ORDINANCE NO. 2014-25

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN AGREEMENT FOR MERCHANT PAYMENT CARD PROCESSING AMONG THE CITY OF POMPANO BEACH, PAYMENTECH, LLC AND JPMORGAN CHASE BANK, N.A.; AUTHORIZING THE FINANCE DIRECTOR, CONTROLLER OR REVENUE COLLECTIONS MANAGER TO EXECUTE ON BEHALF OF THE CITY ALL MERCHANT ACCOUNT APPLICATIONS AND OTHER FORMS ASSOCIATED WITH THIS AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Agreement for Merchant Payment Card Processing among the City of Pompano Beach, Paymentech, LLC and JPMorgan Chase Bank, N.A., a copy of which Agreement is attached hereto and incorporated herein by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement.

SECTION 3.   Without further approval of the City Commission, the Finance Director, Controller or Revenue Collections Manager are hereby authorized to execute on behalf of the city all merchant account applications and other forms, including agreements, associated with the said Merchant Payment Card Processing Agreement.

SECTION 4. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 5. This Ordinance shall become effective upon passage.

PASSED FIRST READING this 11th day of _____ March, 2014.

PASSED SECOND READING this 11th day of ___ March, 2014.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

/jrm
2/24/14
L:ord/2014-174

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AGREEMENT FOR MERCHANT PAYMENT CARD PROCESSING

THIS AGREEMENT FOR MERCHANT PAYMENT CARD PROCESSING is made by and among the **CITY OF POMPANO BEACH, FLORIDA**, a Florida municipal corporation, (the "City" or "Merchant"), **PAYMENTECH, LLC**, a Delaware limited liability company ("Paymentech" or "Provider"), and **JPMORGAN CHASE BANK, N.A.**, a national banking association (the "Member").

WHEREAS, the City issued its Request for Proposals for Banking Services, No. H-62-2013 (the "RFP") to solicit proposals to serve as the City's primary relationship bank; and

WHEREAS, Paymentech and Member responded to the RFP by submitting its proposal dated October 24, 2013 ("Proposal"), whereby Merchant Services was a component service, which Proposal was selected by the City to be the best value; and

WHEREAS, Member is a member of several Payment Brands and Paymentech is authorized, through Member, to process the City's Transactions; and

WHEREAS, the City wishes to accept Payment Cards from its Payors as a method of payment for goods or services offered by the City or as payment on an account held by the City;

WHEREAS, it is the desire of the parties hereto to enter into an agreement whereby Paymentech will provide merchant payment card processing services to the City under the terms and conditions set forth in this Agreement.

1.   ENTIRETY OF AGREEMENT. The entire and integrated agreement between the City, Paymentech and Member related to the service to be provided shall consist of (1) this Base Agreement (Items 1 through 23 herein) for Merchant Payment Card Processing, (2) the Chase Paymentech Select Government Merchant Payment Card Processing Terms and Conditions (as may be amended from time to time and together with all attachments, exhibits, supplements and schedules attached thereto or incorporated by reference), attached hereto as **Attachment A** and incorporated herein by reference, (3) City's Request for Proposals, *Banking Service – H-62-13* (the "RFP"), included as **Attachment B**, and(4) the Providers Bid Response (the "Proposal"), included as **Attachment C**.

2.   MERCHANT PAYMENT CARD PROCESSING SERVICES. Paymentech shall provide the services described in the Agreement as they relate solely to merchant payment card processing (including, without limitation, the authorization, conveyance and settlement of Transactions; which services are hereinafter referred to as the "Services"). The City acknowledges that Paymentech shall use reasonable care in performing its obligations under this Agreement. Time shall be of the essence with respect to all matters set forth in this Agreement. Paymentech acknowledges that this Agreement in non-exclusive and that the City reserves the right to establish merchant accounts with other providers, or provide for additional merchant card processing services from other providers if the City so deems necessary.

3.   ADDITIONAL OR REVISED SERVICES. The parties acknowledge and agree that, in the event that the City elects to utilize any of Paymentech services not set forth in the Proposal,

or in the event that Paymentech, in the normal course of its business, develops specific service agreement in the future for merchant card processing services requested by the City in addition to those covered by the RFP and Proposal, the parties will execute an amendment or the specific services agreement, which shall be deemed to be an amendment to and subject to this Agreement, whether or not specifically stated in the service agreement.

4. COMPENSATION. For the Services, the City agrees to pay all applicable fees, which shall be calculated and payable pursuant to this Agreement, including, but not limited, to Section 9.1 of **Attachment A** and Schedule A to **Attachment A**. Furthermore, in accordance with Section 4 of **Attachment A**, the City agrees that fees may be automatically deducted from monies on deposit in an account (the "Settlement Account") with a bank that is a member of the Automated Clearing House system or the Federal Reserve wire system (the "Bank") in an amount sufficient to cover the City's obligations under the Agreement, including, without limitation, all applicable charges as outlined in Schedule A to **Attachment A** (the "Fees"). Provider shall prepare a monthly statement for Services rendered.

5. TERM. The term of the engagement under this Agreement shall commence upon the earlier of (a) the date executed by both parties; or (b) the date Paymentech processes the City's first Transaction submitted pursuant to this Agreement and shall continue for a term of five (5) years (the "Initial Term"). The agreement may be extended for an additional five (5) year period, if agreeable to all parties.

6. COMPLIANCE WITH LAWS. The parties agree to comply in all material respects with all applicable federal and state laws and regulations and all applicable county and City ordinances and regulations, including, but not limited to, standards of licensing, conduct of business and those relating to criminal activity.

7. INDEPENDENT CONTRACTOR. The providers shall be deemed an independent contractor for all purposes, and the employees of the providers or any of its contractors, subcontractors and the employees thereof, shall not in any manner be deemed to be employees of City. As such, the employees of the Providers, its Contractors or subcontractors, shall not be subject to any withholding for tax, social security or other purposes by City, nor shall such Contractor, subcontractor or employee be entitled to sick leave, pension benefits, vacation, medical benefits, life insurance, workers or unemployment compensation or the like from City.

8. AUDIT AND INSPECTION OF RECORDS. To the extent permitted by applicable law, Paymentech shall permit the authorized representatives of the City to inspect and audit all data and records of Paymentech specifically and directly related to the services rendered under or pursuant to this Agreement by Paymentech to the City, if any, relating to performance under the contract until the expiration of three years after contract termination.

Paymentech further agrees to require a subcontractor to agree that City or any of their duly authorized representatives shall, until the expiration of three years after contract termination, have access to and the right to examine any directly pertinent City books, documents, papers and records of such subcontractor, involving transactions related to the Agreement.

9. INSURANCE. The following insurance coverage shall be required:

a. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees) or the state in which the work is to be performed or of the state in which the providers are obligated to pay compensation to employees engaged in the performance of the work. The providers further agree to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

b. Liability Insurance

1) Naming the City of Pompano Beach as an additional insured as City's interests may appear, on General Liability Insurance only, relative to claims which arise from bank's negligent acts or omissions in connection with Bank's performance under this agreement.

2) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

LIMITS OF LIABILITY

Type of Insurance	each occurrence	aggregate

GENERAL LIABILITY: *MINIMUM $1,000,000 per OCCURRENCE and AGGREGATE*
  * Policy to be written on a claims incurred basis

XX	commercial general liability coverage form	
XX	premises - operations	bodily injury
__	explosion & collapse hazard	property damage
__	underground hazard	
__	products/completed operations hazard	bodily injury and
XX	contractual insurance	property damage
XX	independent contractors	
XX	personal injury	personal injury

AUTOMOBILE LIABILITY: *MINIMUM $1,000,000 per OCCURRENCE and AGGREGATE*

		bodily injury (each person)
		bodily injury
XX	business auto coverage form	(each accident)
XX	owned	property damage
XX	hired	bodily injury and
XX	non-owned	property damage combined

REAL & PERSONAL PROPERTY

__	comprehensive form	Provider must show proof they have this coverage.

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EXCESS LIABILITY

		bodily injury and		
__	umbrella form	property damage		
XX	other than umbrella	combined	$2,000,000.	$2,000,000.

XX	**PROFESSIONAL LIABILITY**	$1,000,000.	$1,000,000.
	* Policy to be written on a claims made basis		

Should the Commercial General Liability insurance be cancelled prior to its expiration date, the insurer will endeavor to mail thirty (30) days in advance notice to the City to the address indicated in section 12 below. The obligation to provide notice of cancellation does not affect, in any way, coverage provided under the policy or the cancellation of the policy or the effective date thereof, nor shall this obligation invest any rights in any entity not insured under the Policy.

Paymentech shall furnish to the City the certification or proof of insurance required by the provisions set forth above, within ten (10) days after notification of award of contract.

10.   HOLD HARMLESS AND INDEMNIFICATION. Providers covenant and agree that it will indemnify and hold harmless the City and all of its officers, agents, and employees from any loss, damage, cost, charge or expense arising out of any Chargeback or third party claim or complaint (a) made with respect to any error in Transaction Data caused by Paymentech or by malfunctions of Paymentech's processing systems; (b) caused by Paymentech's noncompliance with this Agreement, the Payment Brand Rules, or the Security Standards; or (c) resulting from any voluntary or involuntary bankruptcy or insolvency proceeding by or against Paymentech. Furthermore, Paymentech shall indemnify and hold harmless the City and all of its officers, agents, and employees from any loss, damage, cost, charge or expense arising out of any claim related to Paymentech's breach of the representations made in Section 22 herein. Neither Paymentech nor any of their subcontractors will be liable under this section for damages arising out of any (d) injury or damage to persons or property directly caused by or resulting from the negligence of the City or any of its officers, agents or employees, (e) claim or complaint relating to City's failure to resolve a payment dispute concerning merchandise or services sold by City, or (f) City's negligence or willful misconduct. The indemnification provided under this Section 10 shall survive termination and is subject to all limitations of liability set forth in this Agreement.

11.   TERMINATION. In addition to any other termination rights set forth in the Agreement, including, but not limited to Section 10 of Attachment A, the City shall have the right to terminate this Agreement, in whole or in part, with or without cause, and for its convenience, when, in its sole discretion, it believes that it lacks the state-appropriated funds to continue paying its obligations under this Agreement, upon ninety (90) days prior written notice to Paymentech. Furthermore, in addition to any other termination rights set forth in the Agreement, including, but not limited to Section 10 of Attachment A, either party may terminate the Agreement upon written notice to the other party in the event of: (i) a failure to remit charges due, after a reasonable grace period; (ii) a determination in good faith by the terminating party that the financial or business condition of the other party has become impaired; or (iii) a determination by the terminating party, that termination is necessary or required by law or regulation. The receiving party shall have a reasonable opportunity to act upon a termination request submitted pursuant to this Section 11.

12. NOTICE. All written notices required under this Agreement shall be sent first class, postage prepaid, in the case of mailing, or by overnight or same day courier, or by electronic transmission producing a written record, or hand delivered at the address set forth below, or to such other address as either party may from time to time specify to the other party in writing:

PROVIDER:
Chase Paymentech
4 Northeastern Blvd.
Salem, New Hampshire 03079
ATTN: David Miller

CITY:
City of Pompano Beach
100 W. Atlantic Blvd.
Room 480
Pompano Beach, FL 33060
ATTN: Finance Director

13. NON-DISCRIMINATION. In performing under this Agreement, the providers shall not discriminate against any person because of race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status or sexual orientation.

14. ASSIGNMENT.
(a) **City.** City may not transfer or assign this Agreement without the prior written consent of Paymentech. Any purported transfer or assignment of this Agreement by City (including by operation of law, merger, or otherwise) without Paymentech's prior written consent shall be, in Paymentech's sole discretion, null and void and City shall remain bound by the terms and conditions of this Agreement and shall be fully responsible for all Transactions submitted by the purported assignee/transferee, and for all related liabilities arising therefrom. In the case of a permitted transfer or assignment of this Agreement by City, the assignee/transferee shall, as of the effective date of the assignment or transfer, be bound by the terms and conditions of this Agreement and shall be fully responsible for all Transactions submitted and for all related liabilities arising therefrom. 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 City's assets or business, shall have any right to continue or to assume or to assign this Agreement without Paymentech's prior written consent. City agrees to provide Paymentech with not less than thirty (30) days prior written notice of: (i) any sale of all or substantially all of the assets of City; or (ii) any person or entity becoming the beneficial owner, directly or indirectly, of securities representing more than fifty percent (50%) of the combined voting power of City's securities, or otherwise acquires voting control of City.

(b) **Paymentech; Member.** Upon sixty (60) days notice to City, 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 consent of City. In the event Paymentech assigns or transfers this Agreement pursuant to this Section 14(b), the City may terminate this Agreement by providing Paymentech with thirty (30) days written notice; provided that such notice is received by Paymentech within thirty (30) days of Paymentech's assignment or transfer of this Agreement.

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15. CONFLICT OF INTEREST. Paymentech represent that to its knowledge, no City employee is also a majority owner, corporate officer, or an employee of Provider. Paymentech further acknowledge that if it comes to Paymentech's attention that any City employee is a majority owner, corporate officer, or an employee, Paymentech will, as it may determine, file a statement with the Broward County Supervisor of Elections pursuant to §112.313, Florida Statutes. Notwithstanding the forgoing, Paymentech has processing and other business relationships in the normal course of business with various persons or entities, which may include employees or officers of the City. Such relationships are generally governed by usual and customary terms and conditions. However, the JPMorgan Chase Code of Conduct prohibits any employee in general from acting on behalf of Paymentech in any transaction or business relationship involving such employee, members of his/her family, or other persons or organizations with which such employee or his/her family have any significant personal connection or financial interest.

16. PUBLIC ENTITY CRIMES ACT. Paymentech represents, to the knowledge of the undersigned, that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), and certifies that, as of the Effective Date, Paymentech does not appear on the convicted vendor list maintained by the State of Florida Department of Management Services. Violation of this section may result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities.

17. GOVERNING LAW. This Agreement shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law without regard to conflicts of law provisions. The parties agree that proper venue for any suit concerning this Agreement shall be as follows: if such suit is brought by Paymentech against the City, Broward County, Florida, or the Federal Southern District of Florida; if such suit is brought by City against Paymentech, Dallas County, Texas, or the Federal Northern District of Texas. To encourage prompt and equitable resolution of any litigation, each party hereby waives its rights to a trial by jury in any litigation related to this Agreement.

18. WAIVER. Any waiver by parties hereto of any one or more of the covenants, conditions, or provisions of this Agreement, must be in writing executed by the party against whom such waiver is sought to be enforced and shall not be construed to be a waiver of any subsequent or other breach of the same or any covenant, condition or provision of this Agreement.

19. PUBLIC RECORDS. It is the policy of the State of Florida that all state, county, and municipal records (including those of the City) are open for personal inspection and copying by any person. The City is a public agency subject to Chapter 119, Florida Statutes; therefore, providing access to public records is the City's duty. Paymentech will act in good faith to maintain its records related to this Agreement and assist the City in its compliance with Florida's Public Records Law.

20. MUTUAL COOPERATION. The City represents that the performance of this contract is essential to the provision of vital public services and the accomplishment of the stated goals and mission of City. Therefore, Paymentech shall act in good faith in all relations with City in its performance under this Agreement.

21. CONTROLLING PROVISIONS. Except as otherwise specifically provided herein, in the event of any conflict between the specific provisions of this Agreement and the requirements or provisions of the RFP and/or Proposal, the provisions shall be given precedence in the following order: (1) **Attachment A**, (2) this Base Agreement (items 1 through 23 herein), (3) the Proposal; and (4) the RFP. Wherever possible, the provisions of the documents shall be construed in such manner as to avoid conflicts between provisions of the various documents.

22. SIGNING AUTHORITY. Paymentech represents that it is duly authorized, whether pursuant to a power of attorney or otherwise, to execute this Agreement (and any subsequent amendments) for itself and on behalf of Member.

23. SURVIVAL. The provision of Sections 8, 9, 10, 18, 19 and 22 herein, as well as Schedule A and the provisions of Sections 1.6, 4.2, 4.4, 4.5, 4.6, 5, 6, 7, 9, 10.2, 10.4, 12, 14, 15, 16 and 17 of **Attachment A**, shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper and appropriate officials on the day and year first above written.

"CITY"

CITY OF POMPANO BEACH

Witnesses:

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

_____
MARY L. CHAMBERS, CITY CLERK

(SEAL)

Approved by:

_____
GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 17th day of March, 2014, by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and **MARY L. CHAMBERS** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

_____
NOTARY PUBLIC, STATE OF FLORIDA

Krystal Aaron
_____
(Name of Acknowledger Typed, Printed or Stamped)

KRYSTAL AARON
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE874865
Expires 2/14/2017

_____
Commission Number

PAYMENTECH, LLC FOR ITSELF & ON BEHALF OF JPMORGAN CHASE BANK, N.A. (Member)

Witnesses:

Rohoni S. Doubleday

Rohoni S. DOUBLEDAY
Print Name

By: _____

Print Name: Bob Young

Title: Director - Credit

Business License No. _FL license # MO7800004 219_
Tax ID 260906095

_____
Print Name

STATE OF _Texas_
COUNTY OF _Dallas_

The foregoing instrument was acknowledged before me this _21st_ day of _January_ ~~2014~~ by _Bob Young_ as _Director of Credit 2015_ of Paymentech, LLC, a Delaware limited liability company on behalf of the company. (He/she is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:
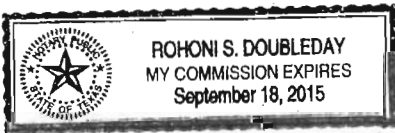
Rohoni S. Doubleday
NOTARY PUBLIC, STATE OF _Texas_

Rohoni S. DOUBLEDAY
(Name of Acknowledger Typed, Printed or Stamped)

Exp — Sept. 18, 2015
Commission Number

ROHONI S. DOUBLEDAY
MY COMMISSION EXPIRES
September 18, 2015

:jrm
2/18/14
L:agr/finance/2014-614

Rohoni S. Doubleday
witness —

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CHASE ○™ Schedule A to Merchant Agreement

Paymentech

Merchant: City of Pompano Beach

NAPFINSCHEDAICPT 20131015 V3.13.4

Assumptions

Transaction related assumptions		Other assumptions	
Payment Transaction Sales Volume	$5,704,470	Number of locations	21
Average Transaction Amount	$20.83	Authorization / Capture %	105.0%
PIN Debit / EBT Transactions	0	Chargebacks as % of Sales Transactions	0.0300%
Conveyed Transactions	7,977	Stored Value Transactions	N/A
		Safetech Encrypted Items	N/A

Target Qualification Level:			
MasterCard:	Public Sector		MUPS
Visa:	CPS Retail 2 (Emerging Markets)		VCR2
Discover:	PSL Public Services - Core		D161

1. Fees applied on every transaction – MasterCard, Visa and Discover assess an Interchange Rate, Interchange Fee, Assessment Fee & Network Fee for each transaction. These rates and fees will be passed thru at cost. Payment Brand interchange rates can be accessed by visiting the Learning & Resources section of Chase Paymentech's website, and selecting "Understanding Interchange".

Payment Brand Interchange & any incremental discount rate %

MasterCard, Visa & Discover Interchange Rates	as set by each Payment Brand
MasterCard, Visa & Discover Incremental Discount Rate	0.0400%
Billing Frequency:	Monthly

PIN Debit and/or EBT Network Fees	All standard PIN Debit Network Fees will be assessed
PIN Debit – Incremental Discount Rate	N/A

JCB (Japanese Credit Bureau)	N/A
Voyager Discount Rate (if settled)	N/A

Payment Brand Assessments

MasterCard	(Credit transactions < $1000 and all Debit Transactions)	0.110%
MasterCard	(Credit transactions > $1000)	0.130%
Visa		0.110%
Discover		0.105%

Payment Brand Network Fees

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

Transaction Fees

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

Authorization Fees

MasterCard per authorization	$0.0400
Visa per authorization	$0.0400
Discover per authorization	$0.0400
JCB per authorization	N/A
American Express per authorization	$0.0400
Voyager per authorization	N/A
Wright Express per authorization	N/A
Private Label per authorization	N/A
Dial Backup authorization surcharge	$0.0150

Encryption Fees

Safetech Encryption per transaction	N/A

Customer Initials	X _[signature]_	Please initial to acknowledge page 1 of the Schedule A pricing sheet

2. One Time and Periodic Fees

One Time Fees		Monthly Fees		Monthly Fees – Pass Thru	
Account Setup Fee	N/A	Monthly Service Fee [1]	N/A	Visa Fixed Acquirer Network Fee [4]	Varies
Rush Fee	N/A	Monthly Minimum Fee [2]	$25.00		
Terminal Reprogram Fee	N/A	Monthly Helpdesk Fee	N/A	**Annual Fees**	
PIN Debit Setup Fee	N/A	Online Reporting Tool	$10.00		
PIN Pad Encryption Fee	N/A	Safetech Encryption [3]	N/A	Annual Fee	N/A

Internet Product: **NetConnect**

Setup fee	N/A	Monthly fee	N/A
Third Party Setup fee	N/A	Third Party Monthly fee	N/A

1 – Monthly service fees will be debited for the first time in the month after your account has been set up. These fees will be debited regardless of whether you are processing transactions through your account.

2 – If the total of all fees each month in section 1, 3, 4 and 5 do not equal the Monthly Minimum Fee, your account will be debited for the difference.

3 – If Merchant obtains point of sale device(s) from Chase Paymentech for use with Safetech Encryption, the following additional fees shall be assessed: (a) a one-time fee of $10.90 per device; and (b) an encryption injection fee of $34.95 per device per occurrence. These assessments are in addition to the above Safetech Encryption Fee(s). If Merchant obtains point of sale device(s) from a third party, additional fees may apply. Merchant acknowledges and understands that its use of any fraud mitigation or security enfacement solution (e.g. an encryption product or service), whether provided to merchant by Paymentech or a third party, in no way limits Merchant's obligation to comply with the Security Standards or Merchant's liabilities set forth in this Agreement.

4 – Visa Fixed Acquirer Network Fee is a monthly fee assessed by Visa based on Merchant Category Code (MCC), dollar volume, number of merchant locations, number of tax id's, and whether the physical Visa card is present or not present at the time of the transaction. This fee can vary monthly.
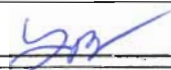
3. Per Incidence Fees

Per Incidence Fees: Charged every time your account incurs one of the below items

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

Statement Type:	E-Mail	Statement only	Statement Frequency:	Monthly

Customer Initials	X _____	Please initial to acknowledge page 2 of the Schedule A pricing sheet

4. Stored Value Fees

Gift Card Program Type & Fees

Gift Card Program:	**N/A**		
Setup Fee	N/A	Processing Fee per transaction	N/A
Monthly Fee	N/A	Block Activation Fee	N/A
ACH Services Fee	N/A	Card Data File Fee	N/A

5. Payment Brand Fees – Per Incidence

MC Acquiring License Fee *	0.0040%	Charged on MasterCard Gross Sales volume. See additional information under Payment Brand Charges section on page 4.
DI Network Authorization Fee	$0.0025	Charged by Discover on all authorizations for card transactions that are settled through the Discover Network
MC AVS Auth Access Fee (Card Present)	$0.005	Charged by MasterCard when a merchant uses the address verification service to validate a cardholder address
MC AVS Auth Access Fee (Card Not Present)	$0.0075	
MC Card Validation Code 2 Fee	$0.0025	Charged by MasterCard when a merchant submits the Card Validation Code 2 (CVC2) in an authorization request
MC Account Status Fee (Intra-regional)	$0.025	Charged by MasterCard or Visa when a merchant uses this service to do an inquiry that a card number is valid
MC Account Status Fee (Inter-regional)	$0.03	
Visa Zero $ Account Verification Fee	$0.025	
MC Processing Integrity Fee	$0.055	Charged when a card is authorized but not deposited and the authorization is not reversed in a timely manner
Visa Misuse of Authorization Fee	$0.048	
Visa Zero Floor Limit Fee	$0.10	Charged when a transaction is deposited but never authorized
Visa Transaction Integrity Fee	$0.10	Applies to Visa Debit & Prepaid transactions that do not meet qualification criteria for Custom Payment Service (CPS) categories
MC Cross Border Assessment Fee	0.40%	Charged by MasterCard, Visa and Discover on foreign bank issued cards.
Visa International Service Assessment Fee	0.40%	
Discover International Service Fee	0.55%	
MC International Support Fee	0.85%	Additional fee charged by MasterCard, Visa and Discover on foreign bank issued cards
Visa Interregional Acquiring Fee	0.45%	
Discover International Processing Fee	0.40%	
Visa Partial Auth Non-Participation Fee	$0.01	Applies to Petroleum merchants using automated fuel pumps that do not support Partial Authorization

6. Other Fees

Fee Description	Amount	Fee Description	Amount

Customer Initials	X _____	Please initial to acknowledge page 3 of the Schedule A pricing sheet

Type	Description	Fee
Replacement Fee (swap)	In warranty - Terminals, Printers, & Pinpads [1]	$50.00
Replacement Fee (swap)	Out of warranty - Terminals, Printers, & Pinpads: Replacement (swap) fees vary based on Manufacturer and Model and will fall within the specified range to the right	$100 - $500
Injection Fee (swap)	Safetech Encryption Injection	$34.95
Restocking Fee	Return equipment for any reason other than repair	$150.00
Late Fee	For all equipment returned late, or not returned	$500.00

1 New Equipment Warranty timeframes

5 years – Verifone Vx5XX, Vx6XX, PP1000 SE180; Hypercom T42XX, P1300 Pinpad, Ingenico ICT250, IPP320

3 years – Verifone MX830 Pinpad

1 year – all other new equipment

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

Amount payable upon Termination

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

Payment Brand Charges

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

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

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

7. Authorized Signature

Authorized Representative Signature: Must appear on Merchant Application section 11

LAMAR FISHER
Printed Name

MAYOR
Title

X _____
Signature

3/13/14
Date

Please ensure you have initialed pages 1, 2 and 3

Please see Additional City Signature Page Attached

AS TO SCHEDULE A TO ATTACHMENT A TO THE AGREEMENT FOR MERCHANT PAYMENT CARD PROCESSING

"CITY"

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

MARY L. CHAMBERS, CITY CLERK

(SEAL)

Approved by:

GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this **17th** day of ___**March**___, 2014, by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and **MARY L. CHAMBERS** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

_____
NOTARY PUBLIC, STATE OF FLORIDA

_____Krystal Aaron_____
(Name of Acknowledger Typed, Printed or Stamped)

KRYSTAL AARON
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE874865
Expires 2/14/2017

_____
Commission Number

CHASE ◯™
Paymentech

If you make any corrections,
you MUST initial each change.

Select Merchant Application

1. Merchant Business (Federal regulations require us to collect and retain information verifying a merchant's identity.)

"Doing Business As" (DBA) Information

Merchant DBA Name	Date Business Started (MM/YYYY)
CITY OF POMPANO BEACH	1 / 1908

DBA Street Address (No PO Box or Paid Mail Box)	Telephone #
100 W. ATLANTIC BLVD, RM 135	954-786-4503

City	State	Zip Code	Fax #
POMPANO BEACH	FL	33060	954-786-5557

Name of Primary Contact	Merchant DBA Email Address
LINDA DYE	LINDA.DYE@COPBFL.COM

Legal Information (If you are an Individual/Sole Proprietor, fill in this section with your personal information)

Merchant Legal Name	State of Formation	Federal Tax ID/EIN (sole prop use SSN)
CITY OF POMPANO BEACH	FL	5 9 6 0 0 0 4 1 1

Complete this section if different from DBA Information.

Legal Street Address	Telephone #
100 W. ATLANTIC BLVD, RM 480	954-786-4503

City	State	Zip Code	Fax #
POMPANO BEACH	FL	33060	954-786-5557

Legal Email Address
LINDA.DYE@COPBFL.COM

Business and IRS Information (Please check the type of business and how it is taxed)

☐ LLC	➡	taxed as ☐ S Corporation ☐ C Corporation ☐ Partnership ☐ Disregarded Entity[1]
☐ Individual/Sole Proprietor		[1] A *Disregarded Entity* is a business that is separate from its owner for legal purposes but the owner chooses to "disregard" that separation for federal income tax purposes. If an individual owns a Disregarded Entity, it is treated as a sole proprietor. If another legal entity owns it, it is treated as a branch or division of the owner.
☐ Partnership		
☐ Private Corporation or ☐ Public Corporation	➡	taxed as ☐ S Corporation ☐ C Corporation
☒ Government Agency or ☐ Non-Profit[2]	➡	check if ☐ Exempt from IRS backup withholding

[2] Non-profit companies need to submit form 501C and, if exempt from sales tax, should also submit their state tax exempt certificate.

2. Merchant Profile

Is your business home-based? ☐ Yes ☒ No	Has business ever been in bankruptcy? ☐ Yes ☒ No
If "Yes" above, where is the inventory located?	What is your business industry type?
	☒ Retail ☐ Restaurant ☐ Lodging
	☐ Auto Rental ☐ Cash Advance ☐ Convenience Store/Gas
What merchandise do you sell or services do you provide?	☐ Other:
BUS TAX/PARKING/UTILITIES	☐ Internet (You are required to list all website addresses):
Is your business seasonal? ☐ Yes ☒ No	www.

3. Delivery of Statements, Chargeback Requests, and Retrieval Requests

Reporting and Statements – you may access transaction history and monthly statements online via Resource Online, or have your monthly statements emailed to you.	Chargeback and Retrieval Requests
☒ **Resource Online.** Set up a Resource Online account and use the following email address as the user login: LINDA.DYE@COPBFL.COM ☐ **Email Statements** to the: ☐ Legal email address ☐ DBA email address	Mail Chargeback and Retrieval Requests to ☒ Legal address ☐ DBA address

4. Sales Information

What is the estimated annual breakdown (in %) of your annual Payment Card Transactions?

	%	Via mail or phone order
25	%	Ecommerce – accepted on your website
75	%	Card is swiped
	%	Card is present but keyed
100	**%**	**Total**

Do you ever charge a Customer on a recurring basis? ☐ Yes ☒ No

If "Yes" above, how often will you charge?

☐ 30 Days   ☐ 60 Days   ☐ 90 Days   ☐ Annually

☐ Other:

If Customers are required to pay a deposit, what % of total sale? %

5. Ownership Information

If your business is privately owned by one or more individuals (e.g. LLC, Sole Prop, Partnership, or Private Corporation),

➡ Complete section A or A and B for one or two owners with the greatest % of ownership.

➡ All owners listed below must sign the Application and Agreement in Section 11.

If your business is a non-profit organization, publicly owned corporation, or government entity,

➡ Complete section C only

If a parent company owns your business,

➡ Enter the name of the legal entity(ies) in section A or A and B

➡ Provide the name of an Authorized Representative in Section C.

➡ Substitute the parent company's Federal Tax ID for the Social Security #.

A Name of Individual/Sole Proprietor or Parent Company	Percentage of Ownership: 100 %	Social Security #
CITY OF POMPANO BEACH		5 9 6 0 0 0 4 1 1

Street Address (Individual/Sole Proprietor use home address) (No PO Box or paid mailbox)	Date of Birth
100 W. ATLANTIC BLVD, RM 135	

City	State	Zip Code	Telephone #
POMPANO BEACH	FL	33060	954-786-4503

B Name of Individual/Sole Proprietor or Parent Company	Percentage of Ownership: %	Social Security #

Street Address (Individual/Sole Proprietor use home address) (No PO Box or paid mailbox)	Date of Birth

City	State	Zip Code	Telephone #

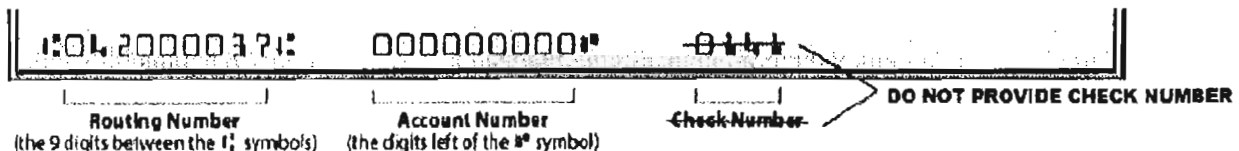| **C** Name of Authorized Representative	Title
Andrew Jean-Pierre *Lamar Fisher*	Controller *Mayor*

6. Funding and Account Information

The Merchant must own the bank accounts you provide below and it must be used primarily for business purposes. Chase Paymentech may:
- deposit into this account amounts owed to Merchant by Chase Paymentech, such as proceeds from Merchant's Payment Card Transactions
- debit this account for amounts Merchant owes to Chase Paymentech associated with its Merchant account, such as fees for processing Merchant's Payment Card Transactions
- debit this account for any negative amounts presented, such as refunds, returns or Chargebacks

Name of Bank	Designating this bank account for the purposes outlined above must not violate any of Merchant's organizational documents or any agreement to which the Merchant is a party.
CHASE	

Routing Number (always consists of 9 digits)

2	6	7	0	8	4	1	3	1

Account Number (number of digits will vary)

5	8	9	8	9	3	1	3	5					

The image below shows where to find your Routing Number and Account Number. Do not use the internal routing number that begins with a 5.

⑆04 20000 37⑆   0000000000⑈   8↑↑↑

Routing Number
(the 9 digits between the ⑆ symbols)

Account Number
(the digits left of the ⑈ symbol)

~~Check Number~~

DO NOT PROVIDE CHECK NUMBER

7. Payment and Processing Information

If you have previously accepted payment cards, please include your three (3) most recent monthly processing statements.

Please check all payment methods you wish to accept:	
☒ Visa ☒ MasterCard ☒ Discover/JCB ☒ American Express	
☐ Voyager ☐ Wright Express ☐ Gift Card ☐ PIN Debit	
Current Payment Processor:	
Has Merchant ever had a breach involving lost card data or received a notification for a violation of the Payment Brand Rules? ☐ Yes ☒ No	

Estimated Annual Visa/MC/Discover Sales Volume	$ 5704470
Estimated Annual PIN Debit Sales Volume	$
Average Ticket Amount	$ 20.83
Highest Transaction Amount	$

8. American Express® Authorization

If your American Express annual processing volume is greater than $500,000.00, please complete Section A only.

If your American Express annual processing volume is, or is expected to be, $500,000.00 or less, please complete Section B only.

A If you do not know your American Express SE #, or you would like to apply for one, please contact American Express directly at (855) 894-6570.

If you know your American Express SE #, please provide it here:

B Estimated Total Annual American Express Sales Volume	$	Estimated Average American Express Transaction Amount	$ 20.83

All American Express fees are set by American Express and are subject to change by American Express. The fees set forth herein are only quotes, based upon the then-current American Express pricing guidelines, which may be modified from time to time.

American Express Discount Rate*	%
American Express Prepaid/Gift Card Discount Rate*	1.95 %

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

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

*Based on Merchant's MCC, an additional per transaction fee of no more than $0.15 may be assessed. For Merchants with a Retail, Restaurant or Travel Agency MCC, an additional 0.30% downgrade will be charged by American Express for transactions whenever a CNP or Card Not Present charge occurs.

*Based on Merchant's MCC, an additional per transaction fee of no more than $0.20 may be assessed. Independent Gas Stations, Mail Order & Internet, and Supermarket MCCs will be assessed a Prepaid/Gift Card rate of [1.30% + $0.12], [2.25% + $0.20], and [0.45% + $0.20], respectively, in lieu of the 1.95% rate listed.

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, from time to time, and disclose such information to their agents, subcontractors, Affiliates, and other parties for any purpose permitted by law. I authorize and direct Paymentech and American Express and American Express's agents and Affiliates to inform me directly, or inform the entity above, about the contents of reports about me that they have requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I also authorize American Express to use the reports on me from consumer reporting agencies for marketing and administrative purposes. I am able to read and understand the English language. Please read the American Express Privacy Statement at http://www.americanexpress.com/privacy to learn more about how American Express protects your privacy and how American Express uses your information. I understand that I may opt out of marketing communications by visiting this website or contacting American Express at 1-(800)-528-5200. I understand that 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.

X _____

Signature	Print Name	Title	Date

9. Site Visit

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

The site visit includes, but is not limited to,
- an interview with you regarding the nature of your business, and
- photographs of your business operation.

If the site visit is not completed or the results of the site visit are not approved, Chase Paymentech may,
- decline your application for a merchant account
- withhold your funds, or
- terminate your Agreement with Chase Paymentech and close your Merchant account.

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

Best phone # to contact you:	Preferred language:
954-786-4503	☒ English ☐ Spanish
Best time to reach you: ANY	☐ Other:

10. IRS Certification

Under penalty of perjury, I certify that:

1. The number shown on this form (Section 1) is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and

2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest in dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and

3. I am a U.S. citizen or other U.S. person.

Certification Instructions

You must cross out and initial #2 above if you have been notified by the IRS that you are currently subject to backup withholding.

IRS Form W-9 instructions available upon request.

11. Authorized Representative(s)

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

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

Furthermore, by signing below I authorize Chase Paymentech, Member, or their designees to:
- investigate and verify personal credit and financial information about me; and
- obtain and use consumer credit reports on me from time to time in connection with establishing Merchant's account and maintaining the Agreement.

By submitting this Application, Merchant, through the undersigned Authorized Representative:
- represents and warrants that the person submitting this Application on behalf of Merchant is duly authorized to enter into agreements on behalf of Merchant and to legally bind Merchant to such agreements;
- represents and warrants that all information contained within the Application as well as any information submitted in conjunction with the Application is true, complete, and not misleading
- represents and warrants that it owns the bank account provided in Section 6
- understands that any unilateral changes to the pre-printed text of any part of the Application may result in Chase Paymentech declining Merchant's Application or terminating the Agreement
- agrees that Chase Paymentech, Member, or their designees, may:
  - investigate and verify the credit and financial information of Merchant; and
  - obtain credit reports on Merchant from time to time and use them in connection with establishing Merchant's account and maintaining the Agreement; and
- agrees that Member and Chase Paymentech may share credit, financial information about Merchant and Chase Paymentech.

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

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

X _A. Jeanpe_	ANDREW JEAN-PIERRE	5/8/2014
Signature	Print Name	Date

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

X		
Signature	Print Name	Date

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

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

Signature	Title	Date

Authorization Agreement for Automated Billing (ACH Debits)
and
For Direct Deposit (ACH Credits)

By checking the "I Agree" box and providing your name below, the undersigned represents and warrants that he/she (i) is an authorized representative of the legal entities and locations (collectively "Merchant") listed on the "Data Table & DDA-ABA Attachment" tab of this spreadsheet; and (ii) is authorized to enter into this Authorization Agreement for Automated Billing and For Direct Deposit on behalf of the Merchant. Merchant, through its authorized representative, hereby authorizes Paymentech, LLC and its affiliates and subsidiaries (collectively "Chase Paymentech") to initiate credit and debit entries to the account(s) indicated within the "Data Table & DDA-ABA Attachment" tab on a recurring basis and without regard to the source of any moneys 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 Chase Paymentech notifies you that all monies due from you under the terms of your Merchant Agreement have been paid in full.

☑ I agree

Na <u>Andrew Jean-Pierre</u>   Titl <u>Controller</u>   Dat <u>5/8/2014</u>

CHASE ◖ ™
Paymentech

SELECT GOVERNMENT MERCHANT PAYMENT CARD PROCESSING TERMS AND CONDITIONS

This Attachment A is attached to and forms a part of the Agreement for Merchant Payment Card Processing by and between the City of Pompano Beach, Florida ("Merchant"), Paymentech, LLC ("Paymentech"), for itself and on behalf of JPMorgan Chase Bank, N.A. ("Member").

1. MERCHANT'S ACCEPTANCE OF PAYMENT CARDS.

1.1 Transaction Submission. Merchant shall submit to Paymentech Transaction Data generated from all its Transactions processed through Paymentech 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 Payor to pay the fees payable by Merchant under this Agreement (i.e. the processing fees set forth on Schedule A).

(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) Except to the extent prohibited by the Payment Brand Rules or applicable law, Merchant may request or encourage a Payor to use a Payment Card other than the Payment Card initially presented by the Payor.

(e) Except to the extent permitted by the Payment Brand Rules and applicable law, Merchant must not establish a minimum or maximum Transaction amount as a condition for honoring a Payment Card.

(f) Merchant shall examine each Payment Card physically presented at the point of sale to determine that the Payment Card presented is valid and has not expired. Merchant shall exercise reasonable diligence to determine that the authorized signature on any Payment Card physically presented at the point of sale corresponds to the Payor's signature on the Transaction Receipt. If the Payment Card is not signed by the Payor, Merchant must obtain additional Payor identification.

(g) With respect to any Transaction for which a Payor 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 Payor. Merchant acknowledges that under certain Payment Brand Rules, Merchant cannot rebut a Chargeback where the Payor disputes making the purchase and Merchant does not have an electronic record (e.g., "swiping" or "tapping" a Payment Card) or physical imprint of the Payment Card.

(h) Merchant agrees to accept all categories of Visa or MasterCard Payment Cards (i.e., debit and credit cards), unless Merchant has notified Paymentech on its Application or otherwise in writing of its election to accept one of the following "limited acceptance" options: (i) all Visa consumer credit cards and Visa commercial credit and debit cards; (ii) Visa debit cards only (but no credit cards); (iii) all MasterCard consumer credit cards and MasterCard commercial credit and debit cards; or (iv) 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 Cards. 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.

(i) Merchant shall not split a single Transaction into two or more Transactions to avoid or circumvent authorization limits or monitoring programs.

(j) Merchant shall not accept Payment Cards for the purchase of scrip, as defined by the Payment Brand Rules.

(k) Merchant shall not require a Payor to complete a postcard or similar device that includes the Payor's Payment Card account number, expiration date, or any other account data in plain view when mailed.

(l) Except to the extent expressly permitted by law or the Payment Brand Rules, Merchant shall not add any tax or surcharge to Transactions. If any tax or surcharge amount is imposed, such amount shall be included in the Transaction

amount and shall not be collected separately. Furthermore, Merchant must provide at least thirty (30) days prior notice to Paymentech and the Payment Brands of its intent to impose a surcharge. All of Merchant's surcharge practices must comply with applicable laws and Payment Brand Rules, including, but not limited to, those laws and Payment Brand Rules governing the amount of the surcharge, and Payor disclosures.

(m) Merchant shall not request or use a Payment Card 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.

(n) At all times Merchant must prominently and clearly inform Payors of the identity of Merchant at all points of interaction so that the Payor can readily distinguish Merchant from any third party, such as a supplier of products or services to Merchant.

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 each Transaction submitted to Paymentech during the term of this Agreement, Merchant represents and warrants that:

(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 Payor for the amount of the Transaction.

(c) The Transaction is not for any purpose other than payment for the current Transaction, and, except to the extent permitted under the Payment Brand Rules, the Transaction does not represent the collection of a dishonored check or the collection or refinancing of an existing debt.

(d) At the time Merchant submits Transaction Data to Paymentech for processing: (i) Merchant has completed the Transaction with the Payor; (ii) the goods have been provided or shipped, or the services actually rendered to the Payor; and (iii) for recurring Transaction, Merchant has obtained the Payor's consent for the recurring Transaction. For approved prepayments, Merchant must advise the Payor (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 Payor.

(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 Payor (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 Payor.

(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 herein, and which is available to the Payor.

(j) Any Transaction submitted to Paymentech to credit a Payor's account represents a Refund for a Transaction previously submitted to Paymentech.

(k) Merchant has not submitted any Transaction that Merchant knows, or should have known, to be fraudulent, illegal, damaging to the Payment Brand(s), not authorized by the Payor, unenforceable or uncollectible, or otherwise prepared or submitted in violation of any provision of this Agreement, applicable law, or Payment Brand Rules.

1.5 Installment, Prepaid and Recurring Transactions.

(a) Unless specifically stated in its Application or otherwise approved in writing by Paymentech in advance, Merchant shall not accept Payment Cards in connection with installment plans. If the Payor 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 Payor 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.

(b) For recurring Transactions, Merchant shall (i) obtain the Payor's consent to periodically charge the Payor 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 Payor's Payment Card; 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: (iv) a cancellation notice from the Payor; or (v) notice from Paymentech or any Payment Brand (via authorization code or otherwise) that the Payment Card is not to be honored. Merchant shall include in its Transaction Data the electronic indicator that the Transaction is a recurring

Transaction.

1.6 Stored Value Card Transactions. This Section 1.6 applies only if Merchant elects to accept Stored Value Cards from its Payors and submits such Stored Value Card Transactions to Paymentech for processing.

(a)   Stored Value Cards are used by Merchant to issue spending credit to its Payors. Popular uses for Stored Value Cards include, but are not limited to, an electronic version of paper gift certificates, merchandise return cards, and prepaid cards. Merchant provides its Payor with a magnetic stripe card in exchange for money received, merchandise returned, or other consideration. The Stored Value Card represents a dollar value that the Merchant's Payor can either use or give to another individual. The actual record of the balance on the Stored Value Card is maintained by Paymentech. Upon acceptance of the Stored Value Card from a Payor, Merchant must immediately transmit the Stored Value Card information to Paymentech and the appropriate approval response will be routed to Merchant. Paymentech will provide Merchant with access to monthly reporting detailing Merchant's Stored Value Card Transactions and the outstanding balances on the individual Stored Value Cards. Merchant will have access to help desk support through Paymentech for its Stored Value Card Transactions. Payors will have access to an interactive voice response system ("IVR"), via a toll free number, through which they may receive some basic account and Stored Value Card balance information. Merchant's Stored Value Card program will be configured in a manner specified by Merchant to Paymentech during enrollment, which will represent binding program rules related to Merchant's Stored Value Card program.

(b)   If Merchant elects to participate in Paymentech's "Now!" or "Advantage" Stored Value Card service, Merchant is obligated to purchase Stored Value Cards from Paymentech. Paymentech will arrange for the Stored Value Card production and may, at its option, invoice Merchant therefore, in lieu of electronically debiting the Settlement Account. Any such invoice will be payable upon receipt. Stored Value Cards, packaging, and point-of-purchase marketing materials are available and priced on a per bundle basis, based on current rates. These rates are captured on the Now! and Advantage enrollment/order form(s). All production and delivery timeframes and costs provided are estimates only and Paymentech does not guarantee any specific date of delivery or price for Stored Value Cards produced by third parties. Merchant is responsible for all production costs and delivery charges for Stored Value Cards. The form and content of all Stored Value Cards may be subject to Paymentech's approval.

(c)   If Merchant elects to participate in Paymentech's "Custom" Stored Value Card service, Merchant is not obligated to purchase Stored Value Cards from Paymentech. If Merchant elects to purchase Stored Value Cards from Paymentech, Paymentech will arrange for the Stored Value Card production and may, at its option, invoice Merchant therefore, in lieu of electronically debiting Merchant's Settlement Account. Any such invoice will be payable upon receipt. All production and delivery timeframes and costs provided are estimates only and Paymentech does not guarantee any specific date of delivery or price for Stored Value Cards produced by third parties. Merchant is responsible for all production costs and delivery charges for Stored Value Cards. The form and content of all Stored Value Cards may be subject to Paymentech's approval.

(d)   Merchant is solely responsible for:
   (i)   complying with all applicable laws and regulations related to the acceptance of Stored Value Cards and Merchant's Stored Value Card program;
   (ii) ensuring that all Stored Value Cards require activation at the point of sale;
   (iii) any and all value adding and fraud losses;
   (iv) providing immediate written notification to Paymentech of any fraud losses;
   (v)   deactivating or otherwise removing all value from Stored Value Cards that have been compromised; and
   (vi) 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. To the extent required by the Payment Brand Rules, each authorization request must include the Payment Card's expiration date. Merchant acknowledges that authorization of a Transaction indicates that the Payment Card (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 Issuing Bank that a particular Transaction is in fact a valid or undisputed Transaction entered into by the actual Payor. 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 its Payors, prior to the completion of the Transaction at the point of sale. Merchant must also disclose its Refund Policy to Paymentech. Any material change to Merchant's Refund Policy must be submitted to Paymentech, in writing, not less than fourteen (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 Payor'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 Payor for shipping charges that the Payor paid to return merchandise. Merchant shall not accept any payment from a Payor as consideration for issuing a Refund. Merchant shall not give cash (or cash equivalent) refunds to a Payor in connection with a Transaction, unless required by law or permitted by the Payment Brand Rules.

3.3 Payor 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 name and the name that will appear on the Payor's Payment Card statement; (b) its customer data privacy policy; (c) a description of its security capabilities and policy for transmission of Payment Card Information; and (d) the address of Merchant's fixed place of business (regardless of website or server locations). Furthermore, Merchant must offer its Payors 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 Payor's consent for a recurring Transaction. Paymentech may from time to time contact Payors 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 Payor 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 or its authorized agent(s) to initiate electronic credit and debit entries (via ACH, wire transfer, or other means) to the Settlement Account, or any other bank account designated by Merchant in writing, at any time without regard to the source of any monies therein, 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 Card. 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 herein, 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 herein) 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. Furthermore, Merchant agrees to reimburse 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 Payor 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 obligations provided for in this Section shall survive termination of this Agreement and do not apply to any claim or complaint to the extent they are caused by Paymentech's own negligence or willful misconduct.

4.5 Negative Amounts. Merchant shall make all reasonable effort to 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, and if payment is not made within three (3) days of demand, debit the Settlement Account for the negative amount;
(b) withhold all or some of Merchant's Settlement funds and apply them against the negative amount; and
(c) apply funds held in the Reserve Account 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.

Reserve Account. If:

(a) there is a material breach of the Agreement by Merchant;
(b) Merchant is receiving excessive Chargebacks (as defined in Section 7.2 below);
(c) Paymentech has reasonable grounds to believe that it may be or become liable to third parties for the provisional funds extended to Merchant; or
(d) Paymentech has reasonable grounds to believe that it may be subject to any additional liabilities arising out of or relating to this Agreement, including, without limitation, any 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;

then each such event may subject Paymentech to additional risk (such risk being hereinafter referred to as "Anticipated Risk"). In any such event, Paymentech may temporarily suspend or delay payments to Merchant during Paymentech's investigation of the issue and/or designate an amount of funds that Paymentech must maintain in order to protect itself against Anticipated Risks (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 herein. The Reserve Account will contain sufficient funds to cover any unbilled processing costs plus Paymentech's estimated exposure based on reasonable criteria for Chargebacks 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 ninety (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 the timeframe indicated in the Retrieval Request or otherwise provided for in the Payment Brand Rules, but in no event more than twenty one (21) days from the date the Retrieval Request is initiated with the Issuing Bank, Merchant must, to the extent required by the Payment Brand Rules or the Retrieval Request itself, provide to Paymentech, via certified or overnight mail, confirmed fax, or upload to Paymentech's Online Chargeback Management System: (a) written resolution of Merchant's investigation of such Retrieval Request; (b) legible copies of valid Transaction Receipt(s); and (c) any additional supporting documentation. 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 shall not require a Payor, as a condition for honoring a Payment Card, to sign a statement that waives the Payor's right to dispute the Transaction.   Furthermore, 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 Payor upon the return or non-delivery of goods or services;
(b) A required authorization/approval code was not obtained;
(c) The Payor claims that the Payment Card is lost, stolen, counterfeit, or fraudulent;
(d) The Transaction or Transaction Data was prepared incorrectly or fraudulently;
(e) Paymentech did not receive Merchant's response to a Retrieval Request in accordance with Section 6 herein;
(f) The Payor 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;
    (g) The Payor refuses to make payment for a Transaction because, in the Payor's opinion, a claim or complaint has not been resolved or has been resolved in an unsatisfactory manner; or
    (h) The credit or debit card comprising the Payment Card was not actually presented at the time of the Transaction or Merchant failed to obtain an electronic record or physical imprint of such Payment Card, and the Payor 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 Cards 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) to the extent applicable, require Merchant to replace any magnetic-strip-only point of interaction terminal or electronic cash register with an EMV chip-capable terminal; or (d) 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 Cards, its Transactions, or with respect to excessive Chargebacks under this Section.

7.4 Claims of Payors. 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 Payor 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 Payor 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 Payor individually or all such Payors 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 Payors 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. Unless otherwise agreed to by the parties or expressly provided for herein, the fees set forth on Schedule A shall not change during the Initial Term. Notwithstanding the foregoing, 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 Intentionally Deleted.

10.2 Events of Default. If any of the following events shall occur (each an "Event of Default"):

(a) any transfer or assignment in violation of the Assignment section of Agreement for Merchant Payment Card Processing;

(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 herein;

(e) material breach of Section 1.1 herein;

(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 sixty (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 or Merchant's ability to accept Payment Cards from Payors;

(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 (i) causes Paymentech or Member to violate the Payment Brand Rules or applicable law; (ii) results in Paymentech's, Member's, or Merchant's participation in a risk-based program under the Payment Brand Rules; or (iii) 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 sixty (60) consecutive days, Merchant does not transmit Transaction Data to Paymentech;

(m) Merchant fails to comply with Section 15.15 herein; or

(n) Paymentech's Transaction processing services under this Agreement fail to conform to generally accepted standards for such services in the Transaction processing industry.

then, the non-defaulting party may terminate this Agreement by providing the defaulting party with written notice of termination. Following receipt of such notice, and solely for termination based on subsections (c), (f) and (n), the defaulting party shall have thirty (30) days to cure the Event of Default, and the Agreement shall terminate in the event such cure is not effected by the end of such period. No cure period shall be provided when termination is based any other Event of Default.

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.

10.3 Other Events. 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) an occurrence of an Event of Default by Merchant; (b) 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 (c) 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.

10.4 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. Intentionally Deleted.

12. TRANSACTION DATA AND PAYMENT CARD INFORMATION; PAYMENT CARD INDUSTRY COMPLIANCE.
12.1 Merchant financial information, information related to Merchant's Transactions, and other information that Merchant provides to Paymentech may be shared by Paymentech with its affiliates and the Payment Brands.

Paymentech will not otherwise disclose or use such information other than (a) as necessary to process Merchant's Transactions or otherwise provide services and maintain Merchant's account pursuant to this Agreement; (b) to detect, prevent, reduce, or otherwise address fraud, security, or technical issues; (c) to enhance or improve Paymentech's products and services generally; or (d) as 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 Card Information. Therefore, Merchant shall not disclose or use Payment Card 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 or pursuant to a government or regulatory demand. 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 Card Information (currently limited to the Payor's name, Payment Card account number, and expiration date) and is prohibited from storing additional Payment Card 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 Card 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 Card 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 Card 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 agrees to comply with all Security Standards, as defined in Section 17 herein. 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 immediately notify Paymentech of its use of any Service Provider. Merchant shall ensure that, to the extent required by each Payment Brand, its Service Providers are (d) compliant with all applicable Security Standards; and (e) appropriately registered with, or otherwise recognized as being compliant with the Security Standards, by all applicable Payment Brands. To the extent required by each Payment Brand, all Payment Applications, or software involved in processing, storing, receiving, or transmitting of Payment Card Information, shall be (f) compliant with all Security Standards applicable to such Payment Applications or software; and (g) registered with and/or recognized by such Payment Brand(s) as being so compliant. Furthermore, to the extent Merchant is required under the Payment Brand Rules, or Merchant otherwise elects, to utilize EMV chip-capable terminals, all EMV chip-capable terminals used by Merchant must appear on the EMV co-approved terminal list maintained by the Payment Brands.

Merchant understands that its failure, or the failure of any of its Service Providers, to comply with the Payment Brand Rules, including the Security Standards, or the compromise of any of Payment Card Information (whether such Payment Card Information is under the control of Merchant or its Service Provider), 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 due to a Data Compromise Event, Merchant agrees to cooperate with, and cause all applicable Service Providers 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 (h) directly engage, or demand that Paymentech engage, an examiner on behalf of the Merchant in order to expedite the investigation of the Data Compromise Event; or (i) pursuant to the Payment Brand Rules, permit Paymentech to investigate the Data Compromise 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 Card 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.

13.1Additional Financial Information. Upon five (5) days' written notice at any time, Merchant agrees to furnish to Paymentech (a) its most recently prepared financial statements and credit information; and (b) if applicable, its three most recent filings with the SEC.

13.2Audit Rights. 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.

13.3 Other Information. Merchant agrees to provide Paymentech at least thirty (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 Cards. 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.

14. DISCLAIMER; LIMITATION OF DAMAGES. Subject to Section 5 herein, 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 liability arising out of or related to its performance of services 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, as permitted by law. **EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT, IN NO EVENT WILL ANY PARTY, ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AFFILIATES, BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, REGARDLESS OF THE FORM OF ACTION AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ANY FINES, FEES, PENALTIES OR ASSESSMENTS IMPOSED BY THE PAYMENT BRANDS RELATED TO MERCHANT'S ACCEPTANCE OF PAYMENT CARDS SHALL NOT BE DEEMED TO BE CONSEQUENTIAL DAMAGES. NEITHER PAYMENTECH NOR MEMBER SHALL BE LIABLE OR RESPONSIBLE FOR THE AUTHENTICITY, ACCURACY, CORRUPTION, DISAPPEARANCE, THEFT OF, DAMAGE TO, OR TAMPERING WITH ANY DATA, INCLUDING, WITHOUT LIMITATION, TRANSACTION DATA, TRANSMITTED IN ANY FORM OR FORMAT TO PAYMENTECH BY OR ON BEHALF OF MERCHANT, AND PAYMENTECH AND MEMBER SHALL BE ENTITLED TO RELY ON DATA IT RECEIVES FROM OR ON BEHALF OF MERCHANT IN THE DISCHARGE BY PAYMENTECH AND MEMBER OF ITS OBLIGATIONS HEREUNDER. 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 Intentionally Deleted.

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. The parties shall perform their obligations under this Agreement in compliance with all applicable

laws. Merchant represents and warrants that statements made on its Application are true as of the date of this Agreement. Paymentech 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 Paymentech 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 Paymentech is duly authorized to do so. Merchant represents and warrants that its execution of and performance under this Agreement (d) 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; (e) 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 (f) that the person signing this Agreement on behalf of Merchant is duly authorized to do so. Furthermore, if Merchant is undergoing a forensic investigation at the time this Agreement is executed, Merchant represents and warrants that it is fully cooperating with the investigation and agrees to continue so cooperating until the investigation is completed.

15.6 Publicity. Unless required by law, neither Paymentech nor Merchant may publicly disclose, through press releases or otherwise, the existence of the business relationship that is the subject of this Agreement, without the prior written consent of the non-disclosing party.

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 Intentionally Deleted.

15.9 Intentionally Deleted.

15.10 Intentionally Deleted.

15.11 Intentionally Deleted.

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 only by written agreement of the parties. Notwithstanding the foregoing, in the event the terms of this Agreement must be amended pursuant to a change required by the 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. Intentionally Deleted.

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.

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

"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 Card Information.

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

"EMV" means Europay, MasterCard and Visa.

"Issuing Bank" means the financial institution or other member of a Payment Brand that has a contractual relationship with the Payor for the issuance of a Payment Card.

"Merchant" means the City of Pompano Beach, Florida, a Florida municipal corporation.

"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 and the Electronic Payment Association (frequently referred to as "NACHA").

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

"Payment Card" or *"Payment Instrument"* means an account, or evidence of an account, authorized and established between a Payor and a Payment Brand, or representatives or members of a Payment Brand that Merchant accepts from Payors as payment on an account or for goods, or services. Payment Cards 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. Use of the term Payment Card or Payment Instrument throughout this Agreement includes any Payment Card with an embedded microcomputer EMV chip

"Payment Card Information" means information related to a Payor or the Payor's Payment Card, that is obtained by Merchant from the Payor's Payment Card, or from the Payor in connection with his or her use of a Payment Card (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 the Payment Card account number and expiration date, the Payor'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 Card, whether printed thereon, or magnetically, electronically, or otherwise stored thereon. For the avoidance of doubt, the data elements that constitute Payment Card 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 Payor 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 Card Information, including, without limitation, the Payment Card Industry Data Security Standards ("PCI DSS"), Visa's Cardholder Information Security Program ("CISP"), Discover's Information Security & Compliance Program ("DISC"), American Express's Data Security Operating Policy, MasterCard's Site Data Protection Program ("SDP"), Visa's Payment Application Best Practices ("PABP"), the Payment Card Industry's

Payment Application Data Security Standard ("PA DSS"), MasterCard's POS Terminal Security program, and the Payment Card Industry PIN Transmission Security program ("PCI PTS"), in each case as they may be amended from time to time.

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

"*Settled Transaction*" means a Transaction conducted between a Payor and Merchant utilizing a Payment Card in which consideration is exchanged between the Payor and Merchant for payment on an account or the purchase of a good or service or a Refund 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 Payor adds or redeems value to or from a stored value card, gift card, or loyalty Payment Card issued by or on behalf of Merchant.

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

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To Be Completed By Paymentech, LLC
Merchant Agreement Contract Number is: _____
Merchant Processing Identification Number Will Be Provided At Time of Processing Set Up