

# Merchant Processing Agreement

For All Inquiries Merchant May Call or Write:



**NPC**

5100 Interchange Way, Louisville, KY 40229  
888-208-7231

## TERMS AND CONDITIONS

This Agreement by and among the business entity indicated on the Merchant Application and its accompanying documentation, which documents are incorporated herein and constitute a part of this Agreement as if fully set forth herein ("Merchant" or "you"), National Processing Company, a Nebraska corporation ("NPC" or "us" or "we"), and the financial institution indicated on the Merchant Application ("Member Bank") is binding on you as of the earlier of the date signed by NPC, the date of the first electronic transaction processed under this Agreement, or the date we approve your Merchant Application. If NPC has approved your Merchant Application in accordance with the preceding sentence, the effective date of the Agreement will be the date that you signed the Merchant Application (the "Effective Date"). Merchant desires to accept Cards (defined below) validly issued by Visa, Inc. ("Visa"), MasterCard International Incorporated ("MasterCard") and DFS Services LLC, d/b/a Discover® Network ("Discover Network") and/or their members. NPC and Member Bank desire to provide Card processing services to Merchant. By either your signature on the Merchant Application or your processing a transaction with NPC or any of its affiliates, you confirm acceptance of this Agreement. Your signature, a facsimile copy of your signature, a digitally stored image of your signature, or a unique digital signature on or captured within (as applicable) the Merchant Application serves as the signature for this Agreement. The parties expressly acknowledge and agree that the parties may choose to contract via electronic means and that such contracts shall have the same force and effect as if conducted via conventional form. Notwithstanding anything to the contrary elsewhere in this Agreement or in other agreements you may have with NPC, it is expressly acknowledged and understood that all such electronic contracting is and shall be conducted pursuant to the provisions of Kentucky Revised Statutes §369.101 et seq. The parties also expressly acknowledge and agree that any duplicate original (whether digital, photographic, or otherwise) or electronic record of this Agreement shall have the same force and effect as the original form of this Agreement. Therefore, Merchant, NPC and Member Bank agree as follows:

**1. Definitions.** In addition to the terms defined above and throughout the Agreement, the following terms shall have the meaning set forth below:

**"Agreement"** means this Merchant Processing Agreement, including the attached Merchant Application, Exhibits, and Schedules.

**"Association"** means the Card Organizations, Debit Networks, EBT networks, issuers and processors of Non-Bankcard Cards and any other issuer of credit or debit cards supported by NPC.

**"Card Organization"** means a card organization such as MasterCard, Visa and Discover Network (including any card issuer of payment cards processed and settled through the Discover Network, which may include Japanese Credit Bureau ("JCB"), China Union Pay ("CUP") and Diners Club International ("DCI")) that promulgates operating rules and operates an interchange system for exchanging charges and credit vouchers among you, Card issuers, NPC and Member Bank.

**"Cardholder"** means a person presenting a Card and purporting to be a person authorized to use the Card.

**"Operating Rules"** means the NPC Operating Rules attached as Exhibit A.

**"Processor"** means NPC's designated processor for the settlement of Discover Network Card transactions.

**"Rules"** means any and all relevant portions of the regulations, rules, policies and procedures, as amended from time to time, of the Associations, Third Party Service Providers, Member Bank and NPC, including but not limited to the Operating Rules. Some Card Organization Rules are available to you on the Internet (see Section 2.F).

**"Third Party Service Provider"** means equipment lessors, rental vendors, check service vendors, fleet card vendors, including Voyager, gift and loyalty card vendors, including TenderCard, issuers and processors of Non-Bankcard Cards, debit networks, software vendors, internet vendors, and other companies whose services you obtain through the coordination or setup of NPC, whether or not private labeled by NPC.

### 2. Card Processing Services.

**A. Card Election.** Subject to this Agreement, we will process transactions for the Credit Cards, Debit Cards, Other Cards, or PIN-Debit Cards you have indicated on the Merchant Application. **"Debit Card"** means Visa or MasterCard cards issued by a U.S. bank and/or a non-U.S. bank, or a Visa or MasterCard card that accesses a consumer's asset account within 14 days after purchase, including but not limited to Visa or MasterCard issued stored value, prepaid, payroll, EBT, gift, or consumer check cards. **"Other Card"** means all Visa/MasterCard cards issued by a non-U.S. bank and all Visa or MasterCard cards other than Debit Cards, including but not limited to business and consumer credit cards and Visa and MasterCard business debit cards. **"Credit Card"** means Discover Network Cards, Debit Cards and/or Other Cards. **"Discover Network Card"** means a valid payment card in the form issued under license from Discover Network and any other valid payment card processed and settled through the Discover Network, which may include JCB, CUP and DCI. Notwithstanding the foregoing, if Discover

Network classifies you as a retained Discover Network Merchant, NPC and Member Bank will not process or settle your Discover Network cards, NPC and Member Bank will have no liability to you for the processing and settlement of Discover Network cards, and Discover Network cards will not be included in the definition of Credit Cards. **"PIN-Debit Card"** means a card validly issued by a Debit Network requiring the entry of a personal identification number ("PIN"). **"Debit Networks"** means those debit card networks accepted by NPC. **"Non-Bankcard Cards"** refers to any form of electronic payment, including, but not limited to, American Express or any other issuer of credit/debit/check cards, except for electronic payments involving Visa, MasterCard or Discover Network (including Discover Network Cards). **"Cards"** mean Credit Cards, PIN-Debit Cards and/or Non-Bankcard Cards that you have requested to accept as indicated on the Merchant Application. You may selectively reject or decline transaction requests for Visa or MasterCard Card account numbers that are within a product category not accepted by you. Should you submit a transaction outside of the Visa or MasterCard Card or product categories regularly accepted by you, there is no requirement for NPC or Member Bank to reject the transaction. If you elect limited Card acceptance as set forth on the Merchant Application, any transaction submitted into interchange outside of the selected Visa or MasterCard Card or product category will be assessed the standard interchange reimbursement fee applicable to that product or any other applicable fee set forth on the Merchant Application. Your initial election will be made in your Merchant Application. If you wish to modify your election and NPC agrees to said modification, then you will provide NPC sixty (60) days advance notice of your intent to change said election in writing, and you will be responsible for any Visa or MasterCard charges assessed as a result of your limited acceptance and any and all costs incurred by NPC or Member Bank as a result of your election. These acceptance options apply only to U.S. issued Cards. The Visa and MasterCard Rules require merchants accepting any Card product bearing a Visa or MasterCard symbol to continue to accept both debit and credit card products issued by non-U.S. members.

**B. Processing.** You will be responsible for the quality and accuracy of all data provided to us. You also acknowledge that you need an Imprinter to get imprints of cards that will not swipe. Subject to this Agreement, Member Bank will deposit to the Merchant Account (defined below) the net settlement funds resulting from a transaction evidenced by a Credit Card or PIN-Debit Card sales draft or other form approved by NPC and Member Bank ("Sales Draft"), whether evidenced in writing or by electronic means, and will provide you provisional credit for such funds (less recoupment of any credit(s), adjustments, fines, chargebacks or fees). You acknowledge that your obligation to NPC and Member Bank for all amounts owed under this Agreement arise out of the same transaction as Member Bank's obligation to deposit funds to the Merchant Account. You agree that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. § 365, as amended from time to time. NPC may not subcontract, sublicense, assign, license, franchise or in any manner extend or transfer to any third party any right or obligation of NPC in connection with Visa and MasterCard transactions set forth herein without Member Bank's consent. Approval of your Merchant Application does not constitute a guarantee to process any transactions on your behalf.

**C. Provisional Credit.** Notwithstanding the above, under no circumstance will Member Bank or NPC be responsible for processing credits or adjustments related to Sales Drafts not originally processed by Member Bank and NPC. All Sales Drafts and deposits are subject to audit and final checking by Member Bank and NPC, and may be withheld and adjusted for inaccuracies. NPC and/or Member Bank may, upon receipt of verbal or written instructions, from any Association to which NPC and Member Bank are providing access hereunder, immediately cease to provide to you, including your clients, access to such Association. NPC and/or Member Bank shall use reasonable efforts to promptly notify you of such interruption in Association access.

**D. Control.** NPC is an agent of Member Bank in connection with Visa and MasterCard transactions, and Member Bank is at all times entirely responsible for and in control of NPC performance in connection therewith. You acknowledge that NPC may use an independent sales organization/member service provider ("ISO/MSP") operating under applicable Card Organization Rules. ISO/MSP is an independent contractor and not an agent of NPC. ISO/MSP has no authority to execute the Agreement on NPC's or Member Bank's behalf or to alter the terms hereof without NPC and Member Bank's prior written approval.

**E. Transactions.** For all Card transactions submitted to us: (a) the transaction must represent obligations of the person to whom the Card has been issued and/or the authorized Cardholder for the amounts in the transaction (including tax, but without any surcharge) and only for merchandise actually sold or rented or services actually rendered by you (except for any delayed delivery or advance deposit authorized by the Rules

and this Agreement) and must not involve any element of credit for any other purpose; (b) the transaction must represent a bona fide sale/rental of merchandise and/or services not previously submitted and may not represent a refinancing of any prior obligation; (c) the price charged for the transaction must not be subject to any dispute, setoff or counterclaim; (d) you must have no knowledge or notice of any fact, circumstances or defense which would indicate that the transaction was fraudulent or not authorized by the Cardholder or which would otherwise impair the validity or collectability of the Cardholder's obligation or relieve the Cardholder from liability for the transaction; (e) except as otherwise provided in the Rules, the transaction does not represent the refinancing of an existing obligation of the Cardholder (including any obligation otherwise owed to you by a Cardholder, or arising from the dishonor of a personal check); and (f) the transaction does not result from any sale outside of your normal course of business, as described in the Merchant Application.

F. Operating Rules. NPC and/or Member Bank may supply you with various manuals and instructions regarding chargebacks, terminal processing and other operational compliance matters (the "**Manuals/Instructions**"), and may from time to time otherwise advise you of requirements imposed by the Rules by providing you with relevant portions or summarizations thereof of the rules, regulations, releases, interpretations and other requirements of the Associations. You agree to follow the procedures in the Operating Rules and the Manuals/Instructions in connection with each Card transaction and to comply with all requirements of the Rules. Unless the context clearly requires otherwise, references to this Agreement include the Operating Rules, Manuals/Instructions and the Rule provisions. If there is any conflict between the terms of this Agreement, the Operating Rules and the Manuals/Instructions, the terms of this Agreement will govern, except to the extent the Operating Rules and/or Manuals/Instructions specifically provides that a particular provision in it overrides any conflicting provision in this Agreement. Additional information is available at the Visa web site (download the "Card Acceptance & Chargeback Cycle Management Guide" under the "Operations & Risk Management" section at [http://www.usa.visa.com/business/accepting\\_visa](http://www.usa.visa.com/business/accepting_visa)) and the MasterCard web site (download the "Merchant Rules" under the "Accept MasterCard" section at <http://www.mastercardmerchant.com>).

### 3. Debit & EBT Card Processing Services; Availability of Terminals.

If so indicated on the Merchant Application, we will process PIN-Debit Card transactions and EBT Card transactions. If you accept EBT Cards, the terms set forth on Schedule IV will apply. NPC, Member Bank or third party banks with which NPC or Member Bank have a relationship are members of certain Debit Networks and are willing to sponsor you as a participant in such Debit Networks. Debit Networks may be added or removed from time to time. Neither NPC nor Member Bank warrants the continuing availability of any Debit Network or EBT network. You agree to pay NPC the then current fees for any Debit Network or EBT Network added after the effective date of this Agreement. You hereby delegate to NPC and/or Member Bank the authority to decide to which Debit Network a given PIN-Debit Card transaction will be routed. You will take all reasonable steps necessary to ensure that all point-of-sale devices and PIN pads will be available for use by the Cardholders of each Card Organization, Debit Network and EBT network to which you are being provided access as set forth on the Merchant Application for the Cardholders' Card transactions and such devices and PIN pads will function in a reliable manner.

### 4. Merchant Account.

A. Establishment and Authority. You will establish and maintain with an Automated Clearing House ("ACH") receiving depository institution acceptable to Member Bank one or more commercial checking account(s) (collectively, the "**Merchant Account**") to facilitate payment for Credit Card and PIN-Debit Card transactions. You will maintain sufficient funds in the Merchant Account to accommodate all transactions, including but not limited to fees, fines and chargebacks. You irrevocably authorize Member Bank to debit the Merchant Account for chargebacks in accordance with the Rules and this Agreement, and for fees and any other penalties or payments due under this Agreement related to the Card Organizations. You also irrevocably authorize Member Bank or NPC to debit the Merchant Account for fees and any other penalties or payments due in accordance with this Agreement (other than related to the Card Organizations) and any other agreement between you and NPC or an NPC affiliate. In addition, you authorize NPC and/or Member Bank, as appropriate, to deduct any chargebacks, adjustments, fees, charges, obligations and other amounts you owe NPC and/or Member Bank from any settlements due to you. You also authorize NPC or Member Bank's vendors or agents to debit the Merchant Account for any fees due such vendor or agent under this Agreement. You must obtain prior written consent from Member Bank and NPC to change the Merchant Account. If you do not obtain consent prior to changing the Merchant Account, NPC or Member Bank may immediately terminate this Agreement and may take other actions necessary to protect them within their discretion, and this Agreement will apply to such new account.

B. Merchant Account. If Alternate Funding is selected on the Merchant Application but you are not approved by NPC to receive Alternate Funding, you will be set up with Premium ACH for your deposit timeframe. If Alternate Funding is selected on the Merchant Application and you are approved for Alternate Funding, and neither NPC nor Member Bank has placed your account on hold, Member Bank will generally initiate an ACH of settlement funds due to you, subject to the terms of this Agreement, to the Merchant Account the business day (which, for purposes herein, will mean any day on which the Federal Reserve is open for business, other than Sundays or State or Federal holidays) after Member Bank processes such

transactions, provided that Member Bank successfully receives the complete transaction data by the applicable cut off time. Notwithstanding the foregoing, neither NPC nor Member Bank will be liable to you if an ACH of your settlement funds is not initiated within such one business day time period. NPC and/or Member Bank may change your deposit time frame from Alternate Funding to Premium ACH at any time and without advance notice to you. NPC and/or Member Bank may, within their sole discretion, delay your settlement payments for up to seven (7) days, which period will begin after the settlement payments were received by NPC and Member Bank. In this event, you acknowledge that NPC and/or Member Bank will, and you expressly authorize NPC and/or Member Bank to, delay your settlement payments for up to seven (7) days. This delay of your settlement funds does not preclude NPC and/or Member Bank from exercising their right to establish a Reserve Account or to suspend payments pursuant to Section 5 or Exhibit A of this Agreement. The settlement payments will begin to be credited to your Merchant Account, less any monies owed NPC and Member Bank, on the next business day following expiration of this rolling delay period. This rolling delay of the settlement payments will be ongoing and continue as long as NPC is providing your processing services. In addition, Member Bank has a right to delay, within its discretion or at the request of NPC, crediting the Merchant Account with funds evidenced by submitted Sales Drafts. You are responsible for verifying the amount of funds actually deposited to and available in your Merchant Account on a daily basis. Neither NPC nor Member Bank are responsible for the availability of funds represented by submitted Sales Drafts, or for any charges you may incur for overdrawing the Merchant Account. You authorize Member Bank or NPC to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant you conditional credit for any entry. You authorize and appoint Member Bank or NPC to act as your agent to collect Credit Card and PIN-Debit Card transaction amounts from the issuing bank. As the collecting agent, Member Bank grants you provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Member Bank subject to all chargebacks, returns, fees and fines.

C. Asserted Errors. Each day you will balance and reconcile your Merchant Account and Reserve Account (as defined in Section 5.B) to ensure that all funds due you have been deposited into your Merchant Account, and to ensure that no funds have been improperly withheld or withdrawn from your Merchant Account. NPC is not liable for any errors made in assisting you in establishing and maintaining your account relationship with Member Bank or the Card Organizations. You agree to verify you have received all statements and promptly examine all statements relating to the Merchant Account and to immediately notify NPC in writing of any errors. Your written notice must include: (i) Merchant name and identification number, (ii) the dollar amount of the asserted error, (iii) a description of the asserted error, and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by NPC within 30 days after the date of the statement containing the asserted error or missing statement. If you do not notify NPC within that 30 day period, NPC is not liable for, nor obligated to investigate or correct, such asserted error, and you agree that all claims related to such error are waived. You may not make any claim against Member Bank or NPC for any loss or expense relating to any asserted error for 60 days immediately following NPC's receipt of your written notice. During that 60 day period, NPC will be entitled to investigate the asserted error. If you notify NPC that a Credit Card sales batch has not processed, NPC and Member Bank will attempt to re-present such missing Credit Card batches dated during the 90 day period immediately preceding the date NPC receives your notice. For any Credit Card sales batches prior to such 90 day period, NPC will attempt, but is not responsible, to process such transactions upon receipt of an Authorization Form obtained from NPC and executed by you to allow NPC to re-present such tickets. NPC and Member Bank shall not be liable for any amounts they are unable to collect, including but not limited to declined transactions.

D. ACH Authorization. You authorize Member Bank, NPC, or their vendors or agents, including but not limited to Third Party Service Providers, to initiate ACH credit/debit entries to or from the Merchant Account, the Reserve Account or any other account maintained by you at any institution that is a receiving member of ACH, all in accordance with this Agreement. You hereby agree to be bound by the terms of the operating rules of the National Automated Clearing House Association, as are in effect from time to time. This authorization extends to payments for all amounts owed by you to NPC, an NPC affiliate, or Member Bank, including but not limited to amounts owed for lease, rental or purchases of POS terminals, check guarantee services, and supplies. You will provide NPC with a voided check from the Merchant Account. This ACH authorization will remain in effect after termination of this Agreement, and until NPC has received written notice terminating this authorization and all your obligations to NPC and Member Bank have been paid in full. If you change the Merchant Account upon prior written consent from NPC and Member Bank pursuant to Section 4.A, this authorization will apply to the new account and to any other account you own at any other financial institution. When changing Merchant Accounts, do not close the old account until the new account receives the third deposit. You shall be solely liable for all fees and charges assessed by your financial institution, including all overdraft and NSF charges, and you irrevocably release NPC and Member Bank and hold NPC and Member Bank harmless from the same fees and charges, regardless of cause. Neither NPC nor Member Bank is liable for any delays in receipt of funds or errors in debit and credit entries caused by unaffiliated third parties including but not limited to the Associations, a clearing house or your financial institution.

All sales and credits accepted by NPC and Member Bank are subject to audit and verification by NPC and Member Bank. You agree that Member Bank and NPC may debit or credit your Merchant Account for any inaccuracies.

E. Third Party Service Provider Transactions. Notwithstanding the right of NPC to debit funds from the Merchant Account for erroneous deposits made by Third Party Service Providers, this Agreement does not govern the deposit to or withdrawal of funds by Third Party Service Providers. If you have contracted for services with Third Party Service Providers coordinated by NPC or its agents, NPC is not a party to those contracts and NPC has no control over your contractual relationship with those companies. Third Party Service Providers will provide their own statements and you are responsible for notifying them of any discrepancies or errors. NPC and Member Bank are not responsible or liable for any errors made in connection with establishing and maintaining such account relationships with Third Party Service Providers, and you waive, indemnify and hold harmless NPC and Member Bank against all such claims. You are responsible for ensuring that all account numbers are correct. You must notify the Third Party Service Providers of any changes, including but not limited to changes in ACH information, address and account information. In addition, except to the extent that NPC and Member Bank will provide settlement services for American Express, NPC and Member Bank will provide authorization and/or processing services only, and all settlement and chargeback obligations and similar financial responsibilities arising from your transactions involving Cards other than Credit Cards or PIN-Debit Cards will be governed exclusively by your agreement with the respective card issuer. Notwithstanding anything to the contrary in this Agreement, all terms of this Agreement apply to your use of Voyager Fleet Card Services.

## 5. Security Interest, Reserve Account, Recoupment and Set-Off.

### A. Security Interest.

i. Security Agreement. This Agreement will constitute a security agreement under the Uniform Commercial Code. You grant to Member Bank and NPC a security interest in and lien upon: (a) all funds at any time in the Merchant Account, regardless of the source of such funds, (b) all funds at any time in the Reserve Account, regardless of the source of such funds, (c) present and future Sales Drafts, and (d) any amount which may be due to you under this Agreement, including but not limited to all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). You agree to provide other security to NPC and Member Bank upon request to secure your obligations under this Agreement. You agree that if at any time there are insufficient funds in your Reserve Account and Merchant Account to cover your obligations under this Agreement, NPC is granted a further security interest in all of your assets of any kind whatsoever, and such assets shall then become Secured Assets. These security interests and liens will secure all of your obligations under this Agreement and any other agreements now existing or later entered into between Merchant, NPC or an affiliate of NPC, and/or Member Bank. This security interest may be exercised by NPC and Member Bank without notice or demand of any kind by making an immediate withdrawal or freezing the Secured Assets.

ii. Perfection. Pursuant to Article 9 of the Uniform Commercial Code, as amended from time to time, Member Bank and NPC have control over and may direct the disposition of the Secured Assets, without further consent of Merchant. You represent and warrant that no other person or entity has a security interest in the Secured Assets. With respect to such security interests and liens, Member Bank and NPC will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from Member Bank and NPC written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and Member Bank and NPC are not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets. Nevertheless, you agree not to contest or object to any motion for relief from the automatic stay filed by NPC or Member Bank. You agree to execute and deliver to NPC such instruments and documents NPC may reasonably request to perfect and confirm the lien, security interest and right of setoff set forth in this Agreement.

### B. Reserve Account.

i. Establishment. For the purpose of providing a source of funds to pay damages which Member Bank and NPC may potentially suffer under this Agreement and to pay fees, fines, chargebacks or other amounts you may owe Member Bank and/or NPC under this Agreement, a Reserve Account may be established from time to time at Member Bank (or other approved depository institution), by you, Member Bank or NPC, initially or at any time in the future as determined in good faith by Member Bank or NPC, in an amount sufficient to satisfy your current and/or future potential obligations as determined by Member Bank or NPC. Member Bank or NPC may, at any time, require that the amount on deposit in the Reserve Account be increased. Reserve Account funds may be commingled with other funds, and need not be maintained in a separate account designated in the name of the Merchant. Subject to the other terms of this Agreement, NPC and Member Bank shall have the right and discretion to retain funds placed into the Reserve Account until requested by Merchant in writing following the later of (a) 270 days following the effective date of termination of this Agreement, or (b) 180 days from the date of the last chargeback (the latter of such dates shall be referred to as the "Refund Request Date"). If at any time NPC or Member Bank in its discretion should determine that (1) Merchant has engaged in illegal business activities, (2) Merchant is suspected of being or confirmed to be involved in a collusive fraudulent transaction with a Cardholder, (3) Merchant has laundered or aggregated illegal and/or brand

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damaging transactions, (4) the Merchant account was established as a result of identity theft, and/or (5) the Merchant has engaged in any other action constituting Merchant fraud (each an "Improper Transaction") Merchant shall be provided notice of the same, and balances in the Reserve Account shall become the property of NPC and shall otherwise be forfeited in the nature of liquidated damages without prejudice to NPC and Member Bank's other continuing contractual remedies. If Merchant fails to provide written notice and objection within 90 days of either the Refund Request Date or notification by NPC of an Improper Transaction event, as the case may be, Merchant agrees that he shall be deemed to have voluntarily waived contractual rights, claims and all interest in any subject Reserve Account balances, if any.

ii. Funding. You will fund a Reserve Account at NPC's or Member Bank's direction and Member Bank and NPC have the unilateral right to debit the Merchant Account to establish, maintain and fund the Reserve Account, in such amounts as NPC or Member Bank may determine is necessary in their discretion to protect their present or future interests. Member Bank or NPC may deposit into the Reserve Account funds they would otherwise pay to your Merchant Account for the purpose of establishing, maintaining or increasing the Reserve Account. Regardless of whether the funds in the Reserve account are sufficient to cover the chargebacks, fees, fines and other amounts due from you, even if funds in a Reserve Account have been previously released or offset, you will pay all contractual obligations as and when they come due, and there is no requirement that NPC first look to the Reserve Account for satisfaction of any obligation due under the Agreement. NPC or Member Bank's right to fund and to debit a Reserve Account will not limit NPC's or Member Bank's rights and other remedies under this Agreement or their right to debit or withhold ongoing settlement payments as recoupment for chargebacks, potential chargebacks, adjustments, fees, fines, charges, obligations and other amounts due hereunder.

iii. Authorizations. Member Bank or NPC may, without notice to you, apply deposits in the Reserve Account against any outstanding amounts you owe under this Agreement or any other agreement between you and Member Bank or NPC. NPC or Member Bank may debit the Reserve Account to exercise their rights under this Agreement to collect any amounts due to Member Bank or NPC including but not limited to rights of set off and recoupment. Except as otherwise set forth in this Agreement, NPC may not have access, directly or indirectly, to any account for funds or funds due to a Merchant and/or funds withheld from a Merchant for chargebacks arising from or related to performance of this Agreement. Member Bank may not assign or otherwise transfer an obligation to pay or reimburse a Merchant arising from or related to performance of this Agreement to NPC.

iv. Breach or Suspicious Activity. If Merchant breaches this Agreement or if NPC, in its sole discretion, identifies suspicious or irregular transaction, settlement or banking activity, NPC may refuse to process Sales Drafts and/or may avail itself to all contractual remedies provided in this Agreement, including the retention of such transactions or other funds in the Reserve Account, pending the cure of such breach or resolution of such activity to NPC's satisfaction.

C. Recoupment and Set Off. Member Bank and NPC have the right of recoupment and set-off. This means that they may offset any outstanding/uncollected amounts owed to them from you including: (i) any amounts they would otherwise be obligated to deposit into the Merchant Account, and (ii) any other amounts NPC or Member Bank may owe you under this Agreement or any other agreement. You acknowledge that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code §. 362 to NPC, you must create or maintain the Reserve Account as required by NPC or Member Bank, and NPC or Member Bank will have the right to offset against the Reserve Account for any and all obligations which you may owe to NPC and/or Member Bank, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

D. Monitoring. You acknowledge that NPC and/or Member Bank may monitor your daily credit card transaction activity. You agree that NPC or Member Bank may upon reasonable grounds divert into a Reserve Account the disbursement of your funds and/or temporarily suspend processing under this Agreement. Reasonable grounds shall include, but not be limited to, the following: suspicious or unusual transaction activity; material variance in the nature of your business, type of product and/or service sold, average ticket size, monthly volume or swiped/keyed percentages, from such disclosures made by you in this Agreement; you do not authorize transactions; we receive excessive retrieval requests against your prior activity; excessive chargebacks are debited against your prior activity; you do not deliver product or render full service on or before the transaction date; or you key a foreign card transaction. If your funds are diverted by NPC or Member Bank or NPC or Member Bank has temporarily suspended processing under this Agreement, such diversion or suspension shall be for any reasonable period of time required by NPC or Member Bank to fully investigate your account activity and resolve, to its sole satisfaction, your subject transaction or activity. Upon completion of such investigation, NPC or Member Bank may maintain the suspended funds in the Reserve Account to be held in accordance with Section 5. NPC or Member Bank shall maintain any funds diverted in a non-interest bearing account, which may be a commingled account. Neither NPC nor Member Bank shall have liability for any losses, either direct or indirect, which you may attribute to any diversion of funds, or suspension of processing.

E. Remedies Cumulative. The rights conferred upon Member Bank and NPC in this Section are not intended to be exclusive of each other or of any other rights and remedies of Member Bank and NPC under this Agreement, at law or in equity. Rather, each and every right of Member Bank and NPC at law or in equity will be cumulative and concurrent and in addition to every other right.

## 6. Fees and Other Amounts Owed

A. Fees. Your fees are described on your Merchant Application. You will pay Member Bank and NPC fees for services, forms, and/or equipment in accordance with this Agreement. Monthly recurring charges will be assessed upon approval of the Merchant Application. These fees are based on and contingent upon your processing activity reflecting the information set forth in the Merchant Application, including but not limited to, average ticket size, annual volume, card swipe percentage and percentage of business to business sales. Such fees will be calculated and debited from the Merchant Account once each business day or month, as determined by NPC, for each business day or month's activity, or will be netted out from the funds due you under this Agreement. Minimum Monthly Bill is calculated each month by taking the Minimum Bill fee as described on the Merchant Application, less actual charges for Visa, MasterCard and Discover Network net discount rate and gross transaction fees for such month's processing. Minimum Monthly Bill shall never be a negative number (i.e. a credit). The Annual Fee or Semi-Annual Fee, as applicable, will not be prorated or refunded if this Agreement is cancelled or terminated for any reason. Member Bank must approve, in advance, any fee or obligation of Merchant arising from or related to performance of this Agreement in connection with Visa and MasterCard transactions. NPC, upon approval from Member Bank if required, may adjust the fees in accordance with Section 14.J below. NPC and/or Member Bank may charge you interest at our then current rate for any amounts that are not timely paid by you.

B. Discount and Transaction Fees. The discount fees shown in the Application shall be calculated based on the gross amount of all (i) for Visa, MasterCard and Discover Network sales, the Visa Card, MasterCard Card and Discover Network Card transactions submitted to NPC, (ii) for Debit Networks, the PIN Debit Card transactions submitted to NPC, and (iii) for American Express, the American Express Card transactions submitted to NPC. The discount rate is based on sales transactions as opposed to sales less credits. Transaction fees may be charged as settlement or authorization fees, or a combination thereof. Transaction fees are fees per transaction such as closing daily transactions (batch fee), Association fees, network fees, and Non-Bankcard Card providers' fees, authorizations, rejects, multiple authorizations of the same transaction, any other electronic payment transaction or any other communication attempt from your point of sale device.

C. Rate Qualifications and Association Fees. If the Merchant Application states that your Visa, MasterCard and Discover Network Interchange fees, assessments and other fees will be passed through to you, all Card Organization Interchange fees, assessments and other fees will be passed through to you in addition to the Discount Rate, Transaction Fee and other fees set forth on the Merchant Application. If the Merchant Application does not state that your Visa, MasterCard and Discover Network Interchange fees, assessments and other fees will be passed through separately to you, the current Card Organization fees are included in the Discount Rate and Transaction Fee set forth on the Merchant Application. Regardless of whether the Card Organization fees are assessed separately or incorporated into your Discount Rate and Transaction Fee, the Card Organization Interchange fees, assessments and other fees are based on the current Interchange rates, assessments and fees set by the Card Organizations and are subject to change from time to time. You acknowledge that whenever your transactions fail to qualify for any reduced fees, NPC and Member Bank will process such transactions at the applicable rate as set forth on the Merchant Application, and you will pay the corresponding amount. You acknowledge that to receive the lowest Discount Fee and Transaction Fee on a Card transaction, the Card transaction must exactly meet certain processing criteria or "qualify" for basic fees according to the Rules. Criteria for determining qualification will include, but not be limited to, whether a Card transaction is: (1) hand entered (the required data is not electronically captured by a point-of-sale device reading the information encoded in or on a Card); (2) voice authorized; (3) not authorized; (4) transmitted for processing within twenty-four (24) hours of the Card transaction; (5) a Card transaction involving a Consumer Reward, Commercial Reward, Visa Signature, and MasterCard World Elite Card, or (6) deemed "Non-Qualifying" by the Rules, such as, but not limited to, Card transactions involving foreign Cards or Cards issued as business, commercial, purchasing or government Cards. **In the event that Card transactions submitted to us for processing only partially qualify or do not at all qualify for the qualified discount rate quoted in accordance with the Merchant Application and/or the Rules, you may be assessed and agree to pay an additional Mid-Qualified Exception Fee or Non-Qualified Exception Fee if set forth on the Application.** Further, you will pay, in accordance with this Agreement, all fees, cost escalations, assessments, tariffs, penalties, fines or other items that may be charged, assessed or imposed under this Agreement and/or the Rules. Several factors affect the best rate you may achieve on any given transaction, including but not limited to the type of Card used, the number of days between the sale and the date you submit the transaction to us, obtaining authorization, capturing all transaction data, submitting the transaction in the correct format, and proper functioning of your point of sale terminal, software, and communications lines. Further, the Associations change the transaction

qualification criteria from time to time, and your terminal or software may not meet the new criteria. We make no representation or warranty that your transactions qualify for any given rate, and we disclaim all responsibility and liability for a transaction's failure to so qualify. You will release and hold NPC and Member Bank harmless from any loss, cost or damage, including legal fees and court costs, resulting from transactions' failure to qualify for a particular rate. In addition, Card transactions that do not meet the necessary criteria for payment are subject to complete denial, reversal and/or chargeback.

D. Additional Provisions for PIN-Debit Cards. NPC will charge the Debit PIN-Based Transaction Fee set forth on the attached Merchant Application for each PIN-Debit Card transaction submitted regardless of whether such transaction is approved, declined, or determined invalid. In addition, you will be assessed for each PIN-Debit Card transaction all Debit Network Interchange fees and other fees, sponsorship, switch and gateway fees. Should any Debit Network, sponsor or processor raise its Interchange, sponsorship, gateway or switch fees or other, NPC will have the right to assess the fees to you. In addition to the charges set forth on the Merchant Application, you agree to pay for all Debit Network setup fees, chargeback fees and adjustment fees, including but not limited to, late fees that may be imposed by the Debit Networks.

E. Other Amounts Owed. You will immediately pay NPC or Member Bank any amount incurred by NPC or Member Bank attributable to this Agreement, including but not limited to chargebacks, fines imposed by the Associations, Third Party Service Providers, or other card issuers or governmental agencies, cost escalations, assessments, taxes, tariffs, penalties, insufficient fund fees, fees associated with deconversion (including but not limited to costs associated with customer service or technical support during any period of deconversion) and ACH debits that overdraw the Merchant Account, Reserve Account, or any other account you have at Member Bank or at any other financial institution for any amount you owe NPC or Member Bank under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between you and NPC or Member Bank, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event such ACH does not fully reimburse NPC or Member Bank for the amount owed, you will immediately pay NPC or Member Bank such amount. From time to time, NPC may assess a lump sum fee to cover common industry expenses. NPC and Member Bank reserve the right to assess other fees as they arise. You are obligated to pay all taxes and other charges imposed by any governmental authority on the services and products provided under or in connection with this Agreement. You also acknowledge that NPC and/or Member Bank may be required to withhold taxes from amounts otherwise due to you under this Agreement in accordance with the Laws (as defined in Section 8.E.) and that NPC and Member Bank have no liability to you for such amounts withheld.

F. Chargebacks. You are fully liable to NPC and Member Bank for all transactions returned to NPC or Member Bank for any reason, otherwise known as "**chargebacks**" (or, for Debit Card transactions, "**reversals**"). You will pay NPC and Member Bank on demand the value of all chargebacks/reversals. You authorize NPC and Member Bank to offset from incoming transactions or to debit the Merchant Account, the Reserve Account, or any other account of Merchant the amount of all chargebacks/reversals. You will fully cooperate with NPC and Member Bank in complying with the Rules regarding chargebacks/reversals. Guarantors are personally liable for all chargebacks/reversals. Merchant and guarantors will remain liable to NPC even if this Agreement has terminated.

G. If, after the Effective Date of this Agreement, you elect to accept other card types, by submitting sales data for said card type (after approval by us and the Card issuer, if applicable) you indicate your acceptance to the pricing and conditions associated with accepting said Card types. NPC may assess the ACH/DBA Fee set forth on the Merchant Application for administrative services, including, but not limited to, changing your Merchant Account information or processing returned ACH items. MasterCard issuers may collect a handling fee for specific authorization chargebacks for certain Merchant Industry types.

## 7. Application, Indemnification, Limitation of Liability.

A. Application. You represent and warrant to Member Bank and NPC that all information in the Merchant Application is correct and complete, including but not limited to the average ticket size and average monthly volume. You may present Card transactions to us only for the activities and in the volumes described on the Merchant Application, including the percentage of mail order/telephone order/Internet order transactions. Any Card transaction volume exceeding the volume indicated on the Merchant Application by more than twenty five percent (25%) must be approved in writing by our authorized officer before you submit Card transactions to us. Any variance in the stated average ticket size and monthly volume could result in increased fees, delayed and/or withheld settlement of funds, or termination of this Agreement. You must notify NPC in writing of any changes to the information in the Merchant Application, including but not limited to: any additional location or new business, the identity of principals and/or owners, the form of business organization (i.e., sole proprietorship, partnership, etc.), type of goods and services provided, and how sales are completed (i.e., by telephone, mail, electronic commerce, or in person at your place of business). The notice must be received by NPC within 10 business days of the change. You will provide updated information to NPC within a reasonable time upon request. You are liable to Member Bank and NPC for all losses and expenses incurred by Member Bank or NPC arising out of your failure to report changes to us. NPC may immediately terminate this

Agreement upon notification by you of a change to the information in the Merchant Application.

**B. Indemnification.** You will be liable for, defend, hold harmless, and will indemnify NPC, Member Bank, the Associations, and their employees, officers, directors and agents from and against all claims, losses, liabilities, damages, fines, assessments, expenses (including attorneys' and collection fees and expenses) and other costs resulting from (i) any action or omission of any third party with which you have contracted, (ii) arising out of any transaction processed under this Agreement, (iii) any breach by you of this Agreement or any misrepresentation by you under this Agreement, (iv) any bankruptcy proceeding, (v) your violation of applicable Laws or the Rules, (vi) your or your employees' negligence, fraud, or willful misconduct in connection with your card transactions, use of NPC's services, or otherwise arising from your provision of goods and services to Cardholders, and (vii) effecting transactions with the use of a lost, stolen, counterfeit, or misused Card. Further, you agree to indemnify and hold NPC and Member Bank harmless from and against all losses, liabilities, damages, fines, fees, assessments and expenses (including attorneys' and collection fees and expenses) and other costs NPC or Member Bank may incur pursuant to any Rule resulting from your action or inaction, including but not limited to, all losses and expenses NPC or Member Bank may incur as a result of any action you institute against any Card Organization or Card issuer following a chargeback or fine. In addition, you will defend, indemnify and hold harmless NPC, Member Bank, and the Associations for any action they take against the Merchant Account, Reserve Account, or any other account you own, pursuant to this Agreement. You will also defend, indemnify and hold harmless the institution at which you maintain your Merchant Account for acting in accordance with any instruction from Member Bank or NPC regarding any such account.

**C. Limitation of Liability.** IN NO EVENT WILL NPC OR MEMBER BANK BE RESPONSIBLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHICH YOU MAY INCUR AS A RESULT OF ENTERING INTO OR RELYING UPON THIS AGREEMENT OR TERMINATION OF THIS AGREEMENT, EVEN IF NPC OR MEMBER BANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING. Any liability of NPC or Member Bank under this Agreement, whether to you or any other party, whatever the basis of the liability, will not exceed in the aggregate the difference between (i) the amount of fees NPC received from you during the month in which the transaction out of which the liability arose accrued, and (ii) assessments, chargebacks, and offsets against such fees which arose during that month. If more than one month is involved, the aggregate amount of NPC and Member Bank's liability will not exceed the lowest amount determined in accordance with the previous sentence for any one month involved. NPC and Member Bank shall not be responsible for the errors, acts, omissions, failures to act, negligence or intentional conduct of any other person or entity, including but not limited to entities such as NPC's communications carriers or clearing houses, and no such entity shall be deemed a representative or an agent of NPC or Member Bank. Member Bank will have no liability for the errors, acts, omissions, failures to act, negligence or intentional conduct of the Processor. In no event shall NPC or Member Bank be liable to Merchant for any consequential, incidental, punitive or special damages which Merchant or its customers, affiliates, parent companies, associates, agents, officers, directors or employees may incur or suffer in connection with this Agreement.

**D. Performance.** NPC and Member Bank will perform all services in accordance with this Agreement. NPC and Member Bank make no other warranty, expressed or implied, regarding the services, and nothing contained in this Agreement will constitute such a warranty. NPC and Member Bank disclaim all implied warranties, including those of merchantability and fitness for a particular purpose. NPC's and Member Bank's sole liability to you or any third party for any claims, notwithstanding the form of such claims (e.g. contract, negligence or otherwise), arising out of the delay of, or interruption in the services provided or to be provided by NPC or Member Bank hereunder, will be to use reasonable efforts to commence or resume the services as promptly as reasonably practicable. Should NPC and/or Member Bank be required to defend a claim brought by you and NPC and/or Member Bank prevails, NPC and/or Member Bank will be entitled to reimbursement from you, and you agree to pay all costs, attorneys' fees and any other expenses incurred in connection with those proceedings. No party will be liable to the other parties for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the fault or gross negligence of such party.

**8. Representations and Warranties.** You represent and warrant to NPC and Member Bank at the time of execution and throughout the term of this Agreement the following:

**A. Information.** You are a corporation, limited liability company, partnership or sole proprietorship validly existing and organized in the United States. All information contained in this Agreement or any other document submitted to NPC is true and complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Merchant. You are not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Merchant Application, unless you obtain the prior written consent of NPC.

**B. Corporate Power.** Merchant and the person signing this Agreement on behalf of Merchant have the power to execute and perform under this Agreement and Merchant represents and warrants that the person executing this Agreement is duly authorized to bind Merchant to all provisions of this Agreement, and that such person is authorized to execute any documents

and to take any action on behalf of Merchant, which may be required by NPC now or in the future. Further, you represent and warrant that this Agreement will not violate any law or conflict with any other agreement to which you are subject.

**C. No Litigation.** There is no action, suit or proceeding pending or to your knowledge threatened which, if decided adversely, would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never been placed on the MasterCard MATCH system or the Combined Terminated Merchant File except as disclosed in writing to NPC.

**D. Transactions.** All transactions are bona fide. No transaction involves the use of a Card for any purpose other than the purchase and delivery of goods or services from you and does not involve a Cardholder obtaining cash from you unless allowed by the Rules and agreed to in writing with NPC.

**E. Rules Compliance.** You will comply with all applicable state, federal and local laws, and governmental rules and regulations (including but not limited to, laws and regulations regarding anti-money laundering compliance) relating to the completion of Card transactions, submitting Card transactions to us, and the operation of your business (as amended from time to time, the "Laws"). You further will comply with the Rules.

**F. Products and Services.** (a) You have the full power and authority to sell the products and services you offer and to display the advertisements you use; (b) no products or services offered by you constitute a violation of any applicable law and you will not accept a Card for any illegal transaction; (c) you will prominently and unequivocally inform each Cardholder of your identity at all points of the interaction between the Cardholder and you so that the Cardholder can readily distinguish you from any other party such as a supplier of goods or services to you; (d) the products and services offered by you and the name of your business do not infringe upon the rights of any other person, including, without limitation, trademark, copyright, confidentiality or patent rights; and (e) you will not sell, market or display any products or services that would jeopardize NPC's or the Member Bank's reputation.

## 9. Audit and Information.

**A. Audit.** You authorize NPC and Member Bank to audit your records to confirm compliance with this Agreement. You will obtain, and will submit a copy of, an audit of your business when requested by NPC or Member Bank.

### B. Information.

i. **Authorizations.** You authorize NPC, Member Bank and Third Party Service Providers to make, from time to time, any business and personal credit and other inquiries they consider necessary in connection with this Agreement. You also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to NPC, Member Bank or Third Party Service Providers, as applicable. This authorization shall survive for a period of 6 months following termination of this Agreement.

ii. **Documents.** You will provide financial statements and other financial information to NPC and Third Party Service Providers as requested from time to time. You will furnish to NPC and Member Bank within 120 days after the end of each fiscal year a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

iii. **Information.** You represent and warrant that the name and tax identification number (TIN) on the Merchant Application matches the name and TIN that you use to file your tax returns for your business and that you will at all times comply with your obligations under 6050W of the Internal Revenue Code. You agree to immediately provide NPC with any updates to the name and/or TIN that you use to file your tax return for your business.

**C. Credit Reporting.** NPC and Member Bank may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

**D. Liquidation/Change in Business.** You will provide NPC with written notice of your intent to liquidate, substantially change the basic nature of your business, transfer or sell any substantial part (25% or more) of your total assets, or change the control or ownership of your business or of any other entity that controls your business, thirty (30) days prior to such liquidation, change, transfer or sale taking place. You will also notify NPC of any judgment, writ, warrant of attachment, execution or levy against any substantial part (valued at 25% or more) of your total assets not later than three (3) days after you obtain knowledge of any such judgment, writ, warrant of attachment, execution or levy.

## 10. Term and Termination.

**A. Term.** The Agreement will become effective on the Effective Date. The Agreement will remain in effect for a period of 3 years (the "Initial Term") and will automatically renew for successive 2 year terms (the "Renewal Term") unless terminated as set forth below. Termination of this Agreement does not terminate your equipment lease, which may be non-cancellable, or your other agreements with Third Party Service Providers, it only terminates your agreement with NPC and Member Bank with respect to Credit Card and PIN-Debit Card processing and any other electronic transactions that are settled through the Member Bank as designated on your monthly statement from NPC or Member Bank.

**B. Termination.** This Agreement may be terminated by any party effective at the end of the Initial Term or any Renewal Term by providing 30 days written notice of an intent not to renew prior to the expiration of the then current term. Additionally: i) this Agreement may be terminated at any time, with fifteen (15) days notice, by Member Bank or NPC without cause; ii)

Member Bank or NPC may terminate this Agreement immediately (1) in the event that an Association identifies you, your principals, or associated parties under a program designed to monitor merchants or otherwise instructs NPC or Member Bank to close your account, (2) for any circumstances that could cause harm or loss of goodwill to the Card Organization systems or you no longer meet the eligibility requirements of a Card Organization, (3) upon a default event set forth in Section 10.C. below or other material breach by you of the terms of this Agreement, (4) upon a material adverse change in your business, financial condition, business procedures, products or services, a sale of all or a substantial portion of your assets, or a change in control of your business (directly or indirectly), (5) upon any non-compliance by you with the terms of the Rules or applicable Law, (6) if your business name and/or the name of your principals is listed on the MATCH (Membership Alert To Control High Risk Merchants) System and/or other security/credit alert systems, (7) if your business operations cause NPC or Member Bank, or are reasonably likely to cause NPC or Member Bank, to violate the Laws applicable to NPC or Member Bank, regardless of the jurisdiction in which you accept or conduct Card transactions, (8) in the event of irregular Card sales, excessive chargebacks, illegal activity or any other circumstances which, in NPC's discretion, may increase NPC's potential exposure for your chargebacks or otherwise present a financial or security risk to NPC, (9) if any guaranty is revoked, (10) if you file a voluntary petition or complaint seeking relief under any federal or state bankruptcy or other debt relief statute, an involuntary petition under any federal or state bankruptcy or other debt relief statute is filed against you, you generally become unable to pay your debts or trade obligations as they become due, or you make a general assignment for the benefit of creditors, or (11) if you fail to establish a Reserve Account when requested by NPC or Member Bank; and iii) this Agreement may be terminated by you upon a material breach of the terms of this Agreement by Member Bank or NPC, provided you give Member Bank and NPC written notice of any alleged breach and such breach remains uncurd for a period of 30 days following receipt of written notice by the breaching party. Further, you may terminate this Agreement for any reason on 30 days written notice accompanied by payment of the Early Termination Fee (set forth below). NPC's and Member Bank's rights of termination under this Agreement are cumulative. Notice of termination by NPC may be given orally. Notice of termination by you must be signed by the person who signed the Merchant Application or an authorized Merchant signatory. Termination shall be effective on the date specified by the oral or written notice. Termination by you or us of Card processing shall terminate the entire Agreement, including all services on all Schedules. You must notify us in writing if you desire to terminate any particular service set forth on a Schedule.

C. Default Event. A default event by Merchant of this Agreement includes, but is not limited to, the following: (i) volume in any month in excess of 120% of the average Annual Volume indicated on the Merchant Application, (ii) non-card present transactions in any month in excess of 120% of the MO/TO and Internet volume indicated on the Merchant Application, (iii) excess returns greater than 3%, (iv) Merchant is listed on the Visa/MasterCard MATCH list or the Discover Network Consortium Negative File for processing irregularities (NPC cannot make this determination within the first 30 days of approval), (v) Merchant does not do business as specified in the Merchant Application, (vi) splitting tickets, (vii) laundering tickets or (viii) any other action constituting Merchant fraud (each a "Fraudulent Transaction"). If you have accepted and processed Fraudulent Transactions, neither NPC nor Member Bank will be obligated to pay you for such Fraudulent Transactions and will have full recourse against you for all such aforementioned Fraudulent Transactions. NPC and Member Bank will also have the right to assess fees and recover all costs associated with the investigation of any suspected fraudulent activity. Neither NPC nor Member Bank will have any liability to you for any losses, either direct or indirect, which you may suffer as a result of any such suspension of funds disbursement or failure to pay for Fraudulent Transactions. If you accept or process Fraudulent Transactions, processing funds may be held and subject to a per month Fraudulent Transaction Fee equal to 15% of the dollar volume held by NPC or Member Bank. In addition, if you have engaged in a Improper Transaction, you agree NPC may retain all amounts in the Reserve Account as liquidated damages. The determination of the existence of a Fraudulent Transaction or Improper Transaction shall be made by NPC and shall be conclusive unless you contest such determination in writing to NPC within one year of the determination.

#### D. Action upon Termination.

i. Terminated Merchant File. You acknowledge that Member Bank and/or NPC is required to report your business name and the name of Merchant's principals to the Associations, including the MATCH (Membership Alert to control High Risk Merchants) System, the Discover Network Consortium Negative File and other security/credit alert systems, when Merchant is terminated due to the reasons listed in the Rules, which include, but are not limited to violation of the Rules, breach of this Agreement, and Fraudulent Transactions. You expressly agree and consent to such reporting and will waive, indemnify and hold harmless NPC and Member Bank for all claims and liabilities you may raise as a result of such reporting.

ii. Accounts. All of your obligations regarding accepted Sales Drafts will survive termination of this Agreement. Upon termination, all amounts payable to NPC and Member Bank will be due and payable in full without demand or other notice of any kind (all of which you agree to expressly waive) and you must immediately send NPC and Member Bank all the data relating to Card sales and credits made up to the date of termination.

Collected Sales Drafts may be withheld and /or placed in the Reserve Account until you pay all amounts you owe NPC or Member Bank or amounts for which you are liable under this Agreement. After any termination of this Agreement, you will continue to bear total responsibility for any and all chargebacks, credits and adjustments and all other amounts then due, or which later become due, to NPC and/or Member Bank under this Agreement or to any of NPC's or Member Bank's affiliates for any related equipment or related services. In connection with termination, NPC or Member Bank may require that a Reserve Account be established and maintained by you in accordance with the terms of Section 5.B. You must maintain in the Merchant Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time, but in any event not less than the time specified in this Agreement. Unless it is determined that you have engaged in fraud, any balance remaining after chargeback rights have expired and all other amounts owed have been paid will be disbursed to you. You authorize Member Bank and NPC to debit the Merchant Account, the Reserve Account, or any other account you may own, for all such amounts. If the amount in the Merchant Account and Reserve Account is not adequate, you will pay Member Bank and NPC the amount you owe them upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.

iii. Equipment. Within 14 business days of the date of termination, you must return all equipment owned by NPC and immediately pay NPC any amounts you owe it for equipment costs.

iv. Early Termination Fee. If you terminate this Agreement before the end of the Initial Term or any Renewal Term, unless such termination is due to an uncured breach by NPC or Member Bank pursuant to the terms of Section 10.B, or NPC and/or Member Bank terminates this Agreement for cause, NPC will be entitled to recover, and you will pay on demand, as liquidated damages, the Early Termination Fee set forth on the Merchant Application for each location. You agree that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by early termination of this Agreement. Notwithstanding the foregoing, the early termination fee will not exceed the maximum amount set forth by applicable law (e.g. if you are located in Arkansas, the early termination fee will not exceed \$50.00 under this Agreement). You will be responsible for all collection and legal fees and expenses NPC and/or Member Bank incurs in the collection of any delinquent amounts you may owe NPC or Member Bank. Notwithstanding anything in this Agreement to the contrary, however, after termination you will remain liable for chargebacks and other adjustments and for other fees, fines, penalties, charges or losses incurred by NPC and/or Member Bank in connection with this Agreement. You authorize NPC and/or Member Bank to debit your Merchant Account and/or Reserve Account for, or deduct from any settlement funds otherwise owed to you, the Early Termination Fee, plus any and all losses (including costs, expenses and liabilities) incurred by NPC and/or Member Bank in connection with termination. If your settlement funds or the balance in your Merchant Account or Reserve Account is insufficient to cover the Early Termination Fee and all such losses, you agree to pay NPC such amounts immediately on receipt of invoice.

E. Option on Termination. Upon termination or non-renewal of this Agreement by Merchant, prior to entering into any agreement with any third party for the Services provided to Merchant by NPC pursuant to this Agreement, Merchant shall provide NPC the right of first refusal to enter into an agreement with Merchant for all such Services under the same terms and conditions (except for the length of the term, which shall not be less than the length of the Initial Term of this Agreement) in lieu of Merchant entering into such agreement with a third party.

**11. Compliance With Laws And Rules.** The Rules are incorporated into this Agreement by reference as if they were fully set forth in this Agreement. You will assist Member Bank and NPC in complying in a complete and timely manner with all Laws and Rules now or hereafter applicable to any Card transaction or this Agreement. You will execute and deliver to Member Bank and NPC all such instruments we may from time to time reasonably deem necessary. It is your responsibility to know all applicable Laws and the Rules that apply to your acceptance of Cards and for ensuring that your equipment complies with all Laws and Rules.

#### 12. Use of Trademarks and Confidentiality.

A. Use of Trademarks. You will prominently display the promotional materials provided by NPC in your place of business. Your use of the marks of the Associations will fully comply with the Rules. Your right to use the marks of Associations will terminate upon termination of this Agreement. NPC, Member Bank and the Associations have the right to inspect your use of their trademarks and if NPC, Member Bank or the Associations disapprove of any material, you will cease using such material, without liability to NPC, Member Bank or the Associations. No right, title or interest in the service marks have been transferred or is being transferred under this Agreement, except the non-exclusive right to use said marks as provided in this Agreement and the Rules.

#### B. Confidentiality.

i. Agreement. You will treat this Agreement, all Manuals/Instructions, software, products, systems and any other information provided by NPC or Member Bank as confidential and will not disclose to any third parties the terms of this Agreement, the provisions of the Manuals/Instructions, any information received from Card Organizations, or any other such information; provided, however, that these restrictions will not apply to information: (a) rightfully obtained by you on a

non-confidential basis from an entity or person other than NPC or Member Bank and their agents and representatives, which entity or person was not subject to a duty of confidentiality, (b) rightfully and independently known by you on a non-confidential basis prior to its disclosure by NPC or Member Bank or (c) generally available to the public other than through any disclosure by or fault of you or your agents or representatives. In accordance with state and federal law, as well as NPC's and Member Bank's applicable policies, NPC and Member Bank, may participate in sharing relevant information among other financial institutions, regulatory authorities, law enforcement agencies and other entities authorized by such law/policies. NPC may disclose to its affiliates information about you and your activities so that they may consider you for, and if they desire, offer to you their products and services. You agree that NPC may share information about its experience with you among its subsidiaries and affiliates, such as information about transactions and experiences between NPC and you. In addition, NPC may share with its affiliates and subsidiaries information contained in any applications, financial statements or other documents provided by you in connection with these or other transactions, and information NPC may obtain about you from outside sources.

ii. Cardholder Information. You will not disclose to any third party any Cardholder account information or other personal information except to an agent of yours assisting in completing a Card transaction, or as required by law. You must not request or use Cardholder account number information for any purpose that you know or should have known to be fraudulent or in violation of the Rules, or for any purpose that the Cardholder did not authorize, except to an agent of yours assisting in completing a Card transaction, or as required by law. You must keep all systems and media containing account, Cardholder or transaction information (physical or electronic, including but not limited to account numbers, Card imprints, and terminal identification numbers) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. You must destroy in a manner that will render the data unreadable all such media that you no longer deem necessary or appropriate to store (except for Sales Drafts maintained in accordance with this Agreement, Laws or Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. You may not retain or store magnetic stripe, CVV2 or CVC2 data after authorization. Do not store, and ensure that all of your third party providers that have access to Cardholder data do not store, magnetic stripe, CVV2 or CVC2 data after a transaction. If you use any third parties who will have access to Cardholder data ("Merchant Provider(s)"), you must notify us of their identity. In addition, you must (1) only allow the Merchant Providers access to the Cardholder data for purposes that are authorized by the Rules, (2) have proper security measures in place for the protection of Cardholder data, (3) ensure that Merchant Providers have proper security measures in place for the protection of Cardholder data, (4) comply with and assure that Merchant Providers comply with the Payment Card Industry Data Security Standard ("PCI DSS"), as amended from time to time, which may be referred to as the Visa Cardholder Information Security Program ("CISP") (found at [www.visa.com](http://www.visa.com)) or the MasterCard Site Data Protection Program ("SDP"), found at [www.mastercard.com](http://www.mastercard.com), and (5) have written agreements with Merchant Providers requiring the compliance set forth herein. You will immediately notify us of any suspected or confirmed loss or theft of any transaction information, including any loss or theft from a Merchant Provider. You are responsible for demonstrating your and Merchant Providers' compliance with the CISP, SDP and PCI DSS programs, and providing reasonable access to your locations and ensuring Merchant Providers provide reasonable access to their locations to verify your and their ability to prevent future security violations. Any fees, fines or penalties from non-compliance will be passed through to you. You agree to indemnify us against all costs, expenses, damages and/or losses resulting from any breach of security, or loss or theft of information. In addition, in the event of a suspected or confirmed loss or theft of information, you agree, at your cost, to provide all information requested by NPC, Member Bank, an Association, financial institutions or local, state or federal officials in connection with such event and to cooperate in any ensuing investigation, including without limitation, any forensic investigation. Any information provided in response to such investigation will (as between you and NPC) be considered NPC's confidential information. You agree that NPC may release to Member Bank, the Associations, financial institutions and/or local, state or federal officials, any information you provide to NPC in connection with a suspected or confirmed loss or theft of transaction information. The requirements of this provision apply to Cardholder data regardless of the medium in which the information is contained and regardless of whether you process transactions via Internet, mail, phone, face-to-face or any other method. Additional information regarding data security may be found at the Association websites.

iii. Prohibitions. You will not use for your own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of NPC including but not limited to the terms of this Agreement, and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information. You authorize Member Bank or NPC to disclose information to any third party who requests or otherwise has a reason to know such information.

C. Return to NPC. All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to you and not consumed in use will remain the property of NPC and will be immediately returned to NPC upon termination of this Agreement. You will be fully liable for any and all losses, costs, and expenses suffered or incurred

by NPC, arising out of any failure to return or destroy such materials following termination of this Agreement.

D. Passwords. If you receive a password from NPC to access NPC's database, you will: i) keep the password confidential; ii) not allow any other entity or person to use the password or gain access to NPC's database; iii) be liable for any/all actions taken by any user of the password; and iv) promptly notify NPC if you believe the confidentiality of NPC's database or your information has been compromised by use of the password.

E. Release of Information to Third Parties. You authorize NPC and Member Bank to provide to any Card Organization, any entity designated by a Card Organization, Third Party Service Provider, any entity designated by a Third Party Service Provider, any governmental, administrative or regulatory entity, as well as any referral source, vendor or affiliate of NPC and/or Member Bank, including the applicable referer, ISO/MSP, or Associated Sales Group, any information about you, whether independently obtained by NPC and/or Member Bank or provided by you, that NPC and/or Member Bank deems reasonably necessary or connected to the provision of services contemplated in the Agreements or the request by you for other services, upon request from such entity, referer, vendor or affiliate or in compliance with applicable law, including the USA PATRIOT Act. If you are a franchisee or member of a corporate association, and you are receiving preferential pricing and/or other benefits as a result of your relationship with said entity, then upon the request of said entity, NPC and/or Member Bank may provide such entity any information about you that NPC and/or Member Bank deems reasonably necessary or connected to the provision of services contemplated in the Agreements.

**13. Waiver of Jury Trial and Covenant Not to Participate in a Class Action.** MERCHANT HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT OR ANY ACTION, LAWSUIT, CLAIM, COUNTERCLAIM OR OTHER ACTION RELATING TO, OR ARISING UNDER THIS AGREEMENT AND/OR ANY TRANSACTION GOVERNED BY THIS AGREEMENT. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY, VOLUNTARILY AND INTENTIONALLY BY MERCHANT, AND IS INTENDED TO ENCOMPASS EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE BE AVAILABLE. NPC IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MERCHANT. MERCHANT ALSO COVENANTS NOT TO PARTICIPATE IN ANY CLASS ACTION AGAINST NPC OR MEMBER BANK BASED UPON ANY CLAIMS ARISING FROM THIS AGREEMENT. Any legal action brought against NPC and/or Member Bank for any reason related to this Agreement, must be commenced by you within one (1) year of the date of the error or incident giving rise to such action occurred.

#### 14. General Provisions.

A. Entire Agreement. This Merchant Processing Agreement, including the attached Merchant Application, Exhibits, and Schedules, and any amendment or supplement made in accordance with the procedures set forth in Section 14.J, all of which are incorporated into this Agreement, constitutes the entire agreement between the parties with regard to the services provided by NPC under this Agreement, and all prior or other agreements or representations, written or oral, are merged in and superseded by this Agreement.

B. Governing Law and Forum. Merchant, NPC and Member Bank acknowledge and agree that this Agreement and the guaranty contained herein was, and shall be deemed to have been, made and delivered in Jefferson County, Kentucky. The laws of the Commonwealth of Kentucky, without giving effect to its conflicts of law principles, shall govern all matters (whether in contract, statute, tort or however characterized) arising out of or relating to this Agreement and the guaranty contained herein, including, without limitation, the validity, interpretation, construction, performance and enforcement of the Agreement and guaranty. Merchant, NPC and Member Bank agree that, in the event of any dispute regarding, arising out of or relating to this Agreement or the guaranty contained herein, the courts of the Commonwealth of Kentucky shall have and be vested with personal jurisdiction over the parties. Merchant, NPC and Member Bank further agree that any and all actions, claims, suits or proceedings arising out of or relating (directly or indirectly) to this Agreement or the guaranty contained herein shall be filed and litigated only in courts located in Jefferson County, Kentucky, and such courts shall have exclusive jurisdiction over any action, claims, suit or proceeding arising out of or relating (directly or indirectly) to this Agreement or the guaranty contained herein.

C. Exclusivity. During the Initial Term and any Renewal Term of this Agreement, you will not enter into an agreement with any other entity that provides services similar to those provided by NPC and Member Bank pursuant to this Agreement without NPC's written consent. Notwithstanding the foregoing, NPC will not process any Visa or MasterCard Card transactions beyond the authority of a U.S. member of Visa and MasterCard or any Discover Network Card transaction outside the United States of America and other U.S. territories.

D. Construction. Any alteration or strikeover in the text of this Agreement will have no binding effect and will not be deemed to amend this Agreement. The headings used in this Agreement are inserted for convenience only and

will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. In the event of an inconsistency between the Merchant Application and this Merchant Processing Agreement or the Operating Rules attached as Exhibit A, the terms of the Merchant Application (unless left blank) will control.

**E. Assignability.** This Agreement may be assigned by NPC and by Member Bank upon NPC's consent but may not be assigned by Merchant directly or by operation of law without the prior written consent of NPC. If Merchant assigns this Agreement without NPC's consent, the Agreement will be binding on the assignee. If Merchant sells its business, and the new owners incur chargebacks, the original owner and all original guarantors will be held personally liable for all chargebacks and any other liabilities of the new owners. Merchant shall not assign transfer or encumber its present or future payment rights under this Agreement or connected with a Reserve Account, if any; nor shall NPC or Member Bank be obligated to honor such purported attempt to assign, transfer or encumber such rights or funds unless both NPC and Member Bank consent in writing.

**F. Notices.** Any written notice under this Agreement (unless involving normal operational matters and except for notices pursuant to Section 14.J.) may be made by U.S. certified mail, return receipt requested, or by Federal Express (or other overnight carrier service) and shall be deemed given upon the earlier of: (i) actual receipt, or (ii) 7 days after being deposited in the United States mail, and addressed, if to NPC, to: National Processing Company, 5100 Interchange Way, Louisville, KY 40229 Attn.: Legal Department, and if to the other parties: to the addresses shown on the Merchant Application. It is the responsibility of each party to notify in writing the other party of any change to the contact information listed or referenced above. If a party fails to update the information, notice, if effectuated as listed or referenced above, shall be deemed proper for purposes of this Agreement.

**G. Bankruptcy.** You will immediately notify Member Bank and NPC of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. You will include Member Bank and NPC on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing, and failure to do so will be cause for immediate termination of this Agreement or any other action available to NPC under applicable Rules or Law. You acknowledge that this Agreement constitutes an executory contract to make a loan or extend other debt financing or financial accommodations to or for the benefit of you, and, as such, cannot be assumed or assigned in the event of your bankruptcy.

**H. Attorney's Fees.** Merchant will be liable for and will indemnify and reimburse Member Bank and NPC for all attorneys' fees and other costs and expenses paid or incurred by Member Bank and NPC in the enforcement of this Agreement, or in defending its rights under this Agreement, or in collecting any amounts due from Merchant to Member Bank or NPC or to any agent of NPC, or resulting from any breach by Merchant of this Agreement.

**I. Customer Contact.** You authorize Member Bank and NPC to contact your customers or their Card issuing bank if they determine that such contact is necessary to find out information about any Card transaction between you and the customer. You may not contact a Discover Network Cardholder in connection with the services provided under this Agreement except as authorized under this Agreement or the Rules or except as required by law.

**J. Amendments.** Member Bank and NPC may amend this Agreement, including but not limited to changes to fees, rates, rate descriptions and rate categories at any time. Member Bank or NPC will inform you of a proposed change by periodic statement, electronic or internet statement, fax, e-mail, or other written notice. You will be deemed to have agreed to the change if you continue to present transactions to Member Bank and NPC after 7 days following the date the notice was sent, even if it was not received by you. You may elect to terminate this Agreement within 60 days of the date of notice of an amendment to the fees, rates, rate descriptions or rate categories without penalty, except as a result of a change by the Associations or a telecommunications vendor. If you are a participant in an NPC third party program including but not limited to agent bank and Association programs, and you subsequently terminate your agreement and/or relationship with such third party, we may terminate this Agreement or amend the fees, in which case Merchant will not have the right to terminate this Agreement. Except as set forth above, this Agreement may not be modified in any respect without the approval or express written consent of Member Bank.

**K. Severability and Waiver.** If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by NPC or Member Bank to exercise, or partially exercise, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by NPC. Member Bank may not waive, forgive, release, assign or in any manner fail to insist on strict performance of Sections 2.B, 2.D, 5.B.iii, 6.A, and 14.J.

**L. Independent Contractors.** NPC and Merchant will be deemed independent contractors and will not be considered an agent, joint venturer or partner of the other.

**M. Third Party Providers.** In the event you utilize third party providers to assist you with the processing of your transactions, including but not limited to the direct delivery of data captured transactions, you will immediately provide notice to us identifying such third party providers and the services to

be provided by such third party providers. NPC and Bank are not a party to, and have no liability with respect to, your contractual relationships with third party providers. You further agree to indemnify, defend and hold us harmless for any actions or inactions of such third party providers.

**N. Wireless Service Acknowledgement.** NPC and Member Bank are not responsible for verifying wireless service coverage for you, and we will not be held responsible if you lose coverage in any particular area and then terminate your wireless coverage. By selecting wireless service and by executing this Agreement, you acknowledge and understand that (1) wireless coverage is not guaranteed, (2) if the wireless service you select is lost in your area, your equipment will not operate with another wireless carrier, and (3) we have no control over the wireless service providers and the business decisions made by them. You further acknowledge that NPC and Member Bank would not be liable if wireless coverage is lost in a specific area and the equipment can no longer be used as a wireless terminal.

**O. NPC PCI Program.** The Card Organizations have mandated that all merchants must comply with the PCI DSS found at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org) (see [www.visa.com/cisp](http://www.visa.com/cisp) for additional information). Member Bank is not a party to or liable for NPC's PCI Program (the "PCI Program").

(i) **Benefits of the PCI Program.** Upon enrollment in the PCI Program, you are eligible to receive:

- (a) Access to an online PCI certificate validation system, where you can complete your Self-Assessment Questionnaire (SAQ);
- (b) Access to remote scanning services provided by Trustwave (or such certified security assessor selected by NPC), which includes monthly vulnerability scanning for up to five (5) of your computer website (IP) addresses (additional fees apply if you have more than 5 IPs). This applies to PC/IP merchants only; and
- (c) Access to MyNPCdata.net.

(ii) **PCI Compliance Validation Process**

(a) **Validation Requirement.** In order to take full advantage of the PCI Program, you must validate your compliance with the PCI DSS on an annual basis or as otherwise required by NPC or a Card Organization as more fully set forth herein. To validate your compliance with the PCI DSS, you must successfully complete a SAQ and, if applicable, a vulnerability scan as provided below.

(b) **Self-Assessment Questionnaire (SAQ).** A SAQ is a list of questions developed by the Payment Card Industry Security Standards Council ("PCI SSC"). There are 5 SAQ versions covering different types of merchants (the "SAQ Classifications"):

1. SAQ A Merchants who process credit card transactions via payment gateways.
2. SAQ B Merchants who process credit card transactions via stand-alone dial terminals.
3. SAQ C Merchants who process credit card transactions via PC software systems or through an IP enabled terminal located in their merchant locations. These merchants do not store cardholder information electronically at their merchant locations.
4. SAQ D Merchants who process credit card transactions electronically and do store cardholder information electronically at their merchant locations.
5. SAQ-VT Merchants who process credit card transactions using only web-based virtual terminals and who do not store cardholder information electronically.

Please review the five (5) SAQ Classifications above and confirm that you complete the appropriate SAQ. You may go to [www.NPC.net](http://www.NPC.net) to print the desired SAQ or call NPC merchant services at 877.479.6649. To successfully complete a SAQ, you must answer each control statement in the affirmative and sign the merchant attestation on the SAQ. For SAQ C and SAQ D Merchants, you must also successfully pass quarterly vulnerability scans, performed by an Approved Scanning Vendor (ASV).

Once you have the appropriate SAQ, there are a number of ways to complete it:

1. Go to [www.NPC.net](http://www.NPC.net), select Online Tools under the Merchant tab, and then select PCI. Enter your MID (merchant identification number) as the login name and your Tax ID as your password. Your MID is your merchant identification number assigned to you upon becoming a customer of NPC.
2. Email a PDF copy of the completed SAQ to NPC at [PCIcompliance@npc.net](mailto:PCIcompliance@npc.net).
3. Fax the completed SAQ to NPC at 877.283.0630.
4. Mail the completed SAQ to NPC, Attn: PCI Department at 5100 Interchange Way, Louisville, KY 40229.

(c) **Vulnerability Scans.** A vulnerability scan ("Scan") is necessary for PC, IP enabled terminal, or integrated ECR merchants (SAQ C or SAQ D Merchants). Here are the steps to receive your Scan:

1. Once you have completed your SAQ, the system will guide you to the scanning site to schedule your Scan, if applicable.
2. The Scan will identify vulnerabilities or gaps that may allow unauthorized or malicious users to gain access to your network and potentially compromise cardholder data. The Scan does not require you to install any software, and no denial-of-service attacks will be performed.

3. Upon completion of the Scan, you will receive a link to your full compliance report with TrustKeeper. If you fail TrustKeeper's network vulnerability review, this means that the Scan discovered areas of severe vulnerability. The TrustKeeper report describes the issues found and provides you with recommendations for resources to begin fixing the problems. The tool will guide you to remediate the failed Scan and work toward achieving compliance. Once you have addressed the vulnerabilities, simply schedule a follow-up Scan to ensure your remediation of the problem meets the PCI DSS requirements.

(d) Certificate of Validation. Upon successful completion of the SAQ and vulnerability scan, if applicable, your Certificate of Validation will be issued. You can print your Certificate through NPC's online portal or, if you completed a paper version of the SAQ, your Certificate will be mailed to you.

(e) Re-Validation. You must maintain a current, successfully completed SAQ and timely pass quarterly vulnerability scans, if applicable, in order to take full advantage of the PCI Program. A SAQ is no longer current if the Certificate of Validation issued by NPC to you is more than one (1) year old. You are also required to re-validate by completing a new SAQ and passing vulnerability scans, if applicable, when you make a change in your processing environment or if you fail to timely complete a required quarterly scan.

1. A change in your processing environment requiring re-validation occurs when you transition from one card-processing environment to another such that your SAQ Classification changes, necessitating re-validation under a new SAQ. With respect to a re-validation required due to a change in your processing environment, you must complete the re-validation process within twenty-four (24) hours of such change in order to maintain your validation of compliance with the PCI DSS.

2. With respect to a re-validation required due to your failure to complete a required quarterly Scan, NPC will deem your failure to complete a Scan within ten (10) days of the end of the preceding quarter to require re-validation under the PCI Compliance Validation Process, in order to maintain your validation of compliance with the PCI DSS.

3. With respect to a re-validation required due to the expiration of the annual SAQ or any other reason for which Re-Validation is required, you will have five (5) days to complete the PCI Compliance Validation Process, in order to maintain your validation of compliance with the PCI DSS.

Once you have successfully completed the re-validation of your PCI DSS compliance, NPC will issue you a new Certificate of Validation for the current validation period.

(iii) Waiver; Limitations on Waiver. Upon your successful validation of compliance with the PCI DSS under the PCI Program, NPC agrees to waive your liability to NPC, up to \$50,000, for the following fees and costs incurred as a result of a verified compromise of cardholder data that are otherwise your liability under this Agreement: (1) fees and costs associated with a required forensic audit conducted by an approved Qualified Incident Response Assessor (QIRA); (2) fines or assessments levied by a Card Organization as a result of the required forensic audit; and (3) fees and costs associated with the production and distribution of replacement credit cards for compromised card numbers (the "Waiver").

The Waiver provided under this subsection (iii) is also subject to the following:

(a) NPC's agreement to waive your liability to NPC for the fees and costs described in this subsection (iii) is only effective upon: (1) your continued validation of compliance with the PCI DSS and participation in the PCI Program; and (2) your successful completion of the PCI Compliance Validation Process described in section (ii) above; provided, however, that there is no change in your business practices regarding Card acceptance. Your continuing qualification for the PCI Program is premised upon initial validation of your compliance with the PCI DSS as described in subsection (ii) above and timely re-validation of your compliance with the PCI DSS, including annual completion of a SAQ and passing quarterly vulnerability scans, if applicable, payment of the Program cost, and otherwise complying with the terms of the Program and the Agreement.

(b) If you are in compliance with the requirements of subsection (a) above, NPC agrees to waive up to \$50,000 in fees and costs described in this subsection (iii) for each unique Merchant Identification Number (MID). If you have multiple MIDs that have the same federal tax identification number (or in the case of a sole proprietorship, the same social security number), then the maximum aggregate Waiver amount for those MIDs is limited to \$100,000. In addition, if a MID is one of a group of MIDs that are eligible for and receive a multi-merchant discount for the PCI Program fees, the aggregate Waiver for all MIDs in such group is \$100,000.

(c) Your validation of compliance with the PCI DSS through the PCI Program is required to be eligible for the Waiver. To validate your

compliance, you must successfully complete the PCI Compliance Validation Process described in subsection (ii) of this Section O, including any required re-validation of your compliance with the PCI DSS as described in subsection (ii)(d) of this Section O. You will not be eligible for the Waiver if your SAQ is not current, if you have not timely completed your quarterly vulnerability scans, or if you have otherwise failed to maintain compliance with the PCI DSS through the PCI Program.

(d) NPC's Waiver of up to \$50,000 of the costs and fees described in this subsection (iii) is limited to one (1) compromise of cardholder data incident per Program year. Any subsequent incidents occurring during the same Program year are not eligible for the Waiver, and any costs and fees associated with such incident(s) remain your liability under this Agreement. Chargebacks and reversals are not eligible for the Waiver under any circumstances.

(e) To report a possible compromise of cardholder data, you should immediately contact NPC at [compliance@npc.net](mailto:compliance@npc.net). You will need to provide your name, MID, contact information and a brief summary of the incident in this communication, but do not include cardholder numbers or other sensitive information.

(iv) Costs. Your cost for the PCI Program is set forth on the Merchant Application. Such cost is assessed either per MID per PCI Program year or per MID per month as set forth on the Merchant Application. If the PCI Program fees are assessed yearly, you will initially be assessed the fees for the PCI Program within sixty (60) to one hundred and twenty (120) days of NPC's acceptance of this Agreement and will be assessed the PCI Program fee in the same month in each year thereafter. If you are charged monthly, you will initially be assessed the fees for the PCI Program in your first monthly statement and the monthly fee will continue during the initial term and the renewal terms of the PCI Program. The fee for the PCI Program set forth on the Merchant Application is based on your representation of your processing environment. If NPC determines, at any time, that the PCI Program fee that you are being assessed does not accurately reflect your processing environment, NPC may adjust your fee for the PCI Program to the PCI Program fee applicable to your current processing environment.

(v) Security Policy. As part of PCI DSS, the Card Organizations require that each Merchant have a security policy that covers the security of credit card information. You may obtain a sample policy by visiting [www.NPC.net](http://www.NPC.net) and selecting PCI under the other payment processing services tab. NPC will provide you with a sample policy for your convenience only. If you do not already have a security policy in place, you may use the sample policy as a starting point. However, you will need to modify it to fit your processing environment and needs. If you already have a security policy in place, you may want to compare it to the sample policy to verify that your security policy contains the required items.

(vi) Amendment. The PCI Program is subject to change from time to time by NPC. Any changes to the Program will be effective fifteen (15) days following the date notice of such change is sent to you, even if it was not received by you.

(vii) Further Information. To speak with an NPC customer service representative, please call NPC at 877.479.6649. You may also visit [www.npc.net](http://www.npc.net) for more information regarding the PCI Program.

P. Certain Rights of Card Organizations. The parties acknowledge that the Rules give the Card Organizations, including all applicable Debit Networks and EBT Networks, the States, the State's EBT service providers, and certain governmental entities participating in the EBT Project, certain rights to investigate you and to require termination or modification of this Agreement with respect to transactions involving said entity's systems.

Q. No Third-Party Beneficiary. This Agreement is for the benefit of, and may be enforced only by, Member Bank, NPC and Merchant and their respective successors and permitted transferees and assignees, and is not for the benefit of, and may not be enforced by, any third party.

R. The Regulatory Accounting Assistance Program Fee is for an online and paper reporting tool that will assist you in reconciling on a monthly basis your gross sales processed with us to your net sales. NPC may assess this fee to each unique Taxpayer Identification Number (TIN).

S. All provisions that by their context are intended to survive the termination of this Agreement will survive termination of this Agreement, including but not limited to Sections 4, 5, 6, 7, 8, 10.D, 12, and 13.

Attachments to this Merchant Processing Agreement include:

- Exhibit A – Operating Rules
- Schedule I – Applicable and included if Services Packages are selected on the Merchant Application
- Schedule II – Applicable and included if NPC Check Services are selected on the Merchant Application
- Schedule III – Applicable and included if Voyager Fleet Card is selected on the Merchant Application
- Schedule IV – Applicable and included if EBT is selected on the Merchant Application

**EXHIBIT A**  
*Operating Rules*

All capitalized terms not defined below will have the meanings ascribed in the Merchant Processing Agreement.

**Good Business Practices That Will Help Reduce Your Processing Costs**

- Use an imprinted sales ticket with signature for all "key entered" transactions. This will assist you with issues such as chargebacks.
- Close and settle your sales transactions daily. This will help reduce those instances where "Mid-Qualified" or "Non-Qualified" discount rates are assessed.
- Balance your Merchant Account, processing statements from NPC, Member Bank, Associations, and Third Party Service Providers, and your sales slips to assure that you are receiving anticipated funds in a timely fashion, as more fully described below. Because of the number of parties involved in the processing of credit card and other electronic transactions, the only way to ensure that you receive all funds is by balancing each day's sales tickets against daily ACH deposits.
- Respond within the acceptable time frame to retrievals and/or chargebacks in order to assure the most favorable outcome possible.
- Do not call the voice authorization center for services other than authorization.
- Settle disputes with your customers before they reach "chargeback" status. A chargeback is like a returned check, it is expensive and time consuming.
- Read your Merchant Processing Agreement and these Operating Rules closely and thoroughly.
- Shipping products overseas without a card present should be closely monitored. Merchant has little ability to prevent a chargeback in this type of situation.
- You should carefully reconcile sales tickets against deposits daily, particularly in the following situations: installation of new equipment, new downloads, adding new products to your terminal, power outages, change in your Merchant Account.

**1. Honoring Cards**

A. You shall honor all Cards when presented in accordance with these Rules for the purchase of goods or services or in processing a request for credit resulting from such a transaction, by an authorized holder of a Card without imposing any special conditions not required by any Rules. However, if you do not deal with the public at large (for example, if your business is a private club), you are required to honor a valid Card only if presented by a cardholder who has purchasing privileges or a membership with you.

B. Cardholder Identification. You will identify the Cardholder and check the expiration date and signature on each Card. You will not honor any Card if: (i) the Card has expired; (ii) the signature on the Sales Draft does not correspond with the signature on the Card; or (iii) the account number embossed on the Card does not match the account number on the Card's magnetic stripe (as printed in electronic form) or the account number is listed on a current Electronic Warning Bulletin file. Unless permitted under the Laws and Rules, you will not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address, or a driver's license number, as a condition for honoring a Card.

C. Responsibility for Transactions. Merchant is responsible for ensuring that the Cardholder understands that the Merchant is responsible for the transaction, including goods or services that are the subject of the transaction, and for related customer service, dispute resolution, and performance of the terms and conditions of the transaction. A Merchant must prominently and unequivocally inform the Cardholder of the identity of the Merchant at all points of interaction so that the Cardholder readily can distinguish the Merchant from any other party such as a supplier of goods or services to the Merchant.

D. Card Recovery. You will use your reasonable, best efforts to recover any Card: (i) on Visa Cards, if the printed four digits above the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by Member Bank (or its designee), the issuer of the Card or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder; or (iv) for MasterCard Cards, the embossed account number, indent printed account number and/or encoded account number do not agree, or the Card does not have a MasterCard hologram on the lower right corner of the Card face. This obligation upon you in no way authorizes a breach of the peace or any injury to persons or property, and you will hold NPC or Member Bank harmless from any claim arising from any injury to person or property or other breach of peace.

E. Surcharges. You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, consistent with the Laws and the Rules. Provided you are in compliance with the Rules, this paragraph does not prohibit you from offering a discount to induce a person to pay by cash, check or similar means rather than by using a Card.

F. Return Policy. You will properly disclose to the Cardholder, at the time of the transaction and in accordance with the Rules, any limitation you have on accepting returned merchandise.

G. No Claim Against Cardholder. You will not have any claim against, or right to receive payment from a Cardholder unless Member Bank or NPC refuses to accept the Sales Draft or revokes its prior acceptance of the Sales Draft (after receipt of a chargeback or otherwise). You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Sales Draft, and if you receive such payment, you will promptly remit them to Member Bank. You may not reimburse a Cardholder in cash or check for any transaction.

H. Disputes With Cardholders. You must ensure that the Cardholder understands that you are responsible for the transaction, for any related customer service, dispute resolution, and performance of the terms and conditions of the transaction. All Disputes between you and any Cardholder

relating to any transaction will be settled between you and the Cardholder. Neither NPC nor Member Bank bears any responsibility for such transactions. You shall not require a Cardholder to waive his or her rights to dispute the transaction as a condition of the sale.

I. Employee Actions. You are responsible for your employees' actions while in your employ.

J. Prohibitions on Card Acceptance. You may not do any of the following: (i) require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, expiration, signature or any other account-related data in plain view when mailed; (ii) add any tax to a transaction, unless applicable law expressly requires you to impose a tax, and in such event the tax amount must be included in the transaction amount and not collected separately; (iii) request or use an account number for any purpose other than as payment for goods or services, except as permitted by the Rules; (iv) disburse funds in the form of travelers cheques, if the sole purpose is to allow cardholder to make a cash purchase of goods or services from MERCHANT; (v) permit a Cardholder to purchase travelers cheques, or other similar item, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant; (vi) accept a Card to collect or refinance an existing debt that has been deemed uncollectible; (vii) enter into interchange a transaction that represents collection of a dishonored check; (viii) require a Cardholder to waive his/her rights to dispute a transaction as a condition of sale; (ix) accept Cardholder payments for previous Card charges incurred at the Merchant location; (x) submit for payment into interchange any transaction that may in the sole discretion of a Card Organization, damage the goodwill of such Card Organization or reflect negatively on a Card Organization's brands; (xi) add any surcharge to a transaction; (xii) enter into interchange any transaction receipt for a transaction that was previously charged back to Member Bank and subsequently returned to you, irrespective of Cardholder approval (you may pursue payment from the customer outside of the Card Organization system); (xiii) accept a Card for the purchase of Scrip; or (xiv) accept a Visa Electron Card or a Visa TravelMoney Card for manual cash disbursement. You may establish a minimum sale amount as a condition for honoring Cards, provided that the minimum transaction amount does not differentiate between Card Organizations and/or issuers and the minimum transaction amount does not exceed \$10.00 (or any higher amount established by applicable law or the Rules). Unless otherwise set forth below or otherwise allowed by applicable law or the Rules, you may not establish a maximum sale amount as a condition for honoring Cards. You may establish maximum sale amount as a condition for honoring Cards if you are a department, agency or instrumentality of the U.S. Government, you are a corporation owned or controlled by the U.S. Government, or your primary business is reflected by one of the following MCCs: 8220 (Colleges, Universities, Professional Schools and Junior Colleges), 8244 (Schools, Business and Secretarial), or 8249 (Schools, Trade and Vocational), provided that the maximum transaction amount does not differentiate between Card Organizations and/or issuers.

K. Security Features. You are required to examine the Card security features prior to completing a sale. You should examine the Card to be sure there has been no tampering to the signature panel. Specific Card security features are as follows:

- i. Visa:
  - a. The "DOVE" hologram should appear to fly when tilted.
  - b. All Visa account numbers begin with a "4" and can be up to 19 digits long.
  - c. The first four digits of the embossed account number match the four digits printed on the account number of the Card.
  - d. The "V" to the right of the expiration date should be a special letter (a "Flying V" not a normal "V").
- ii. MasterCard:
  - a. The MasterCard Global hologram or the Debit MasterCard hologram and the MasterCard brand mark stacked within a retaining line, or the MasterCard brandmark without a retaining line if the hologram is on the back.
  - b. All MasterCard account numbers are 16 digits long.
  - c. The first four digits of the embossed account number match the four digits printed on the account number of the Card. The last four digits of the account number are embossed over the hologram.
- iii. Discover Network: (certain valid devices (e.g., radio frequency enabled Cards, key fobs, contactless Cards, and JCB, CUP and DCI Cards) may not display the features described below).
  - a. Card numbers are at least 16 digits embossed on the front of the Card.
  - b. The word DISCOVER or DISCOVER NETWORK will appear in ultraviolet ink on the front of the Card when it is held under an ultraviolet light.
  - c. An overprint on the signature panel reads Discover Network.
  - d. The Discover Network three-dimensional hologram, bearing a distinct circular shape and images of a globe pierced by an arrow, water and stars on a repetitive pattern background (the "Discover Network Hologram"), appears on the front of certain Discover Network Cards. The hologram reflects light and appears to move as the Card is rotated.

When an Electronic Cash Register or Electronic Draft Capture terminal reads the magnetic stripe on the Card, you must check the Card account number on the terminal (if displayed) against the account number embossed on the Card or follow such other security check as is mandated by NPC from time to time. If the Card is read with a terminal that displays the Card number and the Sales Draft is printed, you shall verify that the account number displayed on the terminal and the printed card numbers on the Sales Draft match the embossed numbers on the face of the Card. In the event that they do not match, the sale must not be completed. Failure to follow these checks and procedures will expose you to chargebacks. If the terminal is programmed to require you to key

the last 4 or more digits of each Card used for a sale, and the terminal indicates that the numbers keyed are not the same as those present on the Card, the sale must not be completed.

L. Advertising. You must display Visa, MasterCard, Discover Network and any other applicable Card issuer, Debit Network and EBT Network decals and program marks on promotional materials that NPC furnishes, including, if applicable, the JCB, CUP, DCI and/or Electron symbol, in equal prominence near the point-of-sale devices and as otherwise required by the Rules. Your use of the promotional materials of Visa, MasterCard, Discover Network or any other Association or State will not indicate, directly or indirectly, that Visa, MasterCard, Discover Network or any other Association or State endorse any goods or services other than their own and you may not refer to Visa, MasterCard, Discover Network or any other Association or State in stating eligibility for your products or services.

M. Acceptance Procedures. You may ask or incent your customers to use alternative forms of payment other than a Visa or MasterCard. Discounts can be offered on alternate card brands, card types or payment types. Card brand or payment method preference can be promoted, as well as the ability to inform your customers of the costs associated with accepting a particular card type or brand.

i. MasterCard Specific Requirements. You may request or encourage a customer to use a payment card with an acceptance brand other than MasterCard or other form of payment or a Card of a different product type (e.g., traditional cards, premium cards, rewards cards) than the Card the consumer initially presents. You may do so by methods that include, but are not limited to:

- a. offering the customer an immediate discount from your list, stated, or standard price, a rebate, a free or discounted product or service, or any other incentive or benefit if the customer uses a particular payment card with an acceptance brand other than MasterCard or other particular form of payment;
- b. offering the customer an immediate discount from your list, stated, or standard price, a rebate, a free or discounted product or service, or any other incentive or benefit if the customer, who initially presents a MasterCard, uses instead another payment card or another form of payment;
- c. expressing a preference for the use of a particular payment card or form of payment;
- d. promoting the use of a particular general purpose payment card with an acceptance brand other than MasterCard or the use of a particular form or forms of payment through posted information, through the size, prominence, or sequencing of payment choices, or through other communications to customers (provided that merchants will abide by the MasterCard trademark standards relating to the display of its marks); or
- e. communicating to customers the reasonably estimated or actual costs incurred by you when a customer uses particular payment cards or forms of payment or the relative costs of using different general purpose payment cards or forms of payment.

You are free to engage in the POS practices that are described above, or any other substantially equivalent practices.

ii. Visa Specific Requirements. You may steer customers to use a particular network brand, such as Visa or MasterCard; to a type of payment card, such as a "non-reward" credit card; or to another preferred form of payment. You may also encourage a customer who initially presents a Visa card to use a payment card with a different network brand, a different type of payment card, or a different form of payment. You may engage in any of the following steering activities:

- a. offering a customer a discount or rebate, including an immediate discount or rebate at the point of sale;
- b. offering a free or discounted product;
- c. offering a free or discounted or enhanced service;
- d. offering the customer an incentive, encouragement or benefit;
- e. expressing a preference for the use of a particular brand or type of general purpose card or a particular form of payment;
- f. promoting a particular brand or type of general purpose card or a particular form or forms of payment through posted information, through the size, prominence or sequencing of payment choices, or through other communications to a customer;
- g. communicating to a customer the reasonably estimated or actual costs incurred by the merchant when a customer uses a particular brand or type of general purpose card or a particular form of payment or the relative costs of using different brands or types of general purpose cards or different forms of payment; or
- h. engaging in any other practices substantially equivalent to these.

You are not required to display the Visa mark in a size as large as other payment marks. You may promote acceptance brands other than Visa through the size, prominence, or sequencing of payment choices. However, you must continue to respect a cardholder's ultimate decision to pay with Visa: you still have an obligation to accept for payment properly presented Visa cards, including rewards cards. In addition, surcharging of Visa cards and steering among Visa cards based on the issuing bank are not permitted and you must ensure that your steering practices are not performed in a confusing manner.

iii. American Express Specific Requirements. If you accept American Express cards, you must comply with the American Express rules regarding card acceptance. You should review your agreement with American Express for further details on the requirements for American Express card acceptance.

## 2. Authorization.

A. Required on all Transactions. You will obtain a prior authorization via electronic terminal or similar device before completing any transaction,

including MO/TO transactions. You will follow any instructions received during such authorization process. Upon receipt of authorization, you may consummate only the transaction authorized and must note on the Sales Draft the authorization number. Where authorization is obtained, you will be deemed to warrant the true identity of the customer as the Cardholder. If you receive a negative authorization response, you may not complete the sale and may be requested to recover the Card, if you can do so by reasonable and peaceful means. If you do recover the Card, you should notify the voice authorization center and ask for further instructions. Transactions will be deemed invalid on Cards that are expired, whether or not an authorization has been obtained. For electronic commerce transactions, you must attempt to obtain the Card expiration date and forward it as part of the authorization request. You may not, after receiving a negative response or decline on an authorization request, split the sale amount into multiple transactions in order to obtain a valid authorization for each one so that the separate transactions total the original dollar amount of the sale.

B. Effect. Authorizations are not a guarantee of acceptance or payment of the Card transaction and will not waive any provision of this Agreement or otherwise validate a Fraudulent Transaction or a transaction involving the use of an expired Card. Obtaining an authorization will not assure payment to you for a Card transaction. The fact that an authorization is obtained by you will not affect NPC's or Member Bank's right thereafter to revoke the authorization of a Card transaction or to charge back the transaction to you. In no event will the fact that an authorization is obtained by you be deemed to be NPC's or Member Bank's representation or warranty, either express or implied, that the particular Card transaction is in fact a valid, authorized or undisputed transaction entered into by the Cardholder.

C. Unreadable Magnetic Stripes. If you authorize and present Card transactions electronically and your terminal is unable to read the magnetic stripe on the Card, you will obtain an imprint of the Card and the Cardholder's signature on the imprinted draft before presenting the Sales Draft to Member Bank and NPC for processing.

D. Procedures. If an unsigned Card is presented at the point of sale, you must request that Cardholder provide proof of identification and sign the card before completing the sale. Details of the identification provided must be placed on the Sales Draft unless prohibited by local law. If the Cardholder refuses to do so, the sale must not be completed. In any of the following cases, you shall obtain authorization from the voice authorization center, designated or approved by NPC or Member Bank, before completing a sales transaction:

- i. paper merchants whose sales exceed your floor limit as established by NPC or Member Bank, or amended from time to time;
- ii. an unsigned Card is presented;
- iii. if you believe the Card may be counterfeit or stolen or that the sale is in some other manner suspicious or unusual, you should state to the voice authorization clerk, "This is a Code 10" and await further instruction; or
- iv. in any other circumstances established by NPC or Member Bank or stated in this Agreement.

E. If you are approved to utilize batch authorization by NPC, you may obtain batch authorization for certain sales after such sales have occurred provided, however, that authorization for each transaction is obtained by end of the calendar day upon which such sale was initiated and that you do not preset the batch by account number or BIN. Further, you explicitly agree that you will be responsible for any fines, fees, chargebacks, assessments, and declined or disputed transactions that may result from using a batch authorization process.

## 3. Sales Drafts.

A. Forms. You will use a Sales Draft to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) Merchant's name, identification number, and city and state; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually); (iii) the date of the transaction (iv) a brief description of the goods or services involved; (v) the transaction authorization number; (vi) the total amount of the sale (including any applicable taxes) or credit transaction; and (vii) adjacent to the signature line, a notation that all sales are final, if applicable. If you use an electronic terminal to print Sales Drafts, the account number must be truncated on the cardholder copy of the Sales Draft. This means that only the last 4 digits of the account number may appear. The entire expiration date must be suppressed on receipts provided to cardholders.

B. Signatures. Sales Drafts must be signed by the Cardholder. The requirement for the Cardholder's signature on the Sales Draft will only be waived if the Card transaction is a valid MO/TO or electronic commerce card transaction, which fully complies with the requirements set forth in this Agreement, or if otherwise permitted by the Rules.

C. Delivery and Retention of Sales Drafts. You will deliver a complete and legible copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. You shall store all Sales Drafts and transaction records in a limited access area for at least 1 year after the date of sales. You will retain the Merchant copy of the Sales Draft or credit memorandum for at least 12 months following the date of completion of the transaction for Visa Card transactions, at least 18 months following the date of completion of the transaction for MasterCard Card transactions and at least 3 years following the date of completion of the transaction for Discover Network Card transactions (or such longer period as the Rules may require), which documentation must be maintained in a secure manner in accordance with your obligations under Section 12 of the Merchant Processing Agreement. You will submit to NPC or Member Bank a legible copy of a Sales Draft if any Card issuer requests such retrieval. Your deadline for providing NPC or Member Bank a legible copy of the requested Sales Draft will be ten (10) days after the date of the Card issuer's retrieval request, as specified in the notice from NPC or Member Bank. Unless specifically permitted by NPC, goods and services purchased must be delivered to Cardholder at the time of sale. You shall not disclose a Cardholder's account information or any other personal information to third parties other than your agents for the purpose of completing the transaction or as specifically required by the Laws or by the Rules.

D. Electronic Transmission. If you utilize electronic authorization and/or data capture services, you will enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed. If you provide your own electronic terminal or similar device, such terminals must meet NPC's requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by you to NPC or its agent in the form NPC from time to time specifies or as required under the Laws or Rules. If Member Bank or NPC requests a copy of a Sales Draft, credit voucher, or other transaction evidence, you will provide it within 3 business days following the request. If your terminal cannot successfully read the magnetic stripe, you must imprint the Card, even if it is a key entered transaction. You must imprint the Card on the same Sales Draft containing the remainder of the transaction information and the Cardholder signature. Failure to obtain a signed and imprinted Sales Draft when a transaction is not captured by swiping through a magnetic stripe reader will expose you to a chargeback regardless of the authorization that may or may not be received. Failure to read the magnetic stripe on the Card may result in a discount rate tier downgrade.

E. Daily Settlement of Transactions. You must Batch Out each POS terminal every day. Failure to Batch Out daily will delay the deposit of funds. "Batch Out" is the process by which you total and settle all transactions, on each POS terminal, which occurred before midnight (12:00 a.m.) and transmit the information to NPC. In all cases, Merchant must present the record within 3 business days (2 business days for Electron Cards) after the transaction date, unless otherwise permitted by the Rules. Transactions contained in an untimely Batch Out may be refused, held for a 180 day period, become subject to chargeback or be transferred to a Reserve Account and held in accordance with the terms of Section 5. Merchant is responsible for resubmitting a Batch Out or ticket if the POS terminal fails to properly Batch Out or if sales ticket data does not process through the normal payment cycle. NPC is not liable to Merchant for amounts it did not collect, including but not limited to amounts collected by Third Party Service Providers.

#### 4. Chargebacks.

Failure to comply with the Rules will reduce NPC or Member Bank's ability to reverse chargebacks and increase the likelihood of your receiving a chargeback. You may be subject to a chargeback on sales for a minimum period of 180 days from the date the sale was entered into the Association's processing system. NPC may hold funds from your account to cover any chargebacks for the later of 270 days following the effective date of termination of this Agreement or 180 days from the date of your last chargeback. NPC or Member Bank will mail all chargeback documentation to the address provided by you. You agree to respond promptly to all chargebacks. If NPC or Member Bank elects, at its discretion, to take action on chargebacks after the Association time limits have expired, such action shall be done at additional cost. You will not redeposit sales that have been previously charged back and not represented. This restriction applies whether or not the Cardholder consents to such activity. If you receive a chargeback for an international Cardholder, you are responsible for any currency conversion differences in the dollar amount. You will be charged the fee indicated on the Merchant Application for each chargeback.

#### 5. Chargeback Reasons.

A. Summary. The summary of reasons for chargebacks include, but are not limited to, any one of the following:

- i. an invalid Card account number submitted by you;
- ii. neither the Cardholder nor a person authorized by the Cardholder received the goods or services requested;
- iii. the Cardholder received the good or services but disputes the quality;
- iv. the Cardholder never received credit for a returned item or a canceled order;
- v. the Cardholder was charged incorrectly;
- vi. the amount of the sale exceeded the floor limit and an authorization was not obtained or was denied;
- vii. the sale was authorized but not for the correct amount;
- viii. the authorization code provided is invalid;
- ix. the Card was expired at the time of the sale or had not reached its effective date;
- x. the Sales Draft was not signed. An exception will be made where MO/TO sales are permitted by NPC;
- xi. the Card issuer has information that a Merchant fraud has occurred;
- xii. the Card account number and the amount of sale is missing from Sales Draft or is illegible;
- xiii. the Sales Draft bears the imprint of a Card which to the Associations is a counterfeit Card because the Card is not embossed in accordance with the standards set forth in the Rules, even if the sale was authorized.

#### 6. Chargeback Monitoring Programs.

A. If you exceed a 1% chargeback to interchange ratio for all incoming chargebacks for a particular location you are considered an excessive chargeback merchant and may be subject to a Card Organization's monitoring programs. You are responsible for monitoring your monthly chargeback percentage and developing chargeback reduction plans as required by the Card Organizations. Excessive chargeback activity for an unreasonable period of time may result in termination of this Agreement. You must pay Member Bank or NPC for any fine or charge levied by the Associations on Member Bank, NPC or Merchant as a result of your chargeback activity. This section may be amended from time to time as a result of action by the Associations.

B. Other Monitoring Programs. If you are identified by certain Association monitoring programs, NPC or Member Bank's ability to reverse chargebacks may be severely restricted. Certain monitoring programs review the number of lost, stolen and counterfeit Cards accepted by you in the normal course of business and the percentage of Cards used for sales that were not read

electronically by terminals or Electronic Cash Registers. The purpose of these programs is to reduce the use of lost, stolen, fraudulent, and counterfeit Cards. In the event that you are identified under these programs as exceeding the acceptable threshold value of such Cards, you may become liable for chargebacks and sales on lost, stolen, or counterfeit Cards regardless of the Card acceptance procedures followed, and this Agreement may be terminated by NPC or Member Bank and/or NPC or Member Bank may immediately cease providing services to Merchant without notice.

C. Excessive Activity. Your presentation to NPC of Excessive Activity will be a breach of this Agreement and cause for immediate termination. "Excessive Activity" means, during any monthly period, and for any one of Merchant's terminal identification numbers or Merchant Identification Numbers, chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of your Card transactions or returns in excess of 3% of the average monthly dollar amount of Sales Drafts. You authorize, upon the occurrence of Excessive Activity, Member Bank and NPC to take additional actions as either of them may deem necessary, including but not limited to suspension of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.

#### 7. Credits.

A. Credit Memoranda. You will issue a credit memorandum, instead of making a cash advance, a disbursement or a cash refund on any Card transaction. Member Bank will debit the Merchant Account for the total face amount of each credit memorandum submitted to NPC. You will not submit a credit relating to any Sales Draft not originally submitted to NPC, nor will you submit a credit that exceeds the amount of the original Sales Draft. You will, within the time period specified by applicable law, provide NPC with a credit memorandum or credit statement for every return of goods or forgiveness of debt for services which were the subject of a Card transaction.

B. Revocation of Credit. Member Bank or NPC may refuse to accept any Sales Draft or revoke its prior acceptance of a Sales Draft in the following circumstances: (i) the transaction giving rise to the Sales Draft was not made in compliance with this Agreement, the Laws and the Rules; (ii) the Cardholder disputes his/her liability to Member Bank for any reason, including but not limited to those chargeback rights enumerated in the Rules; or (iii) the transaction giving rise to the Sales Draft was not directly between you and the Cardholder. You will pay Member Bank or NPC, as appropriate, any amount previously credited to you for a Sales Draft not accepted by Member Bank or NPC or, where accepted, is subsequently revoked.

C. Returns. If you agree to credit a Cardholder for any merchandise or service that was the subject of a sale, you must provide a Credit Transaction Receipt using the same Card as in the original sale. Such credit shall not exceed the original sale amount. You shall not make any cash refund on sales. You may limit the acceptance of returned merchandise or establish a policy to make price adjustments for any sale provided proper disclosure is made and purchased goods and services are delivered to the Cardholder at the time of the sale. Proper disclosure means the words "NO REFUND," "EXCHANGE ONLY," or "IN STORE CREDIT ONLY" are printed in large letters near the signature line on all copies of the Sales Draft prior to obtaining the Cardholder's signature on the Sales Draft. You may stipulate other special circumstances or terms of the sale on the Sales Draft. For each credit transaction, you must be able to provide NPC or Member Bank with evidence of the original purchase.

D. Fraud and Factoring. You agree that, except as otherwise contemplated herein or otherwise permitted by NPC, you will use the services provided by NPC only for your own internal and proper business purposes and will not resell, directly or indirectly, any of the services or any portion thereof to any third party. You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. Perpetrators of Fraudulent Transactions will be referred to law enforcement officials. You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement. You will not deposit any Sales Draft representing the refinancing of an existing obligation of a Cardholder. In addition to NPC's and Member Bank's ability to establish and maintain a Reserve Account, you agree that NPC may, within its sole discretion, suspend the disbursement of Sales Draft funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. Upon completion of NPC's investigation, NPC may transfer such Sales Draft funds into a Reserve Account. NPC and Member Bank will have no liability for any losses you may attribute to any suspension of funds disbursement. You further agree that engaging in the aforementioned activity may result in the incurrence of research fees and may be grounds for termination of this Agreement.

#### 8. Other Types of Transactions.

A. Mail Order and Telephone Order. You may not solicit or accept mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ("MO/TO") without prior written authorization from NPC. MO/TO transactions completed without prior written consent of NPC or Member Bank will be a breach of this Agreement and cause for immediate termination in addition to any other remedies available under the Laws and the Rules. You may be required to use an address verification service ("AVS") on MO/TO transactions and are encouraged to use AVS even if not required. AVS is not a guarantee of payment and the use of AVS will not waive any provision of this Agreement or validate a Fraudulent Transaction. You will obtain the expiration date of the Card for a MO/TO transaction and submit the expiration date when obtaining authorization of the Card transaction. For MO/TO transactions, you will type or print legibly on the signature line of the Sales Draft the following applicable words or letters: mail order or "MO" or telephone order or "TO". If you are specifically authorized by NPC or Member Bank to accept MO/TO sales, no sale shall be submitted for processing prior to the shipping of the product or the provision of services purchased by the Cardholder. If you supply goods and/or services under a preauthorization order, you shall not charge a Cardholder for goods after receiving notice from a Cardholder that the authorization for goods or services is canceled. The

shipping documents indicating the address the goods were shipped to and a signature of an individual (even Cardholder) will not normally be sufficient to reverse an Unauthorized Purchaser reason code. You assume the risk associated with accepting MO/TO sales transactions.

B. Recurring/Quasi Cash Transactions. You may not accept transactions where the goods or services are performed periodically without NPC's consent. If you receive such consent, you must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder's account, the frequency of the recurring charge and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder, (ii) notice from NPC or Member Bank indicating that you may not accept such transaction, or (iii) a response that the Card is not to be honored. You must print legibly on the Sales Draft the words "Recurring Transaction". You shall not accept sales for processing that are classified as "QuasiCash Transactions" including but not limited to the sale of casino gaming chips, money orders, opening deposits on financial or other accounts, wire transfer money orders, or the issuance of scrip. You shall not accept a Card or use a Visa and MasterCard processing terminal to issue script exchangeable for cash, products, or services as a result of a sale. You must not submit for payment into interchange any transaction that represents the refinancing or transfer of an existing Cardholder obligation that is deemed to be uncollectible, or that arises from the dishonor of a Cardholder's personal check.

C. Multiple Sales Drafts. You will include a description and total amount of goods and services purchased in a single sales transaction on a single Sales Draft or transaction record, unless: (i) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (ii) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Rules. If the total amount of both Sales Drafts exceeds the floor limit, authorization must be obtained. The use of multiple Cards for one purchase is permissible as long as an individual Sales Draft is used for each Card. The use of multiple sales on one Card, for one purchase, is not permitted.

D. Deposits.

i. Prior Consent. You will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future without the prior written consent of NPC. The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed to be a breach of this Agreement and cause for immediate termination in addition to any other remedies available under the Laws or Rules.

ii. Acceptance. If you have obtained prior written consent, then you will complete such Card transactions in accordance with this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft upon making a deposit with a Card and a second Sales Draft upon paying the balance. You will note upon the Sales Draft the words "deposit" or "balance" as appropriate. You will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or you have fully performed the services.

E. Future Delivery. You will not present any Sales Draft or other memorandum to Member Bank or NPC for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without NPC's prior written authorization. If Member Bank or NPC have previously given such consent, you represent and warrant to Member Bank and NPC that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date independent of any credit or proceeds resulting from Sales Drafts or other memoranda taken in connection with future delivery transactions.

F. Electronic Commerce Transactions.

i. Electronic Commerce. You must obtain the consent of NPC to process electronic commerce ("EC") transactions, and you may process such transactions only if the transactions comply with the Payment Card Industry Security Standard requirements set forth below. If you submit EC transactions without NPC's consent, NPC may immediately terminate this Agreement. You understand that transactions processed via EC are high risk and subject to a higher incidence of chargebacks. A Merchant must not refuse to complete an EC transaction using a MasterCard card solely because the Cardholder does not have a digital certificate or other secured protocol. You are liable for all chargebacks and losses related to EC transactions, whether or not: a) EC transactions have been encrypted; and/or b) you have obtained the consent of NPC to engage in such transactions. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a Fraudulent Transaction. You are responsible for contracting with a third party payment engine, payment gateway or other Internet service provider. You must ensure that such third parties transmit Sales Drafts to NPC and Member Bank in an acceptable format and in compliance with the Rules, including but not limited to PCI DSS. All communication costs related to EC transactions are your responsibility. You understand that NPC will not manage the EC telecommunications link and that it is your responsibility to manage that link. All EC transactions will be settled by Member Bank into a depository institution of the United States in U.S. currency.

ii. Requirements. For goods to be shipped on EC transactions, you may obtain authorization up to 7 calendar days prior to the shipment date. You need not obtain a second authorization if the Sales Draft amount is within 15% of the authorized amount provided that the additional amount represents shipping costs. Further, your website must contain all of the following information: a) complete description of the goods or services offered, b) returned merchandise and refund policy, c) customer service contact, including electronic mail address and/or telephone number, d)

transaction currency (such as U.S. or Canadian dollars), e) export or legal restrictions, if known, and f) delivery policy. If you store Cardholder account numbers, expiration dates, and other personal Cardholder data in a database, you must follow Association guidelines on securing such data.

iii. Cardholder Information Security Program. If you accept EC transactions, you must install and maintain a working network firewall to protect data accessible via the Internet, keep security patches up-to-date, encrypt stored data and data sent over open networks, use and update anti-virus software, restrict access to data by business "need-to-know", assign a unique ID to each person with computer access to data, not use vendor-supplied defaults for system passwords and other security parameters, track access to data by unique ID, regularly test security systems and processes, maintain a policy that addressed information security for employees and contractors, and restrict physical access to Cardholder information.

iv. Physical Address. If you accept EC transactions, your website must include the physical address of your permanent establishment, along with your country of domicile, either:

- On the same screen view as the checkout screen used to present the total purchase amount, or
- Within the sequence of webpages the Cardholder accesses during the checkout process.

v. You acknowledge and agree that you will only submit Electronic Commerce Card transactions in U.S. Dollars that arise from a Cardholder's purchase over the Internet. If software is to be purchased by you, you will be responsible for sublicensing fees and all other fees for software and the software program utilized by you that enables you to connect to and maintain communication between you, the Internet and NPC. You will, at all times, maintain in effect a sublicense agreement for any such software. You agree to use any such software and the software program properly and for the purposes for which it was intended.

G. Third Party Service Provider Transactions.

i. Authorization. Upon your request, NPC will provide access to authorization and/or data capture services for Third Party Service Provider transactions, such as American Express, and all settlement and chargeback obligations and similar financial responsibilities arising from your transactions involving Third Party Service Providers will be governed exclusively by your agreement with such Third Party Service Providers. You must enter into a separate agreement with such Third Party Service Providers and must abide by the terms and conditions of such Third Party Service Providers. Neither NPC nor Member Bank are responsible for funding such transactions. The terms of this Agreement will apply to Third Party Service Providers. NPC may notify you in writing of the fees applicable to Third Party Service Provider transactions. Third Party Service Providers separately invoice Merchants for their services, and their fees are not necessarily included in this Agreement (including the Merchant Application). Any applicable fees and charges for third party services will be disclosed by the applicable Third Party Service Provider and may be subject to adjustment in accordance with the Third Party Service Provider's terms and conditions. Additionally, NPC charges a transaction fee for such transactions in addition to those fees charged by Third Party Service Providers (see the Merchant Application). Your acceptance of cards, bearing the symbols of organizations other than the Debit Networks or the Card Organizations, such as American Express and transmission of such card transactions to NPC will constitute your agreement to the terms of this Agreement with regard to such cards. Termination of your Agreement with NPC does not automatically terminate your agreement with Third Party Service Providers.

ii. Information. NPC and Member Bank reserve the right and you agree and consent to allow NPC and Member Bank to share your credit report and credit history with all Third Party Service Providers. Changes made to this Agreement, such as address or ACH changes, do not automatically make the same changes for the Third Party Service Provider. You must contact the Third Party Service Provider to make the changes. NPC is neither liable nor responsible for such changes. If false data is provided to NPC or the Merchant Account has had any suspected fraudulent activity, NPC reserves the right to share such false or suspected fraudulent information with other financial entities and processors.

iii. Statements. You must reconcile your sales tickets for each Third Party Service Provider's transactions against deposits to your bank account daily. Each Third Party Service Provider provides its own statement, and you are responsible for reviewing each statement and resolving all issues regarding the transactions directly with that Third Party Service Provider. Each Third Party Service Provider sets its own rates and fees for its services, and may adjust such rates and fees in accordance with your agreement with such Third Party Service Provider. NPC and Member Bank are not liable or responsible for these transactions and have no legal access to such transactions.

iv. JCB. The following special provisions apply (notwithstanding any contrary provision in this Agreement) to your JCB Card transactions: (i) you must retain original sales drafts and credit vouchers for at least 120 days after the transaction and must retain microfilm or legible copies of sales drafts and credit vouchers for at least three (3) years after the transaction; (ii) for purposes of your chargeback liability with respect to JCB Card transactions, an Authorization obtained on a transaction does not override any chargeback reason which may apply to the item; (iii) if you process JCB Card transaction data electronically, your account number must be included in the JCB Card transaction data transmitted to us, in addition to the other information required to be included on each sales draft or credit voucher; (iv) if you are a lodging merchant, JCB Cardholders must be allowed to cancel reservations at resort establishments until 4:00 p.m. on the scheduled arrival date; and (v) by

contracting for JCB settlement services, you authorize JCB to publish your name, address and telephone number in JCB solicitation materials.

**H. Age Restricted Products.** If you are engaged in the sale of age restricted products such as alcoholic beverages, tobacco products, weapons and/or any other applicable age-restricted products or services, you must comply fully with all local, state and federal laws governing the distribution of age-related products. You certify herein that you will implement age verification procedures governing the sale of such products, including age verification of each customer against an official government records database before entering certain transactions into the credit card payment system. For face-to-face sales, you will require the signature of the Cardholder. To verify legal age, you will also require the Cardholder to present a valid, government-issued photo identification card in the same name and address as the Cardholder. For sales made via mail, telephone and/or the Internet, you will (1) only deliver age-restricted products to the name and address listed as belonging to the Cardholder, and (2) require, without exception, the signature of the Cardholder, as well as presentation of a valid, government-issued photo identification card in the same name and address as the card holder to verify legal age upon delivery of the merchandise. Failure to abide by all applicable age verification laws may result in fines and/or loss of credit card merchant charge privileges, as well as termination of your account with NPC and Member Bank.

#### 9. Cash Transactions.

You shall not receive money from a Cardholder and subsequently prepare a credit voucher for the purpose of depositing to the Cardholder's account. Cash disbursement by you to a Cardholder is not permitted. Additionally, you shall not make any cash advance to an employee, principal, or family member of Merchant, who is a Cardholder. You will not accept sales from Cardholders where the primary purpose of the transaction is for the provision of working capital to business and not the purchase of goods and/or services from the business.

#### 10. Third Parties.

**A. Services.** You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You are responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure you have and comply with any software updates. NPC has no responsibility for any transaction until that point in time when NPC receives data about the transaction.

**B. Use of Terminals Provided by Others.** You will notify NPC immediately if you decide to use electronic authorization or data capture terminals or software provided by any entity other than NPC or its authorized designee ("third party terminals") to process transactions. If you elect to use third party terminals, you agree (i) the third party providing the terminals will be your agent in the delivery of Card transactions to Member Bank via a data processing network; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Member Bank nor NPC will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or a malfunction in a third party terminal.

#### 11. Vehicle Rental Authorization Procedures.

**A. Estimate.** A special authorization procedure is available if you estimate the transaction amount based upon Cardholder's intended rental length at time of rental, the applicable rental rate, tax, and/or mileage rates. Such estimated transaction amount shall not include ancillary charges representing amounts to cover potential vehicle damages or insurance deductible when Cardholder waives insurance at time of rental.

**B. Procedures.** Special terminal downloads may be required in order to qualify for certain rates on Vehicle Rental transactions. You shall record on the Sales Draft the date, amount, and all authorization approvals obtained. You shall disclose to Cardholder the amount authorized at the time of rental. Subsequent Authorization:

i. If no authorization was obtained at the time of rental and you, based upon Cardholder's actual charges, later estimate that the transaction amount will exceed the applicable floor limit, you may obtain an Authorization approval code for the new estimated amount.

ii. You may obtain authorization for additional amounts (above any amount not authorized) on the car rental pickup date or prior to the car rental return date. Additional authorization is not necessary if the sales transaction does not exceed the sum of the authorized amounts plus 15% of the sum of the authorized amounts.

#### 12. Paper Processing Merchants.

Paper processing merchants shall authorize by using the established floor limits. Any Merchant that wishes to accept a sales transaction that is under the established floor limits, and that is not authorized, is liable for the resulting chargebacks from those Card numbers listed on the Electronic Exception File. In the case of a Merchant depositing paper drafts, such drafts shall be deposited with NPC or Member Bank within 5 days of the sale date.

#### 13. Travel and Entertainment ("T&E") Merchants.

A merchant whose primary function is to provide travel related services shall be referred to as a Travel & Entertainment ("T&E") Merchant. These include, but are not limited to, car rental, lodging, and central reservation services. A T&E Merchant may process delayed or amended charges if the Cardholder has consented to be liable for those charges. These charges may NOT include charges for loss, theft, or damage.

#### 14. T&E Services.

**A. Services.** T&E Merchants may participate in any of the following Visa T&E Services:

- Priority CheckOut Service
- T&E Advance Deposit Service
- T&E Cash Disbursement Service
- Visa Reservation Service

#### B. Visa Priority CheckOut Service:

You agree to:

- i. accept all Visa Cards in accordance with this Agreement;
- ii. have Cardholder complete, sign, and return a Priority CheckOut Agreement ("PCO Agreement") which includes the Cardholder's mailing address;
- iii. complete a Sales Draft which includes the total sales amount and the words "Priority CheckOut" on the signature line;
- iv. review the completed PCO Agreement and ensure the account number matches the account number on the Sales Draft if applicable;
- v. comply with normal authorization and deposit requirements;
- vi. at the Cardholder's request, you must mail the Sales Draft copy, the itemized bill, and the signed PCO Agreement to the Cardholder within 3 business days of the Cardholder's departure; and
- vii. you must retain the itemized bill and signed PCO Agreement for a minimum of 6 months after the transaction date.

#### C. T&E Advance Deposit Service:

You agree to:

- i. accept all Visa Cards in accordance with this Agreement;
- ii. obtain the Cardholder name, account number, expiration date on the Card, telephone number, mailing address, scheduled date of arrival/embarkation/rental, and intended length of stay/term/rental;
- iii. determine the advance deposit amount, which is the cost of the intended length of stay, cost of the cruise, or cost of the intended term of rental, not to exceed 14 days;
- iv. apply the deposit amount to the total obligation;
- v. provide: (1) reservation confirmation code to the Cardholder advising that it be retained, (2) advance deposit amount, and (3) cancellation policy requirements;
- vi. advise the Cardholder the accommodations will be held according to the reservation and provide written confirmation if requested;
- vii. advise the Cardholder that you will retain the deposit amount if the Cardholder has not canceled the reservation within the specified time frames;
- viii. you must not charge for a no show transaction;
- ix. complete the Sales Draft including advance deposit amount, Cardholder name, mailing address, telephone number, account number, expiration date, the words "Advance Deposit" on the signature line, confirmation code, scheduled date of arrival/embarkation/rental, and the date and time the cancellation privileges, if any, expire without forfeiture;
- x. follow normal authorization procedures;
- xi. mail a Sales Draft copy and cancellation policy to the Cardholder within 3 business days of the sales date;
- xii. accept all Cardholder cancellations within the time limits specified by you;
- xiii. upon cancellation, you shall complete a Credit Transaction Receipt with the information set out in (ix) above and include the cancellation code. You must deposit the Credit Transaction Receipt within 5 days of the transaction date and mail a copy to the Cardholder within 3 days of the transaction date of the Credit Transaction Receipt;
- xiv. for a Lodging Merchant, if the reserved accommodations are unavailable, you must provide the Cardholder the following services without charge: (1) refund the entire advance deposit amount, (2) a copy of the Credit Transaction Receipt to the Cardholder, (3) comparable accommodations at an alternate establishment for the number of nights specified in the reservation not to exceed 14 nights or until the reserved accommodations become available, (4) two three-minute telephone calls, (5) message forwarding to the alternate establishment, (6) transportation to the alternate establishment and return to the original establishment and, if requested, daily transportation to and from the alternate establishment and your location; and
- xv. for a Car Rental Merchant if the reserved vehicle is unavailable, you must provide the Cardholder the following services without charge: (1) refund the entire advance deposit amount, and (2) provide a comparable vehicle for the number of days specified in the reservation, not to exceed 14 days or until the reserved vehicle becomes available.
- xvi. for a Cruise Line Merchant if the reserved accommodations are unavailable, and no comparable accommodations are available on the ship, the Merchant may offer: (1) a comparable cruise within the same approximate sailing dates and number of sailing days specified in the reservation, (2) any extra nights' accommodations or air fare to a different port city necessitated by the Cardholder's acceptance of alternate accommodations. The Merchant must refund the entire T&E deposit amount, if comparable accommodations are not available or the Cardholder does not accept the offered accommodations. The Merchant must provide a credit receipt to the Cardholder and the Merchant must provide all of the following without charge, (1) one night's hotel accommodation, if required, (2) transportation to the hotel as well as the airport, (3) Airline transportation to the airport nearest the Cardholder's residence, (4) reasonable out-of-pocket expenses incurred by the Cardholder because the guaranteed accommodations were not available.

**D. T&E Cash Disbursement Service:** You may make cash disbursement to a registered Visa Gold or Platinum Cardholder under the following conditions:

- i. Cardholder indicates at registration the intent to pay for services with a Visa Card;
- ii. Before disbursement, you review positive identification, and, if permitted by applicable law, record type and number on the Sales Draft;

- iii. You complete an 80 column Cash Disbursement Sales Draft or a 51 column Cash Disbursement T&E Sales Draft that includes the Cardholder's positive identification or a Cash Disbursement Record;
- iv. You do not disburse more than \$250.00 during the Cardholder's stay. Cash availability may limit cash disbursements; and
- v. You must not include any additional fees or charges except taxes or charges imposed by law on the transaction amount.

E. Visa Reservation Service: Any Merchant who accepts Cards to guarantee reservations must do so in accordance with the following requirements:

- i. You must accept all Visa Cards in accordance with this Agreement;
- ii. You must obtain the Cardholder's account number, expiration date, and name embossed on the Card. You must quote to Cardholder the rate of reserved accommodation, Merchant's name and address, and the Confirmation Code advising that it be retained. Advise the Cardholder that if he/she has not checked in by checkout time the following day after his/her scheduled arrival date or the reservation was not properly canceled, the Cardholder will be billed for one night's lodging plus applicable taxes. If requested, you will provide a written confirmation with the above information including the Visa reservation service provisions relating to the Cardholder's obligation, and any other reservation details;
- iii. You must accept all cancellations prior to the specified time. The Merchant must not require more than 72 hours cancellation notification prior to the scheduled arrival date. But, if the Cardholder makes the reservation within 72 hours of the scheduled arrival date, the cancellation deadline must be no earlier than 6:00 p.m. on the arrival date. If you require that the Cardholder cancel before 6:00 p.m. on the arrival date, you must mail the cancellation policy to the Cardholder;
- iv. If the reservation is properly canceled, you must provide a cancellation code and advise the Cardholder to retain it. If requested, you must mail a confirmation of cancellation that includes the Cardholder name, account number, card expiration date, cancellation code, and details related to the canceled reservation;
- v. If Cardholder has not claimed or canceled the accommodation by the specified time, the room(s) must be held available in accordance with the reservation until checkout time the following day. You may then complete a Sales Draft for 1 night's lodging plus applicable tax, indicating the Cardholder's account number, expiration date, and name embossed on the Card and the words "No Show" on the Cardholder signature line. You must obtain an authorization code for the no show transaction;
- vi. If guaranteed accommodations are unavailable, you must provide Cardholder with comparable accommodations as described in Section 14.C.xiv above. These services shall be provided at no cost to Cardholder.

15. Preauthorized Health Care Transactions

A. Order Form. Merchants accepting Preauthorized Health Care Transactions must have the Cardholder complete an order form containing the following:

- i. a request for the services to be charged to the Cardholder's account;
- ii. assignment of insurance benefits to you;
- iii. authorization for you to charge the Cardholder's account for only that portion of the bill subsequent to your receipt of any applicable insurance payment;
- iv. duration of time, not to exceed 1 year, for which permission is granted; and
- v. if the Preauthorized Health Care Transaction is renewed, the Cardholder must provide an updated order form.

B. Procedures. Merchants accepting Preauthorized Health Care Transactions must:

- i. retain a copy of the order form during the period it is in effect;
- ii. provide a copy of the order form upon NPC or Member Bank's request; and
- iii. type or print the words "Preauthorized Health Care" on the signature line of the Sales Draft; and
- iv. submit a Sales Draft within 90 days of the service date and request authorization for the amount due upon receipt of notice of adjudication from Cardholder's insurance company.

C. Cancellation. You must not complete a Preauthorized Health Care Transaction after receiving a decline response or a notice of cancellation from Cardholder, NPC or Member Bank.

16. Visa Supermarket Program

A merchant that wishes to participate in the Visa Supermarket Incentives Program must first obtain a Supermarket Incentives Agreement with NPC or Member Bank.

17. Electron Card Program

You may accept Electron Cards. If a Merchant chooses to accept Electron Cards, it must accept all Electron Cards when properly presented and process all transactions as Electron Card transactions. Unless otherwise specifically provided in the Agreement or the applicable requirements of Visa or Visa International, all provisions of the Agreement applicable to Visa Cards also will apply to Electron Cards. Electron Card transactions are permitted only in face-to-face transactions when the Card and the Cardholder are present. You must process any Electron Card transactions through an electronic data capture terminal that obtains an electronic authorization response and prints a transaction receipt.

18. Automated Fuel Dispenser

A. Procedures.

- i. When an Automated Fuel Dispenser ("AFD") transaction takes place, the card must be presented and the entire, unaltered contents of

either Track 1 or Track 2 of the magnetic stripe must be read and transmitted along with a value of "90" in the POS entry mode code field.

ii. The Merchant name, city, state, and zip code of the station location where the transaction took place must be included in any authorization and clearing message.

iii. A transaction receipt must be produced and the transaction must be cleared within 2 days of the transaction date.

iv. You must obtain an authorization for the exact amount of the transaction or use the status check procedure, which requires you to request an authorization for no more than \$1.00.

v. You must use the status check procedure if the floor limit is zero and the actual transaction amount is no more than the maximum set by Visa and MasterCard, which amounts are currently \$125.00 for Visa transactions and \$100.00 for MasterCard transactions.

vi. You must have an established self-service terminal operating plan on file with NPC or Member Bank and must establish a velocity check program that monitors the volume and frequency of account transactions.

vii. The transaction ratio of chargebacks to total Visa Interchange for Merchant must not exceed an average of 0.30% for the previous 6 months.

viii. The transaction ratio of fraud to total Visa Interchange for Merchant must not exceed an average of 0.40% for the previous 6 months.

ix. Under no circumstances should you use an arbitrary estimation of the transaction amount to obtain an authorization.

x. An AFD must not dispense scrip.

xi. Terminals at automated fuel dispensers do not qualify for the Qualified Rate set forth on the Merchant Application. In order to qualify for the Automated Fuel Dispenser Transaction Rate the authorization must be obtained within 1 day of the transaction date and the sale must be for less than than the maximum amount set by Visa and MasterCard, currently \$125.00 for Visa transactions and \$100.00 for MasterCard transactions.

B. Programming. NPC is not responsible for programming or reprogramming of fuel dispensers.

19. Equipment

If you enter into a lease or rental agreement for the use of credit card processing equipment, you understand that such agreement is separate and apart from the Merchant Processing Agreement and is subject to the terms and conditions of the lease or rental agreement. Neither NPC nor Member Bank is a party to such leases and neither is affiliated with the third party institutions. Such leases are typically non-cancelable 48-month leases. Termination of your Merchant Processing Agreement with NPC does NOT automatically terminate your equipment lease, it only terminates your processing agreement with Member Bank with respect to Card Organization processing and any other electronic transactions that are settled through the Member Bank as designated on your monthly statement from the Member Bank. You acknowledge that you have selected the equipment set forth on the Merchant Application based upon your own independent evaluation and you are not relying upon any warranty or representation of any third party, including but not limited to the representations of a sales representative, regarding the equipment. NPC is not responsible for and is not able to provide customer service for equipment, such as POS devices, installed by and/or operated by any third party. Merchant should contact the third party for service of this equipment. Merchant shall not allow any third party to install, remove, or modify any terminal software application of NPC or Member Bank without the express written consent of NPC or Member Bank.

20. Imprinters.

You must be in possession of a working imprinter, a supply of blank Sales Drafts and an accurate imprinter plate showing your DBA name, city, state, and Merchant Identification Number. If you are not in possession of the above equipment, you must contact NPC to obtain such equipment. Failure to use the equipment and supplies listed above will seriously increase your liability for chargebacks. You must obtain an imprint of a Card when a Card will not swipe. Obtaining an imprint of a Card will greatly reduce your chance of a chargeback.

21. Merchant Identification Number.

You are responsible for ensuring that your Merchant Identification Number ("MID") is kept confidential. When a change to your Merchant Account is required, you must disclose your MID to the NPC representative as confirmation that the person requesting the change has authority to do so. If the person requesting the change discloses the proper MID, NPC or Member Bank shall assume that person has the proper authority to make the change. You shall be fully liable for any changes to your Merchant Account after disclosure of the MID. NPC or Member Bank may request from you additional information to further verify your identity.

22. Use of Third Party Terminals and/or Software.

If you elect to use the terminal of a third party provider of software (such as POS or Accounting System vendors) to capture and transmit to NPC or Member Bank, you assume full responsibility and liability for any failure of such third party provider to comply with the Rules. The third party provider is the source for information regarding authorizations and reversals that may be needed by NPC or Member Bank. Certain reversals require authorization information to reverse. You are responsible for obtaining this information from the third party provider. NPC and Member Bank are not liable for sales that were not received by them. In addition, NPC will not be liable for third party software or clearing of Association transactions.

THE FOLLOWING RULES APPLY ONLY IF NPC OR PROCESSOR SETTLES YOUR DISCOVER NETWORK CARD TRANSACTIONS

1. Discover Network Marks.

You are prohibited from using the Discover Network Program Marks, as defined below, other than as expressly authorized in writing by NPC or

Processor. "Discover Network Program Marks" mean the brands, emblems, trademarks, and/or logos that identify Discover® Network cards. Additionally, you shall not use the Discover Network Program Marks other than to display decals, signage, advertising, and other forms depicting the Discover Network Program Marks that are provided to you by NPC or Processor pursuant to this Agreement or otherwise approved in advance in writing by NPC or Processor. You may use the Discover Network Program Marks only to promote the services covered by the Discover Network Program Marks by using them on decals, indoor and outdoor signs, websites, advertising materials and marketing materials; provided that all such uses by you must be approved in advance by NPC or Processor in writing. You shall not use the Discover Network Program Marks in such a way that customers could believe that the products or services offered by you are sponsored or guaranteed by the owners of the Discover Network Program Marks. You recognize that you have no ownership rights in the Discover Network Program Marks. You shall not assign to any third party any of the rights to use the Discover Network Program Marks. Your authority to use the Discover Network Program Marks will terminate immediately upon notice from NPC, Member Bank or Discover Network.

## 2. Priority Check-Out Service.

If you offer priority check-out services, you must comply with the following requirements: (i) require the Cardholder to sign the registration card at the time of check-in acknowledging responsibility for all charges, and obtain an authorization for the estimated amount of the accommodations at check-in; (ii) complete a Sales Draft at check-out by entering the total amount of charges incurred during the stay, including restaurant bills, telephone charges, convenience bar charges, missing item fees and miscellaneous expenses; (iii) write the words "Priority Check-out" on the Cardholder signature line of the Sales Draft; (iv) obtain a final authorization code for any additional amounts from the check-in estimate to equal the total amount to be billed to the Cardholder by following the normal authorization procedures; and (v) mail (at the address shown on the registration card) or otherwise deliver a copy of the Sales Draft and the itemized lodging bill (portfolio) to the Cardholder within seven (7) calendar days of check-out.

## 3. Card Checks.

Card checks are frequently issued to Cardholders by Discover Network. You agree to accept card checks on a basis consistent with the terms of your policy applicable to acceptance of other payment card checks. You should handle these card checks like any other personal check drawn upon a bank in the United States.

## THE FOLLOWING RULES APPLY TO PIN-DEBIT CARD TRANSACTIONS ONLY; CARD ACCEPTANCE PROCEDURES

1. Honoring PIN-Debit Cards. You shall not require Cardholders to provide personal information (such as telephone number or address) as a condition for honoring a PIN-Debit Card, unless required by the Rules. You may not require or request the Cardholder's signature or any other means of verifying the Cardholder's identity. You shall place the PIN Entry Device in an area accessible by all Cardholders and that will reasonably prevent others, including Merchant employees, from observing the PIN. Any penalties incurred by you for failure to comply with Debit Network Rules will be your responsibility. You assume exclusive responsibility for the consequences of any oral or written instructions you may give to NPC and/or Member Bank, for your failure to properly access the services in the manner prescribed by NPC or Member Bank, and for your failure to supply accurate input information. You will be responsible for auditing, balancing, verifying and reconciling any out-of-balance condition, and for notifying NPC of any errors in the foregoing after receipt of the applicable report from NPC or Member Bank. You will reject all incorrect reports or output within two (2) business days after receipt of the reports or output. Note, also, that neither NPC nor Member Bank warrant the continuing availability of any Debit Network.

## 2. PIN-Debit Card Sales Drafts.

A. Procedures. You shall deliver to the Cardholder at the time of a sale a true and completed copy of the Sales Draft evidencing a sale involving use of a PIN-Debit Card ("PIN-Debit Sales Draft"). The PIN-Debit Sales Draft must comply with the Rules and Laws. The following information must be included on the PIN-Debit Sales Draft: (i) the PIN-Debit Card account number; (ii) your DBA name; (iii) your city and state; (iv) the amount of sale; and (v) the sale date. A PIN-Debit Sales Draft shall be made available to the Cardholder at each terminal. You may not require or request the Cardholder to provide or disclose their PIN in any oral or written manner to the Merchant. You shall not impose any fee or charge for a PIN-Debit Card transaction without the prior written consent of NPC or Member Bank. If surcharging is approved by NPC, it must be a separate line item on the PIN-Debit Sales Draft and must be in compliance with all Debit Networks' rules and federal and state laws and regulations. You shall not process any sale if an authorization code is not received through the electronic terminal. When a denial to an authorization request is received, the POS transaction shall not be completed unless completed as a store and forward transaction or resubmission transaction. A sale shall not be completed if you know or should know that the sale is fraudulent or not authorized by the Cardholder.

B. Reversal. A sale may be reversed or voided electronically, but only if such reversal/void is entered prior to midnight of the calendar day on which the sale was initiated. To effect a reversal or void, Cardholder must reenter the PIN, the magnetic stripe reader must read the card, and you must transmit the trace number and the exact dollar amount of the sale to be reversed or voided. A reversal or void must be initiated at the same Merchant identified on the PIN-

Debit Sales Draft at which the original sale was initiated, but it need not be initiated at the same POS terminal.

C. Returns. All returns shall be processed in accordance with your normal procedures except that you or Cardholder shall not attempt to reverse a previously approved POS transaction unless otherwise permitted in accordance with the Debit Network Rules. Any sale known by you to be erroneous should be canceled and re-billed in the Cardholder's presence.

D. Balance Inquiry. Balance inquiries may be performed only by the Cardholder at a Cardholder-operated terminal and shall at all times require the Cardholder to enter the PIN and use the magnetic stripe reader.

3. Distribution and Storage of Information. You shall not disclose a Cardholder's account information or any other personal information to third parties other than to your agents for the purpose of completing the sale or as specifically required by law or by the Rules. You shall store in a limited access area for at least 1 year after the date of sales all transaction records, and you shall make and retain for at least 2 years the original or legible microfilm copies of both sides of all transaction records. Prior to discarding, you shall destroy or make unreadable all material containing Cardholder account numbers. There are no voice authorizations for PIN-Debit Card transactions and no manually imprinted PIN-Debit Sales Drafts. You may not store the Cardholder's PIN in any manner.

4. Promotional Materials. You will adequately display promotional materials to inform the public that PIN-Debit Cards will be honored by you. All uses by you of decals, signs, printed and broadcast materials and other promotional materials must be in conformity with the requirements of the Debit Networks, NPC, and Member Bank. You will not at any time do, or cause to be done, any act or deed in any way impairing or intended to impair NPC or Member Bank's exclusive right, title and interest in and to its respective protected marks.

5. Reversals. You agree to pay NPC or Member Bank for any Debit Network fees, fines or charges imposed on you, NPC or Member Bank. Such reimbursement will be accomplished by the debit of the sum(s) involved from your Merchant Account. If NPC or Member Bank elects, at its discretion, to take action on reversals after the Debit Network time limits have expired, such action shall be done at additional cost. Upon request of a Debit Network, processor, NPC, or Member Bank, you will retrieve and forward to NPC or Member Bank, within the time frame required, either the original or a readable copy of the terminal journal tape or duplicate transaction receipt for the transaction in question and, if requested, will give the Debit Network such information from such transaction records as it requests by telephone. You will, on request of the Debit Network, cooperate fully with the Debit Network and the Card issuing participant in order that the participant may comply with the error resolution procedures.

6. Your Name and Address. All forms submitted to NPC or Member Bank must bear both your corporate and "Doing Business As" ("DBA") name.

## 7. Equipment.

A. Use. You shall take all necessary steps to ensure that all POS Terminals and PIN Entry Devices operated in all of your locations:

- i. are placed in an area accessible by all Cardholders;
- ii. are available for use whenever you are open for business;
- iii. will function with minimal error, meeting all applicable technical specifications and security regulations; and
- iv. will require the Cardholder to enter the Cardholder's PIN at or near the check out location when initiating a POS transaction.

B. Standards. A PIN Entry Device must meet the ANSI standard format X9.8, 1995 or newer requirements, as they are released. A PIN Entry Device must comply with the PCI DSS requirements for POS and PED equipment. Terminals must have a magnetic stripe reader capable of reading Track 2 on the PIN-Debit Cards. PINs used in conjunction with any store and forward transaction or your resubmission must be encrypted and stored within a tamper-resistant security module. If your authorization system is capable of store and forward, it must comply with the Debit Networks' rules and regulations regarding this capability. NPC or Member Bank, the Issuer and the Debit Networks shall not be liable for any losses suffered by you arising from the use of the store and forward function. A PIN must never be logged in any form as a function of software either in the clear or encrypted.

8. Supply of Information. You must submit all information requested by the Debit Networks, NPC or Member Bank, including but not limited to lists and mailing addresses of terminals. You shall not sell, purchase, provide, or exchange account number information in any form, including but not limited to, transaction receipts, carbon copies of transaction receipts, mailing lists, tapes, to any third party other than to your agents for the purpose of assisting you in your business, or to the Debit Networks, NPC or Member Bank, or pursuant to a government request.

9. Left PIN-Debit Cards. PIN-Debit Cards that are inadvertently left at your location must be held under dual control during the time they are retained. PIN-Debit Cards inadvertently left at your location may be returned to the Cardholder by you under the following conditions: (A) the Card was inadvertently left by the Cardholder at an on-premise location, (B) the Cardholder requests the Card within 1 business day, and (C) the Cardholder provides 2 forms of current identification, at least 1 of which is a photo identification. If the Cardholder has not requested the Card within 1 business day, the Card should be destroyed by cutting it in half through the stripe.