



**SELECT GOVERNMENT MERCHANT PAYMENT CARD PROCESSING AGREEMENT  
U.S. GOVERNMENT AGREEMENT**

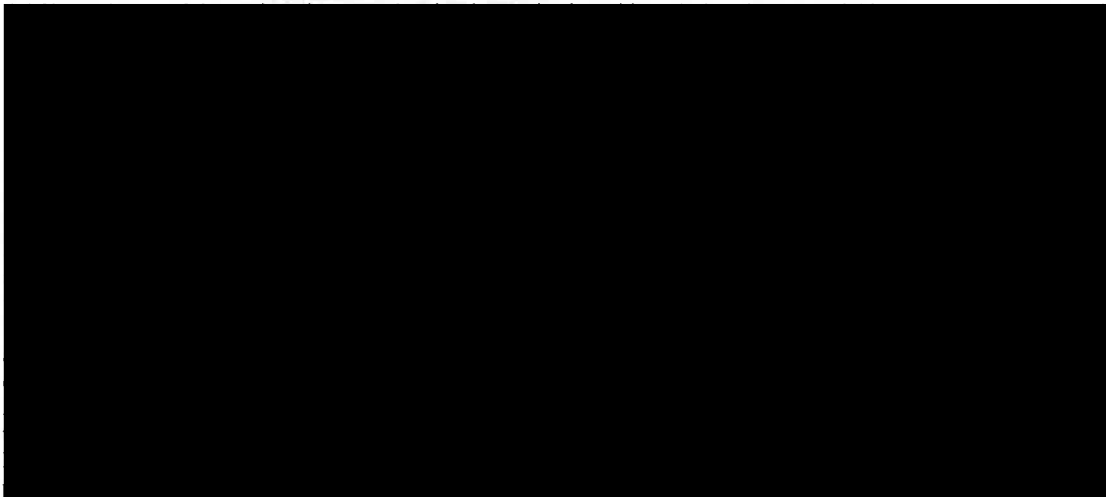
THIS SELECT GOVERNMENT MERCHANT PAYMENT CARD PROCESSING AGREEMENT (the "Agreement") is entered into by and between JPMorgan Chase Bank, N.A., a national banking association ("Member"), Paymentech, LLC, a Delaware limited liability company ("Paymentech"), and The Texas A&M University System, an agency of the State of Texas ("Merchant").

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

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

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

**1. MERCHANT'S ACCEPTANCE OF PAYMENT CARDS.**



**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. Convenience fees allowed by the Payment Brands shall be permitted.

(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 and 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 and MasterCard consumer credit cards and Visa and MasterCard commercial credit and debit cards; or (ii) Visa and MasterCard debit cards only (but no credit cards). Notwithstanding the election of one of the foregoing limited acceptance options, Merchant must honor all foreign bank-issued Visa or MasterCard Payment Cards. If Merchant elects one of the limited acceptance categories: (1) Merchant must display appropriate signage to indicate the limited acceptance category; and (2) 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 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, 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 (with the exception of payment plans for tuition and fees which processing is disclosed to Paymentech in writing). 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, for all Transactions, Paymentech will submit Merchant's Transaction Data to the applicable Payment Brand. Promptly after Paymentech receives funds for Settled Transactions from the Payment Brands, Paymentech will provisionally fund the Settlement Account. The proceeds payable to Merchant shall be equal to the amounts submitted by Merchant in connection with its Transaction Data minus the sum of the following: (a) all fees, charges, and other amounts described on Schedule A or that Merchant has otherwise agreed to pay; (b) all Refunds and Chargebacks; (c) all Reserve Account (as defined in Section 4.6) amounts; (d) all fees, charges, fines, assessments, penalties, or other liabilities that may be imposed on Paymentech or Member from time to time by the Payment Brands and all related costs and expenses incurred by Paymentech. Merchant agrees that all amounts are due and payable as provided in this Agreement. In the event Paymentech does not deduct such amounts from Merchant's proceeds when such amounts are due and payable, Merchant agrees to pay all such amounts to Paymentech immediately without any deduction or offset. Additionally, Paymentech may debit the Settlement Account or Merchant's Reserve Account for such amounts at any time. 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. Merchant agrees to the foregoing to the extent permitted by the Constitution and the laws of the State of Texas. 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 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 Paymenttech with sufficient funds to prevent the occurrence of a negative balance.

**4.6 Reserve Account. If:**

- (a) there is a material breach of the Agreement by Merchant;
- (b) Merchant is receiving excessive Chargebacks (as defined in Section 7.3 below);
- (c) Paymenttech has reasonable grounds to believe that it may be or become liable to third parties for the provisional funds extended to Merchant; or
- (d) Paymenttech 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 Paymenttech 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 Paymenttech to additional risk (such risk being hereinafter referred to as "Anticipated Risk"). In any such event, Paymenttech may temporarily suspend or delay payments to Merchant during Paymenttech's investigation of the issue and/or designate an amount of funds that Paymenttech 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. The Reserve Account will contain sufficient funds to cover any unbilled processing costs plus Paymenttech's estimated exposure based on reasonable criteria for Chargebacks and all additional Anticipated Risks. Paymenttech 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 Paymenttech, will not bear interest, and may be commingled with other funds. To the extent permitted by the Constitution and laws of the state of Texas, effective upon Paymenttech's establishment of a Reserve Account, Merchant irrevocably grants to Paymenttech 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 Paymenttech such instruments and documents that Paymenttech 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 Paymenttech in connection with the return of any Reserve Account funds, Paymenttech will pay to Merchant any funds then remaining in the Reserve Account.

**5. ACCOUNTING.** Paymenttech 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 Paymenttech 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 Paymenttech, via certified or overnight mail, confirmed fax, or upload to Paymenttech'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;
- (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 presentation, 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.

**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 Term.** This Agreement takes effect upon Paymentech's signature hereto and continues for five (5) years from such date (the "Initial Term"). Unless otherwise terminated by either party as provided in this Agreement or otherwise agreed by the parties in writing to an extension for a five (5) year term, this Agreement will automatically renew for successive one-year terms (each a "Renewal Term"; the Initial Term and all Renewal Terms collectively referred to herein as "Term") for no more than five (5) 1-year extensions. Either party may give notice of non-renewal of this Agreement in writing no more than ninety (90) days and no less than thirty (30) days prior to any expiration date.

**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 Section 15.3 of this Agreement;
- (b) irregular Transactions by Merchant, excessive Chargebacks, or any other circumstances which, in Paymentech's discretion, may increase Paymentech's or Member's exposure for Merchant's Chargebacks or otherwise present an Anticipated Risk to Paymentech;
- (c) any representation or warranty in this Agreement is breached in any material respect or was or is incorrect in any material respect when made or deemed to be made;
- (d) Merchant fails in any material respect to perform any of its obligations with respect to the funding or establishing of a Reserve Account, as detailed in Section 4.6;
- (e) material breach of Section 1.1;
- (f) Merchant fails in any material respect in performance or observance of any term, covenant, condition, or agreement contained in this Agreement, including, without limitation, compliance with Payment Brand Rules and Security Standards;
- (g) a case or other proceeding shall be commenced by or against Merchant in any court of competent jurisdiction seeking relief under the Bankruptcy Code or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up, or adjustment of debts, the appointment of a trustee, receiver, custodian, liquidator, or the like of Merchant, or of all or any substantial part of the assets, domestic or foreign, of Merchant, and such case or proceeding shall continue undismissed or unstayed for a period of 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 reasonable discretion, deems Merchant to be financially insecure and Merchant's credit rating falls below investment grade;
- (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 ninety (90) consecutive days, Merchant does not transmit Transaction Data to Paymentech;
- (m) Merchant fails to comply with Section 15.15; 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 not hold Paymentech responsible or liable for any and all claims which Merchant may have as a result of such reporting. Merchant agrees to the foregoing to the extent permitted by the

Constitution and laws of the state of Texas.

**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. Merchant agrees to immediately deposit such amount in its Settlement Account, or Paymentech may withhold such amount from Merchant's settlement funds in order to establish a Reserve Account pursuant to and governed by the terms and conditions of this Agreement.

**11. INDEMNIFICATION.** Paymentech agrees to indemnify Merchant and its affiliates, officers, directors, employees, and agents from any losses, liabilities, and damages of any and every kind (including, without limitation, Merchant's costs, expenses, and reasonable attorneys' fees) arising out of any 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. This indemnification does not apply to any claim or complaint relating to Merchant's failure to resolve a payment dispute concerning merchandise or services sold by Merchant or Merchant's negligence or willful misconduct. The indemnification provided under this Section 11 shall survive termination and is subject to the limitation of liability set forth in Section 14 of this Agreement.

**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.** Paymentech acknowledges and understands the importance of compliance with the Security Standards, such as those relating to the transmission, storage and disclosure of Transaction Data and Payment Card Information. Therefore, Paymentech agrees to maintain compliance with the Payment Card Industry Data Security Standards and acknowledges that it is responsible for the security of the data that Paymentech possesses.

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. 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 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 for outside counsel and other costs relating to such forensic examination. Merchant agrees to the foregoing to the extent permitted by the Constitution and laws of the state of Texas.

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.**

**13.1 Additional 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.

**13.2 Audit 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, 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. **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. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT STATING THAT MERCHANT WILL AGREE TO LIMIT THE LIABILITY OF PAYMENTECH OR ANY OTHER PARTY OR DAMAGES AVAILABLE TO MERCHANT, MERCHANT SHALL BE OBLIGATED TO LIMIT ANY PARTY'S LIABILITY AND DAMAGES ONLY TO THE EXTENT AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS**

**15. MISCELLANEOUS.**

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

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

**15.3 Assignment.**

(a) **Merchant.** Merchant may not transfer or assign this Agreement without the prior written consent of Paymentech. Any purported transfer or assignment of this Agreement by Merchant (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 Merchant 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 Merchant, 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 Merchant's assets or business, shall have any right to continue or to assume or to assign this Agreement without Paymentech's prior written consent. Merchant 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 Merchant; or (ii) any person or entity becoming the beneficial owner, directly or indirectly, of securities representing more than fifty percent (50%) of the combined voting power of Merchant's securities, or otherwise acquires voting control of Merchant.

(b) **Paymentech; Member.** Upon notice to Merchant, another Payment Brand member may be substituted for Member under whose sponsorship this Agreement is performed and for whom Paymentech is acting as agent hereunder. Subject to Payment Brand Rules, Paymentech may assign or transfer this Agreement and its rights and obligations hereunder and may delegate its duties hereunder, in whole or in part, to any third party, whether in connection with a change in sponsorship, as set forth in the preceding sentence, or otherwise, without notice to or consent of Merchant.

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

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

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

**15.11 Governing Law.** UNLESS OTHERWISE MANDATED BY APPLICABLE LAW, THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT REFERENCE TO CONFLICT OF LAW PROVISIONS.

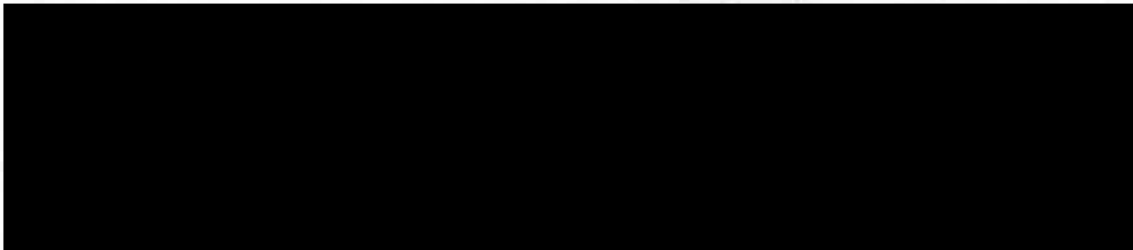
**15.12 Force Majeure.** Neither party will be liable for delays in processing or other nonperformance caused by such events as fires, telecommunications failures, utility failures, power failures, equipment failures, labor strife, riots, war,

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.

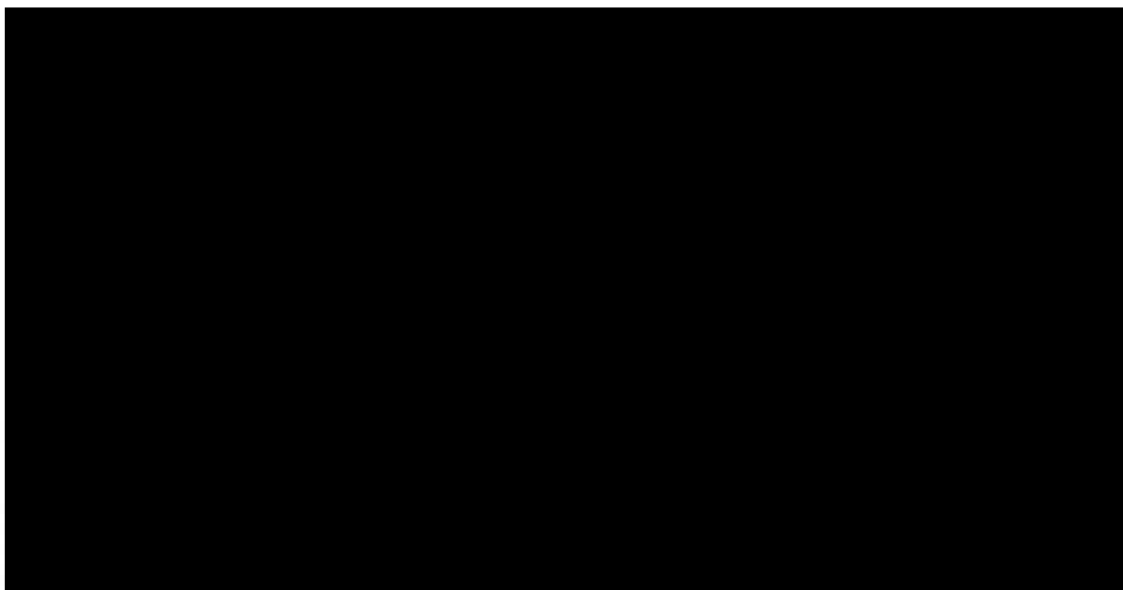
**15.14 Counterparts and Electronic Signature.** This Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. A signature received via facsimile or electronically via email shall be as legally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



**15.17 Applicable Laws.** Paymentech and Merchant agree to comply with and perform its obligations hereunder in accordance with all applicable laws, rules (including Payment Brand Rules) and regulations applicable to it.

**15.18 Confidentiality.** Each party shall (i) treat all Confidential Information of the other party with the same degree of care as it accords its own Confidential Information, but in no event less than a reasonable degree of care; and (ii) implement and maintain commercially reasonable physical, electronic, administrative and procedural security measures designed to protect the Confidential Information of the other party. "**Confidential Information**" of a party, for purposes of this Agreement, means information about such party, or their respective businesses, customers, vendors or employees, that is reasonably expected to be confidential or proprietary to such party; provided, however, that the term shall not include information that is: (i) already in the possession of the other party that is not otherwise subject to an agreement as to confidentiality; (ii) obtained in the public domain and which became available in the public domain other than as a result of an unauthorized disclosure or breach of agreement; (iii) lawfully received on a non-confidential basis from a third party authorized to disclose such information without restriction and without breach of this Agreement; or (iv) contained in, or is capable of being discovered through examination of, publicly available records. Each party shall not use or disclose Confidential Information of the other party except: (i) to perform its obligations or enforce its rights with respect to this Agreement; (ii) as expressly permitted by this Agreement; (iii) with the prior written consent of such other party; (iv) pursuant to a subpoena, summons or other order requesting information that is issued through any judicial, executive or legislative process; or (v) as otherwise required by applicable law or a Payment Brand. Notwithstanding the foregoing, Paymentech acknowledges that Merchant is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement.



**15.21 Prohibited Bids and Agreements.** A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The *Texas Government Code* requires the following statement: "Under Section 2155.004, *Texas Government Code*, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate." Merchant's sole and exclusive remedy for any violation of this Section 15.21 shall be termination of this Agreement.

**15.22 Tax Exempt Status:** As an agency of the State of Texas, Merchant is tax exempt. Tax exemption certification will be furnished upon request.

**15.23 Non-Waiver.** Paymentech expressly acknowledges that Merchant is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by Merchant of its right to claim such exemptions, privileges, and immunities as may be provided by law.



**16. SURVIVAL.** The provisions of Sections 1.6, 4.2, 4.4, 4.5, 4.6, 5, 6, 7, 9, 10.2, 10.4, 11, 12, 14, 15, 16 and 17 shall survive the termination of this Agreement.

**17. DEFINITIONS.**

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

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

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

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

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

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

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

*[Signature Page Follows]*

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

Agreed and Accepted by:

Agreed and Accepted by:

The Texas A&M University System,  
Merchant Legal Name

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

By (authorized signature)

By 85EA841285A4474...

John Sharp, Chancellor

Trea Johnson

Executive Director, Credit Risk Mana

Print Name and Title

Print Name and Title

2/12/2016

3/24/2016

Date

Date

301 Tarrow St., 7th Floor

Address

Address

College Station, TX 77840

City, State Zip

City, State Zip

VI4242

To Be Completed By Paymentech, LLC

Merchant Agreement Contract Number is:

Merchant Processing Identification Number Will Be Provided At Time of Processing Set Up

# Schedule A to Merchant Agreement

Merchant: **The Texas A&M University System**

NAPSLSSCHEDAIP 20150701 V3.15.3

Assumptions			
Transaction-related assumptions		Other assumptions	
Payment Transaction Sales Volume	\$188,763,696	Number of locations	223
Average Transaction Amount	\$95.78	Authorization / Capture %	105%
PIN Debit / EBT Transactions	0	Chargebacks as % of Sales Transactions	0.0300%
Conveyed Transactions	N/A	Billing Frequency	Monthly
Safetech Encryption	250,000		
Target Qualification Level:		Visa:	CPS Retail 2 (Emerging Marekt)
		MasterCard:	Merit I
		Discover:	PSL Emerging Market - Core
		VCR2	MMI
		D160	

## 1. Fees applied on every transaction

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

Visa, MasterCard, & Discover Interchange Rates	as set by each Payment Brand
Visa, MasterCard, & Discover/JCB Incremental Discount Rate	
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)	Pass-Thru of Interchange Fees
Voyager Discount Rate (Paymentech settled):	N/A

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

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

Transaction Fees	
MasterCard per transaction	
Visa per transaction	
Discover per transaction	
JCB per transaction	
American Express per transaction	
PIN Debit per transaction	
EBT per transaction	N/A
Check Verification - Scan per transaction	N/A
Voyager per transaction	N/A
Wright Express-Fleet-Co Brand per trans	N/A
Hosted Pay Page per transaction	N/A

Authorization Fees	
MasterCard per authorization	
Visa per authorization	
Discover per authorization	
JCB per authorization	
American Express per authorization	
Voyager per authorization	N/A
Wright Express per authorization	N/A
Private Label Authorization Fee	N/A
Dial Backup authorization surcharge	
Encryption & Tokenization Fees	
Safetech Encryption per transaction	
Safetech Tokenization per transaction	

Customer Initials	X <u>mer</u>	Please initial to acknowledge page 1 of the Schedule A pricing sheet
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**2. One Time and Periodic Fees**

One Time Fees	
Account Setup Fee	N/A
Rush Fee	N/A
Terminal Reprogram Fee	N/A
PIN Debit Setup Fee	N/A
PIN Pad Encryption Fee	N/A

Monthly Fees	
Monthly Service Fee <sup>1</sup>	N/A
Monthly Minimum Fee <sup>2</sup>	N/A
Monthly Helpdesk Fee	N/A
Online Reporting Tool	N/A
Safetech Encryption <sup>3</sup>	N/A

Monthly Fees - Pass Thru	
Visa Fixed Acquirer Network Fee <sup>4</sup>	Varies

Annual Fees	
Annual Fee	N/A

**Internet Product NetConnect**

Setup Fee	N/A
Third Party Setup Fee	N/A

Monthly Fee	N/A
Third Party Monthly Fee	N/A

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****3A. Per Incidence Fees: Charged every time your account incurs one of the below items.**

Chargeback Fee		Charged when a cardholder or card-issuing bank formally protests a charge
Voice Authorization Fee		Charged when you call the Voice Auth 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 accounts

**3B. Per Incidence Fees: Charged every time you request one of the below items.**

Statement Fee(Email/ROL)		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)		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)		Charged for each archived statement you request to have printed
Supplies: Billed Per Order		Charges for supply orders vary based on the items ordered
Dynamic Debit Surcharge Fee		Charged for each PIN Debit transaction routed with the Dynamic Routing product
PIN Debit Injection Fee		Charged when merchant elects PIN Debit processing and applies to each device not purchased from Chase Paymentech.

Statement Type:	Resource Online	No Statement/No Recap	Statement Frequency:	N/A
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Customer Initials

X

Please initial to acknowledge page 2 of the Schedule A pricing sheet

4. Payment Brand Fees - Per Incidence		
MC Acquiring License Fee*	0.004%	Charged on MasterCard gross sales volume. See Additional Information under Payment Brand Charges section on page 4.
MC Digital Enablement/Card Not Present Fee	0.010%	Charged on MasterCard Card Not Present Gross Sales Volume.
DI Network Authorization Fee	\$0.0025	Charged by Discover on all authorizations for card transactions that are settled through the Discover Network
MC AVS Auth Access Fee (Card Present)	\$0.010	Charged by MasterCard when a merchant uses the address verification service to validate a cardholder address
MC AVS Auth Access Fee (Card Not Present)	\$0.010	
MC Auth Access Fee	\$0.005	Charged by MasterCard when an authorization is reversed or the authorization is provided by MasterCard if the card issuer is not available.
MC Card Validation Code 2 Fee	\$0.0025	Charged by MasterCard when a merchant submits the Card Validation Code 2 (CVC2) in an authorization request
MC Account Status Fee (Intra-regional)	\$0.025	Charged by MasterCard or Visa when a merchant uses this service to do an inquiry that a card number is valid
MC Account Status Fee (Inter-regional)	\$0.030	
Visa Zero \$ Account Verification Fee	\$0.025	Charged when a card is authorized but not deposited and the authorization is not reversed in a timely manner
MC Processing Integrity Fee	\$0.055	
Visa Misuse of Authorization Fee	\$0.048	Charged when a transaction is deposited but never authorized
Visa Zero Floor Limit Fee	\$0.10	
Visa Transaction Integrity Fee	\$0.10	Applies to Visa Debit & Prepaid transactions that do not meet qualification criteria for Custom Payment Service (CPS) categories
MC Cross Border Assessment Fee	0.60%	Charged by MasterCard, Visa and Discover/JCB on foreign bank issued cards.
Visa International Service Assessment Fee	0.80%	
Discover/JCB International Service Fee	0.55%	Additional fee charged by Visa and Discover/JCB on foreign bank issued cards
MC International Support Fee	0.85%	
Visa Interregional IAF Fee	0.45%	
Discover/JCB International Processing Fee	0.40%	Applies to Petroleum merchants using automated fuel pumps that do not support Partial Authorization
Visa Partial Auth Non-Participation Fee	\$0.01	
MC Global Wholesale Travel Transaction Program B2B Fee	1.57%	Applies to Travel merchants for transactions qualifying at the MasterCard Commercial Business-to-Business interchange category.

5. Other Fees			
Fee Description	(Amount)	Fee Description	(Amount)

Customer Initials	X <u>mlr</u>	Please initial to acknowledge page 3 of the Schedule A pricing sheet
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**Equipment Swap Fees**

Type	Description	Fee
Replacement Fee (swap)	In warranty - Terminals, Printers, & Pinpads <sup>1</sup>	
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	
Injection Fee (swap)	Safetech Encryption Injection	
Restocking Fee	Return equipment for any reason other than repair	
Late Fee	For all equipment returned late, or not returned	

**<sup>1</sup> New Equipment Warranty timeframes**

5 years - VeriFone Vx520, Vx820 PIN Pad, PP1000 SE; Ingenico ICT250

1 year - all other new equipment

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

**Payment Brand Charges**

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

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

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

**6. Authorized Signature**

Authorized Representative Signature: Must appear on Merchant Application section 11

<u>Maria L. Robinson</u>	<u>Chief Investment Officer</u>
Printed Name	Title <u>and Treasurer</u>
X <u>Maria L. Robinson</u>	<u>2/12/2014</u>
Signature	Date

**Please ensure you have initialed pages 1, 2 and 3**

CONTROL NUMBER:

Printed: February 03, 2016

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Approved by:

  
John Sharp, Chancellor  
The Texas A&M University System