



**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”), **Paymenttech, LLC**, a Delaware limited liability company and wholly owned subsidiary of Member (“Paymenttech”), and **City and County of Denver**, a municipal corporation of the State of Colorado, acting by and through the Department of Finance for the use and benefit of its agencies and offices (collectively referred to herein as “Merchant” or “City”).

**WHEREAS**, Member is a member of several Payment Brands and Paymenttech 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, Paymenttech, Member, and Merchant agree to the following terms and conditions intending to be legally bound:

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

**1.1 Exclusivity.** Unless otherwise agreed to by the parties in writing, during the term of this Agreement Paymenttech shall be the exclusive provider of all Transaction processing services as are currently being processed (including, without limitation, the authorization, conveyance and settlement of Transactions) for the City and County of Denver through its Department of Finance, except for transactions which Paymenttech is unwilling or unable to process and also excluding fund raisers, the City’s purchasing agreement business and any other business that can’t be transitioned to Paymenttech due to other contractual obligations. Transaction Data shall be submitted via electronic data transmission according to Paymenttech’s formats and procedures throughout the term of this Agreement. Notwithstanding the foregoing, it shall not be an automatic breach of this Agreement should an individual City agency use another Transaction processing provider and in such event the parties will cooperate to determine if such individual agency use should be added to the Transaction processing services provided under 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.

(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 Paymenttech on its Application, or otherwise obtained Paymenttech’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: (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 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 based on facts at the time of submission, 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.

**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 liable for all fees, costs, and overdrafts associated with the Settlement Account, subject to Paragraph 18 hereof. 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 Payment Brand 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. The following shall settle separately upon occurrence: (a) all fees, charges, and other amounts described on Schedule A or that Merchant has otherwise agreed to pay, subject to Paragraph 18 hereof; (b) all Refunds and Chargebacks; (c) all Reserve (as defined in Section 4.6) amounts; (d) all fees, charges, fines, assessments, penalties, or other liabilities, subject to Paragraph 18 hereof, that may be imposed on Paymentech or Member from time to time by the Payment Brands related to Merchant's acceptance of Payment Cards and all related costs and expenses incurred by Paymentech. Notwithstanding the foregoing, the parties understand and agree that the City shall not be responsible for payment of any liability based on the breach of Paymentech's obligation to Payment Brands. Merchant agrees that all amounts are due and payable as provided in this Agreement, subject to Paragraph 18 hereof. 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, subject to Paragraph 18 hereof, promptly without any deduction or offset. Additionally, Paymentech may debit the Settlement Account or Merchant's Reserve for such amounts at any time, subject to Paragraph 18 hereof.

**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 prompt payment for such amounts, subject to Paragraph 18 hereof, and if payment is not made within three (3) days of demand, offset 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 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 promptly provide Paymentech with sufficient funds to prevent the occurrence of a negative balance, subject to Paragraph 18 hereof.

**4.6 Reserve.** 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 request that the City provide an irrevocable letter of credit drawn on a U.S. bank, in a form reasonably acceptable to Paymentech and in an amount reasonably determined by Paymentech to protect itself against Anticipated Risks (the "Reserve"). The Reserve will be used 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 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.

In the event the City refuses to fund the Reserve, Paymentech may terminate this Agreement immediately; provided, however, that termination of the Agreement pursuant to this section 4.6 shall in no way limit Merchant's liability for amounts owed to Paymentech under this Agreement, including any amounts related to or arising from the event which gave rise to the need to establish a Reserve.

**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 agrees to reimburse Paymentech, subject to Paragraph 18 hereof, for any amounts it incurs relating to a Chargeback or claim made by a Payor with respect to any Transaction or Transaction Data submitted by Merchant. 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.** Following a Chargeback, Merchant may resubmit applicable Transaction Data for a second presentment, but only in accordance with Payment Brand Rules. 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. Merchant also agrees to reimburse Paymentech, subject to Paragraph 18 hereof, for all amounts that may be imposed on or incurred by Paymentech or Member from time to time related to Merchant's Chargebacks. Notwithstanding the foregoing, the parties understand and agree that the City shall not be responsible for payment of any liability to the extent such liability arises from the breach of Paymentech's or Member's obligations to Payment Brands. The foregoing is intended to address responsibilities between the parties and shall not act as an admission or waiver by the City as to third parties

**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, subject to Paragraph 18 hereof, 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 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, subject to Paragraph 18 hereof, 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.**

~~i.~~ **Initial Term.** The Agreement will commence on January 1, 2014 and will expire on December 31, 2014 (the "Initial Term.")

~~ii.~~ **Renewal Terms.** The City shall automatically renew the Initial Term for up to three (3) additional one-year terms (each an "Annual Renewal Term") by appropriation of sufficient amounts for the subsequent year by City Council. The first Annual Renewal Term shall be from January 1, 2015 to December 31, 2015; the second Annual Renewal Term shall be from January 1, 2016 to December 31, 2016; and the third Annual Renewal Term shall be from January 1, 2017 to December 31, 2017 (each an "Annual Renewal.")

~~iii.~~ **Optional Renewal Terms.** The City shall have the unilateral option to renew the Agreement after the expiration of the final Annual Renewal Term for up to three (3) additional one-year terms upon notice from the Manager confirming the exercise of such optional renewal and confirming appropriation of sufficient amounts for the subsequent year has been made by City Council, subject to Section 10.e., below. The first Optional Annual Renewal Term shall be from January 1, 2018 to December 31, 2018; the second Optional Annual Renewal Term shall be from January 1, 2019 to December 31, 2019 and, after December 31, 2019, if this Agreement has not been terminated by either party prior to December 31, 2019, and the third Optional Annual Renewal Term shall be from January 1, 2020 to December 31, 2020 and, after December 31, 2020, if this Agreement has not been terminated by either party prior to December 31, 2020 this Agreement shall be continued on a month to month basis thereafter for up to, but not to exceed, 12 months (each a "Monthly Renewal Term"). Each Annual Renewal Term, Optional Annual Renewal Term, or Monthly Renewal Term shall be referred to herein as a "Renewal Term".

~~iv.~~ **Renewal Procedures; Non-Renewal.** The Maximum Payment shall be payable only if funds are appropriated by the City Council and for which an encumbrance has been made in each year for the ensuing fiscal year. The option of the City to renew the Initial Term, or any subsequent Annual Term shall have been deemed to have been exercised upon the City making sufficient appropriation and encumbrance for the next fiscal year. In the event the City Council fails to make a sufficient appropriation or the City fails to encumber for any subsequent Annual Term, the Manager shall notify Paymentech of such failure to fund the Agreement. The option of the City to renew for an Optional Renewal Term shall be exercised upon notice from the Manager and the City making such appropriation and encumbrance for the next fiscal year. If such appropriation and encumbrance is not made for a future fiscal year, during which such Renewal Term occurs, then, the City shall notify Paymentech and shall be deemed to have failed to exercise its option to renew this Agreement for a subsequent Renewal Term, whereupon this Agreement will expire and terminate on the expiration date of the then current Initial Term or Renewal Term. It is expressly understood and agreed that if the City exercises its option to renew this Agreement for a Renewal Term, the City's obligation to make payments to Paymentech shall only extend to monies appropriated and encumbered for the purposes and amounts covered by this Agreement. It is further understood and agreed that Paymentech is not obligated to provide services if the City is past due in payment by more than ninety (90) days.

~~v.~~ The Manager shall, upon request, provide Paymentech with documentation that reasonably evidences the amounts appropriated and encumbered for payment of the services for each ensuing fiscal year. If either party determines that such amount is not sufficient to cover payment for the Services, consistent with the fees described in Schedule A and current or reasonably forecasted Transaction volumes and Anticipated Risks, such party may request that additional funds be appropriated or terminate the Agreement, effective as of the end of the current Initial Term or Renewal Term, as the case may be.

~~vi.~~ **Termination.** The City has the right to terminate the Agreement with cause upon written notice to Paymentech effective immediately, and without cause upon thirty (30) days prior written notice to Paymentech. Paymentech has the right to terminate the Agreement with or without cause upon ninety (90) days prior written notice to the City. Notwithstanding the preceding paragraph, the City may terminate the Agreement if Paymentech or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Paymentech's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice. Member affirmatively discloses that it has entered into several consent orders with its banking regulators and has also entered into a deferred prosecution agreement, the latter dated as of January 7, 2014. Details of these consent orders and the deferred prosecution agreement are publicly available through Member's SEC filings. The City agrees that the previously occurring conduct and activities that formed the basis for the matters disclosed in the Bank's SEC filings on or prior to the execution of this Agreement by the City, Paymentech and Member, shall not trigger the City's termination rights under this Agreement.

**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 15.4 of this Agreement;

(b) irregular Transactions by Merchant, excessive Chargebacks, or any other circumstances which, in Paymentech's discretion, may increase Paymentech's or Member's exposure for Merchant's Chargebacks or otherwise present an Anticipated Risk to Paymentech;

(c) any representation or warranty in this Agreement is breached in any material respect or was or is incorrect in any material respect when made or deemed to be made;

(d) Merchant fails in any material respect to perform any of its obligations with respect to the funding or establishing of a Reserve, as detailed in Section 4.6;

(e) intentionally deleted.

(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 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) 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 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; 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.

**10.3 Termination of Banking Services Agreement.** Merchant has entered into an agreement with JPMorgan Chase Bank, N.A. for the provision of commercial banking services (the "Banking Services Agreement"). Notwithstanding anything to the contrary contained in this Agreement, if the Banking Services Agreement terminates or expires, Merchant may terminate this Agreement upon thirty (30) days' written notice to Paymentech.

**10.4 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.

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



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

Upon notice of termination of this Agreement, Paymentech may estimate the aggregate dollar amount of anticipated Chargebacks, Refunds and Anticipated Risks that Paymentech reasonably anticipates subsequent to termination, and Paymentech may temporarily suspend or delay payments and/or request an irrevocable letter of credit as provided in Section 4.6 in order to protect itself from such Anticipated Risks (a "Reserve") pursuant to Paragraph 4.6 and governed by the terms and conditions of this Agreement.

#### **11. DEFENSE AND INDEMNIFICATION.**

(a) Subject to subparagraph 11(e) hereof, Paymentech hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the acts or failures to act by Paymentech or Paymentech's subcontractors in the course of performance of the Services under this Agreement ("Claims"), unless such action or failure to act is: (i) consistent with commercially reasonable industry standards; (ii) expressly permitted or required in accordance with the terms of the Agreement; or (iii) pursuant to and in compliance with the instructions of, or options exercised by, the City. Nothing in the foregoing paragraph is intended to nor shall it lessen any duty of the parties nor lessen rights the parties may have under the law, including but not limited to the Uniform Commercial Code or applicable banking regulations, except to the extent that such laws permit the parties to vary such duties and rights by agreement and the same have been so varied by the terms of this Agreement.

(b) Paymentech's duty to defend and indemnify City against a Claim shall arise at the time written notice of the Claim is first provided to City regardless of whether claimant has filed suit on the Claim. Paymentech's duty to defend and indemnify City against a Claim shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

(c) Paymentech will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

(d) Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of Paymentech under the terms of this indemnification obligation. Paymentech shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

(e)

(i) Notwithstanding anything to the contrary contained in this Agreement, and to the extent not precluded by Colorado law, neither party will be liable for any indirect, incidental, consequential, exemplary, punitive, or special damages, including lost profits, regardless of the form of the action or theory of recovery, even if advised of the possibility of these damages. Any fines, fees, penalties, assessments or other amounts imposed by the Payment Brands shall not be deemed to be indirect, incidental, consequential, exemplary, punitive, or special damages.

(ii) Except for Claims related to or arising from Paymentech's obligation to pay settlement proceeds to City pursuant to this Agreement (including Section 4), and except to the extent otherwise expressly provided for pursuant to applicable law, for all Claims against Paymentech under this Agreement, and regardless of the basis on which the Claim is made, Paymentech's aggregate liability shall equal the total fees paid to Paymentech under this Agreement (net of Payment Brand fees, third party fees, interchange, assessments, penalties, and fines) at the time the liability arose, but in no event shall such amount exceed two million dollars (\$2,000,000.00).

This defense and indemnification obligation shall survive the expiration or termination 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.** 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 promptly 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.

At all times during the term of this Agreement, Merchant will comply with all Security Standards, as defined in Section 17. Merchant will 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 promptly 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, fees, penalties or other liabilities (collectively "Losses") imposed on or incurred by Paymentech or the Member by third parties, including, without limitation, the Payment Brands, and Merchant agrees to reimburse Paymentech, subject to Paragraph 18 hereof, promptly for any such Losses. Notwithstanding the foregoing, the parties understand and agree that the City shall not be responsible for payment of any liability to the extent such liability arises from the breach of Paymentech's or Member's obligations to Payment Brands. 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 and the payment of all amounts related to the examination. 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. If Paymentech is required to engage an examiner on behalf of Merchant under subsection (h) herein or Paymentech is required to perform the investigation itself, Merchant agrees, subject to Paragraph 18 hereof, to pay for all of Paymentech's costs and expenses related to such examination. Notwithstanding the foregoing, the parties understand and agree that the City shall not be responsible for payment of any liability to the extent such liability arises from the breach of

Paymenttech's or Member's obligation to Payment Brands. The foregoing is intended to address responsibilities between the parties and shall not act as an admission or waiver by the City as to third parties

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 Paymenttech or provide Paymenttech 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 Paymenttech its most recently prepared financial statements and credit information.

**13.2 Audit Rights.** With prior notice and during Merchant's normal business hours, Paymenttech's duly authorized representatives may visit Merchant's business premises and may examine Merchant's books and records that pertain to Merchant's Transactions or Merchant's compliance with this Agreement.

**13.3 Other Information.** Merchant agrees to provide Paymenttech 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 Paymenttech determines such a change is material to its relationship with Merchant, Paymenttech may refuse to process Transaction Data made subsequent to the change or terminate this Agreement. Merchant agrees to provide Paymenttech with prompt written notice if Merchant is the subject of any voluntary or involuntary bankruptcy or insolvency petition or proceeding. Merchant authorizes Paymenttech to perform any credit check deemed necessary with respect to Merchant.

**14. Intentionally deleted.**

**15. MISCELLANEOUS.**

**15.1 Taxes.** Merchant is exempt, and, if applicable, will provide a valid exemption certificate, however in the event of a valid tax charge, Merchant agrees to pay, subject to Paragraph 18 hereof, any taxes imposed on the services, equipment, supplies, and other property provided under this Agreement, and Merchant authorizes Paymenttech, upon notice to the City, 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. Paymenttech shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against Merchant property.

**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 Paymenttech. Any purported transfer or assignment of this Agreement by Merchant (including by operation of law, merger, or otherwise) without Paymenttech's prior written consent shall be, in Paymenttech'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 Paymenttech's prior written consent. Merchant agrees to provide Paymenttech with not less than thirty (30) days prior written notice of any sale of all or substantially all of the assets of Merchant.

(b) **Member.** Upon notice to Merchant, another Payment Brand member may be substituted for Member under whose sponsorship this Agreement is performed and for whom Paymenttech is acting as agent hereunder.

(c) **Paymenttech.** Paymenttech shall not voluntarily or involuntarily assign any of its rights or obligations under the Agreement or subcontract performance obligations without obtaining Merchant's prior written consent, provided, however, Paymenttech may, without the consent of Merchant, assign any or all of its rights and obligations under this Agreement to its parent, any subsidiary (of Paymenttech or its parent), or any affiliate (of Paymenttech or its parent) or to

any other party pursuant to or in conjunction with a merger, acquisition, consolidation, reorganization or sale of all or substantially all of the ownership interest in Paymentech. Any attempt by Paymentech to otherwise assign its rights or obligations or subcontract performance obligations without Merchant's prior written consent will be void and Merchant may terminate the Agreement; provided that such termination occurs within sixty (60) days of the assignment event. Subject to the foregoing, Merchant has sole and absolute discretion whether to consent to any assignment of rights or obligations and subcontracting of performance obligations under the Agreement. Manager of Finance shall, however, be responsible for making all payments, subject to Paragraph 18 hereof, *only* to Paymentech at the address set forth herein, notwithstanding any assignment by Paymentech pursuant to the terms of this section, unless and until an amendment of this agreement in writing has been executed. In the event of any unauthorized subcontracting or assignment: (i) Paymentech shall remain responsible to Merchant; and (ii) it shall not create a contractual relationship between Merchant and subcontractor or assignee. For purposes of this Agreement, and as it relates to Paymentech, the term "sub-consultant" or "subcontractor" shall refer to a third party, if any, engaged by Paymentech to specifically and solely aid in the performance of its obligations under this Agreement, excluding any third party engaged by Paymentech, from time to time, in the performance of certain operational, technological, incidental, or back office functions that assist Paymentech in its performance of services, on a common basis, for all or most of its customers utilizing such services.

**15.4 Parties; Independent Contractor; No Authority; No Third Party Beneficiary.** The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective 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. Paymentech lacks any authority to bind Merchant on any contractual matters. Final approval of all contractual matters that purport to obligate Merchant must be executed by Merchant in accordance with Merchant's Charter and the Denver Revised Municipal Code ("D.R.M.C."). Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than Merchant, Paymentech or Member receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

**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. Merchant agrees to reimburse Paymentech, subject to Paragraph 18 hereof, for all amounts that may be imposed on or incurred by Paymentech or Member related to Merchant's breach of any representation contained in this Agreement.

**15.6 Publicity.** Paymentech shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of its advertising or public relations materials without first obtaining the written approval of Merchant. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by Merchant. Nothing in this provision precludes the transmittal of any information to Paymentech's affiliates or officials of the City, including the Mayor, the Manager, City Council or the Auditor. The parties understand that all the material provided or produced under this Agreement which is not legally defined as confidential may be subject to the Colorado Open Records Act., § 24-72-201, et seq., C.R.S.

**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. In no event will any payment or other action by either party

constitute or be construed to be a waiver by such party of any breach of covenant or default that may then exist on the part of the other party. No payment, other action, or inaction by either party when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, by either party to any breach of any term of the Agreement constitutes a waiver of any other breach

**15.9 Entire Agreement; Merchant's Execution.** The Agreement (inclusive of the Payment Brand Rules, Application, taxpayer identification and certification documentation, and Schedule A) is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior or contemporaneous addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment will have any force or effect unless embodied in a written amendment to the Agreement properly executed by the parties. No oral representation by any officer or employee of Merchant at variance with the terms of the Agreement will have any force or effect or bind the City. Merchant agrees that in entering into this Agreement it has not relied on any statement of Paymentech or its representatives, other than those expressly provided for herein. The Agreement is, and any amendments thereto will be, binding upon the parties and their successors and permitted assigns. The Agreement will not be effective or binding on Merchant until it has been fully executed by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**15.10 Notices.** Notices concerning termination of the Agreement, alleged or actual violations of the terms of the Agreement, and matters of similar importance must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Paymentech at the address set forth below and if to Merchant at:

Manager of Finance  
201 West Colfax Avenue, Dept. 1010  
Denver, Colorado 80202  
Attn: Alyssa White, Cash Risk and Capital Funding Division

With a copy of any such notice to:

Attn: Municipal Operations Section  
Denver City Attorney's Office  
201 West Colfax Avenue, Department 1207  
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery; notices sent by certified mail are effective upon receipt; and notices sent by mail are effective upon deposit with the US Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered; however, these substitutions will not become effective until actual receipt of written notification.

**15.11 Governing Law; Waiver of Right to Contest Jurisdiction. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO WITHOUT REFERENCE TO CONFLICT OF LAW PROVISIONS. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado Second Judicial District or, if the jurisdictional prerequisites are met in the U.S. District Court for the District of Colorado.**

**15.12 Force Majeure.** The parties hereto shall not be responsible for any failure or delay in the performance of any obligations hereunder proximately caused by acts of God, flood, fire, catastrophe, computer or telecommunications failure, declared war, or terrorism or other similar causes of an extreme nature not caused by or within the control of either party. Notwithstanding the foregoing, 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 or parties described herein, such amendment will be effective immediately.

**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. The parties consent to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically, provided that such manner is consistent with applicable law and rules of evidence to establish the parties' execution thereof. Subject to the foregoing, the parties agree: (i) not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation; and (ii) not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document,



or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**15.15 Merchant Taxpayer Certification and Paymentech Reporting Obligations.** Pursuant to 26 USC 6050W, Paymentech is a “payment settlement entity”, obligated to collect and report certain taxpayer information to the United States Internal Revenue Service. Therefore, in conjunction with the execution of this Agreement, Merchant shall provide Paymentech with the appropriate taxpayer certification documentation, via Internal Revenue Service (IRS) Form W-9 (or the appropriate versions of Form W-8, if applicable). Merchant shall promptly notify Paymentech if there are any changes in this information. Paymentech may deduct withholding taxes, if any, from proceeds payable to Merchant or any entity that is a party to this agreement where required under applicable law. Paymentech may, in accordance with applicable law and from time to time during the Term of this Agreement, request Merchant to recertify its taxpayer certification hereunder. Furthermore, Merchant shall be responsible for any penalties related to the reporting obligations of Paymentech hereunder to the extent such penalties accrue based on the actions or inactions of Merchant despite reasonable notice from Paymentech.

**16. SURVIVAL.** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, Paymentech’s obligations to indemnify Merchant, as set forth in the Agreement, will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any actions begun within that period.

**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.

## 18. **COMPENSATION AND PAYMENT.**

~~§~~ **Fee:** Paymentech’s compensation for its services rendered and costs incurred under this Agreement from the City, if all Renewal Terms are effected, during the Term shall not exceed Fifty Million Dollars (\$50,000,000.00) and, unless otherwise agreed to in writing by the parties. fee amounts billed may not exceed the rates set forth in **Schedule A.**

### ~~§~~ **Maximum Contract Amount:**

(1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation, if all Renewal Terms are effected under the Term shall not exceed Fifty Million Dollars (\$50,000,000.00) (the “Maximum Contract Amount”). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Paymentech beyond that specifically described herein. Any services performed beyond those set forth therein are performed at Paymentech’s risk and without authorization under the Agreement.

(2) The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in

future fiscal years, and the Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the City's Revised Municipal Code or specified in the Agreement.

(3) At anytime during the Term, Paymentech may request an amendment to this Agreement to modify the Maximum Contract Amount.

19. **EXAMINATION OF RECORDS.** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to examine any directly pertinent books, documents, papers and records of Paymentech, directly and solely related to transactions performed under the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations, but in no event beyond seven (7) years from the date of the relevant transaction. The City shall bear all costs associated with an examination pursuant to this Section 19. Notwithstanding the foregoing or anything to the contrary in the Agreement, the City shall not be entitled to access any examination reports or filings made by or to Paymentech's or Member's regulators or other applicable supervisory authorities or any other data or information that Paymentech or Member is precluded by regulation or other applicable law from disclosing to third parties.

20. **CONFLICT OF INTEREST.**

~~f~~—No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement; and Paymentech shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12

~~f~~—Paymentech shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. Paymentech represents that it has disclosed any and all current or potential conflicts of interest, including transactions, activities or conduct that would affect the judgment, actions or work of Paymentech by placing Paymentech's own interests, or the interests of any party with whom Paymentech has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given Paymentech written notice describing the conflict.

~~c~~—The City acknowledges that Paymentech has banking and other business relationships in the normal course of business with various persons or entities, and is a wholly owned subsidiary of a publicly traded company that may include shareholders that are employees or relatives of employees of the City, which, in turn, may indirectly benefit from revenues received through Paymentech's performance under this Agreement. The J.P. Morgan 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 family members are affiliated. Paymentech's representations contained in this section are based upon the knowledge of Paymentech's signatory to the Agreement, who is subject to the foregoing disclosure relative to "conflicts of interest."

21. **NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT.**

~~f~~—This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

~~f~~—Paymentech certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 817.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

~~c~~—Paymentech also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to Paymentech that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires Paymentech to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three (3) days. Paymentech will also then terminate such sub-consultant or subcontractor if within three (3) days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. Paymentech is liable for any violations as provided in the Certification Ordinance. If Paymentech violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, Paymentech shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Paymentech from submitting bids or proposals for future contracts with the City.

## 22. **INSURANCE:**

~~h.~~ **General Conditions:** Paymentech agrees to secure (directly or through its parent JPMorgan Chase Bank, N.A.), at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. The required insurance coverage shall be kept in force at all times during the term of the Agreement, or any extension thereof. The required insurance shall be underwritten by an insurer rated by A.M. Best Company as "A-"VIII or better. Commercial General Liability, Auto Liability, and Excess Liability/Umbrella policies shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall endeavor to send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal." Paymentech, or its parent JPMorgan Chase Bank, N.A., shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Paymentech. Paymentech (directly or through its parent JPMorgan Chase Bank, N.A.) shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

~~i.~~ **Proof of Insurance:** Paymentech may not commence services or work relating to the Agreement prior to placement of coverage or evidence of self insurance acceptable to the Denver Risk Management. Paymentech certifies that the certificate of insurance attached as **Exhibit B** preferably an ACORD certificate, complies with all insurance requirements of this Agreement. In lieu of an ACORD certificate, Paymentech may provide web-based Memorandum of Insurance a copy of which will be attached as **Exhibit B**. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Paymentech's breach of this Agreement or of any of the City's rights or remedies under the Agreement.

~~j.~~ **Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella, Paymentech insurer(s) shall name the City and County of Denver, its elected and appointed officials, and employees as additional insured as their interests may appear relative to claims which arise from acts or omissions in connection with performance of this Agreement.

~~k.~~ **Waiver of Subrogation:** For all coverages except for Financial Institution Bond and Professional Liability, Paymentech's insurer shall waive subrogation rights against the City.

~~l.~~ **Subcontractors and Sub-consultants:** All subcontractors and sub-consultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Paymentech. Paymentech shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and sub-consultants maintain the required coverages. Paymentech agrees to provide proof of insurance for all such subcontractors and sub-consultants upon request by the City.

~~m.~~ **Workers' Compensation/Employer's Liability Insurance:** Paymentech (directly or through its parent JPMorgan Chase Bank, N.A.) shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by

disease claims. Paymentech expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of Paymentech's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Paymentech executes this Agreement.

~~6.7~~ **General Liability:** Paymentech (directly or through its parent JPMorgan Chase Bank, N.A.) shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate..

~~6.8~~ **Professional Liability:** Paymentech (directly or through its parent JPMorgan Chase Bank, N.A.) shall maintain coverage or self insure to limits of \$1,000,000 for each claim, and \$1,000,000 aggregate limit for all claims.

~~6.9~~ **Financial Institution Bond:** Paymentech (directly or through its parent JPMorgan Chase Bank, N.A.) shall maintain \$1,000,000 in commercial crime or Financial Institution Bond insurance coverage.

~~6.10~~ **Additional Provisions:**

(1) For Commercial General Liability, the policies must provide the following:

(i) That this Agreement is an Insured Contract under the policy;

(ii) Defense costs in excess of policy limits;

(iii) A severability of interests, separation of insureds or cross liability provision; and

(iv) A provision that coverage is primary and non-contributory with other coverage or self-

insurance maintained by the City.

(2) For claims-made coverage, the effective date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

(3) Paymentech (directly or through its parent JPMorgan Chase Bank, N.A.) shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At Paymentech's own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, Paymentech will (directly or through its parent JPMorgan Chase Bank, N.A.) procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**23. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the Agreement, Paymentech may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. Paymentech shall insert the foregoing provision in all subcontracts hereunder.

*[Signature Page Follows]*



To Be Completed By Paymentech, LLC

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

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_


By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** FINAN-201520122-00

**Contractor Name:** PAYMENTECH LLC

By: 

Name: Bob Young  
(please print)

Title: VP Credit/RISK  
(please print)

**ATTEST: [if required]**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**EXHIBIT A**

(exhibit follows)

**Assumptions**

Transaction related assumptions		Other assumptions	
Payment Transaction Sales Volume	\$250,355,424	Number of locations	150
Average Transaction Amount	\$30.00	Authorization / Capture %	105.0%
PIN Debit / EBT Transactions	4,259	Chargebacks as % of Sales Transactions	0.0300%
Conveyed Transactions	554,138	Billing Frequency	Monthly
Safetech Encrypted Items	N/A		

**Target Qualification Level:**

MasterCard:	Merit III	MM3
Visa:	CPS Retail	VPSC
Discover:	PSL Retail - Core	D164

**1. Fees applied on every transaction**

**Payment Brand Interchange & any incremental discount rate %** – MasterCard, Visa and Discover assess an Interchange Rate, Interchange Fee, Assessment Fee & 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".

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

Payment Brand Assessments		
MasterCard	Credit transactions < \$1000 and all Debit transactions	0.120%
	Credit transactions > \$1000	0.130%
Visa	Debit transactions	0.110%
	Credit transactions	0.130%
Discover		0.105%

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	\$0.0400
Visa per transaction	\$0.0400
Discover per transaction	N/A
JCB per transaction	N/A
American Express per transaction	N/A
PIN Debit per transaction	\$0.0400
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	N/A

Encryption Fees	
Safetech Encryption per transaction	N/A

<b>Customer Initials</b>	x _____	Please initial to acknowledge page 1 of the Schedule A pricing sheet
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## 2. One Time and Periodic Fees

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

### Internet Product: Orbital Gateway

Setup fee	\$50.00	Monthly fee	\$20.00
Third Party Setup fee	N/A	Third Party Monthly fee	N/A

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

## 3. Per Incidence Fees

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

Statement Fee (Email / ROL)	N/A	No charge if statements are sent to a valid email address or accessed by Merchant through Resource Online, as elected by Merchant on the Application.
Statement Fee (Mail)	\$5.00	Charged each month Chase Paymentech mails a statement (whether at the request of Merchant or because delivery to a valid email address has failed)
Statement Fee (Reprint)	N/A	Charged for each archived statement you request to have printed
Supplies: Billed Per Order	N/A	Charges for supply orders vary based on the items ordered
Chargeback Fee	\$5.00	Charged when a cardholder or card-issuing bank formally protests a charge
Voice Authorization Fee	\$0.55	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:	<input checked="" type="checkbox"/> E-Mail	<input type="checkbox"/> Statement only	Statement Frequency:	<input type="checkbox"/> Monthly
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Customer Initials	X _____	Please initial to acknowledge page 2 of the Schedule A pricing sheet
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4. Payment Brand Fees – Per Incidence		
MC Acquiring License Fee *	0.0040%	Charged on MasterCard Gross Sales volume. See additional information under Payment Brand Charges section on page 4.
MC Digital Enablement / Card Not Present Fee	0.010%	Charged on MasterCard Card Not Present Gross Sales volume.
DI Network Authorization Fee	\$0.0025	Charged by Discover on all authorizations for card transactions that are settled through the Discover Network
MC 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

5. Other Fees			
Fee Description	Amount	Fee Description	Amount

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

Type	Description	Fee
Replacement Fee (swap)	In warranty - Terminals, Printers, & Pinpads <sup>1</sup>	\$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.

**6. Authorized Signature**

Authorized Representative Signature: Must appear on Merchant Application section 11

Printed Name

Title

X

Signature

Date

Please ensure you have initialed pages 1, 2 and 3

**EXHIBIT B**

(Exhibit follows)



# CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)  
01/19/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> Aon Risk Services Northeast, Inc. New York NY Office 199 Water Street New York NY 10038-3551 USA	<b>CONTACT NAME:</b> PHONE (A/C. No. Ext): (866) 283-7122      FAX (A/C. No.): 800-363-0105		
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b> JPMorgan Chase & Co. and subsidiary, affiliated, and associated companies therof 270 Park Avenue New York NY 10017-2070 USA	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A:</b> National Union Fire Ins Co of Pittsburgh		19445
	<b>INSURER B:</b> New Hampshire Ins Co		23841
	<b>INSURER C:</b> Commerce & Industry Ins Co		19410
	<b>INSURER D:</b>		
	<b>INSURER E:</b>		
<b>INSURER F:</b>			

Holder Identifier :

**COVERAGES**      **CERTIFICATE NUMBER: 570056656691**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b>			GL7266980	06/01/2014	06/01/2015	EACH OCCURRENCE	\$5,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
	<input checked="" type="checkbox"/> Blanket Contractual Liability						MED EXP (Any one person)	Excluded
	<input checked="" type="checkbox"/> Host Liquor Liability Included						PERSONAL & ADV INJURY	\$5,000,000
GENL AGGREGATE LIMIT APPLIES PER:							GENERAL AGGREGATE	\$10,000,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG	\$5,000,000
	OTHER:							
	<b>AUTOMOBILE LIABILITY</b>						COMBINED SINGLE LIMIT (Ea accident)	
	<input type="checkbox"/> ANY AUTO						BODILY INJURY ( Per person)	
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident)	
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident)	
	<input type="checkbox"/> UMBRELLA LIAB	<input type="checkbox"/> OCCUR					EACH OCCURRENCE	
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE					AGGREGATE	
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION							
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>			WC027527573	06/01/2014	06/01/2015	<input checked="" type="checkbox"/> PER STATUTE	<input type="checkbox"/> OTHER
	ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	N/A	All other States			E.L. EACH ACCIDENT	\$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below			WC 027527574	06/01/2014	06/01/2015	E.L. DISEASE-EA EMPLOYEE	\$1,000,000
				AK, GA, VA			E.L. DISEASE-POLICY LIMIT	\$1,000,000

Certificate No : 570056656691

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
RE: RFP No. 6772 - Commercial Banking, Treasury Management and Merchant Service. City and County of Denver is included as an Additional Insured with respect to the General Liability policy but only to the extent required by agreement.

**CERTIFICATE HOLDER****CANCELLATION**

City and County of Denver Department of General Services Purchasing Division, Wellington E. Webb Municipal Office Building 201 West Colfax Ave. Dept. 304, 11th Fl. Denver CO 80202 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	<b>AUTHORIZED REPRESENTATIVE</b>  



# ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Northeast, Inc.		NAMED INSURED JPMorgan Chase & Co.	
POLICY NUMBER See Certificate Number: 570056656691			
CARRIER See Certificate Number: 570056656691	NAIC CODE	EFFECTIVE DATE:	

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance**

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER	
INSURER	
INSURER	
INSURER	

**ADDITIONAL POLICIES** If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
	WORKERS COMPENSATION						
A		N/A		WC 027527576 CA	06/01/2014	06/01/2015	
C		N/A		WC 027527577 FL	06/01/2014	06/01/2015	
B		N/A		WC 027527579 KY, NC, NH, UT, VT	06/01/2014	06/01/2015	
B		N/A		WC 027527580 MA, ND, OH, WA, WI, WY	06/01/2014	06/01/2015	
B		N/A		WC 027527581 ME	06/01/2014	06/01/2015	
B		N/A		WC 027527582 NJ	06/01/2014	06/01/2015	
B		N/A		WC 027527583 NY	06/01/2014	06/01/2015	
B		N/A		WC 027527584 PA	06/01/2014	06/01/2015	
B		N/A		WC 027527585 TX	06/01/2014	06/01/2015	
B		N/A		WC 027527575 AZ	06/01/2014	06/01/2015	
B				WC 027527578 IL	06/01/2014	06/01/2015	