



NPc



UNIVERSAL
DEBIT & CREDIT

We Process The World's Transactions®

MERCHANT

SERVICES

AGREEMENTS

Welcome to NPC. Please carefully read the attached Instructions, Card Processing Agreement, Debit Card Agreement, and Equipment Agreement, as applicable. Execute the original copy and return it to NPC. The applicable Agreements are subject to NPC's credit and legal review process. NPC will acknowledge its acceptance of the applicable Agreements pursuant to Section 11 of the Card Processing Agreement, Section 16 of the Debit Card Agreement, if applicable, and Section 13 of the Equipment Agreement, if applicable.

Thank you for choosing NPC. If you have any questions, please contact NPC Customer Service at 1 (800) 928-2583.

INSTRUCTIONS FOR THE APPLICATION TO THE CARD PROCESSING AGREEMENT, DEBIT CARD AGREEMENT AND EQUIPMENT AGREEMENT

ALL INFORMATION INDICATED BELOW MUST BE COMPLETED IN THE APPLICATION ATTACHED TO THE CARD PROCESSING AGREEMENT, THE DEBIT CARD AGREEMENT, IF APPLICABLE, AND THE EQUIPMENT AGREEMENT, IF APPLICABLE. ALL OTHER INFORMATION CONTAINED IN THE APPLICATION WILL BE COMPLETED BY NPC.

APPLICATION TYPE

NEW MERCHANT - Indicate if you are a new Merchant of NPC

ADDITIONAL LOCATION - If you decide to submit additional locations in the future, complete sections 3, 4, 5 and 7 and return the form to NPC. If you are implementing multiple locations, attach a list with the required information (if possible, provide the information on a diskette in ASCII format).

CHANGE - If you decide to change any of your existing information in the future, complete the appropriate sections being changed and return the form to NPC.

MERCHANT BUSINESS INFORMATION

Include all information pertaining to the legal entity signing the Card Processing Agreement, Debit Card Agreement and Equipment Agreement, as applicable.

BUSINESS OWNERSHIP AND MANAGEMENT

Include all demographic information pertaining to the business location implementing processing. If the Corporate location is the same as the business location, you will only need to indicate "same as above".

OWNER/OFFICER INFORMATION - Provide the requested owner(s)/officer(s) information.

MERCHANT ACCOUNT AND BANK INFORMATION - Indicate the financial institution in which NPC is to settle your funds. A voided check from your deposit bank must be attached to the Application to initiate distribution of your funds.

BUSINESS CERTIFICATION AND SITE VERIFICATION

Card Presented % - Indicate your anticipated percentage of cards presented.

MO/TO% - Indicate your anticipated percentage of Mail-order or Telephone Order transactions that you expect your business to do annually during the term of these Agreements.

Other/No Card % - Indicate your anticipated percentage of credit cards other than MasterCard and Visa credit cards.

Card Swiped % - Indicate your anticipated percentage of cards that will be swiped at the point of sale.

Hand Entered % - Indicate your anticipated percentage of transactions that will be hand entered.

Seasonal Business - Indicate whether your business is seasonal and the inactive months, if applicable.

CURRENT PROCESSOR - Provide your current Processor name, the reason for the change, your current/previous Merchant # and submit 3-6 months current processing statements

AVERAGE TICKET - Provide your average ticket over a 12-month period. If the Average Ticket varies by location, make sure to note the individual location's Average Ticket on the additional locations list.

ANNUAL BANKCARD VOLUME - Indicate your anticipated Annual Bankcard Volume in dollars

TRADE REFERENCE - Provide a Trade Reference for NPC to verify credit information

CERTIFICATION OF MERCHANT'S BUSINESS

YEARS IN BUSINESS - Indicate the number of years in which the business has been operating.

YEARS UNDER CURRENT OWNERSHIP - Indicate the number of years in which the business has been under the current ownership

BUSINESS TYPE - Indicate the type of goods sold

TYPE OF OWNERSHIP - Indicate the ownership status

MO/TO% - Indicate your anticipated percentage of Mail-order or Telephone Order transactions that you expect your business to do annually during the term of these Agreements.

Internet % - Indicate your anticipated percentage of Internet transactions that you expect your business to do annually during the term of these Agreements.

BUSINESS ENVIRONMENT - Indicate the business environment of the business location

SITE VERIFICATION-ACCOUNT EXECUTIVE USE ONLY. This Section should only be completed by the Account Executive.

MERCHANT SERVICES AND RELATED FEES

CARD TYPE - Indicate which card types you will be submitting through NPC

Check Services: If you elect to receive Check Services, indicate whether you are requesting SCAN, NRC check collection, Check Verification Services, Check Guarantee, CheckThruSM Electronic Check Verification Services, or CheckThruSM Electronic Check Guarantee Services. If you are requesting Check Services other than SCAN or NRC, you must execute a separate agreement with the provider.

Debit: If you elect to receive on-line Debit services, you will receive access to the Debit Networks that NPC makes available. On-line Debit requires a terminal, printer and pinpad for processing.

EBT: Indicate if Electronic Benefits Transfer processing is requested. This is not available for National Franchisees/Associations.

Purchasing Card: Upon receipt of your request for Purchasing Card, NPC will provide you with an additional form to be completed and returned to NPC. The requested information may qualify suppliers for federal and state government agency programs.

ACCOUNT NUMBER:

American Express: If you will be submitting American Express through NPC/NCB, you must provide your American Express Merchant Number for each location.

Diner's Club: To be completed by NPC

Discover Card: If you will be submitting Discover Card through NPC/NCB, you must provide your Discover Card Merchant Number for each location. If you do not have a signed agreement with Discover Card, you may receive your Discover Card Merchant Number from NPC or you may contact Discover Card at 1-800-347-6673. In either case you will need to execute an appropriate agreement with Novus (Discover Card).

JCB: If you will be submitting JCB through NPC/NCB, you must provide your JCB Merchant Number for each location. If you do not have a signed Agreement with JCB, you will need to contact JCB at 1-800-366-4522 and execute an appropriate Agreement with JCB.

Private Label: If you will be submitting Private Label through NPC/NCB, please contact your NPC Representative for detailed instructions.

PERIODIC SERVICE FEES AND SERVICE OPTIONS

A check for all applicable Membership, Application and Reprogramming fees must be included with these Agreements.

EQUIPMENT AND PROCESSING SPECIFICATIONS

SHIPPING INFORMATION - Provide site address for equipment delivery if different than the address in Merchant Business Information section.

MERCHANT TYPE - Indicate processing type *

* PURCHASING CARD - Upon receipt of your request for Purchasing Card, NPC will provide you with an additional form to be completed and returned to NPC. The requested information may qualify suppliers for federal and state government agency programs.

TELEPHONE DIALING ACCESS - Indicate if your phone requires an access code in order to dial out of your location

MERCHANT TRAINING - Indicate whether NPC is to train the Merchant and, if applicable, the training information.

EQUIPMENT SPECIFICATIONS AND PROVIDER - Please complete the information for the terminals, equipment and miscellaneous items.

SPECIAL INSTRUCTIONS

FOR USE BY ACCOUNT EXECUTIVE ONLY

MERCHANT SIGNATURE - The Application to the Card Processing Agreement, Debit Card Agreement and Equipment Agreement, as applicable, must be fully executed on page 3 of the application. Please retain one copy of the Merchant Services Agreements, as applicable, for your files.

RETURN YOUR MERCHANT SERVICES AGREEMENTS, as applicable - Please return the following items to NPC at the address indicated below. If you have questions, please contact NPC Customer Service.

The Application

If applicable, a check made payable to "National Processing Company" for purchased equipment and all applicable fees

If applicable, a check made payable to the leasing company for rented or leased equipment

A voided check for each bank account in which NPC is to deposit your funds.

Current 3 - 6 months processing statements from your existing processor

ALL TO: NATIONAL PROCESSING COMPANY

1231 DURRETT LANE

LOUISVILLE, KY 40213

DEBIT CARD AGREEMENT

1. Services Provided. You wish to purchase from us and we wish to sell to you certain services (the "Services") necessary for the processing and settlement of your on-line debit card transactions submitted to the debit networks, which are collectively hereinafter referred to as the "Debit Networks". You represent that you have entered into a Card Processing Agreement with MPC and National City Bank of Kentucky for the processing and settlement of credit cards and off-line debit cards. The Services provided under this agreement are not available to you unless you have entered into a Card Processing Agreement with us.

You agree that during the term of this Agreement and subject to the other provisions of this Agreement, and unless otherwise specifically agreed to in writing by us, this Agreement shall be a "requirements contract," which means that we (directly or through others) shall be the sole provider of such Services.

2. Charges. We shall charge the per transaction fees set forth on the attached Application for each debit transaction submitted to each Debit Network regardless of whether said transaction is approved, declined or determined invalid. You acknowledge that the aforesaid fees set forth on the attached Application are based upon Debit Network fees currently in effect and upon certain sponsorship arrangements made by us with a Debit Network Sponsor ("Sponsor") for your sponsorship needed to participate in each applicable Debit Network. You agree that should any Debit Network or Sponsor raise or lower its interchange fees or similar charges, we shall have the right to pass or increase or decrease in such fees or charges. You agree to pay for all Debit Network or Sponsor setup fees, chargeback fees and adjustment fees including but not limited to late fees which may be imposed by Debit Networks and Sponsors. You agree to pay any taxes imposed on the Services furnished to you on the transactions under and subject to this Agreement and such taxes shall be added to the charges owed to us and shall be deducted from the settlements. You shall charge you the daily/monthly fees as set forth on the Application for the Services: monies due to you in accordance with the Agreement terms. Any taxes so imposed shall be exclusive of the taxes based on our net income. We shall charge you the daily/monthly fees as set forth on the Application for the Services: provided pursuant to this Agreement and such other fees as set forth thereon and such amounts will be payable as provided for in Section 10. Said fees may be collected hereunder in accordance with the terms and provisions of this Section and Section 10. We may require you to pay handling fees for any supplies we provide and, if applicable, an overnight shipping fee of \$25.00, or NPC's then current rate for overnight shipping.

3. **Acceptance of Cards.** You will honor any valid on-line debit card properly tendered for use for on-line point-of-sale debit transactions for the Debit Networks. You shall not engage in acceptance practices or procedures that discriminate against, or discourage the use of, any debit card in favor of any other competing card brand that is also accepted. You shall not complete any point-of-sale on-line debit transaction that has not been authorized. You may store and forward data for later authorization if permitted by the applicable Debit Network within the time frames and in accordance with the rules and procedures established by such Debit Network. You shall display the applicable Debit Network program marks or signs or details at or near the point-of-sale devices to inform the public that certain debit cards will be honored by you and shall not indicate, directly or indirectly, that any Debit Network endorses any goods or services other than its own services. No right, title or interest in or to the program marks has been transferred or is being transferred in this Agreement, except the non-exclusive right to use the program marks as provided in this Agreement. You shall promptly cease all use of a program's marks upon termination of your participation in the applicable Debit Network.

4. **Access to the Service.** Upon this Agreement becoming effective as provided in Section 15, we shall make the Services selected by you operational and available to you upon a mutually agreed upon implementation plan. You
communicate with us and provide us with all necessary information and assistance required for us to successfully make the Services operational and available to you.

5. Availability of Terminals. You shall take all reasonable steps necessary to ensure that all point-of-sale devices and PIN (personal identification number) pads shall be available for use by the cardholders of each Debit Network.

6. **Systems Data and Confidentiality.** a) NPC Systems. All NPC Systems are and will remain the exclusive property of NPC or licensors of such NPC Systems, as applicable, and, except as expressly provided in this Agreement, you shall have no ownership interest or other rights in any NPC System. You acknowledge that the NPC Systems include our proprietary information and agree to keep the NPC Systems confidential at all times. Upon the expiration or termination of this Agreement you will return all copies of all manuals or other items relating to the NPC Systems which are in your possession, and certify to us in writing that you have retained no material relating to the NPC Systems. You agree that upon termination of this Agreement you will reverse-engineer or disassemble or decompile or destroy the NPC Off-line conversion capability that resides in your system and agree not to use Systems. You acknowledge that such capability is proprietary and unique to NPC and is considered confidential under this Agreement.

b) **MERCHANT Information.** Information relating to you or your clients' contained in your data files is your exclusive property and we will only be the custodian of that information. We agree to hold in confidence all your and your clients' proprietary information provided to us. However, upon the request of any appropriate federal or state regulatory authority with jurisdiction over your business and after we have, when reasonably possible, notified you of such request, we will allow such authority access to all your records and other information in our possession and provide any related assistance that is required. Promptly after the termination or expiration of this Agreement and the payment to us of all sums due and owing, including without limitation any amounts due under Termination Provisions, we will, at your request and expense, return to you all of your information, data and files in our then standard format and media.

c) **Confidentiality.** Except as otherwise provided in this Agreement, we and you each agree that all information communicated to one by the other or the other's affiliates, whether before or after the effective date, will be received in strict confidence, will be used only for purposes of this Agreement, and except for the requirements of Section 6(b), will not be disclosed by the recipient party, its agents, subcontractors or employees without the prior written consent of the other party. Each party agrees to take all reasonable precautions to prevent the disclosure to outside parties of such information, including, without limitation, the terms of this Agreement, except as required by legal, accounting or regulatory requirements beyond the reasonable control of the recipient party. The provisions of this Section will survive the expiration of termination of this Agreement.

d) **Trade Secrets.** You acknowledge that the electronic funds transfer system operated by each Debit Network or its provider and all technical and operational data, specifications, marketing materials and manuals, including the Debit Network Rules as defined in Section 9 and any other information regarding such system, are proprietary to the Debit Network and/or its provider and have been developed as trade secrets at the Debit Network's and/or its provider's expense. Except as provided in the following sentence, you will hold and use such property in strict confidence and as trade secrets and will not copy, sell, transfer, sublicense, assign, distribute or disclose such property or any part or parts of it in any form, to any individual, firm, corporation or other entity, nor permit any of your employees, agents, or representatives to do so either voluntarily or by operation of law without the prior written consent of NPC and the Debit Network. Internal dissemination of proprietary information by you shall be limited to your agents or employees whose duties justify the need to know such information and then only on the basis of a clear understanding by such agents or employees of their obligation to maintain the trade secret or confidential status of such proprietary information solely to the use permitted to you. You shall be responsible for the actions of your agents and employees within the scope of their employment with respect to such proprietary information. If you or any of your employees, agents or representatives shall attempt to use or dispose of any such property in a manner other than as expressly permitted under the applicable Debit Network Rules, you agree that the Debit Network and its provider shall have the right to injunctive relief enjoining such use, disposition, attempted use or disposition, it being acknowledged that legal remedies are inadequate to protect the Debit Network and its provider.

8. **Use of Services.** You assume exclusive responsibility for the consequences of any oral or written instructions you may give to us, for your failure to properly access the Services in the manner prescribed by us, and for your failure to supply accurate input information. You shall be responsible for auditing, balancing, verifying and reconciling any out-of-balance condition, and for notifying us of any errors in the foregoing after receipt of the applicable report from us. You will reject all incorrect reports or output within two (2) Business Days after receipt of daily reports or output, within five (5) Business Days after receipt of annual, quarterly or monthly reports or output, and within three (3) Business Days after receipt of all other reports or output. You will be responsible for the quality and accuracy of all data provided to us. We may, at our option, return to you for correction before processing any data submitted by you which is incorrect, illogical or otherwise not in proper form. If you do not provide your data to us in accordance with our specified format and schedule, we will use reasonable efforts to reschedule and process the data.

You will comply with all operating instructions which are issued by us from time to time. Except as otherwise provided in this Agreement, you will be responsible for the supervision, management and control of your use of the NP Systems, including without limitation (1) implementing sufficient procedures to satisfy your requirements for the security and accuracy of the input you provide, and (2) implementing reasonable procedures to verify reports and output from us within the time frames specified here in above. You agree that you will use the Services in accordance with such reasonable rules as may be established by us from time to time as set forth in any materials furnished to you. You agree that, except as otherwise contemplated herein or otherwise permitted by us, you will use the Services 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.

9. **Access to Debit Networks.** You shall sign appropriate agreements with each applicable Debit Network and/or Sponsor and agree to comply with the rules, regulations, procedures and other membership duties and obligations of the Debit Networks (the "Debit Network Rules") as from time to time in effect, which are applicable to you. Any penalties incurred by us or you for your failure to comply with Debit Network Rules will be your responsibility. We shall, upon receipt of verbal or written instructions from any Debit Network or Sponsor to which we are providing access hereunder, immediately cease to provide to you, including your clients, access to such Debit Networks. We shall also, to the extent necessary, notify you of such termination in Debit Network access.

10. **Settlement of Debit Card Transactions.** After receiving the applicable settlement files from the applicable Debit Network, we will transfer settlement funds to you with respect to your on-line debit card transactions process by us by initiating a transfer of applicable settlement funds received from the Debit Network through the Automated Clearing House ("ACH") to your Settlement Account (defined below); this will generally occur the second bank day after we process the applicable transactions. You will designate an account at a depository institution within the United States of America as the account to be debited and credited for card transactions, fees and chargebacks ("Settlement Account"). All settlements to you for on-line debit card transactions will be based upon gross sales, less credits/refunds, adjustments, per transaction fees when due, chargebacks, and any other amounts then due from us. All deposits in your Settlement Account or other payments to you are subject to NPC's final audit and checking, and you agree that NPC, upon notice to you, may charge or credit your account for any deficiencies and overages.

We shall not have any responsibility to settle your transactions involving Cards other than on-line debit cards under this Agreement. We will not be liable for any delays in receipt of funds, failure to receive funds, or errors in debit or credit entries caused by third parties including but not limited to the Debit Networks or your financial institution. In the event there are insufficient funds in your Settlement Account to pay any monies owed to us, you agree that we may deduct monies owing from any settlements due to you.

11. Chargebacks/Adjustments. You specifically agree that we may charge back to you any transaction amount (commonly referred to as a "chargeback") for the reasons stated and within the time frames permitted by the current Debit Network Rules or pursuant to applicable law. You agree that we may also chargeback any other transaction amount which is settled by us pursuant to this Agreement if such chargeback/adjustment is permissible under the Debit Network Rules in effect at the time of, or subsequent to, the execution of this Agreement.

12. **Laws and Governmental Regulations.** Each party to this Agreement shall comply with all applicable laws and governmental regulations in the performance of its respective responsibilities and obligations hereunder. Each party shall, to the best of its knowledge, advise the other party in writing of any circumstances to which the other party is subject which may cause the other party to violate, or in our reasonable opinion is likely to violate, any applicable laws or governmental regulations, or should we receive instructions from a governmental agency having authority to issue such instructions to us to suspend, terminate or modify our obligations under this Agreement, we shall promptly advise the other party in writing of such instructions and the other party shall have the right to terminate this Agreement.

over your business instructing us to cease providing any or all of the Services, or should you cease operations, then we may, upon oral notice to you, immediately cease providing the affected Services to you. This Debit Card Agreement is governed by and will be construed in accordance with the laws of the Commonwealth of Kentucky.

13. Limitation of Liability - Indemnification. Notwithstanding any other provisions in this Agreement, the following shall apply:

- a) **WE MAKE NO WARRANTIES TO YOU, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- b) We will make every reasonable effort to make the Services available during the hours referred to in the Section of this Agreement entitled "Availability of Services"; however, we cannot and do not guarantee such availability. Accordingly, our sole liability to you or any third party (including your clients) 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 us hereunder, shall be to use our reasonable efforts to commence or resume the Services as promptly as reasonably practicable.
- c) You shall indemnify and save us harmless and any third party providing services hereunder (Providers and Sponsors) and each Debit Network and said Debit Network's participants from any and all claims, liabilities or losses, including reasonable costs and attorney's fees, arising or resulting from your, or your employees, agents, or representatives (1) failure to abide by a requirement of this Agreement, (2) violation of any applicable law or regulation or order, (3) misuse of any protected mark of a Debit Network, (4) willful misconduct, fraud or gross negligence in the use of the Services, (5) effecting transactions with the use of a lost, stolen, counterfeit, or mislabeled debit card in the use of the Services, or (6) conduct of your business.
- d) Neither we nor any Provider or Sponsor shall be liable or deemed to be in default for any delay or failure to perform under this Agreement or for any interruption in the Services resulting, directly or indirectly, from any cause beyond its reasonable control.
- e) You shall indemnify and hold us harmless from any claims, liabilities or losses, including costs and attorney's fees resulting from our compliance with the verbal or written instructions of any Debit Network.
- f) We shall not have any duty of indemnity or liability to you or any of your clients for any and all claims, liabilities or losses, including reasonable costs and attorney's fees, arising or resulting from your use of the Services, except to the extent that such claim, liability or loss is due solely to our willful misconduct, fraud or gross negligence.
- g) **IN NO EVENT WILL WE BE RESPONSIBLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHICH YOU MAY INFLICT AS A RESULT OF ENTERING INTO OR RELYING UPON THIS AGREEMENT OR TERMINATION OF THIS AGREEMENT. EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING.**
- h) Each party will be excused from performance under this Agreement, except for any payment obligations, for any period and to the extent that it is prevented from performing, in whole or in part, as a result of delays caused by the other party or any act of God, war, civil disturbance, court order, labor dispute, third party nonperformance or other cause beyond its reasonable control, including failures, fluctuations, or nonavailability of electrical power, heat, light, air conditioning, or telecommunications equipment. Such nonperformance will not be a default or a ground for termination as long as reasonable means are taken to expeditiously remedy the problem causing such nonperformance. Notwithstanding the foregoing, during any period when our performance is hindered or precluded by reason of any of the aforesaid causes, your obligations to make payments hereunder shall be reduced on an equitable basis.
- i) Each party will indemnify, defend and hold harmless the other from any and all claims, actions, damages, liabilities, costs and expenses, including, without limitation, reasonable attorney's fees and expenses, arising out of any claims of infringement by the indemnitee of any United States letters patent, any trade secret, or any copyright, trademark, service mark, trade name or similar proprietary rights conferred by common law or by any law of the United States or any State alleged to have occurred because of Systems provided or work performed under this agreement. However, this indemnity will not apply unless the indemnitee informs the indemnitor as soon as practicable of any claim or action alleging such infringement and has given the indemnitor full opportunity to control the response thereto and the defense thereof, including, without limitation, any agreement relating to settlement.

14. Termination Provisions.

- a) If you default in the performance of your obligations under this Agreement other than under Section 14(b), 14(c), or 14(d) and you fail to cure such default within ten (10) days after receiving written notice specifying such default, then we may terminate this Agreement, and upon such occurrence any and all amounts payable hereunder shall be due and payable in full without demand or invoice of any kind.
- b) If you fail to pay any daily fees when due, then we may terminate this Agreement immediately upon notice to you and, any and all amounts payable hereunder shall be due and payable in full without demand or invoice of any kind.
- c) If you become or are declared insolvent or bankrupt, are the subject of any proceedings relating to your liquidation or insolvency or for the appointment of a receiver, conservator or similar officer, or make an assignment for the benefit of all or substantially all of your creditors or enter into any agreement for the composition, extension, or readjustment of all or substantially all of your obligations, then upon such occurrence this Agreement shall immediately be terminated without notice, and all amounts payable hereunder by you to us shall thereupon be due and payable in full without demand or invoice of any kind. You agree that this Agreement is a contract whereby we are extending financial accommodations to you, within the meaning of Section 365(c) of the Bankruptcy Code.
- d) If you materially default in your performance under this Agreement by effecting transactions with lost, stolen, or counterfeit debit cards or engage in or cause irregular debit card transactions to occur either by your own actions or that of your employees, representatives, or agents, then upon such occurrence, this Agreement shall immediately be terminated without notice, and all amounts payable hereunder by you to us shall thereupon be due and payable in full without demand or invoice of any kind.
- e) If the Card Processing Agreement between you and us is terminated or if you are only processing and sealing on-line debit card transactions with us and not credit card transactions, then we may terminate this Agreement immediately upon notice to you and, any and all amounts payable hereunder shall be due and payable in full without demand or invoice of any kind.
- f) We may terminate this Agreement at any time upon fifteen (15) days written notice.

The provisions of this Agreement governing processing of on-line debit cards will continue after termination of this Agreement until all card transactions made prior to termination are settled or resolved. In addition, the provisions in Sections 11, 12, 13, 14, 15, and 17(a) and (b) and your obligations to us for amounts due pursuant to this Agreement shall survive any termination.

15. Escrow Account. You agree that after any termination of this Agreement, you shall continue to bear total responsibility for any and all chargebacks and adjustments resulting from transactions processed pursuant to this Agreement. For a period of 360 days after termination, you shall maintain an escrow account with us in an amount equal to the preceding 270 days of your chargeback and adjustment dollar volume (or, if this Agreement has been in effect less than 270 days, an amount equal to 9 times your average monthly chargeback and adjustment dollar volume during the term of this Agreement). The requirement to maintain an escrow account shall not limit our right to debit or withhold ongoing settlement payments for chargebacks, potential chargebacks and adjustments. Escrowed funds may be used to settle chargebacks and adjustments (whether arising before, on or after termination) whenever there are not sufficient settlement funds due to you to cover such chargebacks and adjustments. We will refund any monies remaining in such escrow account to you no later than 280 days after termination of this Agreement, and will provide you with an accounting of any sums debited or credited from or to such account. If the escrow account is not sufficient to cover the chargebacks and adjustments due from you pursuant to this Agreement, or if the escrowed funds have been released, you agree to promptly pay us such sums upon request.

16. Term. You indicate, by signing the Application or by submitting Card transactions, your acceptance of and agreement to the terms and conditions of this Agreement. This Agreement is effective only (i) if and when we note our acceptance of it, (ii) we process Card transactions you submit, or (iii) upon full execution. Unless otherwise agreed by the parties, the initial term ("Initial Term") of this Agreement is three (3) years. Thereafter, this Agreement will automatically renew for successive one-year terms (the "Renewal Terms") unless either party gives the other party written notice at least ninety (90) days prior to the expiration date of the Initial Term or the Renewal Term then in effect that the Agreement will not be renewed beyond such term.

17. Miscellaneous.

- a) **Binding Nature and Assignment.** The terms of this Debit Card Agreement shall be binding upon any successors or assigns and it shall inure to the benefit of the parties and their respective permitted successors and assigns. You may not assign or transfer the Services provided under and pursuant to the terms of this Debit Card Agreement without our prior written consent.
- b) **Notices.** All notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of debit card transactions) shall be in writing, shall be sent by mail, courier or facsimile, to you at your address appearing at the beginning on this Agreement, and to us at 1211 Durand Lane, Louisville, Kentucky 40213, Facsimile (502) 315-2080, Attention: Sales and Marketing, and shall be given (1) if sent by mail when received, (2) if sent by courier, when delivered and (3) if sent by facsimile, when transmission is confirmed.
- c) **Relationship of Parties.** We, in providing Services, are acting as an independent contractor and do not undertake by this Agreement or otherwise to perform any of your regulatory or contractual obligation. We have the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all work to be performed by us under this Agreement.
- d) **Changing This Agreement.** We may change this Agreement at any time by giving you written notice to (a) adjust the fees paid by you to us to reflect increases or decreases by the Debit Network in interchange or assessment fees or similar charges or to pass through increases charged by third parties, or (b) make any other enhancements necessary to comply with applicable Debit Network Rules. Any other changes not specified under (a) or (b) hereinabove may be made by giving you thirty (30) days written notice of such change. However, due to security reasons certain changes may become effective on shorter notice. Any debit card transactions effected by you after the effective date of such change shall constitute consent to the new terms.

- e) **System Enhancements.** If, after the effective date of this Agreement, you request us to perform or provide any system enhancements, customer reports, or related service enhancements that are different from or in addition to the system, services and reports we agree to provide you as of the effective date of this Agreement (collectively, "System Enhancements"), we will use our best efforts to provide such System Enhancements if you pay us the additional fees charged by us for such System Enhancements. Following receipt of any request for System Enhancements, we shall provide you with a description of the System Enhancements to be made, together with an estimate of our fee for providing such System Enhancements. If you thereafter instruct us to make such System Enhancements, we shall do so and you shall pay the additional fees charged by us for such System Enhancements.
- f) **Waiver.** A waiver by either of the parties of any of the covenants, conditions, or agreements to be performed by the other or any breach thereof will not be construed to be a waiver of any succeeding breach or of any other covenant, condition or agreement contained in this Agreement.

18. **Termination by Debit Networks.** The parties acknowledge that the Debit Network Rules give the Debit Networks certain rights to terminate or limit this Agreement with respect to transactions involving on-line debit cards.

19. **Entire Agreement.** This Agreement, the Application and all attached Schedules constitute the entire agreement between you and us with respect to the subject matter of this Agreement. There are no understandings or agreements relative to this Agreement which are not fully expressed herein and no change, waiver or discharge of this Agreement will be valid unless in writing and executed by the party against whom such change, waiver or discharge is sought to be enforced. This Agreement may be amended only by an amendment in writing, signed by the parties.

20. **Signatures General Provisions.** Your signature on the Application attached to this Agreement and the Card Processing Agreement that is related to this Debit Card Agreement also serves as the signature for this Debit Card Agreement.

21. **Dispute Resolution and Arbitration.** If the parties disagree as to any matter governed by this Agreement, the parties shall promptly consult with one another in an effort to resolve the disagreement. If such effort is unsuccessful, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of The American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator(s) shall have the right to render equitable, as well as other, awards and relief. The parties agree that the underlying agreement between the parties involves interstate commerce, and that, notwithstanding any choice of law provisions in Section 12 of this Agreement, any arbitration hereunder shall be governed by the Federal Arbitration Act.

EQUIPMENT AGREEMENT

This Equipment Agreement ("Agreement") is being entered into by and between National Processing Company, LLC ("NPC"), an Ohio Limited Liability Company and the Merchant identified on the attached Application (which is incorporated herein and constitutes a part of this Agreement as if fully set forth herein and which is hereafter referred to as the "Application"). In this Agreement, the words "you" and "your" mean the Merchant and the word "we", "our" and "us" refer to NPC. This Agreement governs the sale of certain terminals, printers, and other equipment identified in the Application (the "Equipment"). All references to the Application in this Agreement mean both the Application attached to this Agreement when it is first executed by you and us and any supplemental versions of the Application mutually agreed upon when you open additional locations or when you otherwise request additional or different equipment. **THE EQUIPMENT IS NOT BEING SOLD TO YOU FOR HOME OR PERSONAL USE.** In this Agreement, Equipment refers to any electronic terminal, electronic printer or other electronic peripheral equipment identified on the Application.

Whereas: Option 1: You desire to purchase certain Equipment directly from us in consideration of the payment of a purchase price by you to us; or

Whereas: Option 2: You desire to purchase certain Equipment through a person or persons other than us who have procured said Equipment from us, payment for which shall be made by you to said other person or persons.

1. Applicability of Agreement Terms

In the event of Option 1 above, you and we agree that all terms and conditions of this Agreement shall apply.

In the event of Option 2 above, you and we agree that only the terms and conditions set forth in Sections 3, 5, 9, 10-13, and 16-20 of this Agreement shall apply.

2. **Purchased Equipment; Supplies.** We will sell to you, and you will buy from us the Equipment identified in the Equipment Schedule as being purchased by you (the "Purchased Equipment"), free and clear of all liens and encumbrances (subject to Section 7), except that any "Software" (as defined in Section 8 below) will not be sold to you outright but instead will be provided to you pursuant to, and subject to the conditions of Section 8 hereof. We will also sell to you and you will buy from us the supplies identified in the Application as requested by you from time to time.

3. **Site Preparation.** You will prepare the installation site or sites for the Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site or sites available to us by the confirmed shipping date.

4. Payment of Amounts Due.

(a) The purchase price specified in the Application for purchased equipment and supplies, if applicable, shall be due and payable upon execution of this Agreement. Such purchase price will be paid by you to NPC prior to shipping of the equipment and supplies. All such payments shall be made: (1) in a lump sum or in certain installments and (2) by check or by debit to the Settlement Account (defined below) through the ACH, in each case, as specified on the Application. In the event you do not specify payment timing or method, payment shall be made in a lump sum via ACH debit to the Settlement Account. We will also provide you the supplies identified in the Application, as requested by you from time to time. You shall pay the purchase price for such supplies, including all applicable taxes prior to delivery of the supplies or at our option such amounts will be collected by invoice or by debits or deductions pursuant to this Section 4. You hereby authorize us to collect all amounts due from you under this Agreement by initiating our debit entries for such amounts to your account designated pursuant to the Card Processing Agreement to be debited and credited for amounts due from and to you under the Card Processing Agreement (the "Settlement Account") or by deducting (or causing National City Bank of Kentucky to deduct) such amounts from settlement amounts due to you under the Card Processing Agreement. All authorizations and other provisions in your Card Processing Agreement regarding the debiting and crediting of your Settlement Account apply with equal force with respect to amounts due to or from you under this Agreement. This authority will remain in full force and effect until we have given written notice to your bank where your Settlement Account is maintained that all monies due from you under this Agreement have been paid in full.

If you shall make any payment hereunder by check and such check shall be returned for non-sufficient funds, or if you shall make any payment hereunder by debit to the Settlement Account and funds in the Settlement Account are inadequate, you agree to reimburse NPC immediately for any account shortfall that occurs as a result thereof together with our then current fee for handling such shortfall. Should you fail to deposit sufficient funds to cover the shortfall in toto within forty eight (48) hours of notice of such shortfall, you shall then owe to and be charged by us a late charge of 15% of the amount past due. Any deposits made to the Settlement Account shall be applied first to late charges, then to processing charges and then to Equipment charges.

(b) In addition, you shall pay, or reimburse us for, amounts equal to any applicable taxes or assessments, however designated, levied or based on such charges, or on this Agreement or the Equipment and related supplies or any services, use or activities hereunder.

(c) As indicated in the Application, separate charges apply for Equipment supplies.

5. Use of Equipment.

(a) You shall cause the Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer and in connection with the services provided under your Card Processing Agreement. You shall not use the Equipment, or permit the Equipment to be used, in any manner or for any purpose for which the Equipment is not designed or reasonably suited.

(b) You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all legally required permits for the Equipment.

(c) After delivery of the equipment any loss, destruction, theft or damage to the Equipment which occurs thereafter shall not relieve you from your obligation to pay the full purchase price payable hereunder.

(d) You shall not move the Equipment from the installation location set forth in the Application for any reason or use whatsoever without our prior written consent.

(e) Notwithstanding anything in this Agreement to the contrary, you shall be solely responsible for properly maintaining all Equipment and meeting all technical standards required by this Agreement. You shall at all times insure that all point-of-sale Equipment shall display, print and report your name, city, state and the transaction date on all transaction receipts, as penalties may be assessed against you for transactions that are inaccurately transcribed.

6. Ownership & Protection of Equipment

During the period of time when any charges, taxes or fees for or on Equipment shall be due us, and until such time as all charges, taxes and fees due shall have been received by us, it is expressly understood and agreed by you that: (1) the Equipment is, and shall at all times during such period remain, our property, and you shall have no ownership rights or interests in such Equipment; (2) you shall not directly or indirectly create or permit to exist, and will promptly and at your own expense discharge, any lien, charge or encumbrance on the Equipment; (3) you shall not alter the Equipment in any manner whatsoever; (4) you shall maintain the Equipment at your expense in the same condition in which it was delivered to you, ordinary wear and tear excepted; and (5) in the event of any loss, theft, damage or destruction of the Equipment from any cause whatsoever, you shall notify us immediately of such condition and we, in our sole discretion, shall determine the extent of loss and the cost of repair and/or replacement, and you shall bear the entire risk and promptly pay the cost of such repair and/or replacement.

7. **Security Interest; Financing Statements.** You hereby grant to us a security interest in all Purchased Equipment and the related Software to secure payment of the purchase price thereof in accordance with the Uniform Commercial Code.

8. Software License. Anything in this Agreement to the contrary notwithstanding, we retain all ownership and copyright interest in and to all software, computer programs, related documentation, technology, know how and products embodied in or provided in connection with the Equipment (collectively, "Software"), and you shall have only a nonexclusive license to use the Software in the operation of the Equipment. You shall not reverse engineer, disassemble or decompile the Software. You shall not give any third party access to the Software without our prior written consent. Your obligations under this Section 8 shall survive the termination of this Agreement.

9. Limited Warranty; Maintenance. Equipment provided to you by us hereunder shall be free from defects in material or workmanship at the initial date of shipment to you and, if covered by any applicable warranty, shall be repaired or replaced by us free of charge within thirty (30) days thereafter. We shall take appropriate steps, to the extent permitted, to assign to you any and all warranties provided by the manufacturer of the Purchased Equipment, but we will not provide any warranty with respect to the Purchased Equipment.

Equipment provided to you by us hereunder shall conform to applicable specifications for the period of time specified in, and be covered by the warranty provided in, the written materials accompanying each component of Equipment. Copies of which materials will be provided to you upon delivery of the specified Equipment. The exact term, conditions and coverage of each warranty will vary for each component of Equipment in accordance with such a materials. The cost incurred by you, if any, to repair or replace Equipment will be determined by us based upon the specific provisions of the warranty applicable thereto as set forth in such written materials, our applicable repair/replacement policy and the date you request such repair or replacement relative to the initial date of shipment by us.

The warranty statement in the written materials provided to you with respect to the Equipment describes the following in explicit detail, but in general, such warranty shall be voided if there is: (1) alteration, installation, repair/maintenance of the Equipment performed by persons not authorized by us; (2) connection of any device to Equipment or peripherals not certified for use with the Equipment; (3) operation of the Equipment outside the published specifications; (4) negligence by you or any other person with respect to the Equipment; or (5) alteration of Equipment serial number(s).

The warranty statement in such written materials also describes the following in explicit detail, but in general, such warranty does not cover: (1) misuse, neglect or abuse of the Equipment; (2) labor involved in the removal/reinstal of warranted Equipment or parts on site; (3) damage or malfunction as a result of acts of nature; or (4) operating supplies, including paper, ribbons, accessories and rechargeable batteries.

You expressly understand and agree that, except as set forth above, we make no warranties whatsoever, express or implied, relative to the Equipment, including, without limitation, any warranties of merchantability or fitness for a particular purpose, and you hereby expressly waive and release us from any and all warranties with respect to the Equipment, other than those specifically set forth in this Agreement.

You further expressly understand and agree that our sole liability and your sole remedy, whether in contract, tort or otherwise, with respect to any Equipment provided to you under this Agreement shall be limited to the repair/replacement of defective or faulty Equipment in accordance with the terms of this Agreement, and we shall not be liable for indirect or consequential damages, or damages resulting from the loss of use, data or profits, arising out of connection with the use of, or the inability to use, the Equipment, and you hereby expressly releases us from any and all liability with respect to the Equipment, other than as expressly set forth above.

WE DISCLAIM ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT AND THE SOFTWARE, INCLUDING AS TO ITS CONDITION, CONFORMITY TO ANY REPRESENTATIONS OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, AND ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

10. Return, Repair & Replacement of Equipment

We will assist you in obtaining repairs and replacements of any Equipment, which is malfunctioning and which cannot be made to work properly via telephone assistance provided to you by our technical support staff. The decision to repair or replace Equipment shall be at our sole discretion, and such repair or replacement shall be made by a facility designated by us. We reserve the right to charge for or to refuse repairs or replacements of Equipment more than (30) days after the initial date of shipment to you or which is not procured through us. In the event that we have approved repair or replacement of specific Equipment, you shall be solely responsible for properly packaging and preparing the defective Equipment to our designated facility, freight and insurance prepaid. In the event replacement Equipment is sent to you and you in turn fail or refuse to return the defective Equipment within thirty (30) days thereafter, we shall charge the Settlement Account for the reasonable fair market value of such replacement Equipment, as determined in our sole discretion. If you shall then afterward properly return said defective Equipment, we, upon verification of receipt, shall credit you any amount so charged, less a handling fee for your failure to return the defective Equipment in a timely manner.

You shall be liable and shall pay for all non-warranty repairs, as well as all return shipping and handling fees. In the event of a valid warranty claim under Option 1 or 2 herein, you shall be responsible for the cost of returning defective Equipment to our designated facility as prescribed in this Agreement, plus all repair and replacement costs, unless such return is made within thirty (30) days of the initial shipment of such Equipment to you by us, in which case you shall be responsible only for such return costs.

11. Limitation on Liability. Our liability arising out of or in any way connected with this Agreement shall not exceed the purchase price paid to us for the particular Equipment involved. In no event shall we be liable for any incidental, special or consequential damages. The remedies available to you under this Agreement will be your sole and exclusive remedies. You warrant that you have chosen the Equipment provided under this Agreement based on your own analysis and evaluation and expressly disclaim any reliance upon statements or representations by us or others.

12. Indemnification. You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses (including attorneys' fees) resulting from (a) the purchase, delivery, installation, acceptance, rejection, ownership, leasing, possession, use, operation, condition, liens against, or return of the Equipment or (b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damage or expenses result from our gross negligence or willful misconduct. This indemnity shall survive the termination of this Agreement. You agree to indemnify and hold us harmless from any and all liability for any claims, proceedings, expenses, damages or liabilities, including attorney's fees, arising as a result of your selection or use of the Equipment provided under this Agreement.

13. Effective Date and Term of Agreement. This Agreement shall become effective on the earlier of the date this Agreement is fully executed by you and us or the first date you are deemed to have accepted any piece of Equipment covered by this Agreement. This Agreement will remain in effect until all of your obligations and all of our obligations under this Agreement have been satisfied. We will deliver the Equipment to the site or sites designated in the Application. You shall be deemed to have accepted each piece of Equipment upon delivery. The provisions of this Agreement shall survive the termination or expiration of the Card Processing Agreement, unless this Agreement terminates or expires before the Card Processing Agreement.

14. Default; Remedies.

(a) If any debit of your Settlement Account initiated by us for charges due hereunder is rejected when due, or if you otherwise fail to pay us any amounts due hereunder when due, or if you default in any material respect in the performance or observance of any obligation or provision in this Agreement, or if any other Default occurs under the Card Processing Agreement, any such event shall be a Default hereunder. In the event that you default in the payment or performance of any of your obligations under this Agreement, you shall immediately (1) forfeit all monies paid hereunder and (2) surrender peacefully and deliver up promptly all Equipment to us.

(b) Upon the occurrence of any Default and in addition to the foregoing, we may at our option, effective immediately without notice, either: (i) terminate our future obligations under this Agreement and proceed in any manner against you for collection of all charges that have accrued and are due and payable, in which case this Agreement shall terminate as soon as your obligations to us are satisfied or (ii) require the immediate payment of all amounts due under this Agreement and be entitled to reimbursement for any costs of repossession and/or any amount necessary to restore the Equipment to the same condition in which it was delivered to you, ordinary wear and tear excepted. In either case, you shall also be responsible for court costs and reasonable attorney's fees incurred by or on behalf of us, as well as applicable shipping, repair and refurbishing costs.

15. Sales Taxes, Installation & De-installation, Etc. You agree to pay any sales taxes imposed on the transactions contemplated by this Agreement, as well as any costs associated with the installation and de-installation of Equipment, during the term of this Agreement and authorize us, or our assigns, to increase the amount of your preauthorized payment to reflect any and all increases in all applicable taxes, or other taxes imposed on the transactions contemplated by this Agreement.

16. Assignment. Subject to the following provisions, this Agreement shall be binding upon successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. You may not assign or transfer this Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Agreement, any transfer of voting control of you or your parent shall be considered an assignment or transfer to us. We may assign or transfer this Agreement and our rights and obligations hereunder, in whole or in part, to any third party without the necessity of obtaining your consent. No assignee for the benefit of creditor, custodian, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party's assets or business, shall have any right to continue or to assume or to assign this Agreement.

17. Governing Law; Miscellaneous. This Agreement is being entered into in connection with the Card Processing Agreement and is also governed by and will be construed in accordance with the laws of the State of Kentucky, except that Section 48 shall be governed by the Federal Arbitration Act. If any part of this Agreement is not enforceable, the remaining provisions will remain valid and enforceable. In performing its obligations under this Agreement, each party agrees to comply with all laws and regulations applicable to it.

18. Dispute Resolution and Arbitration. If the parties disagree as to any matter governed by this Agreement, the parties shall promptly consult with one another in an effort to resolve the disagreement. If such effort is unsuccessful, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator(s) shall have the right to render equitable, as well as other, awards and relief. The parties agree that the underlying agreement between the parties involves interstate commerce, and that, notwithstanding any choice of law provision in Section 15 of this Agreement, any arbitration hereunder shall be governed by the Federal Arbitration Act.

19. Notices. All notices hereunder (unless involving normal operational matters) must be in writing, and shall be given (a) if sent by mail, when received, and (b) if sent by courier, when delivered; if to you at the address appearing in the Application, and to us at 1731 Durrett Lane, Louisville, Kentucky 40213 in the attention of: Bankhead Product Manager.

20. Entire Agreement. This Agreement and the Application together constitute the entire agreement between the parties with respect to the subject matter, supersedes any previous agreements and understandings and can be changed only by a written agreement signed by all parties.

CARD PROCESSING AGREEMENT

This CARD PROCESSING AGREEMENT ("Agreement") is among the Merchant identified in the attached Application (which is incorporated herein and constitutes a part of this Agreement as if fully set forth herein), National City Bank of Kentucky, a national bank headquartered in Louisville, Kentucky ("Bank") and National Processing Company, LLC, an Ohio Limited Liability Company headquartered in Louisville, Kentucky ("NPC"). NPC is engaged in the business of processing and transmitting electronic data of a financial, banking or economic nature, including but not limited to card transactions. Bank is a member of Visa U.S.A., Inc. ("Visa") and MasterCard International Inc. ("MasterCard"). In this Agreement, the words "you" and "your" mean the Merchant and the words "we," "our" and "us," unless the context clearly requires otherwise; refer collectively to Bank and NPC. We may allocate our rights and obligations hereunder as between ourselves as we deem appropriate. As used in this Agreement, "the Application" means both the Application as attached to this Agreement when first executed by you and us and any supplemental versions of the Application that we and you agree upon when you open additional locations or when you otherwise request additional or different services. During the term of this Agreement and unless we otherwise specifically agree in writing, this will be a "requirements contract" which means we and you agree that we (directly or through others providing services on our behalf) will be the sole providers of all services necessary to authorize, process and settle all of your Visa and MasterCard transactions and all services specified in the Application for any other Cards specified therein, except for any Card transactions beyond the authority of a U.S. member of Visa and MasterCard.

1. **Acceptance of Cards.** You must honor any valid and applicable Visa and MasterCard cards properly tendered for use, as well as any properly tendered Electron card, without imposing any special conditions not required by any rule or regulation adopted by an Association (collectively "Association Rules"). "Association" means Visa, MasterCard, any other issuer of Cards you agree to accept as specified on the Application and, for Electron Cards, such term also includes Visa International. You may offer a "discount for cash" if you clearly disclose this as a discount from the standard price available for all other means of payment. In this Agreement, "Card" means a credit or off-line debit card bearing the service mark of Visa or MasterCard and a card issued by any of the other Card Issuers specified in the Application as being covered by this Agreement. Unless otherwise agreed in writing, "Card" does not include an "on-line" debit card, such as an Interlink or Maestro debit card, that generally requires use of the holder's personal identification number. "Card" shall also mean all international point of sale payment cards bearing one of the Electron Program Marks and governed by the Visa International Operating Regulations. You must submit any Visa, MasterCard and other card transaction drafts and records to us no later than 5 calendar days or 3 banking days (whichever is earlier) and no later than 2 business days for Electron Cards after you complete Card transactions (unless you are entitled to any special extension of these deadlines). These are outside deadlines, and faster time frames are required to qualify for incentive programs. Unless otherwise specifically provided in this Agreement or the applicable requirements of Visa or Visa International, all provisions of this 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. You agree to check the valid date and expiration date of each Card presented. You have a zero "floor limit", which means no Card transaction, regardless of its dollar amount, may be processed without being authorized.

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 user (the "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 Association 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, retrof or counterclaim, and (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 collectibility of the Cardholder's obligation or relieve the Cardholder from liability for the transaction.

2. **Manuals/Instructions.** We will 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 Association Rules by providing you with relevant portions or summarizations thereof of the rules, regulations, releases, interpretations and other requirements of Visa, MasterCard and any other issuers of Cards you intend to accept as specified in the Application. You agree to follow the procedures in the Manuals/Instructions in connection with each Card transaction and to comply with any such requirements of the Association Rules. Unless the context clearly requires otherwise, references to this Agreement include the Manuals/Instructions and the Association Rule provisions that we advise you of. If there is any conflict between the terms of this Agreement and the Manuals/Instructions, the terms of this Agreement will govern, except to the extent the Manuals/Instructions specifically provides that a particular provision in it overrides any conflicting provision in this Agreement.

3. **Additional Cards.** Our sole responsibility for transactions involving Cards issued by American Express, Diners Club/Carte Blanche, NOVUS Services, Inc. (the issuer of Discover Cards and certain other cards), and JCB (each a "Card Issuer") and any other Cards specified in the Application, will be to provide the services which we have agreed to provide, as specified in the Application.

Except to the extent the Application specifies that we will provide settlement services for any of these additional Card transactions, we 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 Visa and MasterCard will be governed exclusively by your agreement with the respective Card Issuer and you must not seek authorization for or submit for processing or settlement any transactions involving Cards other than Visa and MasterCard unless you have in effect a valid Issuer Agreement with the applicable Card Issuer, except to the extent we have agreed to provide settlement services with respect to your JCB, Diners Club/Carte Blanche or Novus Card transactions. You must notify us immediately upon termination of any Issuer Agreement. Upon such termination, we will have no further obligation to provide any services to you for transactions involving the Cards covered by the terminated Issuer Agreement (except to the extent we have agreed to provide settlement services with respect to your JCB, Diners Club/Carte Blanche or Novus Card transactions). We do not warrant or bear any responsibility for any Card Issuer or for its performance of any obligations to you. If any Issuer Agreement requires a Card Issuer's consent for us to perform the services contemplated by this Agreement, you are responsible for obtaining that consent.

If the Application indicates that we will provide settlement services with respect to your Diners Club/Carte Blanche Card transactions, you will not have a separate Issuer Agreement with such Issuer; instead, we will provide you with all specified services for such Card transactions solely pursuant to this Agreement (and any provisions from the Manuals/Instructions or any updates thereto). Unless we advise you otherwise, provisions that address special industries (other than the hospitality industry) and special incentive programs will not apply to JCB, Diners Club/Carte Blanche or Novus Card transactions. In addition, the following special provisions apply (notwithstanding any contrary provision in this Agreement) to your JCB or Diners Club/Carte Blanche Card transactions to be settled by us:

(a) For Diners Club/Carte Blanche: (i) you must retain original sales records and credit records for at least 90 days after the transaction and must retain microfilm or legible copies of sales records and credit records for at least 7 years after the transaction; (ii) the contractual floor limit for Diners Club/Carte Blanche transactions will be \$0; (iii) you must not accept a Card embossed "for local use only" outside the territory in which it was issued; and (iv) you must not accept an Amoco co-branded Card unless you have a specific contractual agreement authorizing you to do so.

(b) For JCB: (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 3 years after the transaction; (ii) the contractual floor limit for JCB Card transactions will be \$0; (iii) 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; (iv) 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; (v) 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 (vi) by contracting for JCB settlement services, you authorize JCB to publish your name, address and telephone number in JCB solicitation materials.

4. Special Services.

(a) **Debit Cards.** We will process "off-line" debit cards bearing the service mark of Visa or MasterCard, which are no different for you or us from Visa or MasterCard credit cards. Unless we agree otherwise in writing, we will not have any obligation to provide any services or other assistance to you for "on-line" debit cards, which generally require the use of a customer's personal identification number and bear the service mark of Interlink, Maestro or another regional or national debit card network ("Debit Networks").

(b) **Check Services.** If you want to obtain check authorization and guarantee services from any of the providers of these services identified in the Application, we can facilitate a telecommunications link with any of these entities that will permit a point-of-sale device ("POS device") used for your Card transaction to route information about your check transactions to these other entities for check services. If the Application indicates that you want to receive check services, you must contract directly with the provider of such services. Our responsibility will be limited to facilitating the telecommunications link between you and the indicated provider. If so indicated in the Application (or otherwise pursuant to this Agreement), we may charge you a fee for facilitating this telecommunications link.

5. **Settlement of Card Transactions.** All credits to the bank account(s) you designate for us to debit and credit for Card transactions and related amounts (the "Settlement Account"), as well as any other payments to you, are provisional and are subject to our final audit and checking. We may debit or credit your Settlement Account for any deficiencies and overages or may deduct such amounts from settlement funds due to you.

This Agreement is a contract whereby we are extending financial accommodations to you within the meaning of Section 365(c) of the Bankruptcy Code. We are not 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.

6. **Fees; Adjustments; Collection of Amounts Due From You.** Our fees and other charges to you for the services and any supplies we provide will be calculated pursuant to this Section and the Application or any subsequent amendment to this Agreement. We will charge you a daily fee for the services to be provided by us to you under this Agreement as stated in this Section and the Application. The discount fees shown in the Application shall be calculated based on the gross amount of all Visa and MasterCard transactions submitted to us. The fees with respect to other Card transactions shall be a

percentage of the gross amount of, or a per transaction fee for all such Card transactions. Further, you shall 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 Association Rules. You acknowledge that the fees specified in the Application, as they may be updated or amended from time to time, are basic fees, the lowest discount fee you can achieve, and shall apply only to Card transactions which exactly meet certain processing criteria or "qualify" for basic fees according to the Association Rules. Criteria for determining qualification shall 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; or (5) deemed "Non-Qualifying" by the Association 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 discount rate quoted in accordance with the Application and/or the Association Rules, you may be assessed and agree to pay additional fees based on a sliding scale equal to up to 2.0% of the amount of any Card transaction, or such greater percentage as may be communicated to you by us. Also, if your average ticket size and/or annualized Bankcard volume falls below the amount shown in the Application for any 6 month period, we may adjust our fees as we deem appropriate, and you will pay us the corresponding adjustments. Pursuant to Section 18, we may amend the fees and charges for services and supplies provided under this Agreement. We also may require you to pay us any extra or special charges imposed by third parties; plus our handling charge, if any transactions processed or initiated hereunder are charged back, reversed or rejected (including chargeback fees and fines and ACH reject fees) and we may require you to pay handling fees for any supplies we provide and, if applicable, an overnight shipping fee of \$25.00, or NPC's then current rate for overnight shipping.

We may require you to pay any applicable excessive chargeback handling fees or fines imposed by the applicable Association due to your excessive chargeback volume and any other fees or fines imposed by the applicable Association for your acts or omissions. Further, we may charge you and you agree to pay us \$25.00, or NPC's then current rate, per excessive chargeback as our fee for handling excessive chargebacks. At our option, we may deduct any chargebacks, adjustments, fees, charges, obligations and other amounts you owe us pursuant to any provisions of this Agreement from any settlements due to you, or we may debit your Settlement Account for any such amounts you owe us, or we may invoice you, in which case you must pay us for the invoiced amounts within 30 days of the date of our invoice or such shorter time as may be specified. Except for amounts we elect to collect by invoice, if there are insufficient funds available to be withheld or debited to pay amounts you owe, you must immediately reimburse us upon demand. You authorize us to debit your Settlement Account, or any other account we are otherwise authorized to debit, for any amounts due pursuant to this Agreement, or due to us or any of our affiliates for any related services.

If you believe that any adjustments should be made to your Settlement Account based on debits or credits we have made to your Settlement Account, you must notify us in writing within 45 days after the debit or credit in question was made. If you fail to notify us within such time period, we will not be responsible for investigating or effecting any required adjustments, absent our gross negligence or willful misconduct. If you notify us after such time period, we may, in our discretion, assist you in investigating whether any adjustments are appropriate and whether any amounts are due to or from other parties, but we will not have any liability to effect any such adjustments absent our gross negligence or willful misconduct. Any voluntary efforts by us to assist you in investigating such matter will not create any obligation to continue such investigation or assist with any future notices of possible adjustments that are not timely submitted.

7. Chargebacks, Etc. We may charge back to you any transaction amount (commonly referred to as "chargeback") (and you will reimburse us for any related losses we incur) for transactions settled by us when it appears that:

- merchandise is returned, and a credit is not received by us for processing;
- the sales records or agreement is, or is alleged to have been executed, accepted, endorsed, completed or assigned improperly, without authority, or not in accordance with the authorization requirements or any other provisions of this Agreement;
- regardless of any authorization obtained, you complete a transaction when the cardholder was present and did not sign the sales records, the signature on the record was unauthorized as compared to the signature appearing on the Card, the signature panel on the Card was blank or a limited purpose business "purchasing card" was accepted without appropriate authorization of the nature of the goods or services purchased (in addition to the transaction amount);
- the sales record is incorrectly completed, incomplete or illegible;
- the Cardholder disputes the sale, quality or delivery (or availability for pre-arranged pick-up) of merchandise or the performance or quality of service covered by the sales records or agreement accepted by such Cardholder;
- the circumstances in which the sales records or agreement was created or submitted, or credit was received, by you constituted or otherwise, involved a breach of any term, condition, representation, warranty or duty of you hereunder;
- multiple sales records or agreements were executed to avoid the need to obtain authorization necessary to complete the transaction;
- the extension of credit for merchandise sold or rented or service performed was in violation of law or the rules or regulations of any governmental agency, whether federal, state, local or otherwise;
- a legible copy of the sales record or agreement or credit record cannot be produced by you upon request within 5 days of our request;
- the Cardholder asserts against us any claim or defense which the Cardholder may have as a buyer against you;
- the Cardholder disputes the validity of a telephone or mail order card sale; or
- the transaction is otherwise subject to charge back by the Card issuer or Cardholder in accordance with the Association Rules or applicable law.

8. Confidentiality. Unless you obtain consents from the applicable Associations, Card issuers and Cardholders, you must not use, disclose, sell or disseminate any Cardholder information obtained in connection with a Card transaction (including the names, addresses and Card account numbers of Cardholders) for any purpose other than authorizing, completing and settling Card transactions and resolving any chargebacks, retrieval requests or similar issues involving Card transactions, except pursuant to a court or governmental agency request or order. You must use proper controls for secure storage of, and limit access to, and must render unreadable prior to discarding, all records containing Cardholder account numbers, Card imprints and Cardholder signatures. You must not retain or store magnetic stripe data after a transaction has been authorized. If you store any electronically-captured Cardholder signature you may reproduce such signature only upon our request.

9. Advertising. You must display Visa, MasterCard and any other applicable Card Issuer decals and program marks on promotional materials we furnish, and if applicable the Electron symbol, in equal prominence and as otherwise required by Association Rules. You acknowledge that you will not acquire any right, title or interest in or to any Visa, MasterCard or other applicable Card Issuer marks by virtue of this Agreement. Further, you must not indicate that Visa, MasterCard or any other Association endorse your goods or services and must not continue using such materials after termination of this Agreement. Any use of a color reproduction, facsimile, replica or picture of an Association Card for advertising purposes other than media advertising is prohibited unless the reproduction, facsimile, replica or picture is proportionately larger or smaller in length and width by at least 10% of the standard dimensions for Association Cards.

10. Assignment. Subject to the following provisions, this Agreement is binding upon successors and assigns and inures to the benefit of the parties and their respective permitted successors and assigns. You may not assign or transfer this Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Agreement, any transfer of voting control of you or your parent shall be considered an assignment or transfer hereof. No assignee for the benefit of creditors, custodian, receiver, trustee in Bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of your assets or business, will have any right to continue, assume or assign this Agreement. We may assign or transfer this Agreement and our rights and obligations under this Agreement and we may delegate our duties under this Agreement, in whole or in part, to any third party, without obtaining your consent.

11. Terms; Default; Escrow/Security Account. (a) This Agreement is binding upon the earlier of (i) its execution by all parties as evidenced by signatures on the Application or (ii) the settlement by us of (A) any Card transaction submitted by you to us pursuant to this Agreement if you are a new customer that does not already have an agreement with us for Card transaction services or (B) any Card transaction submitted by you 30 or more days after your receipt of this Agreement if you are one of our existing customers whose current agreement with us for Card transaction services is being replaced by this Agreement. Unless otherwise agreed by the parties, the Initial Term of the Agreement shall be three (3) years. The Agreement shall continue in full force thereafter for successive one-year periods until terminated in writing, by notice given to the other party or parties not less than 90 days prior to the then current expiration date, or until any earlier termination as provided below.

(b) If any of the following events (each a "Default") occurs, we may terminate this Agreement immediately without notice and exercise all of our other rights and remedies under this Agreement and applicable law: (i) 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); (ii) irregular Card sales, excessive chargebacks or any other circumstances which, in our discretion, may increase our potential exposure for your chargebacks or otherwise present a financial or security risk to us; or (iii) a default by you in any material respect in the performance or observance of any term, covenant, condition or agreement in this Agreement, or in any other agreement with us or any of our affiliates; (iv) any non-compliance by you with the terms of the Agreement or the Rules, or any reasonable belief by us, as applicable, that you may fail to comply with the terms of the Agreement, which failure would constitute a substantial risk to us or (v) 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.

(c) If, during any 6-month period (the "Measurement Period") the average size or the total amount of your bankcard transactions is more than 20% lower than the amount stated in the Application for (i) your average bankcard transaction size or (ii) one-half of your annual Bankcard volume, then we may terminate this Agreement by giving you at least 90 days advance notice; any such notice must be sent to you within 30 days after the end of the applicable Measurement Period.

(d) The provisions of this Agreement that govern processing of Card sales and credits and settlement will continue to apply even after this Agreement is terminated, until all Card transactions are settled or resolved, and the provisions of Sections 5, 6, 7, 8, 10, 11, 12, 14, 15, 16 and 17 will survive any termination. Upon termination, all amounts payable to us 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 us all the data relating to Card sales and credits made up to the date of termination. We will not be liable to you for any direct or consequential damages you may suffer as a result of the termination of this Agreement.

(e) If this Agreement is terminated at any time other than upon expiration in accordance with Section 11 (a), we will be entitled to recover, and you will pay on demand, any and all losses (including consequential damages, loss of profits, costs, expenses and liabilities) incurred by us in connection with termination. You will be responsible for all collection and legal fees and expenses we incur in collection of any delinquent amounts you may owe us. You also acknowledge that we will incur costs and expenses to provide certain routine services following termination of the Agreement, similar to the provided during the term of this Agreement, including processing chargebacks relating to transactions that initially occurred prior to termination, providing monthly statements to you to report any such chargebacks or other adjustments and responding to telephone calls and other inquiries. If this Agreement is not terminated prior to expiration of the Initial Term, we will provide those routine post-termination services at no additional service charge to you, but if this Agreement is terminated prior to the end of the Initial Term, you agree to pay us a deconversion fee of \$250 to cover our routine post-termination services. Whether or not we charge a deconversion fee for our services, you will remain liable for chargebacks and other adjustments as provided in Section 11(f) and for other costs, damages, expenses and liabilities incurred by us in connection with an early termination of this Agreement. You authorize us to debit your Settlement Account for, or deduct from any settlement funds otherwise owed to you, the deconversion fee, plus any and all losses (including costs, expenses and liabilities) incurred by us in connection with termination. If your settlement funds or the balance in your Settlement Account is insufficient to cover the deconversion fee and all such losses, you agree to pay us such amounts immediately on receipt of invoice.

(f) After any termination of this Agreement, you will continue to bear total responsibility for any and all chargebacks, credits and adjustments resulting from transactions processed under this Agreement and all other amounts then due, or which later become due, to us under this Agreement or to either of us or any of our affiliates for any related equipment or related services (including any check guarantee verification services). In connection with termination, we may require that an escrow/security account be established and maintained by you on your behalf with us (or otherwise for our benefit) in amount equal to:

(i) our reasonable estimate of your dollar volume of incoming chargebacks for a 9-month period and your credits (for returns or otherwise) for a 2-month period (which may be based on actual volume during the preceding 270 days for chargebacks and 60 days for credits or 9 times your average monthly dollar volume of incoming chargebacks and 2 times your average monthly dollar volume of credits, as determined during a recent 12-month period or any shorter term of this Agreement) or such higher amount that we deem necessary and sufficient to cover our potential liability for chargebacks and credits; plus

(ii) our reasonable estimate of all fees, charges, obligations and other amounts that may be owed to us under or in connection with this Agreement at or following termination (including adjustments needed to reconcile any discrepancies, to reflect increased interchange fees because of failure to comply with intended rates or interchange fees, or otherwise), any and all fines assessed against you, any other fees and charges not collected by us prior to termination, and damages and other amounts due under Section 11(e) upon premature termination; plus

(iii) our reasonable estimate of all uncollected fees, charges, obligations and other amounts (including damages and other amounts due upon premature termination) payable to either of us or any of our affiliates for related equipment or related services.

(g) Without exercising (and without waiving) our right to terminate this Agreement immediately without notice and exercise our rights and remedies, if any of the events in Section 11(b) or 11(c) occur, or may, in our sole discretion, (i) require you to establish an escrow/security account with us during the term of this Agreement equal to the same amount as set forth in Section 11(f) and/or (ii) change process or payment terms to suspend for any reasonable period of time required credits or other payments of any and all amounts now due or to become due to you pursuant to this Agreement upon 3 days' advance written notice to you, except that no prior notice will be required in cases of fraud or similar cause. Should processing or payment terms be changed for fraud or similar cause, we will notify you in writing within 3 business days after effecting a suspension of credits or other payments, stating our reason for the belief that such fraud or similar cause exists. If you have accepted and processed fraudulent transactions, we will not be obligated to pay you for such transactions and will have full recourse against you for all such aforementioned transactions. We shall also have the right to assess fees and recover all costs associated with the investigation of any suspected fraudulent activity. We shall have no 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 transactions.

(h) In connection with the termination of this Agreement or any other event entitling us to require an escrow/security account from you (and continuing thereafter until 280 days after termination), we may use any funds otherwise due to you, or we may debit your Settlement Account for funds, to establish and maintain on your behalf (or restore/supplement) the balance of your funds in an escrow/security account containing your funds equal to the amount set forth in Section 11(f). Your escrow/security funds required by Section 11 may be held in a commingled escrow/security account for the escrow/security funds of our customers, without involvement by an independent escrow agent.

(i) The requirement to maintain an escrow/security account will not limit our right to debit or withhold ongoing settlement payments for chargebacks, potential chargebacks, adjustments, fees, charge obligations and other amounts due hereunder. Your funds in the escrow/security account may be used to settle chargebacks, adjustments, fees, charges, obligations and other amounts described in Section 11(f), whether arising before, on or after termination and whether such obligations or other amounts are liquidated, fixed, contingent, matured or unmatured, whenever there are not sufficient settlement funds due to you to cover such chargebacks, adjustments, fees or other charges or obligations. We will refund any of your unused funds remaining in such escrow/security account to you no later than 280 days after termination of this Agreement, and if we receive a written request from you within 30 days thereafter, we will provide you with an accounting of any of your funds debited or credited from or to such account. If your funds in the escrow/security account are not sufficient to cover the chargebacks, adjustments, fees, charges, obligations and other amounts due from you, or if your funds in such account have been released, you agree to promptly pay us such sums upon request.

(j) In the event you fail to establish or maintain any required escrow/security account, we may immediately terminate this Agreement and may exercise any other rights we have under this Agreement.

12. Security Interest and Setoff Rights. To secure your obligations to us and our affiliates under this Agreement and any other related agreements described below, you irrevocably grant to us a lien against and security interest in any funds pertaining to the transactions contemplated by this Agreement now in our possession or that may come into our possession, whether due or to become due to you together with the proceeds thereof. Any such funds may be commingled with other funds, and need not be maintained in a separate account. In addition to any rights granted under applicable law and notwithstanding any limitation of such rights, you authorize us at any time and from time to time, without notice or demand (any such notice and demand being expressly waived) to set off, to appropriate and to apply all and all such funds against and on account of your obligations (including damages and other amounts due under Section 11(e) upon premature termination) under or in connection with this Agreement and/or other agreement with us or any of our affiliates for any related equipment or related services, whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. You agree to execute and deliver to us such instruments and documents we may reasonably request to perfect and confirm the lien, security interest and right of setoff set forth in this Agreement.

13. Financial and Other Information. You and your undersigned official shall provide us upon request financial statements and other information about your business and principal owner(s) or officer(s) and your compliance with the terms of this Agreement. You and your undersigned official(s) and any Guarantor(s) authorize us to obtain from third parties financial and credit information about you, your undersigned official(s) and any Guarantor(s), respectively, in connection with our determination whether to accept this Agreement and our continuing evaluation of the financial and credit status of you, your undersigned official(s) and any Guarantor(s). Upon request, you will provide to us or our representatives reasonable access to your facilities and records for the purpose of performing any inspection and/or copying of your books and/or records we deem appropriate.

You will provide us 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, 30 days prior to such liquidation, change, transfer or sale taking place. You will also notify us 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 3 days after you obtain knowledge of any such judgment, writ, warrant of attachment, execution or levy.

14. Indemnification. You agree to indemnify and hold us harmless from and against all losses, liabilities, damages and expenses (including attorneys' and collection fees and expenses) resulting from or breach of any covenant or agreement or any misrepresentation by you under this Agreement, or arising out of your or your employees' negligence or willful misconduct in connection with your Card transactions, or otherwise arising from your provision of goods and services to Cardholders. Further, you agree to indemnify and hold us harmless from and against all losses, liabilities, damages and expenses (including attorneys' and collection fees and expenses) we may incur pursuant to any Association Rule resulting from your action or inaction, including but not limited to, all losses and expenses we may incur as a result of any action you institute against any Association or Card issuer following a chargeback.

We agree to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses (including reasonable attorneys' fees and expenses) resulting from any breach of any covenant or agreement or any misrepresentation by us under this Agreement or arising out of our or our employees' gross negligence or willful misconduct in connection with this Agreement.

15. Performance of Duties. No party will be liable for its failure to perform under this Agreement if such failure arises out of causes beyond the control and without the fault or negligence of such party. Such causes may include but are not limited to Acts of God, fires, wars, riots, strikes, acts, omissions or delays by an Association or other unaffiliated third parties or acts of civil or military authorities.

16. Governing Law; Miscellaneous. This Agreement is governed by and will be construed in accordance with the laws of the Commonwealth of Kentucky, except that Section 17 shall be governed by the Federal Arbitration Act. If any part of this Agreement is not enforceable, the remaining provisions will remain valid and enforceable. In performing its obligations under this Agreement, each party agrees to comply with all laws and regulations applicable to it.

17. Dispute Resolution and Arbitration. If the parties disagree as to any matter governed by this Agreement, the parties shall promptly consult with one another in an effort to resolve the disagreement.

If such effort is unsuccessful, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator(s) shall have the right to render equitable, as well as other, awards and relief. The parties agree that the underlying agreement between the parties involves interstate commerce, and that, notwithstanding any choice of law provision in Section 16 of this Agreement, any arbitration hereunder shall be governed by the Federal Arbitration Act.

18. **Amendments.** We may change this Agreement, the Manuals/Instructions, or other operating procedures by giving you at least 15 days advance notice. However, in the event of changes in the Association Rules or due to security or risk control reasons, certain changes may become effective on shorter notice. In addition, we may from time to time notify you in writing or through other means of requirements that must be satisfied to qualify for various incentive programs. Any Card sales made by you after the effective date of such change will constitute consent to the new terms.

19. **Notices.** All notices hereunder (unless involving normal operational matters, including requirements for various incentive programs) must be in writing, and shall be deemed given (a) if sent by mail, on the third business day after being mailed by first-class mail to the specified address or (b) if sent by courier, when delivered, in either case, to you at the address appearing in the Application, and if to us to National Processing Company, LLC, 1231 Durett Lane, Louisville, Kentucky 40213, Attention: Customer Services, or to such other address as we or you may have specified in a written notice to the other.

20. **Certain Rights of Visa, MasterCard and Issuers of Other Cards.** The parties acknowledge that the Visa and MasterCard Association Rules give Visa and MasterCard certain rights to investigate you and to require termination or modification of this Agreement with respect to transactions involving Visa and MasterCard Cards and the Visa and MasterCard systems. The parties also acknowledge that issuers of other Cards specified in the Application may have similar rights under their applicable Association Rules with respect to this Agreement's applicability to transactions involving such other Cards.

21. **Systems Enhancements.** If after the effective date of this Agreement, you request us to perform or provide any system enhancements, custom reports, special files, terminal applications or related service enhancements that are different from or in addition to the system, services and reports we agreed to provide to you as of the effective date of this Agreement collectively "System Enhancements," we will use reasonable efforts to provide such System Enhancements if you pay us the additional fees charged by us for such System Enhancements. Any subsequent changes that we must make in your Systems Enhancements to accommodate changes in applicable law or Card Association Rules will be at your expense.

22. **Signature; General Provisions.** Your signature of a facsimile copy of your signature on the Application attached to this Agreement, and, if applicable, a Debit Card Agreement and/or Equipment Agreement serves as the signature for this Agreement. You indicate, by signing the Application or by submitting sales data, your acceptance of and agreement to the terms and conditions of this Agreement. This Agreement will become effective only if and when we note our acceptance of it or process sales data you submit.

23. **Telephone and Mail Orders; Electronic Commerce; Recurring Sales or Other Preauthorized Orders or Sales.** If you accept and we authorize you to accept telephone or mail orders or electronic commerce transactions or recurring sales or other preauthorized orders or sales, each such Card transaction must be authorized regardless of the face amount, and you must write "TO," "MO," "EC," "Recurring Transaction" (for Visa and other non-MasterCard Card transactions) or "PO" (for MasterCard Card transactions) as applicable, on the signature line of the sales record in lieu of the Cardholder's signature and a Card imprint. You may require additional identification information from a Cardholder, such as a telephone number or home address, if such information is required by you to complete the transaction, i.e. for delivery of your products or services, or as otherwise required by the Association Rules. You must retain and make available to us upon our request, the Cardholder's written request to you for preauthorization. A preauthorized order is a Cardholder's written authorization to make one or more charges to a Cardholder's Card account in the future. You assume all responsibility for identification of the Cardholder and the validity of the Card information for telephone and mail order and electronic commerce transactions and recurring or other preauthorized sales. You must attempt to obtain the Card expiration date and forward it as part of the authorization request. For telephone and mail order and electronic commerce transactions where merchandise is to be shipped or delivered to or for the Cardholder, the shipping date should not be more than seven calendar days after the authorization is obtained, and any shipping costs not included in the authorization amount must not exceed 15% of the amount authorized. Stricter requirements than those in the preceding sentence must be satisfied to qualify for certain incentive programs.

You shall not submit for settlement any sales record resulting from a telephone or mail order or electronic commerce transaction until the merchandise is shipped or delivered to or for the Cardholder. Under no circumstances may you require that a Cardholder complete a postcard or other similar device which includes the Cardholder's account data in plain view when mailed.

You may not accept a recurring transaction from a Cardholder for the purchase of goods or services which are delivered or performed periodically unless the Cardholder completes and delivers to you a written request (and, when applicable, a written renewal request) for such goods or services to be charged to the Cardholder's account, indicating the amount of the recurring charges (unless the recurring charges are for variable amounts), the frequency of the recurring charges and the duration of time for which the Cardholder's permission is granted. If you accept any recurring transactions for variable amounts, you must comply with the following additional procedures. The form provided for Cardholders to authorize recurring transactions must allow space for the Cardholder to specify a minimum and maximum transaction amount to be charged periodically to his or her account. You must inform the Cardholder that he or she has a right to receive, at least 10 days prior to each scheduled transaction date, written notification of the amount and date of the next charge. The Cardholder may elect to receive the notice: (a) for every charge; (b) only when the transaction amount does not fall within the range of amounts the Cardholder specified on the written request; or (c) only when the transaction amount will differ from the most recent charge by more than an agreed-upon amount.

The Cardholder's authorization (including any renewal) must be (a) retained for the duration of the recurring charges; (b) provided in response to an issuer's request for original paper, and (c) used no further upon receiving notice of cancellation. A recurring transaction may include the payment of recurring charges such as insurance premiums, subscriptions, membership fees, tuition or utility charges and may also include preauthorized health care payments that are subject to the Association Rules and regulations. Except for: (i) preauthorized health care payments for the incremental costs not covered by insurance, (ii) advance deposits and (iii) installment payments, all made in compliance with this Agreement, the NPC Manuals/Instructions and the Association Rules, a recurring transaction may not include partial payments made to you for goods or services purchased in a single transaction. In no event may any finance charges be imposed on any periodic payments. An installment payment option may be offered for mail or telephone order merchandise if all terms are clearly disclosed, each installment is authorized, the first installment is not submitted for settlement until the merchandise is shipped, and subsequent installments are submitted no more frequently than monthly.

In addition to the above requirements for electronic commerce transactions, you must follow the following procedures for Electronic Commerce Card transactions over the Internet. The "Internet" is a vast computer network through which with the proper equipment, a person can access information and communicate with other persons or devices on-line. You acknowledge and agree that this Agreement pertains only to Electronic Commerce Card transactions that arise from a cardholder's purchase over the Internet for Card transactions effected in U.S. dollars. All transactions must be in U.S. dollars and will be settled in U.S. dollars. Electronic Commerce Card transactions are viewed by the Associations as non face-to-face transactions and all such rules regarding non-face-to-face transactions shall apply to Electronic Commerce Card transactions; if it appears reasonably applicable to an Electronic Commerce Card transaction. In addition, you must properly identify an Electronic Commerce Card transaction in the authorization and settlement record. You agree to develop and maintain a point of presence on the Internet at your expense. Your Internet web site must contain (a) a complete description of the goods or services offered, (b) your returned merchandise and refund policy, (c) your customer service contact, including e-mail address and/or telephone number, (d) transaction currency, (e) export or legal restrictions (if known); and (f) your delivery policy. In addition you must disclose, at all points of Cardholder interaction (including any supplier's internet web site, any promotions and any invoices), to the Cardholder that you, and not any supplier of goods or services, are the merchant of record and are responsible for any transaction. You must also notify the Cardholder that you are responsible for, even if you use a third party to assist you with, (a) payment transactions, (b) products and services, (c) direct customer service, (d) dispute resolution, and (e) all terms and conditions of the sale. You must display on your Internet web site the Association's brand mark wherever you display payment options. You shall be responsible for all costs of connectivity and communication between your business, the Internet and NPC. You acknowledge that we do not control or warrant your data on the Internet. You agree to utilize Secure Sockets Layer (SSL) or a secure compatible encryption method acceptable to us in providing your Electronic Commerce Card transactions to us for authorization, processing and settlement. You shall be responsible for obtaining any operational consents required of the Issuer to comply with procedures or practices contemplated by both you and us under this Agreement. You agree that your authorization request will include a request for address verification and a positive AVS response. You may not refuse to complete a Card transaction solely because a Cardholder does not possess a digital certificate. You agree to pass the Card Verification Value 2 ("CVV2") security number in the authorization message, if available. Also, you agree to identify separately any high-risk transactions you submit. The high-risk transactions include MCC 5967 - Direct Marketing - Inbound Telemarketing Merchants. If software is to be purchased by you, you shall be responsible for sublicense fees and all other fees for software and the software program utilized by you which enables you to connect to and maintain communication between us, you and the Internet. 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.

If you process mail order, telephone order or electronic commerce transactions and you exceed \$10,000 in monthly Card volume, we may, within our sole discretion, delay your settlement payments for up to seven days, which period will begin after the settlement payments were received by us. In this event, you acknowledge that we will, and you expressly authorize us to, delay your settlement payments for up to seven days. This delay of your settlement funds does not preclude us from exercising our right to establish an escrow/security account pursuant to Section 11 of this Agreement. The settlement payments will begin to be credited to your Settlement Account, less any monies owed us, 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 we are providing your processing services.

24. **Year 2000 Warranty.** You warrant to us that your Systems are, and at all times hereafter, will be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other information technology, used in combination with the Systems, properly exchanges date/time data with it. The Systems shall mean those hardware and software systems that are owned, licensed or leased by you or outsourced by you to third parties, including without limitation integrators, and utilized by you to engage in and perform your obligations under this Agreement. This warranty ends upon termination of your obligations under this Agreement.

If you default in any material respect in the performance or observance of the above warranty or if we reasonably believe that you may fail to comply with the above warranty, then we may terminate the Agreement immediately upon written notice to you and/or, in our sole discretion, require the establishment of an escrow/security account with us pursuant to Section 11 of this Agreement.