7, 9, 10.2, 10.3, 10.4, 10.5, 11, 12, 14, 15, 16 and 17 shall survive the termination of this Agreement.

#### **17. DEFINITIONS.**

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

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

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

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

**"Data Compromise Event"** means an occurrence that results, or could result, directly or indirectly, in the unauthorized access to or disclosure of Transaction Data and/or Payment Instrument Information.

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

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

**"Member"** means JPMorgan Chase Bank, N.A. or other entity providing sponsorship to Paymentech as required by all applicable Payment Brands. Member is a principal party to this Agreement and Merchant's acceptance of Payment Brand products is extended by the Member.

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

**"Payment Brand"** means any payment method provider whose payment method is accepted by Paymentech for processing, including, without limitation, Visa Inc., MasterCard International, Inc., Discover Financial Services, LLC, and other credit and debit card providers, debit network providers, gift card, and other stored value and loyalty program providers. Payment Brand also includes the Payment Card Industry Security Standards Council.

**"Payment Brand Rules"** means all bylaws, rules, programs, and regulations, as they exist from time to time, of the Payment Brands.

**"Payment Instrument"** or **"Payment Card"** means an account, or evidence of an account, authorized and established between a Customer and a Payment Brand, or representatives or members of a Payment Brand that Merchant accepts from Customers as payment for a good or service. Payment Instruments include, but are not limited to, credit and debit cards, stored value cards, loyalty cards, electronic gift cards, authorized account or access numbers, paper certificates, and credit accounts.

**"Payment Instrument Information"** means information related to a Customer or the Customer's Payment Instrument, that is obtained by Merchant from the Customer's Payment Instrument, or from the Customer in connection with his or her use of a Payment Instrument (e.g., a security code, a PIN number, credit

limits, account balances, or the customer's zip code when provided as part of an address verification system). Without limiting the foregoing, such information may include a the Payment Instrument account number and expiration date, the Customer's name or date of birth, PIN data, security code data (such as CVV2 and CVC2), and any data read, scanned, imprinted, or otherwise obtained from the Payment Instrument, whether printed thereon, or magnetically, electronically, or otherwise stored thereon. For the avoidance of doubt, the data elements that constitute Payment Instrument Information shall be treated according to their corresponding meanings as "cardholder data" and "sensitive authentication data" as such terms are used in the then current PCI DSS.

**"Paymentech"** means Paymentech, LLC, a Delaware limited liability company, having its principal office at 14221 Dallas Parkway, Dallas, Texas 75254.

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

**"Refund Policy"** means a written policy with regard to Refunds.

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

**"Security Standards"** means all rules, regulations, standards, or guidelines adopted or required by the Payment Brands or the Payment Card Industry Security Standards Council relating to privacy, data security, and the safeguarding, disclosure, and handling of Payment Instrument Information, including, without limitation, the Payment Card Industry Data Security Standards ("PCI DSS"), Visa's Cardholder Information Security Program ("CISP"), Discover's Information Security & Compliance Program, American Express's Data Security Operating Policy, MasterCard's Site Data Protection Program ("SDP"), Visa's Payment Application Best Practices ("PABP"), the Payment Card Industry's Payment Application Data Security Standard ("PA DSS"), MasterCard's POS Terminal Security program, and the Payment Card Industry PIN Transmission Security program (PCI PTS), in each case as they may be amended from time to time.

**"Service Provider"** means any party that processes, stores, receives, transmits, or has access to Payment Instrument Information on Merchant's behalf, including, without limitation, its agents, business partners, contractors, and subcontractors.

**"Settled Transaction"** means a Transaction conducted between a Customer and Merchant utilizing a Payment Instrument in which consideration is exchanged between the Customer and Merchant for the purchase of a good or service or the Refund of such purchase and the value for such Transaction is settled by the Payment Brand through Paymentech to the Merchant.

**"Stored Value Card Transaction"** means a Transaction in which a Customer adds or redeems value to or from a stored value card, gift card, or loyalty Payment Instrument issued by or on behalf of Merchant.

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

**"Transaction Data"** means the written or electronic record of a Transaction, including, without limitation, an authorization code or settlement record, which is submitted to Paymentech

**"Transaction Receipt"** means an electronic or paper record of a Transaction generated upon completion of a sale or Refund, a copy of which is presented to the Customer.

# **Merchant Operating Guide**

**Merchant Operating Guide****General Rules Applicable to all Transactions****1 Acceptance Of Certain Payment Instruments**

In offering Visa and MasterCard payment options to your Customers, you may elect any one of the following options: (i) accept all types of Visa and MasterCard Payment Instruments - including consumer credit and debit/check cards, and commercial credit and debit/check cards; (ii) accept only Visa and MasterCard credit cards and commercial cards (if you choose this option you must accept all consumer credit cards (but not consumer debit/check cards) and all commercial card products, including business debit/check cards; or (iii) accept only Visa and MasterCard consumer debit/check cards (if you choose this option you must accept all consumer debit/check card products (but not business debit/check cards) and will not accept any kind of credit cards). The acceptance options above apply only to U.S. domestic Visa and MasterCard Payment Transactions and, as such, they do not apply to Visa or MasterCard Payment Instruments issued by non-U.S. banks. In other words, if your Customer presents a Visa or MasterCard Payment Instrument issued from a European or Asian bank, for example, you must accept that card just as you would any other card (provided you receive a valid authorization and confirm the identity of the Customer, etc.), regardless of the acceptance option choice you have made and even if you have elected not to accept that type of Payment Instrument from U.S. issuers. If you choose to limit the types of Visa and MasterCard Payment Instruments you accept, the following rules apply to you: (i) you must display appropriate signage to indicate acceptance of the limited acceptance category you have selected (that is, accept only debit/check card products or only credit and commercial products; (ii) if you elect limited acceptance, any Transaction Data submitted into interchange outside of the selected product category will be assessed the standard interchange fee applicable to that card product and may also have additional fees/surcharges assessed; and (iii) additional Visa and MasterCard Rules that may be applicable to you may be viewed on their respective websites.

**2 Authorization/Approval Codes**

All Payment Transactions and Conveyed Transactions require authorization/approval codes. You must request and receive an authorization/approval code for the total amount of the Transaction. An authorization/approval code indicates (i) the availability of credit on the Payment Instrument at the time of inquiry, and (ii) that the Payment Instrument account number is valid. It is not a promise or a guarantee that you will receive payment for that transaction. It does not warrant that the person presenting the Payment Instrument has the authority to do so.

**3 Refunds/Credits**

You must disclose your return/refund policy to your Customers. You must complete a credit for the total amount of the refund and identify the merchandise being returned and any shipping and handling charges being returned. You must imprint or record the credit voucher with the same Payment Instrument used to make the original purchase. For retail Payment Transactions and Conveyed Transactions, the credit voucher must be dated and signed by the Customer and the appropriate copy provided to the Customer. Cash refunds should never be issued for Payment Transactions or Conveyed Transactions, unless required by law. If you fail to follow these procedures, you may be unable to rebut a Chargeback from the Customer for failure to issue a refund (even if you actually gave the refund by cash or check). Paperwork is not necessary for an even exchange. For an uneven exchange, complete a credit for the total amount of the merchandise being returned and complete a new Transaction receipt for any new merchandise purchased. You cannot process a credit or refund without having completed a previous purchase Transaction with the same Customer.

**4 Processing Of Transaction Data**

You must submit Transaction Data (including credit vouchers) to us on or before the next business day after the date of the Transaction. Late submission of Transaction Data may result in higher Payment Brand fees and interchange rates, Chargebacks and other negative consequences. You must not submit Payment Transactions or Conveyed Transactions for payment until the goods are delivered, shipped, or the services are performed (except as otherwise provided in the Merchant Agreement, and only if you have notified us that you are doing so on your application or otherwise in writing). If the Customer disputes being charged for merchandise or services before receiving them, the result will be a Chargeback to you. We may from time to time contact Customers to verify that they have received goods or services for which Transactions have been submitted. You cannot present for processing any Transaction Data that was not originated as a result of an act directly between the Customer and you. You cannot present for processing any Transaction Data you know or should have known to be (i) fraudulent or (ii) not authorized by the Customer. You will be responsible for the actions of your employees while acting in your employ. The collection and payment of all federal, state and local taxes is your responsibility. Taxes collected must be included in the total transaction amount and not collected separately by another form of payment. You must submit one Transaction Data record for all goods and services sold in the same transaction. All available information about the sale, including any handling and shipping charges, must be accurately recorded. You must provide to the Customer a true and completed record of the Transaction.

**5 Chargebacks**

Chargebacks of Payment Transactions and Conveyed Transactions may occur under a variety of circumstances, as dictated by the Payment Brand Rules, which are subject to modification from time to time. Consequently, the following is only a partial list of circumstances that might give rise to Chargebacks: (i) a Customer account number is incorrect or otherwise invalid; (ii) an authorization/approval code was not received or other required authorization was not obtained; (iii) an authorization/approval code was obtained for the wrong amount or wrong date; (iv) the Customer never received the merchandise/service requested; (v) a Customer's refund/credit was processed as a sale; (vi) the Transaction Data is for the wrong amount; (vii) a Customer was never credited for returned merchandise or a canceled order; (viii) the Payment Instrument was expired, counterfeit, altered, or invalid at time of sale; (ix) a Payment Transaction or Conveyed Transaction was deposited more than once; (x) the Customer did not authorize or consent to the Transaction; (xi) the signature on the Transaction receipt does not match the signature on the Payment Instrument (if required); (xii) the Payment Instrument was not imprinted or its magnetic strip was not electronically recorded (for example, "swiping" or "tapping" a Payment Instrument) through a terminal; (xiii) the Customer asserts any disputes, claim, counterclaim, defense or offset against you; (xiv) the Transaction Data or any material information thereon is illegible, incomplete, inaccurate or unsigned, or is not delivered to us within the required time limits; (xv) the Transaction Data is fraudulent or does not represent a bona fide transaction in the ordinary course of your business, or is subject to any claim of illegality, negligence, dishonesty or offset; and (xvi) you have failed to provide copies of Transaction Data requested by us (retrieval request) within the prescribed time period.

**6 Disputing Chargebacks**

If you have reason to dispute or respond to a Chargeback, then you must do so by the date provided by us on our report to you. We are not required to investigate, reverse or make any adjustment to any Chargeback when thirty (30) calendar days have elapsed from the date of the Chargeback. All responses to Chargebacks must be in writing, and must contain the following information: (i) date of debit/credit advice; (ii) company case number; (iii) total amount of Chargeback; (iv) date and dollar amount for which the Transaction Data was originally submitted (v) if known, the date and authorization approval code; and (vi) any supporting documentation to substantiate your claim. You should include a dated cover letter detailing reasons for requesting a review of the Chargeback. You should retain a copy of the correspondence and all documentation for your files. You should also retain proof that we received your response.

**7 Data Security And Privacy**

You agree to post and maintain on all your Web sites both your consumer data privacy policy (which must comply with all Payment Brand Rules, regulations and guidelines) and your method of transaction security. You may not retain or store CVV2/CVC2 data or PIN data subsequent to the authorization. You must comply with all Security Standards published by the Payment Brands and the PCISSC including, but not limited to, Visa's Customer Information Security Program ("CISP"), MasterCard's Security Data Program (MSDP) and the Payment Card Industry Data Security Standard (PCIDSS). Pursuant to the Security Standards, you must, among other things: (i) install and maintain a working network firewall to protect data accessible via the Internet; (ii) keep security patches up-to-date; (iii) encrypt stored data and data sent over open networks; (iv) use and update anti-virus software; (v) restrict access to data by employees who are on a "need-to-know" basis; (vi) assign a unique ID to each person with computer access to data; (vii) not use vendor-supplied defaults for system passwords and other security parameters; (viii) track access to data by unique ID; (ix) regularly test security systems and processes; (x) maintain a policy that addresses information security for employees and contractors; (xi) restrict physical access to Customer information; (xii) when outsourcing administration of information assets, networks, or data you must retain legal control of proprietary information and use limited "need-to-know" access to such assets, networks or data; and (xiii) reference the protection of Customer information and compliance with the Security Standards in contracts with other service providers. You must notify Paymentech of any third party vendor with access to Customer information, and you are responsible for ensuring that all third party vendors are compliant with the Security Standards, to the extent applicable. The Security Standards may require that you engage an approved third party vendor to conduct quarterly perimeter scans and/or an on-site security review of your systems in order to be compliant. Visa and MasterCard's individual requirements for such scans or security reviews can be accessed through the Visa and MasterCard websites at [www.Visa.com](http://www.Visa.com) and [www.MasterCard.com](http://www.MasterCard.com). The Payment Brand rules provide that Customer information and Transaction Data is owned by the Payment Brand and the Customer. Paymentech also asserts some ownership rights in the Transaction Data to the extent it belongs to the Payment Brand system. You are responsible for securing Customer information. You will not use any Payment Instrument or Customer information other than for the sole purpose of completing the transaction authorized by the Customer for which the information was provided to you, or as specifically allowed by the Payment Brand Rules, or required by law. Paymentech or any Payment Brand may inspect Merchant's premises and computers, and the premises and computers of any company the Merchant has contracted with, for the purposes of verifying that Customer information is securely stored and processed, and is not used for any purpose other than processing the transactions to which it relates.

## **8 Certain Merchant Prohibitions**

You may not (i) accept Customer payments for previous Visa or Visa Electron charges; (ii) require a Customer to complete a postcard or similar device that includes the Customer's account number, Payment Instrument expiration date, signature, or any other account data in plain view when mailed; (iii) add any tax to a Transaction unless applicable law expressly requires that you be permitted to impose a tax; (iv) request or use a Payment Instrument account number for any purpose other than as payment for its goods or services, except to support Visa's Health Care Eligibility Service or Prepaid Load Network; (v) disburse funds in the form of travelers cheques, if the sole purpose is to allow the Customer to make a cash purchase of goods or services from you; (vi) accept Visa or Visa Electron for the purchase of scrip; or (vii) accept Visa Electron for a manual cash disbursement. You understand and acknowledge that all Visa BIN information provided by us to you is proprietary and confidential information belonging to Visa. You must not disclose Visa BIN Information to any third party without prior written permission from Visa. You understand and acknowledge that Visa may impose conditions on, or permanently prohibit you from participating in the Visa program for any reasons it deems appropriate, including, but not limited to (i) fraudulent activity; (ii) submitting Transaction Data that does not result from an act between you and the Customer (laundering); (iii) entering into this Agreement under a new name with the intent to circumvent provisions of the Rules; (iv) activity that causes us to repeatedly violate the Rules; any other activity that may result in undue economic hardship or damage to the goodwill of the Visa system.

## **Specialized Rules for Retail Transactions**

### **1 Presentation Of Payment Instruments**

You or your employee must examine each Payment Instrument presented to determine that the Payment Instrument presented is valid and has not expired. You must exercise reasonable diligence to determine that the authorized signature on any Payment Instrument presented corresponds to the Customer's signature on the Transaction Data. You must not honor expired, invalid, altered, counterfeit, or revoked Payment Instruments nor any Payment Instrument presented by any person other than the proper Customer as evidenced by the authorized signature on the Payment Instrument. A Customer may authorize another person to use his or her Payment Instrument for purchases, provided the user's signature appears on the back of the Payment Instrument. The signature on the back must match the one on the Transaction Data. If the Payment Instrument is not signed, in addition to requesting an authorization, you may review positive identification as allowed by local and state law, such as a passport or driver's license, to confirm that the user is the Customer, record the information and require the Customer to sign the signature panel of the Payment Instrument prior to completing the Transaction. You should not complete a Transaction if the Customer does not present his or her Payment Instrument or if you cannot obtain an electronic swipe record or physical imprint of the Payment Instrument (this includes mail, telephone and internet orders). By the submission of any Transaction Data to us, you will be deemed to warrant the identity of the purchaser as the authorized holder of the Payment Instrument, and if the Customer later denies making the purchase, you will not be able to rebut the Chargeback.

### **2 Completion Of Transactions**

You must use a suitable imprinter to legibly imprint Payment Instruments on Transaction Data or, capture the information from the Payment Instrument by electronic data capture. A photocopy of the Payment Instrument is not an acceptable substitute for an imprint. If the account number is manually keyed into the terminal, you must imprint the Payment Instrument. Your name, location, city and state must match the Merchant plate on the imprinter. You must notify us of any changes to the information on the Merchant plate. In addition to having the Customer sign the Transaction receipt, the Transaction date and dollar amounts and other information must be clearly written or printed on the Transaction receipt or captured by an electronic device. A brief description of the goods sold or service rendered must be provided on the Transaction receipt. Authorization/approval code numbers must be clearly recorded in the appropriate place on the Transaction receipt. Never circle or underline any information on the Transaction receipt. Every Transaction Receipt and credit voucher must be imprinted (or printed from electronic draft capture equipment) with the Customer's truncated account number and Merchant name. You will give the Customer a true and completed copy of the Transaction Receipt or appropriate facsimile. If the Customer's copy of the Transaction receipt or credit voucher is printed from electronic draft capture equipment/terminal, it must comply with all applicable Payment Brand Rules and laws. You cannot require Customers to provide any personal information as a condition for honoring Payment Instruments unless otherwise required by the Payment Brand Rules or law. Personal information includes, but is not limited to, a home or business telephone number, a home or business address, a social security number, or a photocopy of a driver's license. You cannot retain or store full magnetic-stripe data, CVV2, CVC2 codes or PIN data after the authorization of a Payment Transaction or Conveyed Transaction, except as required to complete the transmission of such Transaction Data to us.

### **3 Forgeries/Counterfeit Payment Instruments**

You should examine all notices received from us or from a Payment Brand to help you determine whether a Payment Instrument presented is counterfeit. You should attempt to retain the Payment Instrument while making an authorization request and then match any signature on the Payment Instrument with the one on the Transaction receipt. You should compare the account number on the Payment Instrument to the account number printed on the receipt or displayed on the terminal. You should examine each Payment Instrument to see if it looks genuine. You should use reasonable, peaceful efforts to recover any Payment Instrument if you have reasonable grounds to believe such Payment Instrument is counterfeit, fraudulent or stolen. You will be solely responsible for your actions in recovering/retaining Payment Instruments.

### **4 Travel And Entertainment Services**

At your option and as specified in the applicable sections of the Payment Brand Rules, Merchants may participate in one or more specialized travel & entertainment services offered by any of the Payment Brands. Merchants offering travel and entertainment services must institute and comply with the procedures set forth in the Payment Brand Rules.

## Specialized Rules for Mail Order, Telephone Order and Internet Transactions

### 1 Completion Of Sale

You are responsible for determining that the purchaser is the person whose name appears as the Customer. If an account number is transposed into an invalid or inaccurate account number, the sale will result in a Chargeback. You must be authorized by us to accept Payment Instruments for mail, telephone, internet and pre-authorized orders, and you must have noted such on your application to us. All information that would normally be imprinted from a Payment Instrument must be clearly written in the appropriate areas on the order or Transaction receipt. "Mail Order" or "Phone Order" should be written on the signature line of the Transaction receipt.

### 2 Recurring Transactions

For recurring transactions, you must obtain a written request from the Customer for the goods and services to be charged to the Customer's account, specifying the frequency of the recurring charge and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Customer (ii) notice from Paymentech or any Payment Brand that the Payment Instrument is not to be honored; or (iii) an authorization/approval code that the Payment Instrument is not to be honored. You must include in your Transaction Data the electronic indicator that the transaction is a recurring transaction.

## Specialized Rules for Stored Value Transactions

### 1 Payment Instruments & Packaging

You may be obligated to purchase Stored Value Payment Transaction Payment Instruments ("Gift Cards") from us or pay us a data transfer fee in lieu thereof. Please check the pricing schedule of your Merchant Agreement to see if these requirements apply to you. If you are obligated to purchase Gift Cards from us or if you elect to do so, we will arrange for the Gift Card production and may, at our option, invoice you therefore, in lieu of electronically debiting your account. Any such invoice will be payable upon receipt. Gift Cards, Packaging and Point-of-purchase marketing materials are available and priced on a per bundle basis, based on current rates. All production and delivery timeframes and costs provided by us are estimates only and we do not guarantee any specific date of delivery or price for Gift Cards produced by third parties. You are responsible for all production costs and delivery charges for Gift Cards. The form and content of all Gift Cards will be subject to our approval.

### 2 Compliance and Warranties

You are solely responsible for complying with all applicable laws relating to your Gift Card program and you agree to indemnify and hold us harmless from any loss, damage or claim relating to or arising out of any failure to comply with applicable laws in connection therewith. You are solely responsible for monitoring the legal developments applicable to the operation of your Gift Card program and ensuring that your Gift Card program complies fully with such requirements as in effect from time to time. Merchant acknowledges that Paymentech cannot reasonably be expected to monitor and interpret the laws applicable to its merchants, and has no responsibility to monitor or interpret laws applicable to Merchant's business.

### 3 Fraud

You hereby agree (i) that you are responsible for ensuring that all Gift Cards require activation at the point of sale; (ii) to provide notification in writing to Paymentech of any fraud losses by type by fifteen days following the end of each calendar quarter; (iii) that you will be solely responsible for any and all value adding and fraud losses and expenses relating to or arising from your Gift Card; (iv) to discourage transportation of groups of sequentially numbered Gift Cards; and (v) to deactivate or otherwise remove all value from Gift Cards that have been compromised. You will be responsible for any fraudulent transactions involving your Gift Cards, including, without limitation, the unauthorized activation of Gift Cards, reloading of existing Gift Cards (whether pursuant to a manual telephone order or otherwise) with additional value, or the unauthorized replication of Gift Cards or Gift Card data for fraudulent transactions. Paymentech provides a number of tools and options to help Merchant reduce Merchant's risk of exposure for fraudulent transactions. We urge you to make use of any and all of such tools as we may offer in order to help reduce the risk of such transactions. In particular, we recommend that you utilize only those vendors that have been certified by Paymentech as having appropriate security measures in place to reduce the risk of counterfeit Gift Cards and the loss of sensitive Gift Card information that might result in unauthorized transactions, and we recommend that you promptly and frequently reconcile the transaction reports we provide to you against your own internal transaction records, and to report any unauthorized transactions to your account representative at Paymentech. Because manual Gift Card transactions (i.e. those involving the activation or reloading of Payment Instruments over the telephone in cases where your terminals may be unavailable) pose a higher risk of potential fraud, we urge you to pay special attention to these transactions and reconcile them on an even more frequent basis. In the event that you do not reconcile your transaction reports and promptly report any suspicious activity to us, Paymentech may not be able to assist you in canceling fraudulently activated or reloaded Gift Cards, or in otherwise identifying the source of any fraud.

## **Schedule A - Assumptions and Fees**

**Assumptions**

Payment Transaction Sales volume	\$203,940
Average Transaction amount	\$2.00
Chargeback %	0.025%
Auth / Capture %	105.00%
Number of locations	1
PIN Debit / EBT transactions	0
Conveyed transactions	0

**Fees**

1. Initiation & service fees

Annual fee		N/A
Application fee		N/A
Rush fee		N/A
PIN Debit Setup fee		N/A
Pin Pad Encryption fee		N/A
Monthly Helpdesk fee		N/A
Monthly Service fee		N/A
Supply fee	Billed Per Order	
Terminal Reprogram fee		N/A
Internet Product:	<b>NetConnect</b>	
	Setup fee \$50.00	Monthly fee \$10.00
Dial Backup authorization surcharge		\$0.0150

2. Transaction fees

MasterCard per item	N/A
Visa per item	N/A
Discover per item	N/A
JCB per item	N/A
American Express per item	N/A
PIN Debit per item	N/A
EBT per item	N/A
Check Verification - SCAN per item	N/A
Wireless Terminal per item	N/A

3. Authorization fees

Voice Authorizations	\$0.65
Electronic Address Verification Service	N/A
Electronic Authorizations:	
MasterCard Authorization	\$0.0400
Visa Authorization	\$0.0400
Discover Authorization	\$0.0400
JCB Authorization	N/A
American Express Authorization	N/A
Private Label Authorization	N/A

4. Stored Value fees

Gift Card Program		
Setup fee	N/A	Processing fee N/A
Monthly fee	N/A	Block Activation fee N/A
ACH Services fee	N/A	

Cards, Packaging & Point-of-purchase marketing materials are available and priced on a per run basis, based on current rates. These rates are shown on the Gift Card Materials Order Form.

Initials: \_\_\_\_\_

Date: \_\_\_\_\_  
 (Month/Day/Year)

**5. Reporting Options**

Monthly Statement fee				N/A
Statement Type & Frequency:	<b>E-Mail</b>	<b>Statement only</b>	<b>Monthly</b>	
On-Line Reporting Tool Monthly fee				N/A
Confirmation Letter (per month)				N/A
Daily Funding Client Notification				N/A
Raw data / FARS				N/A

**6. Discount Information**

Target Qualification Level:	MasterCard:	009	Merit III
	Visa:	023	CPS Retail - All Other
	Discover:	310	PSL - Retail (Core)

- MasterCard / Visa / Discover Target Debit Discount rate\* N/A
- MasterCard / Visa / Discover Target Credit Discount rate\* N/A

- Pass-thru of MC / Visa / Discover Interchange\*  
MC / Visa / Discover Interchange fees

as set by each Payment Brand

	MasterCard	Visa	Discover
MC / Visa / Discover Access fees	\$0.0185	\$0.0195	\$0.0185
Visa Risk Identification fee	N/A	\$0.001	N/A

- Pass-thru + %: Incremental Discount rate N/A

- Three-Tier - Debit: Qualified / Mid-Qualified / Non-Qualified

Qualified	Mid-Qualified	Non-Qualified
N/A	N/A	N/A

- Three-Tier - Credit: Qualified / Mid-Qualified / Non-Qualified

N/A	N/A	N/A
-----	-----	-----

- Three-Tier - Reward/WorldCard: Qualified / Mid-Qualified / Non-Qualified

N/A	N/A	N/A
-----	-----	-----

- Two-Tier - Debit: Qualified / Non-Qualified

Qualified	Non-Qualified
N/A	N/A

- Two-Tier - Credit: Qualified / Non-Qualified

N/A	N/A
-----	-----

Discount frequency: **Monthly**

\* The interchange applicable to each transaction will be based on the actual qualification level of the transaction. For each transaction not qualifying at the Target Qualification Level, we will charge you an additional fee calculated as described on the following page under the heading "Additional Information About Your Fees".

- |  |            |         |          |
|--|------------|---------|----------|
| <input checked="" type="checkbox"/> MC / Visa / Discover Assessment fees         | MasterCard | Visa    | Discover |
|  | 0.1100%    | 0.1100% | 0.1000%  |
| <input checked="" type="checkbox"/> MC / Visa / Discover Int'l Cross-border fees | 0.4000%    | 0.4000% | 0.5500%  |
| <input checked="" type="checkbox"/> Visa / Discover Int'l Processing fees**      | N/A        | 0.4500% | 0.4000%  |

\*\* These Visa / Discover International Processing Fees apply to foreign bank issued cards only. The Visa / Discover International Processing Fees may appear on your statement as a separate line item, or they may be included in the respective Payment Brand's interchange fee.

- |   |          |          |  |
|---|----------|----------|--|
| <input checked="" type="checkbox"/> MasterCard AVS Auth Access fee - Card Present     | \$0.0050 |          |  |
| <input checked="" type="checkbox"/> MasterCard AVS Auth Access fee - Card Not Present | \$0.0075 |          |  |
| <input checked="" type="checkbox"/> Visa Zero \$ Account Verification fee             |          | \$0.0250 |  |
| <input checked="" type="checkbox"/> Visa Misuse of Authorization fee                  |          | \$0.0480 |  |
| <input checked="" type="checkbox"/> Visa Zero Floor Limit fee                         |          | \$0.1000 |  |

- JCB Discount rate (PTI Settled) N/A

- Pass-thru of PIN Debit Network fees N/A

- PIN Debit I/C Pass-thru + %: Incremental Discount rate N/A

- Revolution Money Discount fee N/A

**7. Processing fees**

Minimum Monthly Discount fee	\$25.00
Chargeback Processing fee	\$10.00
Batch Settlement fee	N/A
Reprint Statement fee	N/A
ACH fee	N/A
ACH Return fee	\$25.00

**8. Other fees**

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 this Agreement.

Initials: \_\_\_\_\_

Date: \_\_\_\_\_

(Month/Day/Year)

Type	Equipment	Rate
Replacement (swap)	In warranty *	\$50.00
Replacement (swap)	Out of warranty - Verifone Tranz terminals & printers	\$160.00
Replacement (swap)	Out of warranty - Eclipse, Hypercom T7, Nurit terminals & printers, Ingenico i5100	\$200.00
Replacement (swap)	Out of warranty - Omni terminals & printers, Verifone Vx510 & Vx570, MX830 Pinpad, Hypercom T4205, T4210 & T4220, Ingenico I7780	\$250.00
Replacement (swap)	Out of warranty - Verifone Vx610, Nurit 8000, Exadigm terminals	\$500.00
Replacement (swap)	Out of warranty - all Pin Pads	\$100.00
Restocking Fee	Return equipment for any reason other than repair	\$150.00
Late Fee	For all equipment returned late, or not returned	\$500.00

\* In warranty coverage applies only to equipment purchased or leased from Chase Paymentech Solutions

Warranty timeframes: 5 years - Omni 3200, 3730, 3750; Verifone Vx510, Vx570, PP1000 SE; Hypercom T42xx, P1300 Pinpad

3 years - Verifone Vx610, MX830 Pinpad; Hypercom T7Plus; Ingenico i5100, Ingenico I7780, Exadigm terminals

1 year - all other equipment

**Additional Information About Your Fees**

**Payment Brand Charges**

A significant amount of the fees that we charge you for processing your Payment Transactions consists of charges that we must pay to the Payment Brands and Payment Brand issuers (or that are otherwise charged by the Payment Brands and Payment Brand issuers in connection with your Payment Transactions). These charges, which include interchange, assessments, file transmission fees, and other charges are referred to in this Schedule as "Payment Brand Charges." Thus, in addition to the fees set forth above in this Schedule, you will also be charged Payment Brand Charges. Notwithstanding the foregoing, we may temporarily elect not to charge you for certain Payment Brand Charges. Therefore, it is possible that you may not be charged for certain Payment Brand Charges for a period of time. If that is the case, our election not to charge you for those Payment Brand Charges should not be construed as a waiver of our right to charge you for those Payment Brand Charges, and we reserve the right to start charging you for them upon notice to you at any time in the future. No such charges will be imposed retroactively, however. Our right to impose such charges in the future extends to Payment Brand Charges currently in effect, increases in the amount of those Payment Brand Charges, and new Payment Brand Charges imposed by Payment Brands and Payment Brand Issuers.

**Interchange and Assessments**

Payment Brand Charges, including interchange fees and assessments, are set by the Payment Brands and Payment Brand issuers based in part upon a series of interchange levels that they establish and modify from time to time. Thus, the interchange fee and amount of assessments charged for a given Payment Transaction depends on the interchange level applicable to that Payment Transaction; and that interchange level depends on a number of factors established by the Payment Brands, such as the type of Payment Instrument presented, specific information contained in the Payment Transaction, how and when the Payment Transaction is processed, your industry, and other factors. For a Payment Transaction to qualify at any specific interchange level, the applicable qualification criteria must be met. Note that the Payment Brands regularly add new interchange levels, and change the interchange rates or qualification criteria for existing interchange levels.

**Target Discount Rate and Target Qualification Level**

The Target Qualification Level is the interchange level that we expect to apply to your Payment Transactions. It is determined based on the type of Payment Transactions you submit and how they will most likely be processed. However, it is possible that some or many of your Payment Transactions will downgrade to a more costly interchange level, resulting in higher interchange. This may occur because those "Non-Qualified Transactions" do not meet the criteria to qualify at your Target Qualification Level. Paymentech has set your Target Qualification Level based on the assumption that all of your Payment Transactions will satisfy the criteria established by the Payment Brand rules to meet the Target Qualification Level set forth in your pricing schedule. The actual interchange applicable to each transaction, though, will be based on the actual qualification level of the transaction. A summary of the primary qualification criteria for each interchange level established by the Payment Brands is available at [www.chasepaymentech.com/interchange\\_chart/](http://www.chasepaymentech.com/interchange_chart/).

Capitalized Terms: Please review the definitions in your Agreement so that you understand the capitalized terms we use in this pricing schedule. The capitalized term "Payment Brand" has the same meaning as the term "Payment Brand" or "Association" in your Agreement. The capitalized term "Payment Transaction" has the same meaning as the term "Payment Transaction", "Card Transaction", or "Sales Data" in your Agreement. The capitalized term "Payment Instrument" has the same meaning as the term "Payment Instrument", "Card", or "credit card" in your agreement.

**IF YOU SELECT TO USE A PINPAD ENTRY DEVICE, PLEASE READ THE FOLLOWING CAREFULLY**

If you are not currently using a PCI PED / TDES device according to the Visa website listing, you will be required prior to July 1 2010 to upgrade to a certified device at your own cost. You can find a listing of devices supported by Chase Paymentech at [www.chasepaymentech.com/merchantcenter](http://www.chasepaymentech.com/merchantcenter).

**IF YOU SELECT TO USE NETCONNECT, PLEASE READ THE FOLLOWING CAREFULLY**

NetConnect is a product that utilizes the Internet for the transmission to us of your Card transactions. We cannot and will not be responsible for the reliability or security of your transmissions to us while they are in transit to us via the Internet. We strongly recommend that you maintain a dial back-up option to us for transmission of Card transactions for use during periods when your Internet connection is unavailable. Transactions sent to us via a dial back-up option during such periods will be billed an additional \$0.015 per transaction for increased communication costs.

Lauderdale by the Sea

By: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_  
(Authorized Signature) (Month/Day/Year)

## **Schedule B – Estimated Total Fees**

Chase Paymentech Merchant Services Description	Rate	Annual Volume	Chase Paymentech	
<u>Annual Fees</u>				
Setup Fee			\$50.00	PK
Service/Statement Charge \$10/mo			\$120.00	PK
<u>Access Fees</u>				
Payable to Visa	0.0195	69,600	\$1,357.20	PK
Payable to MasterCard	0.0185	29,400	\$543.90	PK
<u>Small Ticket Interchange Fees</u>				
Payable to Visa and MC	0.0165	198,000	\$3,267.00	PK
Payable to Visa and MC	0.0400	99,000	\$3,960.00	
<u>Authorization Fees</u>				
Payable to Chase Paymentech	0.0400	99,000	\$3,960.00	PK
<u>Association Fees - Visa &amp; MC</u>				
Payable to Visa and MC	0.0011	198,000	\$217.80	PK
<b>Estimated Total Annual Cost</b>			<b>\$13,475.90</b>	

<u>Other Fees</u>				
Chargeback fee			\$10.00	PK
International/Cross border fee per transaction			0.0400	PK

<u>Assumptions</u>				
Annual Visa transactions		69,600		
Annual MC transactions		29,400		
Total Annual transactions		99,000		
Average transaction		\$2.00		
Total Annual Credit Receipts		\$198,000.00		
Avg Monthly Credit Card Receipts		\$16,500		

x *BA Top*

\* Changes in Interchange Rates could affect total Cost of Acceptance.