

# Merchant Processing Agreement

For All Inquiries Merchant May Call or Write:



**NPC**

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

## TERMS AND CONDITIONS

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

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

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

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

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

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

“**Operating Rules**” means the NPC Operating Rules attached as Exhibit A.

“**Processor**” means NPC’s designated processor for the settlement of Discover Network Card transactions.

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

“**Third Party Service Provider**” means equipment lessors, rental vendors, check service vendors, fleet card vendors, including Voyager, gift and loyalty card vendors, issuers and processors of Non-Bankcard Cards, including, without limitation, American Express if you are not placed in the American Express OnePoint program or if at any time American Express declines your participation in the American Express OnePoint program, software vendors, internet vendors, and other companies whose services you obtain through the coordination or setup of NPC, whether or not private labeled by NPC.

### 2. Card Processing Services.

A. Card Election. Subject to this Agreement, we will process transactions for the Credit Cards, Debit Cards, Other Cards, or PIN-Debit Cards you have indicated on the Merchant Application. “**Debit Card**” means Visa or MasterCard cards issued by a U.S. bank and/or a non-U.S. bank, or a Visa or MasterCard card that accesses a consumer’s asset account within 14 days after purchase, including but not limited to Visa or MasterCard issued stored value, prepaid, payroll, EBT, gift, or consumer check cards. “**Other Card**” means all Visa/MasterCard cards issued by a non-U.S. bank and all Visa or MasterCard cards other than Debit Cards, including but not limited to business and consumer credit cards and Visa and MasterCard business debit

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

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

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

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

E. Transactions. For all Card transactions submitted to us: (a) the transaction must represent obligations of the person to whom the Card has been issued and/or the authorized Cardholder for the amounts in the transaction (including tax, but without any surcharge) and only for merchandise actually sold or rented or services actually rendered by you (except for any delayed delivery or advance deposit authorized by the Rules and this Agreement) and must not involve any element of credit for any other purpose; (b) the transaction must represent a bona fide sale/rental of merchandise and/or services not previously submitted and may not represent a refinancing of any prior obligation; (c) the price charged for the transaction must not be subject to any dispute, setoff or counterclaim; (d) you must have no knowledge or notice of any fact, circumstances or defense which would indicate that the transaction was fraudulent or not authorized by the Cardholder or which would otherwise impair the validity or collectability of the Cardholder’s obligation or relieve the Cardholder from liability for the transaction; (e) except as otherwise provided in the Rules, the transaction does not represent the refinancing of an existing obligation of the Cardholder (including any obligation otherwise owed to you by a Cardholder, or arising from the dishonor of a personal check); and (f) the transaction does not result from any sale outside of your normal course of business, as described in the Merchant Application.

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

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

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

### 4. Merchant Account.

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

the Merchant Account. If you do not obtain consent prior to changing the Merchant Account, NPC or Member Bank may immediately terminate this Agreement and may take other actions necessary to protect them within their discretion, and this Agreement will apply to such new account.

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

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

D. ACH Authorization. You authorize Member Bank, NPC, or their vendors or agents, including but not limited to Third Party Service Providers, to initiate ACH credit/debit entries to or from the Merchant Account, the Reserve Account or any other account maintained by you at any institution that is a receiving member of ACH, all in accordance with this Agreement. You hereby agree to be bound by the terms of the operating rules of the National Automated Clearing House Association, as are in effect from time to time. This authorization extends to payments for all amounts owed by you to NPC, an NPC affiliate, or Member Bank, including but not limited to amounts owed for lease, rental or purchases of POS terminals, check guarantee services, and supplies. You will provide NPC with a voided check from the Merchant Account. This ACH authorization will remain in effect



after termination of this Agreement, and until NPC has received written notice terminating this authorization and all your obligations to NPC and Member Bank have been paid in full. If you change the Merchant Account upon prior written consent from NPC and Member Bank pursuant to Section 4.A, this authorization will apply to the new account and to any other account you own at any other financial institution. When changing Merchant Accounts, do not close the old account until the new account receives the third deposit. You shall be solely liable for all fees and charges assessed by your financial institution, including all overdraft and NSF charges, and you irrevocably release NPC and Member Bank and hold NPC and Member Bank harmless from the same fees and charges, regardless of cause. Neither NPC nor Member Bank is liable for any delays in receipt of funds or errors in debit and credit entries caused by unaffiliated third parties including but not limited to the Associations, a clearing house or your financial institution. All sales and credits accepted by NPC and Member Bank are subject to audit and verification by NPC and Member Bank. You agree that Member Bank and NPC may debit or credit your Merchant Account for any inaccuracies.

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

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

### A. Security Interest.

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

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

### B. Reserve Account.

i. Establishment. For the purpose of providing a source of funds to pay damages which Member Bank and NPC may potentially suffer under this Agreement and to pay fees, fines, chargebacks or other amounts you may owe Member Bank and/or NPC under this Agreement, a Reserve Account may be established from time to time at Member Bank (or other approved depository institution), by you, Member Bank or NPC, initially or at any time in the future as determined in good faith by Member Bank or NPC, in an amount sufficient to satisfy your current and/or future potential obligations as determined by Member Bank or NPC. Member Bank or NPC may, at any

time, require that the amount on deposit in the Reserve Account be increased. Reserve Account funds may be commingled with other funds, and need not be maintained in a separate account designated in the name of the Merchant. Subject to the other terms of this Agreement, NPC and Member Bank shall have the right and discretion to retain funds placed into the Reserve Account until requested by Merchant in writing following the later of (a) 270 days following the effective date of termination of this Agreement, or (b) 180 days from the date of the last chargeback (the latter of such dates shall be referred to as the "Refund Request Date"). If at any time NPC or Member Bank in its discretion should determine that (1) Merchant has engaged in illegal business activities, (2) Merchant is suspected of being or confirmed to be involved in a collusive fraudulent transaction with a Cardholder, (3) Merchant has laundered or aggregated illegal and/or brand damaging transactions, (4) the Merchant account was established as a result of identity theft, and/or (5) the Merchant has engaged in any other action constituting Merchant fraud (each an "Improper Transaction") Merchant shall be provided notice of the same, and balances in the Reserve Account shall become the property of NPC and shall otherwise be forfeited in the nature of liquidated damages without prejudice to NPC and Member Bank's other continuing contractual remedies. If Merchant fails to provide written notice and objection within 90 days of either the Refund Request Date or notification by NPC of an Improper Transaction event, as the case may be, Merchant agrees that he shall be deemed to have voluntarily waived contractual rights, claims and all interest in any subject Reserve Account balances, if any.

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

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

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

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

D. Monitoring. You acknowledge that NPC and/or Member Bank may monitor your daily credit card transaction activity. You agree that NPC or Member Bank may upon reasonable grounds divert into a Reserve Account the disbursement of your funds and/or temporarily suspend processing under this Agreement. Reasonable grounds shall include, but not be limited to, the following: suspicious or unusual transaction activity; material variance in the nature of your business, type of product and/or service sold, average ticket size, monthly volume or swiped/keyed percentages, from such disclosures made by you in this Agreement; you do not authorize transactions; we receive excessive retrieval requests against your prior activity; excessive chargebacks are debited against your prior activity; you do not deliver product or render full service on or before the transaction date;

or you key a foreign card transaction. If your funds are diverted by NPC or Member Bank or NPC or Member Bank has temporarily suspended processing under this Agreement, such diversion or suspension shall be for any reasonable period of time required by NPC or Member Bank to fully investigate your account activity and resolve, to its sole satisfaction, your subject transaction or activity. Upon completion of such investigation, NPC or Member Bank may maintain the suspended funds in the Reserve Account to be held in accordance with Section 5. NPC or Member Bank shall maintain any funds diverted in a non-interest bearing account, which may be a commingled account. Neither NPC nor Member Bank shall have liability for any losses, either direct or indirect, which you may attribute to any diversion of funds, or suspension of processing.

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

## 6. Fees and Other Amounts Owed

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

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

C. Rate Qualifications and Association Fees. If the Merchant Application states that your Visa, MasterCard and Discover Network Interchange fees, assessments and other fees will be passed through to you, all Card Organization Interchange fees, assessments and other fees will be passed through to you in addition to the Discount Rate, Transaction Fee and other fees set forth on the Merchant Application. If the Merchant Application does not state that your Visa, MasterCard and Discover Network Interchange fees, assessments and other fees will be passed through separately to you, the current Card Organization fees are included in the Discount Rate and Transaction Fee set forth on the Merchant Application. Regardless of whether the Card Organization fees are assessed separately or incorporated into your Discount Rate and Transaction Fee, the Card Organization Interchange fees, assessments and other fees are based on the current Interchange rates, assessments and fees set by the Card Organizations and are subject to change from time to time. For American Express Card transactions, all American Express interchange fees, assessments and other fees will be passed through to you in addition to the Authorization Transaction Fee and other fees set forth on the Merchant Application. You acknowledge that whenever your transactions fail to qualify for any reduced fees, NPC and Member Bank will process such transactions at the applicable rate as set forth on the Merchant Application, and you will pay the corresponding amount. You acknowledge that to receive the lowest Discount Fee and Transaction Fee on a Card transaction, the Card transaction must exactly meet certain processing criteria or "qualify" for basic fees according to the Rules. Criteria for determining qualification will include, but not be limited to, whether a Card transaction is: (1) hand entered (the required data is *not* electronically captured by a point-of-sale device reading the information encoded in or on a Card); (2) voice authorized; (3) not authorized; (4) transmitted for processing within twenty-four (24) hours of the Card transaction; (5) a Card transaction involving a Consumer Reward, Commercial Reward, Visa Signature, and MasterCard World Elite Card, or (6) deemed "Non-Qualifying" by the Rules, such as, but

not limited to, Card transactions involving foreign Cards or Cards issued as business, commercial, purchasing or government Cards. **In the event that Card transactions submitted to us for processing only partially qualify or do not at all qualify for the qualified discount rate quoted in accordance with the Merchant Application and/or the Rules, you may be assessed and agree to pay an additional Mid-Qualified Exception Fee or Non-Qualified Exception Fee if set forth on the Application.** Further, you will pay, in accordance with this Agreement, all fees, cost escalations, assessments, tariffs, penalties, fines or other items that may be charged, assessed or imposed under this Agreement and/or the Rules. Several factors affect the best rate you may achieve on any given transaction, including but not limited to the type of Card used, the number of days between the sale and the date you submit the transaction to us, obtaining authorization, capturing all transaction data, submitting the transaction in the correct format, and proper functioning of your point of sale terminal, software, and communications lines. Further, the Associations change the transaction qualification criteria from time to time, and your terminal or software may not meet the new criteria. We make no representation or warranty that your transactions qualify for any given rate, and we disclaim all responsibility and liability for a transaction's failure to so qualify. You will release and hold NPC and Member Bank harmless from any loss, cost or damage, including legal fees and court costs, resulting from transactions' failure to qualify for a particular rate. In addition, Card transactions that do not meet the necessary criteria for payment are subject to complete denial, reversal and/or chargeback.

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

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

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

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

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

A. Application. You represent and warrant to Member Bank and NPC that all information in the Merchant Application is correct and complete, including but not limited to the average ticket size and average monthly volume. You may present Card transactions to us only for the activities and in the volumes described on the Merchant Application, including the percentage of mail order/telephone order/Internet order transactions. Any



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

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

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

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

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

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

B. Corporate Power. Merchant and the person signing this Agreement on behalf of Merchant have the power to execute and perform under this Agreement and Merchant represents and warrants that the person executing this Agreement is duly authorized to bind Merchant to all provisions of this Agreement, and that such person is authorized to execute any documents and to take any action on behalf of Merchant, which may be required by NPC now or in the future. Further, you represent and warrant that this Agreement will not violate any law or conflict with any other agreement to which you are subject.

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

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

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

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

#### **9. Audit and Information.**

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

B. Information.

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

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

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

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

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

## 10. Term and Termination.

A. Term. The Agreement will become effective on the Effective Date. The Agreement will remain in effect for a period of 3 years (the "Initial Term") and will automatically renew for successive 2 year terms (the "Renewal Term") unless terminated as set forth below; provided that if automatic renewal of this Agreement for 2 year terms violates the provisions of applicable law, the Renewal Term will be 30 days. Termination of this Agreement does not terminate your equipment lease, which may be non-cancelable, or your other agreements with Third Party Service Providers, it only terminates your agreement with NPC and Member Bank with respect to Credit Card and PIN-Debit Card processing and any other electronic transactions that are settled through the Member Bank as designated on your monthly statement from NPC or Member Bank.

B. Termination. This Agreement may be terminated by any party effective at the end of the Initial Term or any Renewal Term by providing 30 days written notice of an intent not to renew prior to the expiration of the then current term. Additionally: i) this Agreement may be terminated at any time, with fifteen (15) days notice, by Member Bank or NPC without cause; ii) Member Bank or NPC may terminate this Agreement immediately (1) in the event that an Association identifies you, your principals, or associated parties under a program designed to monitor merchants or otherwise instructs NPC or Member Bank to close your account, (2) for any circumstances that could cause harm or loss of goodwill to the Card Organization systems or you no longer meet the eligibility requirements of a Card Organization, (3) upon a default event set forth in Section 10.C. below or other material breach by you of the terms of this Agreement, (4) upon a material adverse change in your business, financial condition, business procedures, products or services, a sale of all or a substantial portion of your assets, or a change in control of your business (directly or indirectly), (5) upon any non-compliance by you with the terms of the Rules or applicable Law, (6) if your business name and/or the name of your principals is listed on the MATCH (Membership Alert To Control High Risk Merchants) System and/or other security/credit alert systems, (7) if your business operations cause NPC or Member Bank, or are reasonably likely to cause NPC or Member Bank, to violate the Laws applicable to NPC or Member Bank, regardless of the jurisdiction in which you accept or conduct Card transactions, (8) in the event of irregular Card sales, excessive chargebacks, illegal activity or any other circumstances which, in NPC's discretion, may increase NPC's potential exposure for your chargebacks or otherwise present a financial or security risk to NPC, (9) if any guaranty is revoked, (10) if you file a voluntary petition or complaint seeking relief under any federal or state bankruptcy or other debt relief statute, an involuntary petition under any federal or state bankruptcy or other debt relief statute is filed against you, you generally become unable to pay your debts or trade obligations as they become due, or you make a general assignment for the benefit of creditors, or (11) if you fail to establish a Reserve Account when requested by NPC or Member Bank; and iii) this Agreement may be terminated by you upon a material breach of the terms of this Agreement by Member Bank or NPC, provided you give Member Bank and NPC written notice of any alleged breach and such breach remains uncured for a period of 30 days following receipt of written notice by the breaching party. Further, you may terminate this Agreement for any reason on 30 days written notice accompanied by payment of the Early Termination Fee (set forth below). NPC's and Member Bank's rights of termination under this Agreement are cumulative. Notice of termination by NPC may be given orally. Notice of termination by you must be signed by the person who signed the Merchant Application or an authorized Merchant signatory. Termination shall be effective on the date specified by the oral or written notice. Termination by you or us of Card processing shall terminate the entire Agreement, including all services on all Schedules. You must notify us in writing if you desire to terminate any particular service set forth on a Schedule.

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

## D. Action upon Termination.

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

ii. Accounts. All of your obligations regarding accepted Sales Drafts will survive termination of this Agreement. Upon termination, all amounts payable to NPC and Member Bank will be due and payable in full without demand or other notice of any kind (all of which you agree to expressly waive) and you must immediately send NPC and Member Bank all the data relating to Card sales and credits made up to the date of termination. Collected Sales Drafts may be withheld and /or placed in the Reserve Account until you pay all amounts you owe NPC or Member Bank or amounts for which you are liable under this Agreement. After any termination of this Agreement, you will continue to bear total responsibility for any and all chargebacks, credits and adjustments and all other amounts then due, or which later become due, to NPC and/or Member Bank under this Agreement or to any of NPC's or Member Bank's affiliates for any related equipment or related services. In connection with termination, NPC or Member Bank may require that a Reserve Account be established and maintained by you in accordance with the terms of Section 5.B. You must maintain in the Merchant Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time, but in any event not less than the time specified in this Agreement. Unless it is determined that you have engaged in fraud, any balance remaining after chargeback rights have expired and all other amounts owed have been paid will be disbursed to you. You authorize Member Bank and NPC to debit the Merchant Account, the Reserve Account, or any other account you may own, for all such amounts. If the amount in the Merchant Account and Reserve Account is not adequate, you will pay Member Bank and NPC the amount you owe them upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.

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

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

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

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

12. Use of Trademarks and Confidentiality.



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

B. Confidentiality.

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

ii. Cardholder Information. You will not disclose to any third party any Cardholder account information or other personal information except to an agent of yours assisting in completing a Card transaction, or as required by law. You must not request or use Cardholder account number information for any purpose that you know or should have known to be fraudulent or in violation of the Rules, or for any purpose that the Cardholder did not authorize, except to an agent of yours assisting in completing a Card transaction, or as required by law. You must keep all systems and media containing account, Cardholder or transaction information (physical or electronic, including but not limited to account numbers, Card imprints, and terminal identification numbers) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. You must destroy in a manner that will render the data unreadable all such media that you no longer deem necessary or appropriate to store (except for Sales Drafts maintained in accordance with this Agreement, Laws or Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. You may not retain or store magnetic stripe, CVV2 or CVC2 data after authorization. Do not store, and ensure that all of your third party providers that have access to Cardholder data do not store, magnetic stripe, CVV2 or CVC2 data after a transaction. If you use any third parties who will have access to Cardholder data ("Merchant Provider(s)"), you must notify us of their identity. In addition, you must (1) only allow the Merchant Providers access to the Cardholder data for purposes that are authorized by the Rules, (2) have proper security measures in place for the protection of Cardholder data, (3) ensure that Merchant Providers have proper security measures in place for the protection of Cardholder data, (4) comply with and assure that Merchant Providers comply with the Payment Card Industry Data Security Standard ("PCI DSS"), as amended from time to time, which may be referred to as the Visa Cardholder Information Security Program ("CISP"), found at [www.visa.com](http://www.visa.com), the MasterCard Site Data Protection Program ("SDP"), found at [www.mastercard.com](http://www.mastercard.com), or the American Express Data Security Operating Policy ("DSOP"), found at [https://www209.americanexpress.com/merchant/singlevoice/pdfs/en\\_US/DSOP\\_Merchant\\_US.pdf](https://www209.americanexpress.com/merchant/singlevoice/pdfs/en_US/DSOP_Merchant_US.pdf), and (5) have written agreements with Merchant Providers requiring the compliance set forth herein. You will immediately notify us of any suspected or confirmed loss or theft of any transaction information, including any loss or theft from a Merchant Provider. You are responsible for demonstrating your and Merchant Providers' compliance with the CISP, SDP and PCI DSS programs, and providing reasonable access to your locations and ensuring Merchant Providers provide reasonable access to their locations to verify your and their ability to prevent future security violations. Any fees, fines or penalties from non-compliance will be passed through to you. You agree to indemnify us against all costs, expenses, damages and/or losses resulting from any breach of security, or loss or theft of information. In addition, in the event of a suspected or confirmed loss or theft of information, you agree, at your cost, to provide all information requested by NPC, Member Bank, an Association, financial institutions or local, state or federal officials in connection with such event and to cooperate in any ensuing investigation, including without limitation, any forensic investigation. Any information provided in response to such investigation will (as between you and NPC) be considered NPC's

confidential information. You agree that NPC may release to Member Bank, the Associations, financial institutions and/or local, state or federal officials, any information you provide to NPC in connection with a suspected or confirmed loss or theft of transaction information. The requirements of this provision apply to Cardholder data regardless of the medium in which the information is contained and regardless of whether you process transactions via Internet, mail, phone, face-to-face or any other method. Additional information regarding data security may be found at the Association websites.

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

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

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

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

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

**14. General Provisions.**

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

B. Governing Law and Forum. Merchant, NPC and Member Bank acknowledge and agree that this Agreement and the guaranty contained herein was, and shall be deemed to have been, made and delivered in Jefferson County, Kentucky. The laws of the Commonwealth of Kentucky, without giving effect to its conflicts of law principles, shall govern all matters (whether in contract, statute, tort or however characterized) arising out of or relating to this Agreement and the guaranty contained herein, including, without limitation, the validity, interpretation, construction, performance and

enforcement of the Agreement and guaranty. Merchant, NPC and Member Bank agree that, in the event of any dispute regarding, arising out of or relating to this Agreement or the guaranty contained herein, the courts of the Commonwealth of Kentucky shall have and be vested with personal jurisdiction over the parties. Merchant, NPC and Member Bank further agree that any and all actions, claims, suits or proceedings arising out of or relating (directly or indirectly) to this Agreement or the guaranty contained herein shall be filed and litigated only in courts located in Jefferson County, Kentucky, and such courts shall have exclusive jurisdiction over any action, claims, suit or proceeding arising out of or relating (directly or indirectly) to this Agreement or the guaranty contained herein.

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

D. **Construction.** Any alteration or strikeover in the text of this Agreement will have no binding effect and will not be deemed to amend this Agreement. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. In the event of an inconsistency between the Merchant Application and this Merchant Processing Agreement or the Operating Rules attached as Exhibit A, the terms of the Merchant Application (unless left blank) will control.

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

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

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

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

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

J. **Amendments.** Member Bank and NPC may amend this Agreement, including but not limited to changes to fees, rates, rate descriptions and rate categories at any time. Member Bank or NPC will inform you of a proposed change by periodic statement, electronic or internet statement, fax, e-mail, or other written notice. You will be deemed to have agreed to the change if you continue to present transactions to Member Bank and NPC after 7 days following the date the notice was sent, even if it was not received by you. You may elect to terminate this Agreement within 60 days of the date of notice of an amendment to the fees, rates, rate descriptions or rate categories without penalty, except as a result of a change by the Associations or a telecommunications vendor. If you are a participant in an NPC third party

program including but not limited to agent bank and Association programs, and you subsequently terminate your agreement and/or relationship with such third party, we may terminate this Agreement or amend the fees, in which case Merchant will not have the right to terminate this Agreement. Except as set forth above, this Agreement may not be modified in any respect without the approval or express written consent of Member Bank.

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

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

M. **Third Party Providers.** In the event you utilize third party providers to assist you with the processing of your transactions, including but not limited to the direct delivery of data captured transactions, you will immediately provide notice to us identifying such third party providers and the services to be provided by such third party providers. NPC and Bank are not a party to, and have no liability with respect to, your contractual relationships with third party providers. You further agree to indemnify, defend and hold us harmless for any actions or inactions of such third party providers.

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

O. **NPC PCI Program.** The Card Organizations have mandated that all merchants must comply with the PCI DSS found at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org) (see [www.visa.com/cisp](http://www.visa.com/cisp) for additional information). NPC has developed a PCI DSS program (the "PCI Program") to assist merchants with PCI DSS validation. Member Bank is not a party to or liable for the PCI Program. If the Merchant Application contains a fee for the PCI Program, then you are enrolled in the PCI Program. If the Merchant Application does not contain a fee for the PCI Program, then you are not currently enrolled in the PCI Program and the provisions of this Section 14.O will only apply if you subsequently enroll in the PCI Program or utilize the benefits of the PCI Program.

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

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

(ii) **PCI Compliance Validation Process**

- (a) **Validation Requirement.** In order to take full advantage of the PCI Program, you must validate your compliance with the PCI DSS on an annual basis or as otherwise required by NPC or a Card Organization as more fully set forth herein. To validate your compliance with the PCI DSS, you must successfully complete a SAQ and, if applicable, a vulnerability scan as provided below.
- (b) **Self-Assessment Questionnaire (SAQ).** A SAQ is a list of questions developed by the Payment Card Industry Security Standards Council ("PCI SSC"). There are 5 SAQ versions covering different types of merchants (the "SAQ Classifications"):

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

Please review the five (5) SAQ Classifications above and confirm that you complete the appropriate SAQ. You may go to



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

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

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

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

1. Once you have completed your SAQ, the system will guide you to the scanning site to schedule your Scan, if applicable.
2. The Scan will identify vulnerabilities or gaps that may allow unauthorized or malicious users to gain access to your network and potentially compromise cardholder data. The Scan does not require you to install any software, and no denial-of-service attacks will be performed.
3. Upon completion of the Scan, you will receive a link to your full compliance report with TrustKeeper. If you fail TrustKeeper’s network vulnerability review, this means that the Scan discovered areas of severe vulnerability. The TrustKeeper report describes the issues found and provides you with recommendations for resources to begin fixing the problems. The tool will guide you to remediate the failed Scan and work toward achieving compliance. Once you have addressed the vulnerabilities, simply schedule a follow-up Scan to ensure your remediation of the problem meets the PCI DSS requirements.

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

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

1. A change in your processing environment requiring re-validation occurs when you transition from one card-processing environment to another such that your SAQ Classification changes, necessitating re-validation under a new SAQ. With respect to a revalidation required due to a change in your processing environment, you must complete the re-validation process within twenty-four (24) hours of such change in order to maintain your validation of compliance with the PCI DSS.
2. With respect to a re-validation required due to your failure to complete a required quarterly Scan, NPC will deem your failure to complete a Scan within ten (10) days of the end of the preceding quarter to require re-validation under the PCI Compliance Validation Process, in order to maintain your validation of compliance with the PCI DSS.
3. With respect to a re-validation required due to the expiration of the annual SAQ or any other reason for which Re-Validation is required, you will have five (5) days to complete the PCI Compliance Validation Process, in order to maintain your validation of compliance with the PCI DSS.

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

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

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

- (a) NPC’s agreement to waive your liability to NPC for the fees and costs described in this subsection (iii) is only effective upon: (1) your continued validation of compliance with the PCI DSS and participation in the PCI Program; and (2) your successful completion of the PCI Compliance Validation Process described in section (ii) above; provided, however, that there is no change in your business practices regarding Card acceptance. Your continuing qualification for the PCI Program is premised upon initial validation of your compliance with the PCI DSS as described in subsection (ii) above and timely re-validation of your compliance with the PCI DSS, including annual completion of a SAQ and passing quarterly vulnerability scans, if applicable, payment of the Program cost, and otherwise complying with the terms of the Program and the Agreement.
  - (b) If you are in compliance with the requirements of subsection (a) above, NPC agrees to waive up to \$50,000 in fees and costs described in this subsection (iii) for each unique Merchant Identification Number (MID). If you have multiple MIDs that have the same federal tax identification number (or in the case of a sole proprietorship, the same social security number), then the maximum aggregate Waiver amount for those MIDs is limited to \$100,000. In addition, if a MID is one of a group of MIDs that are eligible for and receive a multi-merchant discount for the PCI Program fees, the aggregate Waiver for all MIDs in such group is \$100,000.
  - (c) Your validation of compliance with the PCI DSS through the PCI Program is required to be eligible for the Waiver. To validate your compliance, you must successfully complete the PCI Compliance Validation Process described in subsection (ii) of this Section O, including any required re-validation of your compliance with the PCI DSS as described in subsection (ii)(d) of this Section O. You will not be eligible for the Waiver if your SAQ is not current, if you have not timely completed your quarterly vulnerability scans, or if you have otherwise failed to maintain compliance with the PCI DSS through the PCI Program.
  - (d) NPC’s Waiver of up to \$50,000 of the costs and fees described in this subsection (iii) is limited to one (1) compromise of cardholder data incident per Program year. Any subsequent incidents occurring during the same Program year are not eligible for the Waiver, and any costs and fees associated with such incident(s) remain your liability under this Agreement. Chargebacks and reversals are not eligible for the Waiver under any circumstances.
  - (e) To report a possible compromise of cardholder data, you should immediately contact NPC at [compliance@npc.net](mailto:compliance@npc.net). You will need to provide your name, MID, contact information and a brief summary of the incident in this communication, but do not include cardholder numbers or other sensitive information.
- (iv) Costs.
- (a) If your costs for the PCI Program are set forth on the Merchant Application, the terms of this subparagraph (a) will apply. Your cost for the PCI Program is assessed either per MID per PCI Program year or per MID per month as set forth on the Merchant Application. If the PCI Program fees are assessed yearly, you will initially be assessed the fees for the PCI Program within sixty (60) to one hundred and twenty (120) days of NPC’s acceptance of this Agreement and will be assessed the PCI Program fee in the same month in each year thereafter. If you are charged monthly, you will initially be assessed the fees for the PCI Program in your first monthly statement and the monthly fee will continue during the initial term and the renewal terms of the PCI Program. The fee for the PCI Program set forth on the Merchant Application is based on your representation of your processing environment. If NPC determines, at any time, that the PCI Program fee that you are being assessed does not accurately reflect your processing environment, NPC may adjust your fee for the PCI Program to the PCI Program fee applicable to your current processing environment.
  - (b) If the Merchant Application does not contain a cost for the PCI Program, the terms of this subparagraph (b) will apply. Your cost for the PCI Program will be provided to you by NPC upon your enrollment in the PCI Program or will be NPC’s standard rates if you utilize the benefits of the PCI Program prior to your enrollment. Such cost is assessed either per MID per PCI Program year or per MID per month. If the PCI Program fees are assessed yearly, you will initially be assessed the fees for the PCI Program within sixty (60) to one hundred and twenty (120) days of your enrollment in the PCI Program and will be assessed the PCI Program fee in the same month in each year thereafter. If you are charged monthly, you will initially be assessed the fees for the PCI Program in your first monthly statement after your enrollment in the PCI Program and the monthly fee will continue during the initial term and the renewal terms of the PCI Program. The fee for the PCI Program is based on your representation of your processing environment. If NPC determines, at any time, that the PCI Program fee that you are being assessed does not accurately

reflect your processing environment, NPC may adjust your fee for the PCI Program to the PCI Program fee applicable to your current processing environment.

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

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

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

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

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

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

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

**15. CONTINUING UNLIMITED GUARANTY. The provisions contained in this Section 15 below (collectively, "Continuing Unlimited Guaranty") apply to each person who signs this Agreement as a Guarantor (each such person, a "Guarantor").**

**A.** For the purpose of inducing NPC and Member Bank to provide to Merchant the services contemplated in this Agreement, each Guarantor jointly and severally, hereby absolutely and unconditionally guarantees the prompt and full payment to NPC and/or Member Bank when due, whether by acceleration or otherwise, of all Obligations, as defined below.

**B.** The word "Obligations" is used in its most comprehensive sense and includes, without limitation, all indebtedness, debts and liabilities (including principal, interest, late charges, collection costs, attorneys' fees and the like) of Merchant to NPC and Member Bank, either created by Merchant alone or together with another or others, primary or secondary, secured or unsecured, absolute or contingent, liquidated or unliquidated, direct or indirect, whether evidenced by note, draft, agreements of guaranty or otherwise, whether now existing or hereinafter arising, and any and all renewals of, extensions of or substitutes therefor. The word "Obligations" shall include, but not be limited to, all obligations of payment, obligations of indemnification, and indebtedness owed by Merchant to NPC and/or Member Bank arising from or related to the transactions or services contemplated in this Agreement.

**C.** Guarantor hereby promises that if one or more of the Obligations are not paid promptly when due, Guarantor will, upon request of NPC and/or Member Bank, pay the Obligations to NPC and/or Member Bank, irrespective of any action or lack of action on NPC or Member Bank's part in connection with the acquisition, perfection, possession, enforcement or disposition of any or all Obligations or any or all security therefor or otherwise, and further irrespective of any invalidity in any or all Obligations, the unenforceability thereof or the insufficiency, invalidity or unenforceability of any security therefor. Guarantor's obligations hereunder shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense based upon any claim the Guarantor may have against Merchant, NPC or Member Bank, except payment or performance of the Obligations.

**D.** Guarantor waives notice of any and all acceptances of this Continuing Unlimited Guaranty. Guarantor waives presentment, demand, protest, notice of protest, and notice of dishonor or other nonpayment of any and all Obligations and further waives notice of sale or other disposition of any

collateral or security now held or hereafter acquired by NPC and/or Member Bank. Guarantor agrees that no extension of time, whether one or more, nor any other indulgence granted by NPC and/or Member Bank to Merchant, or to Guarantor, or any of them, and no omission or delay on NPC and/or Member Bank's part in exercising any right against, or in taking any action to collect from or pursue NPC's or Member Bank's remedies against Merchant or Guarantor, or any of them, will release, discharge or modify the duties of Guarantor. Guarantor agrees that NPC and/or Member Bank may, without notice to or further consent from Guarantor, release or modify any collateral, security or other guaranties, and no such action will release, discharge or modify the duties of Guarantor hereunder. This is a guaranty of payment and not of collection and neither NPC nor Member Bank shall be required or obligated, as a condition of the Guarantor's liability, to make any demand upon or to pursue any of its rights against Merchant, or to pursue any rights which may be available to it with respect to any other person who may be liable for the payment of the Obligations, or to pursue, exhaust or preserve any of its rights or remedies with respect to any collateral, security or other guaranties given to secure the Obligations, or to take any action of any sort, prior to demanding payment from or pursuing its remedies against Guarantor. Guarantor hereby waives all defenses based upon suretyship or impairment of collateral. After any default hereunder, NPC and Member Bank may apply and/or set off against amounts due them hereunder any deposits, account balances or other credits of Guarantor in the possession of or in transit to NPC or Member Bank, and Guarantor hereby grants NPC and Member Bank a security interest in all of the foregoing.

**E.** The obligations of the Guarantor hereunder, if more than one, shall be joint and several. This Continuing Unlimited Guaranty is secured by the property described in any collateral security documents that the Guarantor executes and delivers to NPC or Member Bank and by such other collateral as previously may have been or may in the future be granted to NPC and/or Member Bank to secure any obligations of the Guarantor to NPC and/or Member Bank. This Continuing Unlimited Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, transferees and assignees. Each Guarantor expressly authorizes (i) NPC and/or Member Bank to collect any amounts that are at any time due and owing from Guarantor to NPC and/or Member Bank under this Continuing Unlimited Guaranty by debiting any checking, savings or other deposit account that Guarantor at any time maintains with Member Bank or with any affiliate of Member Bank (any such account, a "Guarantor Account") and (ii) any affiliate of Member Bank to collect any amounts that are at any time due and owing from Guarantor to such affiliate by debiting any Guarantor Account.

**F.** This Continuing Unlimited Guaranty shall be interpreted and construed in accordance with and governed by the laws of the Commonwealth of Kentucky. Guarantor agrees that any legal suit, action or proceeding arising out of or relating to this Continuing Unlimited Guaranty may be instituted in a state or federal court of appropriate subject matter jurisdiction in the Commonwealth of Kentucky; waives any objection which he may have now or hereafter to the venue of any such suit, action or proceeding; and irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding; provided, however, that nothing contained herein shall prevent NPC and/or Member Bank from bringing any action or exercising any rights under this Continuing Unlimited Guaranty within any other state or country. Guarantor agrees that service of process may be made, and personal jurisdiction over Guarantor obtained, by serving a copy of the Summons and Complaint upon Guarantor at its address set forth in the Agreement in accordance with the applicable laws of the Commonwealth of Kentucky.

**G. GUARANTOR HEREBY WAIVES THE RIGHT TO TRIAL BY JURY OF ANY MATTERS ARISING OUT OF THIS CONTINUING UNLIMITED GUARANTY.**

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**Attachments to this Merchant Processing Agreement include:**

- Exhibit A – Operating Rules
- Exhibit B – Agreement for American Express® OnePoint® Program
- Schedule I – Applicable and included if Services Packages are selected on the Merchant Application
- Schedule II – Applicable and included if NPC Check Services are selected on the Merchant Application
- Schedule III – Applicable and included if Voyager Fleet Card is selected on the applicable Merchant Addendum
- Schedule IV – Applicable and included if EBT is selected on the applicable Merchant Addendum



**EXHIBIT A**  
*Operating Rules*

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

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

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

**1. Honoring Cards**

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

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

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

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

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

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

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

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

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

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

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

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

i. Visa:

- a. The “DOVE” hologram should appear to fly when tilted.
- b. All Visa account numbers begin with a “4” and can be up to 19 digits long.
- c. The first four digits of the embossed account number match the four digits printed on the account number of the Card.
- d. The “V” to the right of the expiration date should be a special letter (a “Flying V” not a normal “V”).

ii. MasterCard:

- a. The MasterCard Global hologram or the Debit MasterCard hologram and the MasterCard brand mark stacked within a retaining line, or the MasterCard brandmark without a retaining line if the hologram is on the back.
- b. All MasterCard account numbers are 16 digits long.
- c. The first four digits of the embossed account number match the four digits printed on the account number of the Card. The last four digits of the account number are embossed over the hologram.

iii. Discover Network: (certain valid devices (e.g., radio frequency enabled Cards, key fobs, contactless Cards, and JCB, CUP and DCI Cards) may not display the features described below).

- a. Card numbers are at least 16 digits embossed on the front of the Card.
- b. The word DISCOVER or DISCOVER NETWORK will appear in ultraviolet ink on the front of the Card when it is held under an ultraviolet light.
- c. An overprint on the signature panel reads Discover Network.
- d. The Discover Network three-dimensional hologram, bearing a distinct circular shape and images of a globe pierced by an arrow, water and stars on a repetitive pattern background (the “Discover Network Hologram”), appears on the front of certain Discover Network Cards. The hologram reflects light and appears to move as the Card is rotated.

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

must not be completed. Failure to follow these checks and procedures will expose you to chargebacks. If the terminal is programmed to require you to key the last 4 or more digits of each Card used for a sale, and the terminal indicates that the numbers keyed are not the same as those present on the Card, the sale must not be completed.

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

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

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

a. offering the customer an immediate discount from your list, stated, or standard price, a rebate, a free or discounted product or service, or any other incentive or benefit if the customer uses a particular payment card with an acceptance brand other than MasterCard or other particular form of payment;

b. offering the customer an immediate discount from your list, stated, or standard price, a rebate, a free or discounted product or service, or any other incentive or benefit if the customer, who initially presents a MasterCard, uses instead another payment card or another form of payment;

c. expressing a preference for the use of a particular payment card or form of payment;

d. promoting the use of a particular general purpose payment card with an acceptance brand other than MasterCard or the use of a particular form or forms of payment through posted information, through the size, prominence, or sequencing of payment choices, or through other communications to customers (provided that merchants will abide by the MasterCard trademark standards relating to the display of its marks); or

e. communicating to customers the reasonably estimated or actual costs incurred by you when a customer uses particular payment cards or forms of payment or the relative costs of using different general purpose payment cards or forms of payment.

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

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

a. offering a customer a discount or rebate, including an immediate discount or rebate at the point of sale;

b. offering a free or discounted product;

c. offering a free or discounted or enhanced service;

d. offering the customer an incentive, encouragement or benefit;

e. expressing a preference for the use of a particular brand or type of general purpose card or a particular form of payment;

f. promoting a particular brand or type of general purpose card or a particular form or forms of payment through posted information, through the size, prominence or sequencing of payment choices, or through other communications to a customer;

g. communicating to a customer the reasonably estimated or actual costs incurred by the merchant when a customer uses a particular brand or type of general purpose card or a particular form of payment or the relative costs of using different brands or types of general purpose cards or different forms of payment; or

h. engaging in any other practices substantially equivalent to these.

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

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

## 2. Authorization.

A. Required on all Transactions. You will obtain a prior authorization via electronic terminal or similar device before completing any transaction, including MO/TO transactions. You will follow any instructions received

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

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

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

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

i. paper merchants whose sales exceed your floor limit as established by NPC or Member Bank, or amended from time to time;

ii. an unsigned Card is presented;

iii. if you believe the Card may be counterfeit or stolen or that the sale is in some other manner suspicious or unusual, you should state to the voice authorization clerk, "This is a Code 10" and await further instruction; or

iv. in any other circumstances established by NPC or Member Bank or stated in the Rules and/or this Agreement.

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

## 3. Sales Drafts.

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

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

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



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

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

#### 4. Chargebacks.

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

#### 5. Chargeback Reasons.

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

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

#### 6. Chargeback Monitoring Programs.

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

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

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

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

#### 7. Credits.

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

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

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

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

#### 8. Other Types of Transactions.

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

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

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

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

D. Deposits.

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

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

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

F. Electronic Commerce Transactions.

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

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

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

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

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

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

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

G. Third Party Service Provider Transactions.

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

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

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

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



Cardholders must be allowed to cancel reservations at resort establishments until 4:00 p.m. on the scheduled arrival date; and (v) by contracting for JCB settlement services, you authorize JCB to publish your name, address and telephone number in JCB solicitation materials.

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

#### 9. Cash Transactions.

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

#### 10. Third Parties.

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

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

#### 11. Vehicle Rental Authorization Procedures.

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

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

- i. If no authorization was obtained at the time of rental and you, based upon Cardholder's actual charges, later estimate that the transaction amount will exceed the applicable floor limit, you may obtain an Authorization approval code for the new estimated amount.
- ii. You may obtain authorization for additional amounts (above any amount not authorized) on the car rental pickup date or prior to the car rental return date. Additional authorization is not necessary if the sales transaction does not exceed the sum of the authorized amounts plus 15% of the sum of the authorized amounts.

#### 12. Paper Processing Merchants.

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

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

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

#### 14. T&E Services.

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

- Priority CheckOut Service
- T&E Advance Deposit Service

- T&E Cash Disbursement Service
- Visa Reservation Service

#### B. Visa Priority CheckOut Service:

You agree to:

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

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

You agree to:

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

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

- i. Cardholder indicates at registration the intent to pay for services with a Visa Card;

- ii. Before disbursement, you review positive identification, and, if permitted by applicable law, record type and number on the Sales Draft;
  - iii. You complete an 80 column Cash Disbursement Sales Draft or a 51 column Cash Disbursement T&E Sales Draft that includes the Cardholder's positive identification or a Cash Disbursement Record;
  - iv. You do not disburse more than \$250.00 during the Cardholder's stay. Cash availability may limit cash disbursements; and
  - v. You must not include any additional fees or charges except taxes or charges imposed by law on the transaction amount.
- E. Visa Reservation Service: Any Merchant who accepts Cards to guarantee reservations must do so in accordance with the following requirements:
- i. You must accept all Visa Cards in accordance with this Agreement;
  - ii. You must obtain the Cardholder's account number, expiration date, and name embossed on the Card. You must quote to Cardholder the rate of reserved accommodation, Merchant's name and address, and the Confirmation Code advising that it be retained. Advise the Cardholder that if he/she has not checked in by checkout time the following day after his/her scheduled arrival date or the reservation was not properly canceled, the Cardholder will be billed for one night's lodging plus applicable taxes. If requested, you will provide a written confirmation with the above information including the Visa reservation service provisions relating to the Cardholder's obligation, and any other reservation details;
  - iii. You must accept all cancellations prior to the specified time. The Merchant must not require more than 72 hours cancellation notification prior to the scheduled arrival date. But, if the Cardholder makes the reservation within 72 hours of the scheduled arrival date, the cancellation deadline must be no earlier than 6:00 p.m. on the arrival date. If you require that the Cardholder cancel before 6:00 p.m. on the arrival date, you must mail the cancellation policy to the Cardholder;
  - iv. If the reservation is properly canceled, you must provide a cancellation code and advise the Cardholder to retain it. If requested, you must mail a confirmation of cancellation that includes the Cardholder name, account number, card expiration date, cancellation code, and details related to the canceled reservation;
  - v. If Cardholder has not claimed or canceled the accommodation by the specified time, the room(s) must be held available in accordance with the reservation until checkout time the following day. You may then complete a Sales Draft for 1 night's lodging plus applicable tax, indicating the Cardholder's account number, expiration date, and name embossed on the Card and the words "No Show" on the Cardholder signature line. You must obtain an authorization code for the no show transaction;
  - vi. If guaranteed accommodations are unavailable, you must provide Cardholder with comparable accommodations as described in Section 14.C.xiv above. These services shall be provided at no cost to Cardholder.

#### 15. Preauthorized Health Care Transactions

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

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

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

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

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

#### 16. Visa Supermarket Program

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

#### 17. Reserved

#### 18. Automated Fuel Dispenser

A. Procedures.

- i. When an Automated Fuel Dispenser ("AFD") transaction takes place, the card must be presented and the entire, unaltered contents of either Track 1 or Track 2 of the magnetic stripe must be read and transmitted along with a value of "90" in the POS entry mode code field.
- ii. The Merchant name, city, state, and zip code of the station location where the transaction took place must be included in any authorization and clearing message.
- iii. A transaction receipt must be produced and the transaction must be cleared within 2 days of the transaction date.

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

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

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

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

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

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

x. An AFD must not dispense scrip.

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

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

#### 19. Equipment

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

#### 20. Imprinters.

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

#### 21. Merchant Identification Number.

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

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

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

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

#### 1. Discover Network Marks.

You are prohibited from using the Discover Network Program Marks, as defined below, other than as expressly authorized in writing by NPC or Processor. "Discover Network Program Marks" mean the brands, emblems, trademarks, and/or logos that identify Discover® Network cards. Additionally, you shall not use the Discover Network Program Marks other than to display decals, signage, advertising, and other forms depicting the Discover Network Program Marks that are provided to you by NPC or Processor pursuant to this Agreement or otherwise approved in advance in writing by NPC or Processor. You may use the Discover Network Program Marks only to promote the services covered by the Discover Network Program Marks by using them on



decals, indoor and outdoor signs, websites, advertising materials and marketing materials; provided that all such uses by you must be approved in advance by NPC or Processor in writing. You shall not use the Discover Network Program Marks in such a way that customers could believe that the products or services offered by you are sponsored or guaranteed by the owners of the Discover Network Program Marks. You recognize that you have no ownership rights in the Discover Network Program Marks. You shall not assign to any third party any of the rights to use the Discover Network Program Marks. Your authority to use the Discover Network Program Marks will terminate immediately upon notice from NPC, Member Bank or Discover Network.

## 2. Priority Check-Out Service.

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

## 3. Card Checks.

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

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

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

## 2. PIN-Debit Card Sales Drafts.

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

B. Reversal. A sale may be reversed or voided electronically, but only if such reversal/void is entered prior to midnight of the calendar day on which the sale was initiated. To effect a reversal or void, Cardholder must reenter the PIN, the magnetic stripe reader must read the card, and you must transmit the trace number and the exact dollar amount of the sale to be reversed or voided. A reversal or void must be initiated at the same Merchant identified on the PIN-Debit Sales Draft at which the original sale was initiated, but it need not be initiated at the same POS terminal.

C. Returns. All returns shall be processed in accordance with your normal procedures except that you or Cardholder shall not attempt to reverse a

previously approved POS transaction unless otherwise permitted in accordance with the Debit Network Rules. Any sale known by you to be erroneous should be canceled and re-billed in the Cardholder's presence.

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

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

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

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

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

## 7. Equipment.

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

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

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

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

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

**EXHIBIT B**  
Agreement for American Express® OnePoint® Program

The provisions of this Exhibit B only apply if American Express Travel Related Services Company, Inc. (“**American Express**”) approves the Merchant’s application for the American Express OnePoint program. Neither Member Bank nor NPC is a party to the Agreement for American Express® Card Acceptance American Express OnePoint® Program set forth in this Exhibit B. Merchant acknowledges and agrees that neither Member Bank nor NPC are in any way responsible for the actions, inactions, performance or nonperformance of American Express, or for disputes or resolving disputes of any kind arising from the agreement set forth in this Exhibit B. A termination of or modification to the terms of the Agreement for American Express® Card Acceptance American Express OnePoint® Program will not affect the terms of the Agreement to which this Exhibit B is attached.

**Agreement for American Express® Card Acceptance American Express OnePoint® Program**

The Agreement is by and between American Express Travel Related Services Company, Inc., a New York corporation, and you, the Merchant. By accepting the American Express® Card, you agree to be bound by the Agreement.

**General Provisions**

**1. SCOPE AND OTHER PARTS OF AGREEMENT; DEFINITIONS**

a **Scope of the Agreement.** The Agreement governs your acceptance of American Express Cards in the United States (but not Puerto Rico, the U.S. Virgin Islands, and other U.S. territories and possessions) under our American Express OnePoint Program, which makes available to eligible merchants an integrated service through our agent National Processing Company (“NPC”), among other agents. Schedule A contains important provisions governing your acceptance of the Card under this program. The Agreement covers you alone. You must not obtain Authorizations, submit Charges or Credits, or receive payments on behalf of any other party, except as otherwise expressly permitted in the Merchant Regulations.

b **Other Parts of the Agreement.**

i. Merchant Regulations. The Merchant Regulations set forth the policies and procedures governing your acceptance of the Card. You shall ensure that your personnel interacting with customers are fully familiar with the Merchant Regulations. The Merchant Regulations are a part of, and are hereby incorporated by reference into, the Agreement. You agree to be bound by and accept all provisions in the Merchant Regulations (as changed from time to time) as if fully set out herein and as a condition of your agreement to accept the Card. We reserve the right to make changes to the Merchant Regulations in scheduled changes and at any time in unscheduled changes as set forth in section 8.j of the General Provisions. The Merchant Regulations and releases of scheduled changes therein are provided only in electronic form, existing at the website specified below in the definition of “Merchant Regulations” or its successor website. However, we shall provide you a paper copy of or a CD-ROM containing the Merchant Regulations or releases of scheduled changes therein upon your request. To order a copy, please call our agent NPC (telephone: 1-888-208-7231). We may charge you a fee for each copy that you request.

ii. Schedule A. Schedule A, attached hereto or which we otherwise may provide to you, contains other important provisions governing your acceptance of the Card. Schedule A is a part of, and is hereby incorporated by reference into, the Agreement.

c. **Definitions.** Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Merchant Regulations. Some definitions are repeated here for ease of reference.

- *Affiliate* means any Entity that controls, is controlled by, or is under common control with either party, including its subsidiaries. As used in this definition, control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an Entity, whether through the ownership of voting securities, by contract, or otherwise. For the avoidance of doubt, but not by way of limitation, the direct or indirect ownership of more than 50% of (i) the voting securities or (ii) an interest in the assets, profits, or earnings of an Entity shall be deemed to constitute “control” of the Entity.
- *Agreement* means these General Provisions, Schedule A and any other accompanying schedules and exhibits, and the Merchant Regulations, collectively.
- *American Express Card* and *Card* mean (i) any card, account access device, or payment device or service bearing our or our Affiliates’ Marks and issued by an Issuer or (ii) a Card Number.
- *Cardmember* means an individual or Entity (i) that has entered into an agreement establishing a Card account with an Issuer or (ii) whose name appears on the Card.
- *Charge* means a payment or purchase made on the Card.
- *Chargeback* (sometimes called “full recourse” or “Full Recourse” in our materials), *when used as a verb*, means (i) our reimbursement from you for the amount of a Charge subject to such right or (ii) our reversal of a Charge for which we have not paid you; when used as a noun, means the amount of a Charge subject to reimbursement from you or reversal.
- *Claim* means any claim (including initial claims, counterclaims, cross-claims, and third party claims), dispute, or controversy between you and us arising from or relating to the Agreement or prior Card acceptance agreements, or the relationship resulting therefrom, whether based in contract, tort (including negligence, strict liability, fraud, or otherwise), statutes, regulations, or any other theory, including any question relating to the existence, validity, performance, construction, interpretation, enforcement, or termination of the Agreement or prior Card acceptance agreements, or the relationship resulting therefrom.
- *Credit* means the amount of the Charge that you refund to Cardmembers for purchases or payments made on the Card.
- *Discount* means an amount that we charge you for accepting the Card, which amount is: (i) a percentage (Discount Rate) of the face amount of the Charge that you submit; or a flat per-Transaction fee, or a combination of both; and/or (ii) a Monthly Flat Fee (if you meet our requirements).
- *Disputed Charge* means a Charge about which a claim, complaint, or question has been brought.
- *Entity* means a corporation, partnership, sole proprietorship, trust, association, or any other legally recognized entity or organization.
- *Establishments* means any or all of your and your Affiliates’ locations, outlets, websites, online networks, and all other methods for selling goods and services, including methods that you adopt in the future.
- *General Provisions* means the provisions set out in the Agreement other than the provisions in any accompanying schedule or exhibit hereto.
- *Marks* mean names, logos, service marks, trademarks, trade names, taglines, or other proprietary designs or designations.
- *Merchant Number* (sometimes called the “Merchant ID” or “Establishment” or “SE” number in our materials) means a unique number we assign to your Establishment.
- *Merchant Regulations* means the American Express Merchant Regulations — U.S., which are available from our agent.
- *Other Agreement* means any agreement, other than the Agreement, between (i) you or any of your Affiliates and (ii) us or any of our Affiliates.
- *Other Payment Products* mean any charge, credit, debit, stored value or smart cards, account access devices, or other payment cards, services, or products other than the Card.
- *Reserve* means a fund established and/or collateral held by us as security for your or any of your Affiliates’ obligations to us or any of our Affiliates under the Agreement or any Other Agreement.
- *We, our, and us* mean American Express Travel Related Services Company, Inc.
- *You and your* (sometimes called the “Merchant”, “Service Establishment,” or “SE” in our materials) mean the Entity accepting the Card under the



Agreement, and (as applicable) its Affiliates conducting business in the same industry.

d. **List of Affiliates.** You must provide to our agent a complete list of your Affiliates conducting business in your industry and notify our agent promptly of any subsequent changes in the list.

## 2. ACCEPTING THE CARD

a. **Acceptance.** You must accept the Card as payment for all goods and services sold at all of your Establishments, except as otherwise expressly specified in the Merchant Regulations. You agree that the provisions of Chapter 3 (Card Acceptance) of the Merchant Regulations are reasonable and necessary to protect the Cardmember's choice of which Card to use and that charge and credit Cards, including corporate Cards, are interchangeable. You are responsible and jointly and severally liable for the performance by your Establishment of all provisions of the Agreement and all obligations of your Establishments under the Agreement.

b. **Transaction.** Processing and Payments. Our Card acceptance, processing, and payment requirements are set forth in the Merchant Regulations. Some requirements are summarized here for ease of reference, but do not supersede the provisions in the Merchant Regulations.

- i. **Format.** You must create a Charge Record for every Charge and a Credit Record for every Credit that complies with our Technical Specifications, as described in the Merchant Regulations or otherwise provided by our agent. If the Cardmember wants to use different Cards for payment of a purchase, you may create a separate Charge Record for each Card used. However, if the Cardmember wants to use a single Card for payment of a purchase, you shall not divide the purchase into more than one Charge nor shall you create more than one Charge Record unless the purchase qualifies for a Delayed Delivery Charge.
- ii. **Authorization.** For every Charge, you must obtain from and submit to us an Authorization Approval code. Authorization Approval does not guarantee that (i) the person making the Charge is the Cardmember, (ii) the Charge is in fact valid or bona fide, (iii) you will be paid for the Charge, or (iv) you will not be subject to Chargeback.
- iii. **Submitting Charges and Credits.** Your Establishments must submit Charges and Credits only in U.S. dollars. You must not issue a Credit when there is no corresponding Charge. You must issue Credits to the Card used to make the original purchase, except as otherwise expressly specified in the Merchant Regulations.
- iv. **Payment for Charges.** We will pay you, through our agent, according to your payment plan in U.S. dollars for the face amount of Charges submitted from your Establishments less all applicable deductions, rejections, and withholdings, which include: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks and (iv) any Credits you submit. Your initial Discount is indicated in the Agreement or otherwise provided to you in writing by us. In addition to your Discount we may charge you additional fees and assessments, as listed in the Merchant Regulations. We may adjust any of these amounts and may change any other amount we charge you for accepting the Card.
- v. **Chargeback.** We and our agent have Chargeback rights, as described in the Merchant Regulations. We and our agent may Chargeback by (i) deducting, withholding, recouping from, or offsetting against our payments to you or debiting your Bank Account, or we or our agent may notify you of your obligation to pay us, which you must do promptly and fully; or (ii) reversing a Charge for which we have not paid you. Our or our agent's failure to demand payment does not waive our Chargeback rights.
- vi. **Protecting Cardmember Information.** You must protect Cardmember Information, as described in the Merchant Regulations. You have additional obligations based on your Transaction volume, including providing to us documentation validating your compliance with the PCI DSS.

## 3. PROTECTIVE ACTIONS

a. **Creating a Reserve.** Regardless of any contrary provision in the Agreement, we have the right in our sole discretion to determine that it is necessary to establish a Reserve. If we believe that we need to create a Reserve, we may immediately establish a Reserve or terminate the Agreement. We shall inform you if we establish a Reserve or terminate the Agreement. We may establish a Reserve by (i) withholding amounts from payment we otherwise would make to you under the Agreement or (ii) requiring you to deposit funds or other collateral with us. Any collateral provided pursuant to this Section 3 of the General Provisions is subject to our prior written approval. We may increase the amount of the Reserve at any time so long as the amount of the Reserve does not exceed an amount sufficient, in our reasonable judgment, to satisfy any financial exposure or risk to us under the Agreement (including Charges submitted by you for goods or services not yet received by Cardmembers and our costs of handling Disputed Charges) or to us or our Affiliates under any Other Agreement, or to Cardmembers. Upon the occurrence of an event described in Section 3.b.viii of the General Provisions, and during any continuation of such event, we may take immediate action to establish or increase the amount of any Reserve to an amount proportional to the risk covered by such event.

b. **Trigger Events for Reserve.** Some of the events that may cause us to establish a Reserve include: (i) your ceasing a substantial portion of or adversely altering your operations; (ii) your selling all or substantially all of your assets or any party acquiring 25% or more of the equity interests issued by you (other than parties currently owning 25% or more of such interests), whether through acquisition of new equity interests, previously outstanding interests, or otherwise; (iii) your suffering a material adverse change in your business or a material adverse change occurs in your industry; (iv) your breach of Section 3.e of the General Provisions; (v) your becoming insolvent; (vi) our receiving a disproportionate number or amount of Disputed Charges at your Establishments; (vii) our reasonable belief that you will not be able to perform your obligations under the Agreement, any Other Agreement, or to Cardmembers; or (viii) the establishment of a reserve or other protective action taken by any Entity with whom you have entered into an arrangement for the acceptance or processing (or both) of Other Payment Products that (A) results in the withholding of funds that would otherwise have been payable to you, (B) requires you to make a direct payment into a reserve account or similar device, or (C) requires you to provide such Entity with a letter of credit or other third-party guaranty of payment.

c. **Application of Reserve.** We may deduct and withhold from, and recoup and set-off against, the Reserve (i) any amounts you or any of your Affiliates owe us or any of our Affiliates under the Agreement or any Other Agreement; (ii) any costs incurred by us in connection with the administration of the Reserve, including attorneys' fees; and (iii) any costs incurred by us as a result of your failure to fulfill any obligations to us, any of our Affiliates, or to Cardmembers, including attorneys' fees and our cost of handling Disputed Charges.

d. **Other Protections.** We may take other reasonable actions to protect our rights and rights of any of our Affiliates, including changing the speed or method of payment for Charges, exercising Chargeback under any of our Chargeback programs, or charging you fees for Disputed Charges.

e. **Providing Information.** You must provide to us promptly, upon request, information about you and your Affiliates' finances, creditworthiness, and operations, including the most recent certified financial statements. You must notify us immediately of the occurrence of any event described in Section 3.b.viii of the General Provisions.

## 4. NOTICES

a. **Delivery and Receipt.** Unless otherwise explicitly provided for herein, all notices hereunder must be in writing and sent by hand delivery; or by U.S. postal service, such as first class mail or third class mail, postage prepaid; or by expedited mail courier service; or by electronic mail (e-mail); or by facsimile transmission, to the addresses set out below. Notices are deemed received and effective as follows: If hand-delivered, upon delivery; if sent by e-mail or facsimile transmission, upon sending; if mailed, upon the earlier of (i) receipt or (ii) three days after being deposited in the mail if mailed by first class postage or ten days after being deposited in the mail if mailed by third class postage. If the addressee provided for below rejects or otherwise refuses to accept the notice, or if the notice cannot be delivered because of a change in address for which no notice was appropriately given, then notice is effective upon the rejection, refusal or inability to deliver.

b. **Our Notice Address.** Unless we notify you otherwise, you shall send notices to us, through our agent, at: American Express Travel Related Services Company, Inc. c/o

National Processing Company  
5100 Interchange Way  
Louisville, Kentucky 40229

c. **Your Notice Address.** Our agent shall send notice to you at the address, e-mail address, or facsimile number you indicated on your application to accept the Card. You must notify our agent immediately of any change in your notice address.

## 5. INDEMNIFICATION AND LIMITATION OF LIABILITY

a. **Indemnity.** You shall indemnify, defend, and hold harmless us and our Affiliates, agents, successors, assigns, and third party licensees, from and against all damages, liabilities, losses, costs, and expenses, including legal fees, arising or alleged to have arisen from your breach, negligent or wrongful act or omission, failure to

perform under the Agreement, or failure in the provision of your goods or services.

b. **Limitation of Liability.** IN NO EVENT SHALL WE OR OUR AFFILIATES, AGENTS, SUCCESSORS, OR ASSIGNS BE LIABLE TO YOU FOR ANY INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, FRAUD, OR OTHERWISE, OR STATUTES, REGULATIONS, OR ANY OTHER THEORY) ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, EVEN IF ADVISED OF SUCH POTENTIAL DAMAGES. NEITHER YOU NOR WE (AND OUR AGENT) WILL BE RESPONSIBLE TO THE OTHER FOR DAMAGES ARISING FROM DELAYS OR PROBLEMS CAUSED BY TELECOMMUNICATIONS CARRIERS OR THE BANKING SYSTEM, EXCEPT THAT OUR (AND OUR AGENT'S) RIGHTS TO CREATE RESERVES AND EXERCISE CHARGEBACKS WILL NOT BE IMPAIRED BY SUCH EVENTS.

## 6. TERM AND TERMINATION

a. **Effective Date/Termination Date.** The Agreement begins as of the date (i) you first accept the Card after receipt of the Agreement or otherwise indicate your intention to be bound by the Agreement or (ii) we approve your application to accept the Card, whichever occurs first. Either party can terminate the Agreement without cause (and notwithstanding any other rights established under the Agreement) at any time by notifying the other party. Termination will take effect according to the notice period specified in section 4.a of the General Provisions.

b. **Grounds for Termination.** In addition to our rights in sections 3.c and 6.a. of the General Provisions, we may terminate the Agreement at any time without notice to you and without waiving our other rights and remedies if you have not submitted a Charge within any twelve month period. The Agreement is a contract to extend financial accommodations, and if bankruptcy or similar proceedings are filed with respect to your business, then the Agreement will terminate automatically.

c. **Post-Termination.** If the Agreement terminates, without waiving our other rights and remedies, we and our agent may withhold from you any payments until we have fully recovered all amounts owing to us and our Affiliates. If any amounts remain unpaid, then you and your successors and permitted assigns remain liable for such amounts and shall pay us within thirty days of our request. You must also remove all displays of our Marks, return our materials and equipment immediately, and submit to our agent any Charges and Credits incurred prior to termination.

d. **Effect of Termination.** Termination of the Agreement for any reason does not relieve the parties of their respective rights and duties arising prior to the effective date of termination that by their nature are intended to survive termination, including the provisions of sections 1, 3, 5, 6, 7, and 8 of these General Provisions, our Chargeback rights, and your duties set forth in the Merchant Regulations to protect Cardmember Information, indemnify us, retain documents evidencing Transactions, and notify your Recurring Billing customers of such termination. Our and our agent's right of direct access to the Bank Account will also survive until such time as all credits and debits permitted by the Agreement, and relating to Transactions prior to the effective date of termination, have been made.

## 7. DISPUTE RESOLUTION

a. **Arbitration Rights.** All Claims shall be resolved, upon your or our election, through arbitration pursuant to this section 7 rather than by litigation.

b. **Arbitration Rules/Organizations.** The party asserting the Claim shall select one of the following arbitration organizations, which shall apply its rules in effect at the time the Claim is filed. In the event of an inconsistency between this section 7 and any rule or procedure of the arbitration organization, this section 7 controls. The party asserting the Claim shall simultaneously notify the other party of its selection. If our selection is not acceptable to you, then you may select another of the following organizations within thirty days after you receive notice of our initial selection. Any arbitration hearing that you attend shall take place in the federal judicial district where your headquarters is located.

- National Arbitration Forum (NAF): P.O. Box 50191, Minneapolis, MN 55404-0191; (800) 474-2371; [www.adrforum.com](http://www.adrforum.com)
- American Arbitration Association (AAA): 1633 Broadway, New York, NY 10019; (800) 778-7879; [www.adr.org](http://www.adr.org)
- JAMS (JAMS): 1920 Main Street, Suite 300, Irvine CA 92614; (949) 224-1810; [www.jamsadr.com](http://www.jamsadr.com)

In addition to the arbitration organizations listed above, Claims may be referred to any other arbitration organization that is mutually agreed upon in writing by you and us, or to an arbitration organization or arbitrators appointed pursuant to section of the Federal Arbitration Act, 9 U.S.C. § 16 et seq. (FAA) provided that the arbitration organization and arbitrators enforce the terms of sections 7.c and 7.d below.

c. **Limitation of Rights.** IF ARBITRATION IS CHOSEN BY A PARTY WITH RESPECT TO A CLAIM, NEITHER YOU NOR WE SHALL HAVE THE RIGHT TO LITIGATE THAT CLAIM IN COURT OR HAVE A JURY TRIAL ON THAT CLAIM, OR TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE RULES OR PROCEDURES OF NAF, AAA, OR JAMS, AS APPLICABLE. FURTHER, YOU SHALL NOT HAVE THE RIGHT TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IN COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION. NOTWITHSTANDING ANY OTHER PROVISION IN THE AGREEMENT AND WITHOUT WAIVING EITHER PARTY'S RIGHT TO APPEAL SUCH DECISION, IF ANY PORTION OF THIS SECTION 7.c OR OF SECTION 7.d BELOW IS DEEMED INVALID OR UNENFORCEABLE, THEN THIS ENTIRE SECTION 7 (OTHER THAN THIS SENTENCE) SHALL NOT APPLY.

d. **Individually Named Parties Only.** All parties to the arbitration must be individually named. There is no right or authority for any Claims to be arbitrated or litigated on a class-action or consolidated basis, on behalf of the general public or other parties, or joined or consolidated with claims of other parties, and you and we are specifically barred from doing so. This prohibition is intended to, and does, preclude your from participating in any action by any trade association or other organization against us. The arbitrator's authority to resolve Claims is limited to Claims between you and us alone, and the arbitrator's authority to make awards is limited to awards to you and us alone.

e. **Application of Provision.** For the avoidance of any confusion, and not to limit its scope, this section 7 applies to any putative class action lawsuit that has been filed against us prior to the effective date of the Agreement relating to the "Honor All Cards," "non-discrimination," or "no steering" provisions of the Agreement as described in sections 1 and 2 of these General Provisions and Chapter 3 (Card Acceptance) of the Merchant Regulations, or prior versions of a Card acceptance agreement.

f. **Equitable Relief.** The arbitrator shall have the power and authority to grant equitable relief (e.g., injunction, specific performance) and, cumulative with all other remedies, shall grant specific performance whenever possible. The arbitrator shall have no power or authority to alter the Agreement or any of its separate provisions, including this section 7, nor to determine any matter or make any award except as provided in this section 7.

g. **Small-Claims Court; Injunctive Relief.** We shall not elect to use arbitration under this section for any individual Claim that you properly file in a small claims court so long as the Claim is pending only in that court. Injunctive relief sought to enforce the provisions of sections 8.a and 8.b of these General Provisions is not subject to the requirements of this section 7. This section 7 is not intended to, and does not, substitute for our ordinary business practices, policies, and procedures, including our rights to Chargeback and to create Reserves.

h. **Governing Law/Appeal/Entry of Judgment.** This section 7 is made pursuant to a transaction involving interstate commerce and is governed by the FAA. The arbitrator shall apply New York law and applicable statutes of limitations, honor claims of privilege recognized by law and, at the timely request of either party, provide a written and reasoned opinion explaining his or her decision. The arbitrator shall apply the rules of the arbitration organization selected, as applicable to matters relating to evidence and discovery, not the federal or any state rules of civil procedure or rules of evidence. The arbitrator's decision shall be final and binding, except for any rights of appeal provided by the FAA or if the amount of the award exceeds US \$100,000, in which case either party can appeal that award to a three-arbitrator panel administered by NAF, AAA, or JAMS as applicable, which shall reconsider de novo any aspect of the initial award requested by majority vote and whose decision shall be final and binding. The decision of that three-person panel may be appealed as provided by the FAA. The costs of such an appeal shall be borne by the appellant regardless of the outcome of the appeal. Judgment upon the award rendered by the arbitrator may be entered in any state or federal court in the federal judicial district where your headquarters or your assets are located.

i. **Confidential Proceedings.** The arbitration proceeding and all testimony, filings, documents, and any information relating to or presented during the proceedings shall be deemed to be confidential information not to be disclosed to any other party. All offers, promises, conduct, and statements, whether written or oral, made in the course of the negotiations, arbitrations, and proceedings to confirm arbitration awards by either party, its agents, employees, experts or attorneys, or by the arbitrator, including any arbitration award or judgment related thereto, are confidential, privileged, and inadmissible for any purpose, including impeachment or estoppel, in any other litigation or proceeding involving any of the parties or non-parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation or arbitration.



j. **Split Proceedings for Equitable Relief.** Either you or we may seek equitable relief in arbitration prior to arbitration on the merits to preserve the status quo pending completion of such process. This section shall be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, including legal fees, to be paid by the party against whom enforcement is ordered. Except as otherwise provided in section 7.c. above, if any portion of this section 7 (other than section 7.c. or d.) is deemed invalid or unenforceable, it shall not invalidate the remaining portions of this section 7, the Agreement, or any predecessor agreement you may have had with us, each of which shall be enforceable regardless of such invalidity.

k. **Costs of Arbitration Proceedings.** You will be responsible of paying your share, if any, of the arbitration fees (including filing, administrative, hearing and/or other fees) provided by the Arbitration Rules, to the extent such fees do not exceed the amount of the filing fees you would have incurred if the Claim had been brought in a state or federal court that would have jurisdiction over the Claim located in the federal judicial district where your headquarters is located. We will be responsible for paying the remainder of any arbitration fees. At your written request, we will consider in good faith making a temporary advance of all or part of your share of the arbitration fees for any Claim you initiate as to which you or we seek arbitration. You will not be assessed any arbitration fees in excess of your share if you do not prevail in any arbitration with us.

## 8. MISCELLANEOUS

a. **Confidentiality.** You must keep confidential and not disclose to any third party the provisions of the Agreement and any information that you receive from us that is not publicly available.

b. **Proprietary Rights and Permitted Uses.** Neither party has any rights in the other party's Marks, except as otherwise expressly specified in the Merchant Regulations, nor shall one party use the other party's Marks without its prior written consent, except that we may use your name, address (including your website addresses or URLs), and customer service telephone numbers in any media at any time.

c. **Your Representations and Warranties.** You represent and warrant to us that: (i) you are duly organized, validly existing, and in good standing under the laws of the jurisdiction in which you are organized; (ii) you are duly qualified and licensed to do business in all jurisdictions in which you conduct business; (iii) you have full authority to enter into the Agreement and all necessary assets and liquidity to perform your obligations and pay your debts hereunder as they become due; (iv) there is no circumstance threatened or pending that might have a material adverse effect on your business or your ability to perform your obligations or pay your debts hereunder; (v) you are authorized to enter into the Agreement on behalf of your Establishments and Affiliates, including those indicated in the Agreement, and the individual who signs the Agreement or otherwise enters into it has authority to bind you and them to it; (vi) you are not (1) listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at [www.treas.gov/ofac](http://www.treas.gov/ofac)), (2) listed on the U.S. Department of State's Terrorist Exclusion List (available at [www.state.gov](http://www.state.gov)), or (3) located in or operating under license issued by a jurisdiction identified by the U.S. Department of State as a sponsor of international terrorism, by the U.S. Secretary of the Treasury as warranting special measures due to money laundering concerns, or as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member; (vii) you have not assigned to any third party any payments due to you under the Agreement and all indebtedness arising from Charges are for bona fide sales of goods or services (or both) at your Establishments and free of any liens, claims, or encumbrances other than ordinary sales taxes; (viii) all information that you provided in connection with the Agreement is true, accurate, and complete; and (ix) you have read the Agreement and kept a copy for your file. If any of your representations or warranties in the Agreement becomes untrue, inaccurate, or incomplete at any time, we may immediately terminate the Agreement in our discretion.

d. **Compliance with Laws.** You shall comply with all applicable laws, and government regulations and rules.

e. **Governing Law; Jurisdiction; Venue.** The Agreement and all Claims are governed by and shall be construed and enforced according to the laws of the State of New York without regard to internal principles of conflicts of law. Notwithstanding the immediately preceding sentence, the parties agree that an electronic transmission contemplated hereunder is being provided in connection with a transaction affecting interstate commerce that is subject to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §1700 et seq. (E-Sign Act). The parties intend that the E-Sign Act apply to the fullest extent possible to validate their ability to electronically transmit and electronically commit to be bound by the obligations and form assent described in the Merchant Regulations and releases of scheduled changes therein. Subject to section 7, any action by either party hereunder shall be brought only in the appropriate federal or state court located in the County and State of New York. Each party consent to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

f. **Interpretation.** In construing the Agreement, unless the context requires otherwise: (i) the singular includes the plural and vice versa; (ii) the term "or" is not exclusive; (iii) the term "including" means "including, but not limited to;" (iv) the term "day" means "calendar day;" (v) all amounts are stated in U.S. dollars; (vi) any reference to any agreement (including the Agreement), instrument, contract, policy, procedure, or other document refers to it as amended, supplemented, modified, suspended, replaced, restated, or novated from time to time; (vii) any reference to a website or URL (or both) refers to its successor website or URL; (viii) all captions, headings, and similar terms are for reference only; and (ix) where specific language is used to illustrate by example or clarify a general statement, such specific language shall not be interpreted to modify, limit, or restrict the construction of the general statement. To the extent possible, these General Provisions, the provisions of Schedule A, and the provisions of the Merchant Regulations shall be interpreted to give each their full effect. However, if a conflict is deemed to exist between them, then that conflict shall be resolved in the following order of precedence: Schedule A and any accompanying exhibits shall control over these General Provisions or the Merchant Regulations (or both) and the Merchant Regulations shall control over these General Provisions.

g. **Assignment.** You shall not assign the Agreement, or any of your rights, interests, or obligations hereunder, whether voluntarily or by operation of law (including by way of sale of assets, merger, or consolidation), without our prior written consent. Any purported assignment by operation of law is voidable in our sole discretion. We may assign the Agreement, or any of our rights, interests, or obligations hereunder, without your consent. Except as otherwise specified herein, the Agreement binds, and inures to the benefit of, the parties and their respective successors and permitted assigns.

h. **Waiver; Cumulative Rights.** Either party's failure to exercise any of its rights under the Agreement, its delay in enforcing any right, or its waiver of its rights on any occasion, shall not constitute a waiver of such rights on any other occasion. No course of dealing by either party in exercising any of its rights shall constitute a waiver thereof. No waiver of any provision of the Agreement shall be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced. All rights and remedies of the parties are cumulative, not alternative.

i. **Savings Clause.** Other than as set forth in the last sentence of section 7.c of these General Provisions, if any provision of the Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, that provision shall be replaced by an enforceable provision most closely reflecting the parties' intentions, with the balance of the Agreement remaining unaffected.

j. **Amendments.** We reserve the right to change the Agreement at any time (including by amending any of its provisions, adding new provisions, or deleting or modifying existing provisions) on at least ten days' prior notice to you, provided that we shall change the Merchant Regulations pursuant to the following provisions. You agree to accept all changes (and further to abide by the changed provisions in the Merchant Regulations) as a condition of your agreement to accept the Card. We are not bound by any changes that you propose in the Agreement, unless we expressly agree in a writing signed by our authorized representative. An e-mail does not constitute such a signed writing.

- (1) **Scheduled Changes.** The Merchant Regulations are published twice each year, in April and October. We have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in scheduled releases (sometimes called "Notification of Changes" in our materials) as follows:
  - a release of scheduled changes, to be published every April, which changes shall take effect in the following October (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations, and
  - a release of scheduled changes, to be published every October, which changes shall take effect in the following April (or in a later) edition of the Merchant Regulations or during the period between two editions of the Merchant Regulations.

Where a change is to take effect during the period between two editions of the Merchant Regulations, we shall also include the change in the edition of the Merchant Regulations covering the period during which the change shall take effect, noting the effective date of the change therein.

- (2) **Unscheduled Changes.** We also have the right to, and hereby notify you that we may, change the provisions of the Merchant Regulations in separate unscheduled releases, which generally shall take effect ten days after notice to you (unless another effective date is specified in the notice).

k. **Entire Agreement.** The Agreement is the complete and exclusive expression of the agreement between you and us regarding the subject matter hereof and

supersedes any prior or contemporaneous agreements, understandings, or courses of dealing regarding the subject matter hereof.

l. **Disclaimer of Warranties.** WE DO NOT MAKE AND HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, AND LIABILITIES, WHETHER EXPRESS, IMPLIED, OR ARISING BY LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF TITLE OR NON-INFRINGEMENT.

m. **No Third-Party Beneficiaries.** The Agreement does not and is not intended to confer any rights or benefits on any person that is not a party hereto and none of the provisions of the Agreement shall be enforceable by any person other than the parties hereto, their successors and permitted assigns.

n. **Press Releases.** You shall not issue any press release or make any public announcement (or both) in respect of the Agreement or us without our prior written consent.

o. **Independent Contractors.** You and we are independent contractors. No agency, partnership, joint-venture, or employment relationship is created between the parties by the Agreement. Each party is solely responsible for its own acts and omissions and those of its respective agents, employees, representatives, and subcontractors in connection with the Agreement.

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

By:

Kim C. Goodman  
President  
Merchant Services, Americas



**Schedule A to Exhibit B**  
**Other Important Provisions for Card Acceptance American Express OnePoint® Program**

**1. OVERVIEW OF AMERICAN EXPRESS ONE POINT PROGRAM**

- a **Eligibility; Transition to Our Standard Card Acceptance Program.** Our American Express one point Program provides integrated Card acceptance services to eligible Entities through our agents, including National Processing Company. If you do not qualify for this program, you may be enrolled in our standard American Express Card acceptance program, which has different servicing terms (e.g., different speeds of payment); you may terminate the Agreement if you do not wish to be enrolled. If you become ineligible for our American Express OnePoint Program, we will transition you to our standard American Express Card acceptance program upon forty-five day's prior notice, unless you opt-out of that transition by notifying our agent in writing no later than fifteen days prior to the effective date of transition.
- b **Program Services.** We may perform our obligations and exercise our rights under the Agreement directly or through our agents. Since we are acting through our agent in many instances under the Agreement, the terms "we," "our," or "us" also may refer to our agent above, as the context requires. Please direct all inquiries and notices under the American Express OnePoint Program to our agent:

National Processing Company  
5100 Interchange Way  
Louisville, KY 40229  
1-888-208-7231

- c **Merchant Regulations.** The Merchant Regulations set forth the policies and procedures of our standard American Express Card acceptance program. The provisions of this Schedule A describe the different terms that apply to you under the American Express OnePoint Program and take precedence over the corresponding provisions of the Merchant Regulations. For example, since Entities classified in certain industries do not qualify for, or certain fees or assessments do not apply in, the American Express OnePoint Program, references in the Merchant Regulations to those industries, fees or assessments may not apply to you. Please contact our agent for a copy of the Merchant Regulations and with any questions about its application under the program.

**2. DOING BUSINESS WITH AMERICAN EXPRESS**

- a **Certain American Express Terms Not Applicable.** Our Online Merchant Services, the terms applicable to Corporate Purchasing Cards, and our Monthly Flat Fee option are not available to you under the American Express OnePoint Program. During your participation in the program, you are not required to configure your systems to communicate directly with oursystems and you must not provide Payment Services or otherwise act as a Payment Service Provider.
- b **Merchant Number; Your Merchant Information.** Under the American Express OnePoint Program, you will not receive a standard American Express Merchant Number. Our agent will instead assign a unique OnePoint Program "merchant" or "account" number to your Establishment; if you have more than one Establishment (or a sales channel for Internet Orders), it may assign to each a separate number. You will need that number each time you call our agent under the American Express OnePoint Program. (If you are enrolled in or transition to our standard Card acceptance program, we (not our agent) will assign you a standard American Express Merchant Number.) You must notify our agent of any changes in your business and banking information and any closings of your Establishments. Our agent may verify and disclose information about you, including by requesting reports about you and the person signing your application to accept the Card.

**3. AUTHORIZATION**

During your participation in the American Express OnePoint Program, you must initiate an Authorization for each Charge according to the Authorization procedures of our agent and contact our agent about all Authorization responses. You must obtain from and submit to our agent an Authorization Approval code for all Charges. Authorization does not guarantee that we or our agent will accept the Charge without exercising Chargeback, nor is it a guarantee that the person making the Charge is the Cardmember or that you will be paid.

**4. SUBMISSION**

During your participation in the American Express OnePoint Program, you must submit Charges and Credits electronically to our agent according to its Submission procedures under the OnePoint Program "merchant" or "account" number of the Establishment where the Charge or Credit originated. You must not submit Charges and Credits on paper.

**5. SETTLEMENT**

- a **Settlement Amount.** Our agent will pay you according to your payment plan, as described below, in U.S. dollars for the face amount of Charges submitted from your Establishments less all applicable deductions, rejections, and withholdings, which include: (i) the Discount, (ii) any amounts you owe us or our Affiliates, (iii) any amounts for which we have Chargebacks, and (iv) any Credits you submit. Our agent will subtract the full amount of all applicable deductions, rejections, and withholdings, from this payment to you (or debit your Bank Account), but if it cannot, then you must pay it promptly upon demand.
- b **Discount.** Your initial Discount and other fees and assessments are indicated in the Agreement or otherwise provided to you in writing by our agent. We or our agent may adjust any of these amounts and may change any other amount charged to you for accepting the Card. We or our agent may charge you different Discount Rates for Charges submitted by your Establishments that are in different industries. We or our agent will notify you of such fees, such adjustments and charges, and assessments and any different Discount Rates or Transactions fees that apply to you.
- c **Payment Plan.** During your participation in the American Express OnePoint Program, the terms of your payment plan (e.g., speed of payment, payment and reconciliation options) with our agent govern settlement payments to you. Our agent will send payments for Charges from your Establishments according to your payment plan to your Bank Account that you designate to it. You must notify your bank that we, through our agent, will have access to your account for debiting and crediting the Bank Account.

**6. PROTECTING CARDMEMBER INFORMATION**

You must notify our agent immediately if you know or suspect that Cardmember Information has been accessed or used without authorization or used other than in accordance with the Agreement. You must promptly provide to us and our agent all Card Numbers related to the data incident and audit reports of the data incident, and you must work with us and our agent to rectify any issues arising from the data incident, as specified in the Merchant Regulations.

**7. RISK EVALUATION**

- a **Prohibited/High Risk Merchants and Activities.** Entities classified in certain industries or accepting Transactions for certain prohibited activities do not qualify for the American Express OnePoint Program, but may qualify for our standard American Express Card acceptance program. Please contact our agent with any questions about those risk evaluation procedures under the program.
- b **Protective Actions.** Our agent may take actions to protect our rights or those of any of our Affiliates by events identified by our agent and may include requiring you to deposit funds or other collateral with us or our agent, changing the speed of payment for Charges, exercising Chargeback under any of our Chargeback programs, and charging you fees for Disputed charges. Our agent may establish the Reserve; increase the Reserve from time to time; make deductions and withhold from, and recoup and set-off against the Reserve any amounts owed under the Agreement; and terminate the Agreement on our behalf. Our agent will inform you if a Reserve is established. You must provide to our agent promptly, upon request, information about your finances, creditworthiness, and operations, including your most recent certified financial statements. You must notify our Agent immediately of the occurrence of any event described in Section 3.b.vii of the General Provisions.

**8. INQUIRIES AND CHARGEBACKS**

During your participation in the American Express OnePoint Program, our agent's procedures for Inquiries, Disputed Charges, and Chargebacks govern the Disputed Charge process, provided that nothing therein waives our Chargeback rights under the Agreement. Our agent may Chargeback by deducting, withholding, recouping from, or setting-off against our payments to you (or debiting your Account), or our agent may notify you of your obligation to pay us (through our agent), which you must do promptly and fully. Our or our agent's failure to demand payment does not waive our Chargeback rights.

**SCHEDULE I**  
Service Packages

**Member Bank is not a party to or liable for the Service Packages. If you elect to receive the Service Package or Gold Service Package on the Merchant Application, the following terms and conditions shall apply:**

**Service Package**

With the purchase of this service package, you will enjoy the convenience of receiving all your paper and ribbon supplies, at no additional cost. NPC supplies printer receipt paper and sales draft paper for the bankcard processing equipment that it supports.

To order paper and ribbon supplies, simply call NPC's toll-free merchant support number at 800-683-2289. Orders placed in the morning of any business day are normally shipped out that afternoon.

**Gold Service Package**

With the purchase of this service package, you will enjoy the convenience of receiving equipment replacement and paper supplies, at no additional cost.

NPC realizes how important it is that your equipment works properly. Our goal is to get your terminal up and running as soon as possible. That's why, with the Gold Service Package, you receive a warranty good for broken or defective credit card terminals and/or electronic printers as long as you process with NPC.

To request a replacement, simply call NPC's Technical Support Department at 800-683-2289 to report any problem. This department is open 24-hours a day, seven days a week and will answer all of your questions. NPC realizes that you need the equipment promptly, and that's why orders placed in the morning of any business day are normally shipped out that afternoon.

**NPC Warranty Terms:**

- 1) Replacement of equipment rendered inoperable due to neglect, careless handling or electrical damage, and equipment rendered obsolete are not covered under the above program.
- 2) A \$600.00 per piece fee for terminals and printers, \$350.00 for PIN Entry Devices, and \$1,200.00 for wireless terminals will be incurred if non-functional equipment is not returned within 15 days of receiving replacement equipment. If equipment is returned after this fee is assessed, a \$125.00 restocking fee will be offset to any refund request. In addition, a \$25.00 processing fee will be charged. Return freight charges will also apply.
- 3) If a Merchant does not purchase new equipment when transferring processing to NPC, there is a 60 day qualifying period for use of the equipment replacement portion of this service package.



## SCHEDULE II Check/ACH Services

Global e-Telecom, Inc. or a successor service provider as agreed upon by NPC shall be the Service Provider for all check/ACH services, except for Check Recovery Services.

### CONVERSION WITH OR WITHOUT GUARANTEE SERVICE AGREEMENT

#### TERMS AND CONDITIONS

This Agreement (the "Agreement") is entered into by and between E Telecom, Inc., d/b/a Global eTelecom, Inc., a Florida corporation ("GETI") and the undersigned ("Merchant").

#### DEFINITIONS

"ACH" means the Automated Clearing House.

"Application" means the Application executed NPC and Merchant.

"Conversion with Guarantee" means that GETI, subject to the limitations set forth in this Agreement and subject to Merchant's compliance with the terms and conditions of this Agreement, will provide Conversion and Verification services and will Guarantee reimbursement of losses sustained by Merchant in accepting checks for electronic processing. In addition to the provisions set forth in this Agreement and notwithstanding any provisions to the contrary, GETI has established a per check guarantee limit ("Guarantee Limit"), which is set forth in the Welcome Letter. Each month Merchant shall have access to an itemized summary of electronic check deposits. GETI shall process up to the Guarantee Limit established for Merchant, but will not be responsible for reimbursement of checks exceeding the Merchant's approved Guarantee Limit. Conversion with Guarantee shall cover, subject to the Guarantee Limit, Merchant losses due to: (1) Insufficient Funds, (2) Account Closed, (3) No Account/Unable to Locate Account, (4) Invalid Account Number, (5) Uncollected Funds, (6) Customer Advises Not Authorized/Item is Ineligible, Notice Not Provided, Signatures Not Genuine, or Item Altered, (7) File Record Edit Criteria, (8) Non-Transaction Account, (9) Corporate Customer Advises Not Authorized, (10) Branch sold to another DFI, (11) account holder deceased and (12) beneficiary deceased.

"Conversion" or "Conversion without Guarantee" means that once the dollar amount of the sale has been calculated, the cashier feeds the consumer's check in a Magnetic Ink Character Recognition (MICR) reader. The cashier is then prompted by the attached POS device to enter the check amount, including cash back if applicable. The POS terminal connects to GETI's host network. GETI then creates a transaction file to be delivered to the ACH, debiting the customer's bank account electronically and crediting the Merchant's account. Each day, GETI shall create a transaction file for settlement through the ACH. Merchant shall be funded within 72 hours of the time of confirmed batchout. GETI is given notification, under NACHA rules, within 72 hours on returned items. GETI shall re-submit NSF items electronically.

"Electronic Check Debit Entry" means an electronic entry to the record of an account to represent the transfer or removal of funds from the account.

"Entries" or "Entry" means an electronic item representing the transfer of funds in the ACH.

"Equipment" shall have the meaning set forth in Section 6 of this Agreement.

"Guarantee" shall mean payment to the Merchant for checks that have been returned.

"GETI Services" means the services the Merchant has elected to purchase from GETI in the Application.

"MICR" means the magnetic ink character recognition inscription at the bottom of a paper check.

"NACHA Rules" means the rules, industry standards and procedures governing the exchange of commercial ACH payments by depository financial institutions promulgated by the National Automated Clearing House Association.

"POS" means a point-of-sale debit entry initiated at an electronic terminal to affect a transfer of funds.

"NPC" means National Processing Company.

"Transaction Fee" means the transaction fee set forth in the Application.

"Verification" means a service accessing customer and/or account databases through a point of sale system and/or by phone to verify or authorize that the check writer and/or checking account information is valid and/or in good standing.

Unless otherwise defined herein, capitalized terms shall have the meanings provided in the NACHA Rules

#### TERMS AND CONDITIONS

**1. GETI's Obligations.** GETI hereby agrees to provide the GETI Services selected by Merchant on the Application, subject to the terms and conditions of this Agreement.

**1.1 24 Hour Service.** GETI will accept entries via check reader hardware on a 24-hour per day basis. GETI is only responsible for processing entries that have arrived at its premises in a proper format and on a timely basis. GETI will use information provided by Merchant to originate its entries in the ACH. Merchant understands and agrees that GETI may reject Merchant's entries for any reason permitted in this Agreement and/or if acceptance of such entry would cause GETI to potentially violate any federal, state or local law, rule statute, or regulation, including without limitation any Federal Reserve or other regulatory risk control program. At Merchant's written request, GETI will make reasonable efforts to reverse or delete an entry, but will under no circumstance be liable for the failure to comply with such request.

**1.2 Customer Service.** GETI shall provide, at no additional expense to Merchant, toll-free call-back telephone customer support Monday through Friday between the hours of 8:00 am and 7:00pm Central Standard or Central Daylight Savings time, as applicable. That support shall be provided by trained customer service representatives of GETI.

**1.3 Monthly Statement.** By the 12th day of the following month, GETI will send Merchant a statement reflecting the transactions with GETI during the prior month. Such statement shall be in the same form as the standard statement that GETI provides to its other customers.

**2. Merchant's Obligations.** As a condition precedent to GETI being obligated to perform the GETI Services, the Merchant shall be obligated to:

**2.1 Exclusive Relationship with GETI.** While this Agreement is in effect, Merchant agrees to process all of its check processing transactions through GETI.

**2.2 Merchant's Public Disclosure Responsibilities.** GETI shall provide signage to be displayed at the POS, which informs customers of the Merchant's use of the GETI Services. Merchant agrees to display these materials in the best visible and unobstructed location so as to inform the public that Merchant will, if this service has been selected, honor electronic check processing service by GETI. From time to time, GETI may design educational and promotional materials and send such to Merchant for Merchant to distribute to customers. Merchant further agrees to immediately remove and properly dispose of GETI's stale promotional materials and to display the most current materials upon receipt of such from GETI. Merchant will discontinue the use of all of GETI's promotional materials and properly remove said materials upon receipt of written notification of suspension or termination of this Agreement. In the event of suspension, Merchant shall redisplay appropriate materials upon receipt of written verification of resumption of service by GETI. In the event of termination, Merchant shall immediately discard all promotional materials related to GETI services at Merchant's expense.

**2.3 Restrictions On Use Of Promotional Materials And Representations Concerning GETI's Services.** Merchant shall make no use of GETI's promotional materials or marks, other than as set forth in paragraph 2.2 above, without GETI's prior written consent. In no way shall the Merchant indicate that GETI's services are an endorsement of the Merchant, its business or its business practices.

**2.4 Requirements For Processing Electronic Checks.** Merchant shall comply with the following conditions when processing electronic checks and agrees to complete all transactions in accordance with the provisions of this Agreement and such rules of operation as may be established by GETI from time to time. Merchant shall accept only the following checks as source documents to initiate ACH debit entries through GETI: (a) All demand deposit account checks must be drawn on or payable through a federally insured depository financial institution and be machine-readable MICR-encoded with the bank routing number, account number and check serial number printed on the check; (b) Merchant shall obtain proper identification from the customer so as to verify that the customer is authorized to negotiate the check before submitting the check to GETI for authorization; (c) Merchant shall obtain a customer authorization in the form of a signed sales receipt for each check transaction submitted for electronic processing ("Electronic Check Authorization Receipt"); (d) Merchant shall scan each check through its POS terminal to initiate electronic processing and Merchant shall use an electronic printer connected to a POS terminal to generate and print all electronic check sales receipts; (e) All items, goods and services purchased in a single transaction shall be included in the total amount on a single sales receipt; (f) At the time Merchant initiates authorization with GETI, Merchant warrants that the person presenting the check has been properly identified; (g) Following GETI's authorization of the transaction, Merchant shall ensure that the customer that presented the check signs the receipt and legibly prints his/her correct full name and telephone number by hand. Merchant shall also ensure that the sales receipt contains the following correct information: (w) the customer's bank account number and the check number from the MICR data; (x) Merchant's name and business address; (y) the date of the transaction; and (z) the total cash price of the sale (including all applicable state, federal or local surcharges and taxes) or the amount to be charged if a partial payment is made in cash or by credit card or the amount to be charged as the remaining balance owing after the deposit has been made. After customer signs the receipt, Merchant shall deliver to the person presenting the check a true and completed copy of the sales receipt. No check may be altered after GETI authorizes acceptance of the check. Merchant may not resubmit a check electronically or deposit it by any means, once GETI authorizes a transaction. Merchant shall also write (i) the authorization number from the transaction on the face of the check for each transaction and (ii) the current phone number of the customer on the face of the check. Failure to comply with the above requirements will, in addition to other penalties (such as but not limited to loss of Guarantee for all transactions), subject Merchant to chargebacks or withholding of funds and may be grounds for immediate suspension/termination of services and indemnification of GETI by Merchant pursuant to this Agreement. YOU UNDERSTAND THAT IT IS A FEDERAL VIOLATION TO PROCESS DEBIT REQUESTS AGAINST A CONSUMER BANK ACCOUNT WITHOUT THE ELECTRONIC CHECK WRITER'S EXPRESSED AUTHORITY. YOU HEREBY ACKNOWLEDGE RECEIPT OF PROPER NOTICE THAT THE USE OF ANY COUNTERFEIT, FICTITIOUS, LOST, STOLEN, OR FRAUDULENTLY OBTAINED DEBIT INSTRUMENT TO UNLAWFULLY INITIATE A DEBIT TRANSACTION IS PUNISHABLE BY A MAXIMUM OF A \$10,000 FINE, IMPRISONMENT FOR A TERM OF TEN YEARS, OR BOTH. IT IS SPECIFICALLY UNDERSTOOD BY YOU THAT ANY TRANSACTION EVENT INITIATED AS AN UNAUTHORIZED MANUAL ENTRY OR DEPOSIT BY YOU AFTER YOU HAVE RECEIVED APPROVAL FOR ELECTRONIC DEPOSIT OF CHECK (S) OR IS INTENDED FOR ELECTRONIC DEPOSIT SHALL BE INTERPRETED AS AN UNLAWFUL DEBIT TRANSACTION PURSUANT TO THIS NOTICE. IN THE EVENT OF SUCH A VIOLATION, MERCHANT AGREES AND WARRANTS TO HOLD GETI AND ALL OF ITS ASSIGNS AND ASSOCIATES HARMLESS AND REIMBURSE GETI FOR THE TRANSACTION(S) WITHIN 24 HOURS OF SAID OCCURRENCE. IF MERCHANT REFUSES OR IS UNABLE TO REIMBURSE GETI FOR ANY SUCH OCCURRENCE, IT IS EXPRESSLY STATED AND UNDERSTOOD THAT THE MERCHANT IS IN DIRECT VIOLATION OF THIS AGREEMENT AND FEDERAL LAW, AND GETI WILL PURSUE ALL LEGAL, CIVIL, AND COLLECTION REMEDIES AS ARE POSSIBLE UNDER LAW AS REMEDY.

**2.5 Customer's Authorization Initiates Debit Entry.** Merchant acknowledges that the customer's authorization allows Merchant to instruct GETI to initiate an Entry for Merchant against customer. It further permits GETI to reinitiate an Entry where the original Entry is returned and to assess a collection fee against customer. Any collection fees received by GETI in collecting returned checks shall be the sole property of GETI. GETI shall present the Entry no more than three times. GETI, for those Merchants who do not have Conversion with Guarantee service, shall be entitled to assess a transaction fee as set forth in the Application against Merchant for each re-presentation. If a check is returned unpaid after the third presentation, GETI shall be entitled to debit the Merchant's account for the amount of the check, if Merchant does not have the Conversion with Guarantee service.

**2.6 Unacceptable Transactions.** In addition to any other restrictions set forth in this Agreement, the following transactions are unacceptable for electronic processing, and Merchant agrees not to submit any of the following transactions to GETI for electronic processing: (a) Merchant shall not process any temporary checks or checks that do not have the customer's current name, address and phone number preprinted on its face, (b) Merchant shall not electronically process any checks drawn on the personal checking account of Merchant or any of its agents or employees, (c) Merchant shall not accept any third party items for electronic processing or checks made payable to "cash" or "bearer", (d) Merchant shall not accept a traveler's check, money order, payroll check, counter check or sight draft, (e) Merchant shall not submit for processing any transaction representing the financing of an existing obligation whether previously owed to Merchant, arising from the dishonor of a check or arising from a credit card, debit card or smart card dispute with the Merchant, (f) Merchant shall not submit a transaction for processing which represents an attempt to collect a chargeback, (g) Merchant shall not submit a check written for goods or services that are not concurrently provided to the customer, including any check given for a service contract, gift certificate, a layaway (except for the final payment) or for a similar transaction, or for goods or services provided to a third party, (h) Merchant shall not submit a check which contains erasures, or which is altered, unless the alteration is initiated by the customer at time of transaction, or for goods or services provided to a third party, (i) Merchant shall not submit a check which contains erasures, or which is altered, unless the alteration is initiated by the customer at time of presentation, (j) Merchant shall not knowingly submit a check on an account which GETI previously denied authorization. Merchant's submission of any of the above transactions for electronic processing may subject the Merchant to immediate suspension or termination, and all funds of Merchant, including those in Merchant's account, may be placed on hold. This will also remove the Guarantee coverage from all checks submitted by Merchant currently in the GETI system.

**2.7. Surcharges And Taxes.** Merchant shall not impose any surcharge on any electronically processed check transaction. Merchant shall collect all required taxes at time of sale. All required taxes must be included in the total transaction amount at the time such is submitted for authorization by GETI and must be reflected in the face amount of the check. In any event, Merchant shall not collect any required taxes separately in cash, or otherwise. Merchant is responsible for paying all taxes collected to the appropriate authorities in a timely manner.

**2.8. Confidentiality Of Customer Information.** Merchant further warrants and agrees that it shall not sell, purchase, provide, or exchange checking account information in the form of sales drafts, mailing lists, tapes, or any other media obtained by reason of a transaction or otherwise, to any third party other than to GETI, NPC or Merchant's agents approved by GETI for the purpose of assisting Merchant in its business to GETI, the financial institution named on the check, or pursuant to lawful government demand without the account holder's explicit written consent. All media containing checking account numbers must be stored in an area limited to selected personnel until discarded and must be destroyed prior to or in connection with discarding in a manner that will render the data unreadable. Merchant will not disclose and will keep confidential the terms and conditions of this Agreement.

**2.9. Changes In Merchant's Business.** Merchant will not transfer, sell, merge or liquidate its business or assets or otherwise transfer control of its business, change its ownership in any amount or respect, engage in any joint venture partnership or similar business arrangement, change its basic nature or method of business, types of products sold or engage in sales by phone or mail order without providing notice to GETI and providing GETI with the opportunity to terminate this Agreement.

**2.10. GETI's Right To Audit.** Merchant agrees to permit GETI to audit Merchant upon reasonable notice.

**2.11. Outstanding Amounts Due GETI.** Merchant agrees that any outstanding amount(s) owed to GETI shall be subject to a 1.5% finance charge monthly. Any outstanding sums will be sent to an outside collection agency and charged the maximum amount of civil, legal, and collection fees/charges as is allowed by law.

**2.12. Indemnification.** Merchant agrees to indemnify GETI for any cost, expense, damage, lost profit and/or attorneys' fees caused by any breach of its obligations or representations in this Agreement.

**3. Merchant's Authority To Enter Into This Agreement.** Merchant specifically warrants to GETI that Merchant has taken all necessary legal action and has authority to enter into this Agreement with GETI. It further warrants that the person(s) signing for and on behalf of Merchant is authorized to do so by Merchant. Merchant acknowledges that this Agreement constitutes the legal, valid and binding obligation of Merchant, enforceable in accordance with its terms.

**4. Check Collection.** Merchant authorizes GETI to represent all return items forwarded to GETI and to originate an electronic entry for the amount of any allowable recovery fee. Merchant agrees to complete a return item authorization form and forward it to Merchant's bank. GETI shall have sixty (60) days from the date of receipt of a return check item to complete their electronic re-presentation process. If this Agreement is terminated for any reason, GETI will retain the right to complete their electronic re-presentation process for all return check items forwarded to GETI prior to said termination.

**5. Restrictions On Acceptance Of Checks For Electronic Processing.** Merchant agrees to take reasonable security precautions to prevent the unauthorized use of the GETI Services by the Merchant, its employees, agents and customers. From time to time, GETI shall establish necessary security and identification procedures for presentation of checks for electronic processing pursuant to the NACHA Rules and applicable law. These procedures will include the use of identification numbers and passwords, which shall be assigned to Merchant and validated by GETI, in order to access the GETI Services from Merchant's terminal(s). Merchant agrees to comply with such procedures and to accept such "properly presented" checks for electronic processing. Merchant further agrees to inform GETI immediately of any changes in business activities, rules or regulations, which may affect the GETI Services. Merchant shall scan each check submitted for processing through no more than one POS terminal. Merchant agrees that sales completed at one location cannot be processed through a terminal at another location. In no event is Merchant allowed to process checks manually by keying in the MICR number.

**6. Equipment.** Merchant shall furnish each outlet, retail location, or business entity with a POS terminal, electronic printer and a check reader (collectively the "Equipment"). Merchant agrees to utilize only Equipment approved by GETI and that transmits information in a format and medium of transmission acceptable to GETI. GETI shall assign each Merchant's POS terminal an identification and password number. In connection with the GETI Services and the Equipment, Merchant (a) is responsible for all telecommunication fees and charges, including but not limited to telephone fees, associated with and related to the use of the Equipment; (b) shall maintain the Equipment in good working order at Merchant's expense; (c) shall advise GETI immediately in the event of a breakdown of the Equipment or of any other system failure; and (d) acknowledges that GETI is not responsible for the Equipment or related systems. Moreover, GETI's approval of the Equipment does not constitute an express or implied warranty, representation or endorsement of the Equipment.

**7. Daily Settlement Of Transactions.** Merchant agrees to Batch Out on a daily basis each POS terminal used by Merchant. "Batch Out" shall mean that Merchant totals and settles all of the transactions on each POS terminal used by midnight (12:00 am) of the day GETI authorizes the sale and transmits the information contained in the Batch Out to GETI. GETI, in its sole discretion, may assess a \$50.00 fee per day for each terminal on which Merchant fails to transmit a timely Batch Out. In addition, any transactions contained in an untimely Batch Out may be refused, become subject to chargeback or be held until after a sixty day period for consumer chargebacks by GETI. If Merchant has selected Conversion with Guarantee, then checks contained in an untimely Batch Out will not be guaranteed. Merchant acknowledges that failure to Batch Out on a timely basis may be grounds for suspension or termination of the GETI Services at GETI's sole discretion. Merchant acknowledges that failure to Batch Out will delay funds being deposited and will result in the loss of guarantee coverage on those checks.

**8. Request for Electronic Check Authorization Receipt Or Other Documentation.** If requested by GETI, Merchant is obligated to deliver the signed Electronic Check Authorization Receipt to GETI's designated location within 48 hours from the date of such request. Additionally, if a Merchant has selected the Conversion with Guarantee, then upon GETI's request, Merchant will deliver all documents related to a guaranteed transaction to GETI's designated location within 48 hours. If a Merchant, which has selected the Conversion with Guarantee service, fails to provide the requested receipt or documentation within this time period, GETI, in its sole discretion, may elect not to guarantee that check.

**9. Netting Of Transactions.** Merchant acknowledges that all transactions between GETI and Merchant under this Agreement, except assessment and calculation of fees, shall be treated as a single transaction for purposes of daily settlement between Merchant and GETI.

**10. Provisional Settlements.** Merchant acknowledges that all settlements between GETI and Merchant are provisional and are subject to the customer's rights to dispute the charges against the customer's account. In submitting electronic checks to GETI, Merchant endorses and assigns to GETI all right, title and interest to such checks with rights of endorsement. Merchant acknowledges that GETI has the right to receive payment on all electronically processed checks acquired from Merchant and Merchant will not attempt to collect on any such transactions. If any payment is tendered to Merchant, Merchant will notify GETI by telephone of the payment, endorse the check, sign it over to GETI and immediately mail the payment to GETI by certified mail. If customer pays cash, Merchant shall reimburse GETI by Merchant's check. Merchant agrees to provide GETI notice of any such payments in accordance with the terms of this Agreement.

**11. Payment To Merchant By GETI.** Merchant acknowledges that this Agreement provides for the provisional settlement of Merchant's transactions, subject to certain terms and conditions, fees, credit transactions, contingent claims for chargebacks, adjustments and final settlement including but not limited to those enumerated herein. All payments to Merchant under this Agreement shall be made by GETI through the ACH and shall normally be electronically transmitted directly to Merchant's designated account. However, GETI cannot guarantee the timeliness with which any payment may be credited by Merchant's bank. Merchant understands that due to the nature of the ACH and the electronic networks involved, and the fact that not all banks belong to an ACH, payment to Merchant can be delayed through no fault of GETI. In such cases, Merchant agrees to work with GETI to help resolve any problems in crediting Merchant's designated account. In the event that a payment is rejected by Merchant's bank or fails to arrive within three (3) days from the date of the confirmed Batch Out due to problems beyond GETI's control, GETI may periodically wire transfer all funds due Merchant until the problem is corrected, at Merchant's expense. All payments to Merchant shall be made after first deducting therefrom any discount fee, transaction fee, credit, chargeback, reserve or other fee or charge for which Merchant is responsible pursuant to this Agreement. At GETI's sole discretion, said charges and fees shall be deducted from incoming transactions or may be debited through the ACH against Merchant's designated account, without further notice or demand.

**11.1 Authorization To Access Merchant's Account.** Merchant hereby authorizes GETI to initiate debit and credit entries to Merchant's designated account, which is identified in the Application. Merchant's authorization shall continue in effect for at least 180 days after termination of this Agreement, or for such longer period as determined by GETI, in its sole discretion, to be necessary to properly terminate business.

**11.2 Timing of Payment To Merchant.** Unless a reserve or delay is placed on the Merchant's account, GETI will transmit settlement to Merchant's bank within seventy-two (72) hours of the time when Merchant Batches Out the applicable transaction. GETI may hold back certain amounts where GETI is investigating a transaction for breach of warranty or transactional requirements by Merchant or for other reasons.

**11.3 GETI's Right To Monitor Transactional Activity.** GETI shall have the right to monitor Merchant's transactional activity and Merchant agrees that GETI may divert funds for a reasonable period to investigate account activity. GETI will attempt, but is not required, to notify Merchant of any such investigation, but GETI shall have no liability to Merchant, or any other party, for any such actions taken by GETI. Merchant agrees that GETI may hold, setoff or retain funds to protect against amounts owed GETI or based on Merchant's financial condition. GETI will not be liable for any dishonor of any item as a result of actions taken hereunder. GETI may return any item to Merchant for correction or proper processing.

**12. Returns And Credits.** Merchant shall maintain a fair policy permitting refunds, exchanges, returns and adjustments. During the term of this Agreement, Merchant shall be responsible for making all cash or check refunds to customer after a transaction has been Batched Out for settlement. Merchant must initiate a credit receipt for the same amount as the debit entry to effect voids, which occur the same day as the day of authorization and prior to Batching Out. Merchant must use the Equipment to transmit the credit. Merchant shall obtain proper written authorization from the customer whose name is printed on the face of the check, or the customer's authorized representative, prior to crediting customer's account. The customer or its authorized representative shall sign the completed credit receipt and a copy of the credit receipt shall be delivered to the customer at the time of each cancellation of a transaction. Each debit and credit entry shall constitute a separate transaction for which a Transaction Fee will apply. If it becomes necessary for a reversal of a transaction to be initiated, Merchant shall request in writing to GETI to initiate such reversal. Merchant shall give GETI enough information to create such reversal. A fee of no more than twenty dollars (\$20.00) for each transaction reversal may be charged by GETI.

**13. Warranties By Merchant.** Merchant warrants and agrees to fully comply with all federal, state, and local laws, rules and regulations, as amended from time to time, including those with respect to customer protection. Merchant also warrants not to change the nature of its business as indicated on the Application or to modify the ownership of the business without the prior written consent of GETI. With each transaction presented to GETI by Merchant for authorization, Merchant specifically warrants and represents that: (a) each customer has authorized the debiting or crediting of its checking account; (b) that each debit or credit is for an amount agreed to by the customer; (c) each debit or credit entry was authorized by the person named on the checking account or the authorized representative or agent of such person; (d) the sales receipt is valid in form and has been completed in accordance with all applicable laws and all of the provisions set forth in this Agreement; (e) the total amount of each sales receipt evidences all goods and services purchased in a single transaction (No splitting check transactions to multiple checks); (f) Merchant has delivered the goods or completed the services identified in the authorized sales receipt draft; (g) each sales draft represents a bona fide direct sales transaction, in the ordinary course of Merchant's business, between the Merchant and the person presenting the check; (g) the person presenting the check has no claim, defense, right of offset, or dispute against Merchant in connection with the purchase of the goods or services and Merchant will provide adequate services to the person presenting the check and will honor all warranties applicable thereto; (h) Merchant has not charged any separate or additional fee(s) in connection with the transaction other than as may be required by law (the foregoing shall not prohibit Merchant from extending discounts to customers paying by cash or by any means other than electronic check processing); (i) all of Merchant's business locations engage in the business activities listed on the Application; (j) neither Merchant, nor any of its employees, have submitted checks drawn from their personal checking accounts on the Merchant's Equipment; (k) Merchant uses only the name and address shown on the front of the Agreement on all its sales drafts; (l) Merchant has not submitted duplicates of any transaction; (m) the banking information for the check on the printed sales receipt is correct; and (n) no transaction submitted for authorization to GETI is with or through an entity other than Merchant.

**14. Limitation Of Liability And Merchant's Waiver Of Damages.** GETI shall be responsible for performance of the GETI Services as a third-party provider in accordance with the terms of this Agreement. GETI shall not be responsible for any other person's or entity's errors, acts, omissions, failures to act, negligence or intentional conduct, including without limitation entities such as GETI's communication carrier or clearing houses, and no such entity shall be deemed to be a representative or an agent of GETI. IN NO EVENT SHALL GETI BE LIABLE TO MERCHANT FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES WHICH MERCHANT OR ITS CUSTOMERS, AFFILIATES, PARENT COMPANIES, ASSOCIATES, AGENTS, OFFICERS, DIRECTORS OR EMPLOYEES MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, INCLUDING LOSS OR DAMAGE FROM SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM GETI'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.

**15. Force Majeure.** GETI shall not be responsible for delays, nonperformance, damages, lost profits or other losses caused directly or indirectly by any Act of God, including, without limitation, fires, earthquakes, tornadoes, hurricanes, wars, labor disputes, communication failures, legal constraints, power outages, data transmission loss or failure, incorrect data transmission or any other event outside the direct control of GETI.

**16. Chargebacks And Returns.** Merchant shall bear all risk of loss, without warranty or recourse to GETI for the amount of any transaction, or other amounts due GETI (including GETI's actual costs and expenses) due to or caused by chargebacks and returns of any kind, whether for customer chargebacks, insufficient funds returns, administrative returns, or any other type of returns, except that a Merchant which has purchased Conversion with Guarantee, shall not be liable for any returns or chargebacks covered by the Guarantee provided with that service. For Merchant's who have purchased Conversion without Guarantee, GETI shall have the right to debit Merchant's incoming transactions, designated account or any other funds of Merchant in GETI's direct or indirect control and to chargeback such transactions to Merchant including, but not limited to, any of the following situations: (a) where goods have been returned or service canceled by the person submitting the check for electronic processing and that person has requested a credit draft and such credit draft was not processed by Merchant; (b) where the purchaser and/or merchant breaches any representation, warranty or covenant or failed to meet the requirements of this Agreement, or applicable law, or has not been authorized in advance by the authorization center as required hereunder; (c) where the transaction is for a type of goods or services sold other than as disclosed in the Application or approved in advance by GETI; (d) where the amount shown on the sales receipt differs from the copy given to the customer; (e) where a customer disputes in writing with GETI, or the customer's financial institution named on the check, that: (1) goods or services were received; (2) goods or services received conform to the description on the sales receipt; (3) goods or services were not defective; (f) where the customer has a claim, dispute or defense to payment related to the transaction, including a claim or defense authorized by a relevant statute or regulation; (g) where a Electronic Check Authorization Receipt was not received by GETI as required hereunder or is subject to chargeback by the customer's financial institution when acting on the customer's behalf; (h) where the transaction was generated through the use of an account that was not valid (as in, but not limited to, R03, R04 return codes) or effective (as in, but not limited to, R02 return code) on the transaction date; (i) where the transaction was made on an altered or counterfeit check authorization document; (j) where Merchant had notice not to honor the transaction and failed to reject the transaction; (k) code on the transaction date; (l) where the transaction was made on an altered or counterfeit check authorization document; (m) where Merchant had notice not to honor the transaction and failed to reject the transaction; (n) where Merchant disregarded any denial of authorization; (o) where no signature of the customer to the transaction appears on the Electronic Check Authorization Receipt; (p) where Merchant failed to obtain specific authorization in advance from GETI to complete the transaction and/or a valid authorization number was not on the Electronic Check Authorization Receipt; (q) where the customer has certified in writing to GETI or his financial institution on that no authorized user made or authorized the transaction; (r) where security procedures were not followed; (s) where the customer's financial institution or GETI has information that Merchant fraud occurred at the time of the transaction(s); (t) where the transaction is not a sale by Merchant, whether or not such transaction(s) was authorized by the customer; (u) where the check authorization was executed or a credit was given to Merchant in circumstances constituting a breach of any representation or warranty of Merchant or in violation of applicable law; (v) where Merchant has not provided documents or resolved a customer dispute whether or not a transaction is charged back; (w) where a sales receipt was charged back and re-presented, whether or not the customer knows or consents to this re-presentation; Merchant Processing Agreement Schedule II – Check Services



and (x) where Merchant does not provide copy of the signed authorization receipt as requested by GETI within forty-eight (48) hours from the time of such request. For those Merchant's who have purchased Conversion with Guarantee, GETI shall have the right to debit Merchant's incoming transactions, designated account or any other funds of Merchant in GETI's direct or indirect control and to chargeback such transactions to Merchant only for those items set forth in (a) through (x) above that are not covered by the Guarantee. If, with respect to any one of Merchant's outlets, the amount of or number of any counterfeit or fraud incidents becomes excessive, in the sole determination of GETI, Merchant may be charged back for all transactions, this Agreement may be terminated immediately without notice, and Merchant's funds, including but not limited to those in incoming transactions and in Merchant's designated account, shall be held pursuant to the provisions herein. GETI shall retain any Discount Fee or Transaction Fee related to a chargeback transaction. Merchant agrees that GETI will assess up to twenty-five dollars (\$25.00) for each chargeback, or such increased or additional charges as may be established by GETI from time to time. Additionally, GETI shall have the same rights to debit Merchant's designated account for transactions returned or not honored for any reason, including but not limited to insufficient funds, administrative returns, or any other kind of returned transaction, subject to the condition that if the Merchant has purchased the Conversion with Guarantee, GETI shall not have the right to debit the Merchant's designated account for items covered by that guarantee.

**17. Chargeback And Returns Reserve Account.** Notwithstanding any other language to the contrary contained in this Agreement, GETI reserves the right to establish, without notice to Merchant, and Merchant agrees to fund a non-interest bearing Chargeback and Return Reserve Account, or demand other security and/or to raise any discount fee or transaction fee hereunder, upon GETI's reasonable determination of the occurrence of any of the following: (a) Merchant engages in any processing of charges which create an overcharge to the customer by duplication of charges; (b) Failure by Merchant to fully disclose the true nature or percentage of its actual or expected losses due to insufficient funds transactions, fraud, theft or deceit on the part of its customers, or due to administrative chargebacks/returns, or chargebacks or rejections by customer; (c) Failure by Merchant to fully disclose the true nature of its business to GETI to permit a fully informed decision as to the suitability of Merchant for processing through GETI; (d) Failure by Merchant to fully disclose the true ownership of Merchant's business entity or evidence of fraud; (e) Processing by Merchant of unauthorized charges or any other action which violates applicable risk management standards of GETI or is likely to cause loss; (f) Any misrepresentation made by Merchant in completion of the Application or breach of any other covenant, warranty, or representation contained in this Agreement or applicable law including a change of type of business without prior written approval by GETI; (g) Merchant has chargebacks or returns of any kind which exceed 1% of the total number of transactions completed by Merchant in any thirty (30) calendar day period; (h) Excessive number of requests from customers or issuing banks for retrieval of documentation; (i) Merchant's financial stability is in question or Merchant ceases doing business; or (j) Upon notice of or termination of this Agreement. After payment or adequate provision for payment is made by GETI, for all obligations on the part of Merchant to GETI under this Agreement, Merchant may request GETI to disburse to Merchant any funds remaining in the Chargeback and Return Reserve Account unless otherwise agreed to by GETI. Such funds will not be disbursed to Merchant until the end of one hundred eighty (180) days after termination of this Agreement or ninety (90) days from the date of the last chargeback or return activity, whichever is later, unless GETI in its sole discretion has reason to believe that customer chargeback rights may be longer than such period of time or that loss is otherwise likely, in which event GETI will notify Merchant of such fact and GETI will set the date when funds shall be released. No monies held in the Chargeback and Return Reserve Account shall bear interest. Provisions applicable to the designated account are also applicable to this account.

**18. Collections.** Merchant acknowledges and agrees that when collection services are required, GETI may utilize an appropriately licensed third party to perform such collection services. Merchant further authorizes GETI to continue collection efforts for Merchant. If collections are unsuccessful, GETI shall be absolved of all responsibility. Any collection of checks after electronic presentment(s) shall be paid to the Merchant at percentage of the collected amount as set forth by GETI, fees excluded.

**19. Merchant Shall Pay To GETI.** A "Discount Fee" shall be paid on each electronic inquiry to the database under the Conversion with Guarantee service. The Discount Fee for a check shall be calculated by multiplying the Discount Rate, as set forth in the Application, times the amount of the check. To the extent that the aggregate Discount Fees for a month does not exceed the Minimum Monthly Discount as set forth in the Application, then Merchant shall be obligated to pay the Minimum Monthly Discount less any Discount Fees already paid to GETI during the applicable month. The Transaction Fee shall be equal to the amount set forth in the Application. A Transaction Fee shall be charged for each (a) network access, (b) ACH deposit, (c) electronic inquiry to the database that does not result in an electronic transfer of funds, and (d) Batch-Out. Merchant shall pay each month a Service Fee as set forth in the Application. Additionally, a fee up to twenty dollars (\$20.00) may be accessed for each reversal request by Merchant at GETI's sole discretion. Merchant shall also pay an Annual Subscription Fee of \$59.95 each year. Merchant must promptly notify GETI in writing of any dispute regarding fees under this Agreement. Merchant's written notice must include: (i) Merchant name and account number; and (ii) the dollar amount and description of the disputed fees. Such written notice must be received by GETI no later than ninety (90) days after the disputed fees have been paid by Merchant or charged to Merchant's account by GETI. Merchant's failure to so notify GETI will waive and bar the dispute.

**19.1 Change In Pricing.** GETI shall have the right to change any of the above mentioned rates, including the Discount Fee, Transaction Fee, Minimum Monthly Discount and Statement Fee, by giving Merchant written notice of such changes at least thirty (30) days before such new rates take effect.

**20. Assignment Of Checks.** By subscribing to the Conversion with Guarantee service, Merchant shall be deemed to have assigned to GETI, without recourse, all of Merchant's right, title and interest in any and all checks, including any rights to treble or punitive damages, permitted under applicable law. Merchant shall execute and deliver endorsements, instruments, and papers and shall do whatever is necessary under the laws of any applicable jurisdictions to secure and defend GETI's rights and shall do nothing to prejudice those rights. Merchant shall cooperate with GETI in pursuing GETI's rights, including suing or prosecution of the customer under all applicable laws.

**21. Compliance And Disclosure Of Information.** Merchant shall provide such information and certifications as GETI may reasonably require from time to time to determine Merchant's compliance with the terms and conditions of this Agreement and applicable law. Merchant further agrees to produce and make available for inspection by GETI or its officers, agents, attorneys, accountants, or representatives, such books and records of Merchant as GETI may deem reasonably necessary to be adequately informed of the business and financial condition of Merchant, or the ability of Merchant to observe or perform its obligations to GETI pursuant to this Agreement. Merchant further agrees to provide to GETI from time to time such information including, but not limited to, credit reports, personal and/or business financial statements, income tax returns, or other such information as GETI may request. Merchant grants to GETI continuing authority to conduct credit checks and background investigations and inquiries concerning Merchant and Merchant's owner(s) including, but not limited to, character and business references and the financial condition of Merchant and Merchant's owner(s). Merchant expressly authorizes GETI or its agents, attorneys, accountants, and representatives to provide and receive such information from any and all third parties directly, without further consent or authorization on the part of Merchant.

**22. Data Retention.** Merchant shall retain all records related to authorization, including all sales and credit receipts for a period of no less than two (2) years following the date of the transaction. According to GETI'S current policy, Merchant shall hand the check back to the check writer. If check is handed back to check writer then Merchant acknowledges that GETI will not be able to provide any check collection services beyond the third electronic presentment of the check (unless an imaging check reader is used and GETI receives that image in a usable fashion). Failure to provide the signed Electronic Check Authorization Receipt to GETI will result in cessation of collection efforts, and GETI will be entitled to immediately debit Merchant's account for any previously processed and returned transactions.

**23. Non-Waiver.** Neither the failure nor any delay on the part of GETI to exercise any right, remedy, power or privilege hereunder shall operate as a waiver thereof or give rise to an estoppel nor be construed as an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then such waiver shall apply only to the extent specifically stated in such writing.

**24. Assignment.** Merchant may not assign or transfer any rights under this Agreement without the prior written consent of GETI.

**25. Termination.** This Agreement shall continue indefinitely unless and until terminated by any party. Merchant or GETI may terminate this Agreement for any reason upon sixty (60) days written notice to the other party. Monthly minimum and subscription fees will continue in effect for this time. If a Merchant terminates this service within the first three (3) years of the contract, a one-time termination fee of one hundred twenty five dollars (\$125.00) will be assessed and electronically debited from the Merchant's designated account.

**26. Application Fee.** Any application fee paid to GETI is non-refundable whether or not Merchant and this Agreement are accepted by GETI.

**27. Entire Agreement.** This Agreement, including any attached Schedules, together with the Application, is the complete and exclusive statement of the agreement between GETI and the Merchant with respect to the subject matter hereof and supersedes any prior agreement(s) between GETI and the Merchant with respect to the subject matter. In the event of any inconsistency between the terms of this Agreement and the Application, the terms of this Agreement shall govern. In the event the performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which GETI, the Originating Depository Financial Institution (ODFI) or Merchant is subject, and which governs or affects transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy and GETI, the ODFI and Merchant shall incur no liability as a result of such changes except as provided in the following paragraph.

**28. Amendments.** As stated in Section 27, GETI, the ODFI or Merchant may amend operations or processing procedures in order to conform to and comply with any changes in the NACHA Rules or applicable Federal or State Regulations. The changes would be, without limitation, those relating to any cut-off time and the close of any business day. Such amendments to operations or procedures shall become effective upon receipt of written notice to the other party, as provided for herein, or upon such date as may be provided in the NACHA Rules or applicable law or regulation referenced in the written notice, whichever is earlier in time. Use of the ACH services after any such changes shall constitute acceptance of the changes by the parties. No other amendments or modifications to this Agreement will be effective unless such changes are reduced to writing and are signed by the duly authorized party or parties to this Agreement and such Amendments are incorporated into and made a part of this document.

**29. Binding Agreement; Benefit.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement is not for the benefit of any other person or entity and no other person or entity shall have any right against GETI.

**30. Attorneys' Fees.** In the event that it becomes necessary for GETI to employ an attorney to enforce, interpret, mediate or arbitrate this Agreement, or collect a debt from Merchant, GETI shall be entitled to recover its reasonable attorneys' fees, costs and disbursements related to such dispute from Merchant.

**31. Choice Of Law.** Notwithstanding any language to the contrary, all issues related to the electronic processing of checks under the terms of this Agreement shall be determined in accordance with the NACHA Rules. In the event of a conflict between the NACHA Rules and applicable local, state or federal law, the NACHA Rules shall prevail unless otherwise prohibited by law. To the extent Merchant does not have a copy of the NACHA Rules, GETI will provide Merchant with a copy upon receipt of a written request. To the extent that an issue arises which is not covered by the NACHA Rules, this Agreement shall be governed by and construed in accordance with Florida law and it is expressly agreed that, to the extent permitted by law, venue and jurisdiction for all such matters shall lie in Okaloosa County, Florida. Merchant acknowledges that this Agreement was formed in Destin, Florida, upon its acceptance by GETI.

**32. Severability.** If any provision of the Agreement is held to be illegal, invalid, or unenforceable, in whole or in part, by court decision, statute or rule such holding shall not affect any other provisions of this Agreement. All other provisions or parts thereof shall remain in full force and effect and this Agreement shall, in such circumstances, be deemed modified to the extent necessary to render enforceable the provision hereof.

**33. Headings.** The headings in this Agreement are used for referenced purposes only. They shall not be deemed as part of this Agreement and shall not affect its interpretation.

**34. Effective Date.** This Agreement shall be effective only upon acceptance by GETI.

## **CHECK GUARANTEE AGREEMENT** **TERMS AND CONDITIONS**

This Agreement is entered into by and between E Telecom, Inc., d/b/a Global eTelecom, Inc., a Florida corporation ("GETI") and the undersigned ("Merchant").

**1. TERM.** This Agreement shall continue indefinitely unless and until terminated by any party. Merchant may terminate this Agreement upon sixty (60) days written notice to GETI. Monthly minimum and subscription fees will continue in effect for this time. If Merchant terminates this contract within the first three (3) years of the contract of this contract, a one-time fee of one hundred twenty five dollars (\$125.00) will be assessed and electronically debited from Merchants account. GETI shall have the right to suspend or terminate this Agreement immediately and without notice to Merchant.

**2. PRICING.** GETI shall charge and Merchant shall pay to GETI the Guarantee Fees and the Transaction Fees as stated in the Application for services with GETI. Merchant shall also pay a minimum monthly fee which shall be equal to the difference between the minimum monthly fee as set forth in the Application and the total Guarantee Fees paid by the Merchant for the applicable month. The Guarantee Fee for each check submitted shall be equal to the Discount Rate set forth in the Application multiplied by the face value of each personal check (hereinafter referred to as "Instrument") presented through the Merchant's Point of Sale Electronic device. A Transaction Fee shall be charged for each attempt at authorization of a check. Merchant shall also pay to GETI a Service Fee in the amount set forth in the Application. GETI reserves the right to increase any fee under this Paragraph 2. Merchant will be given written notice of any fee increase. Merchant shall also pay an Annual Subscription Fee of \$59.95 each year. Merchant must promptly notify GETI in writing of any dispute regarding fees under this Agreement. Merchant's written notice must include: (i) Merchant name and account number; and (ii) the dollar amount and description of the disputed fees. Such written notice must be received by GETI no later than ninety (90) days after the disputed fees have been paid by Merchant or charged to Merchant's account by GETI. Merchant's failure to so notify GETI will waive and bar the dispute.

**3. LIMITS.** During the term of this Agreement, GETI shall purchase up to the assigned check limit amount of any authorized Instrument which is properly presented for purchase as a Qualified Instrument pursuant to Paragraphs 4, 5 and 6 of this Agreement. Merchant acknowledges that GETI may, at its sole discretion, increase or decrease the Check Limit with written notice.

**4. AUTHORIZED INSTRUMENT.** To be authorized, an Instrument must meet the following criteria at the time of presentation for authorization:

- The name of the person or entity presenting the Instrument ("Presenter") is commercially imprinted thereon. Temporary checks or checks without commercially imprinted check numbers will not qualify for check guarantee;
- Merchant shall require the person presenting the Instrument to produce a valid driver's license or non-driver's State-issued identification card and to write the State of Issue and the identification number contained thereon on the face of the Instrument;
- The address of the person upon whose account the Instrument is drawn is shown on the face of the Instrument. Merchant will verify that the address on the instrument matches that of the drivers license address submitted by the Presenter. Merchant will then input any corrected information on the instrument. If not commercially imprinted, Merchant will write this information. Post Office Boxes are not acceptable addresses for this purpose;
- The Instrument is not a two party check, or a GETI check or a temporary check. The check has not been declined by GETI through its authorization process.

**5. QUALIFIED INSTRUMENT.** For any Instrument to qualify for purchase by GETI it must be an Authorized Instrument as defined by the terms of Paragraph 4 and meet the following criteria:

- The authorization number issued by GETI for the Instrument and the identification used for authorization is written on the face thereof;
- The Instrument is payable to Merchant, and was issued in exchange for goods delivered or services rendered at the time of the Instrument's issuance by presenter;

- c. The Instrument has been signed by the person presenting same and has been endorsed by Merchant;
- d. The Instrument has not been altered;
- e. The Instrument was not tendered, in whole or in part, in exchange for cash. Merchant has not received value in full or in part on the dishonored instrument through cash, credit, service, exchange, or repossession.
- f. The Instrument was not presented as partial payment for a transaction, as payment for debt due the Merchant previous to the date of authorization, or as one of multiple payments in a single transaction;
- g. The Instrument was not authorized under a state driver's license or identification number different than the one appearing on the Instrument;
- h. The State ID code or the name of the issuing state must appear on the face of the Instrument being processed;
- i. Merchant did not subsequently receive value, in full or in part, for the dishonored Instrument from the presenter thereof in the form of payment, credit, services, return, exchange or repossession;
- j. The Instrument was not dishonored as a result of a "stop payment" order issued by the presenter to his financial institution which is based upon a dispute against the Merchant by the presenter, unless Merchant has selected coverage for this contingency;
- k. The authorization for the Instrument was not secured by Merchant, its agents or employees under fraudulent pretenses. Merchant, its agents or employees has not submitted an Instrument for authorization with prior knowledge of the likelihood of the check being dishonored or the ID was forged, stolen or otherwise did not belong to the check writer or that was knowingly illegal, void, or invalid.
- l. The date of the Instrument must be no more than one (1) day from the date on which the Instrument was authorized by GETI. The check number and the dollar amount of the instrument being authorized must be the same check number and dollar amount given at the time authorization is attempted.
- m. The Instrument was not previously denied by GETI based on the same or a different driver's license number presented for authorization by Merchant;
- n. The presenter's name, address and home and work telephone number must appear on the Instrument
- o. Merchant must have followed instructions contained in GETI's Merchant Quick Reference Guide or other authorized, current published instructions;
- p. GETI may change any of these procedures upon written notice to Merchant

**6. CLAIM AND PURCHASE PROCEDURE.** GETI shall purchase Qualified Instruments, subject to the Check Limit, for each Instrument presented by Merchant under the following Claim Procedure:

- a. Merchant agrees to require its depository bank to forward dishonored Instruments directly to GETI at its designated address
- b. Merchant shall submit all authorized Instruments to GETI for purchase within thirty (30) days from the date of authorization of said Instrument. For the purposes of determining time frames, the United States Postal Service postmark shall control
- c. GETI shall make payments to Merchant on properly presented Qualified Instruments within thirty (30) days from the receipt of the same.

**7. COLLECTION OF INSTRUMENTS.** In consideration of GETI's purchase of the Qualified Instrument from Merchant, Merchant assigns all right, title and interest in and to the Instrument purchased by GETI. Merchant further agrees to provide GETI with any additional testimony or information reasonably requested by GETI to aid GETI in the collection or enforcement of said Instrument. Merchant agrees that GETI shall be entitled to all interest, collection, costs, damages and fees allowed by applicable law in addition to any amount received in collection or enforcement of the instrument.

**8. NOTIFICATION OF RECEIPT OF PAYMENT.** Merchant agrees to promptly notify GETI of any payments on an Instrument which has been forwarded to GETI pursuant to the Claim Purchase recited herein. In the event the Instrument has been purchased by GETI, Merchant agrees to promptly forward payment of the amount received by Merchant to GETI with sufficient information to allow GETI to identify the Instrument to which the payment is to be credited.

**9. NOTICES.** All notices required pursuant to the Agreement shall be in writing and shall be deemed to have been properly given twenty-four (24) hours after being deposited, with proper postage prepaid, in a facility of the United States Postal Service. Notices shall be sent to the respective addresses of the parties as recited in the Agreement. Each party warrants to the other that it will immediately inform the other party of any change in address.

**10. GOVERNING LAW, JURISDICTION AND VENUE.** Merchant agrees that the provisions of this Agreement shall be governed by the laws of the State of Florida, the First Judicial Circuit Court or the United States District Court for the Northern District of Florida. The parties agree that these forums constitute the sole proper jurisdiction and venue for any litigation arising under this Agreement. Merchant agrees to comply with all laws and regulations governing use of the services contemplated by this Agreement.

**11. TERMINATION FOR CAUSE.** GETI shall have the right to terminate its obligations under this Agreement at its sole discretion or in the event of Merchant's default under this Agreement. Merchant is in default of this Agreement if Merchant fails to pay the fees imposed by the contract between Merchant and Global eTelecom, Inc. hereunder within thirty (30) days of demand or unsuccessful ACH debit attempt by GETI or Merchant commits any act with an intent to defraud GETI in the authorization of Instruments, qualification of Instruments or claim procedures. GETI may withhold any funds due Merchant in satisfaction of unpaid Merchant charges.

**12. CONFIDENTIALITY.** Merchant agrees to take all actions reasonably necessary to protect the confidential information secured by Merchant from person presenting Instruments to Merchant. Confidential information shall include, but shall not be limited to, the bank account number, the telephone number, state issued identification number or any other item of information unique to the person submitting the Instrument. Merchant agrees to take those actions reasonably necessary to prevent disclosure of confidential information to any entity other than GETI.

**13. PAYMENT.** Merchant agrees to permit GETI to debit Merchant's account for check guarantee service charges according to the terms of the Agreement between Merchant and GETI.

**14. ACKNOWLEDGEMENTS.** Merchant acknowledges that it has read and understands the Terms and Conditions of this Agreement contained on this page. No alteration, addition, deletion, or modification may be made by any Sales Representative. This Agreement represents the entire agreement between GETI and the Merchant. Any previous or extraneous agreements, whether written or oral, are void and of no effect.

**MERCHANT RIGHTS AND RESPONSIBILITIES CHECK 21 PLUS- REMOTE CHECK DEPOSIT SERVICES TERMS AND CONDITIONS**

The Remote Check Deposit (Check 21 Plus) Terms and Conditions agreement is entered into by and between Global eTelecom, Inc. ("GETI") and the MERCHANT, whose name and address are identified on the Merchant Agreement as MERCHANT ("MERCHANT") to which this Remote Check Deposit (Check 21 Plus) Terms and Conditions is attached. GETI and MERCHANT will be referred to collectively as the "Parties" and interchangeably as the "Party." This Remote Check Deposit (Check 21 Plus) Service Terms and Conditions, and all signed addendums are collectively referred to as the "Agreement." WHEREAS, GETI provides electronic transaction processing, Remote Check Deposit (Check 21 Plus), return check processing, and similar services (the "Solutions"). NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows: If MERCHANT has not requested Remote Check Deposit (Check 21) with Guarantee service, or if GETI has not accepted the MERCHANT application for Remote Check Deposit (Check 21) with Guarantee service, GETI will not be liable in any way for any returned checks of MERCHANT or its customers, for any reason.

**1.1 MERCHANT'S AUTHORITY.** MERCHANT specifically warrants to GETI that MERCHANT has taken all necessary legal action and has authority to enter into this Agreement with GETI. It further warrants that the person(s) signing for and on behalf of MERCHANT is specifically authorized and directed to do so by MERCHANT. MERCHANT acknowledges that this Agreement constitutes the legal, valid and binding obligation of MERCHANT, enforceable in accordance with its terms.

**1.2 REMOTE CHECK DEPOSIT (CHECK 21 Plus) with Guarantee.** If MERCHANT has marked the REMOTE CHECK DEPOSIT (CHECK 21 Plus) with Guarantee box on the application form of this Agreement then MERCHANT wishes GETI also to provide check guarantee and collection services to MERCHANT. If MERCHANT has not marked the appropriate box, MERCHANT has engaged GETI to provide for each check: verification and Remote Check Deposit service without any guarantee. As of the date of this Agreement and by subscribing to REMOTE CHECK DEPOSIT (CHECK 21 Plus) with Guarantee, MERCHANT shall be deemed to have assigned to GETI, without recourse, all of MERCHANT's right, title and interest in any and all checks, including any rights to treble or punitive damages permitted under applicable law. MERCHANT shall execute and deliver endorsements, instruments, papers, and shall do whatever is necessary under the laws of any applicable jurisdictions to secure and defend GETI's rights and shall do nothing to prejudice those rights. MERCHANT shall cooperate with GETI in pursuing GETI's rights, including suing or prosecution of the customer under all applicable laws.

**1.3 REMOTE CHECK DEPOSIT (CHECK 21 Plus)-REMOTE (Consumer Not Present Transactions).** If MERCHANT has marked the Remote Check Deposit (Check 21 Plus) Remote with or without Guarantee box on the application form of this Agreement and GETI approves such Agreement, then GETI agrees to waive certain requirements for processing as stated in sections 3.1, 11.1, and 11.2. In exchange for such waiver and higher risk of said transactions, GETI will charge a higher discount rate for the Consumer Not Present Transaction Program (see schedule.) GETI reserves the right to remove Guarantee coverage on any check transaction in such cases where there is not sufficient information on the check face to contact or locate the customer for collection efforts in the event the check is returned by the customer's bank. At a minimum, the check account number must be verified and approved by our front end host and all checks must be preprinted with the check writer's information, contain at least one phone number, and must not be a starter check. Failure to comply with the minimum standards as explained in this section may result in Merchant's loss of guarantee.

**1.4 CHECK COLLECTION.** MERCHANT authorizes GETI to represent all items that are returned to GETI and to originate an electronic entry for the amount of any allowable recovery fee. GETI shall have sixty (60) days from the date of a return check to complete the representation process. If this Agreement is terminated for any reason, GETI will retain the right to complete the representation process for all return check items prior to said termination. **Any collection fees received by GETI in collecting returned checks shall be the sole property of GETI.** GETI shall present the ENTRY no more than two times. GETI, for non- guarantee service, shall be entitled to assess a transaction fee (as set forth in the schedule of fees) from MERCHANT for each representation. If a check is returned unpaid after the second presentation, GETI shall be entitled to debit the MERCHANT'S account or offset such return amount from the next scheduled merchant settlement for the amount of the check (non-guarantee service only).

**1.5 MERCHANT'S PUBLIC DISCLOSURE RESPONSIBILITIES.** GETI shall provide signage to be displayed at the point of purchase (POP) or payment collection site, which informs customers of the electronic debit for the amount of any state allowable NSF or recovery fee as stated in 1.4 CHECK COLLECTION. MERCHANT agrees to display these materials in the best visible and unhindered location so as to inform the public of such electronic debit entry. From time to time, GETI may establish required educational and promotional materials and send such to MERCHANT for MERCHANT to distribute to customers. MERCHANT further agrees to immediately remove and properly dispose of GETI's state promotional materials and to display the most current materials upon receipt of such from GETI. MERCHANT will discontinue the use of all of GETI's promotional materials and properly remove said materials upon receipt of written notification of suspension or termination of this Agreement. In the event MERCHANT's account is reinstated by GETI, MERCHANT shall redisplay all appropriate materials.

**2.1 RESTRICTIONS ON USE OF PROMOTIONAL MATERIALS AND REPRESENTATIONS CONCERNING GETI'S SERVICES.** MERCHANT shall make no use of GETI's promotional materials or marks, other than as set forth in paragraph 1.5 above, without GETI's prior written consent. In no way shall the MERCHANT indicate that GETI's services are an endorsement of the MERCHANT, its business or its business practices.

**3.1 REQUIREMENTS FOR PROCESSING REMOTE CHECK DEPOSIT (CHECK 21 Plus).** MERCHANT shall comply with the following conditions when accepting checks for Remote Check Deposit (Check 21 Plus) and agrees to complete all transactions in accordance with the provisions of this Agreement and such rules of operation as may be established and/or revised by GETI from time to time. MERCHANT shall accept only the following checks as source documents to initiate Remote Check Deposit entries through GETI: (a) All instruments must be drawn on or payable through a federally insured depository financial institution; be machine-readable MICR-encoded with the bank routing number, account number and check serial number printed on the check, and be for an amount less than or equal to the approved check limit assigned by GETI. (b) MERCHANT shall obtain proper identification, in the form of a valid driver's license, from the customer so as to verify that the customer is authorized to negotiate the check before submitting the check to GETI for authorization. (c) MERCHANT shall scan each check through a GETI approved imaging device and/or an approved software vehicle to initiate Remote Check Deposit (Check 21 Plus) processing. (d) All items, goods and services purchased in a single transaction shall be included in the total amount on a single sales receipt; (e) At the time MERCHANT initiates authorization with GETI, MERCHANT warrants that the person presenting the check has been properly identified and is legally authorized to present the check for payment. (f) Once GETI authorizes the transaction, MERCHANT shall retain and store the check in a secure location for a minimum period of ninety (90) days. Refer to "Check Retention" and "Image Requirements" below. (g) MERCHANT shall deliver to the person presenting the check a true and completed copy of the sales receipt. (h) No check may be altered after GETI authorizes acceptance of the check. Once GETI authorizes a transaction, MERCHANT may not resubmit a check electronically or deposit it by any means, unless instructed by GETI to do so in such case where the image quality does not meet the required standards to process the check via Remote Check Deposit. In addition, MERCHANT shall write the current phone number and driver's license number of the customer on the face of the check prior to scanning the check through the check reader. Failure to comply with the above minimum requirements will result in loss of guarantee (if Remote Check Deposit (Check 21 Plus) with Guarantee Service is selected on application) on ALL transactions, subject MERCHANT to chargebacks or withholding of funds, and may be grounds for immediate suspension/termination of services and indemnification of GETI by MERCHANT pursuant to this Agreement.

**3.2 RESTRICTIONS ON ACCEPTANCE OF CHECKS FOR PROCESSING.** From time to time, GETI shall establish necessary security and identification procedures for presentation of checks for Remote Check Deposit (Check 21 Plus) pursuant to the rules and procedural guidelines established by the Federal Trade Commission ("FTC") and Regulation E (Reg E) and applicable law. MERCHANT agrees to comply with such procedures and to accept such "properly presented" checks for Remote Check Deposit (Check 21 Plus) processing. MERCHANT shall not accept or attempt to process checks in excess of the maximum limitations established by GETI. GETI shall also establish the number of checks, which may be submitted on a daily basis by any customer for electronic processing. MERCHANT agrees to provide GETI with any and all information needed to establish such limitations. MERCHANT further agrees to inform GETI immediately of any changes in business activities, rules or regulations, which may affect these limitations. MERCHANT further agrees to abide by these limitations as a condition to GETI processing any check. MERCHANT shall scan each check submitted for processing through no more than one GETI approved imaging device for any given transaction. MERCHANT agrees that sales completed at one location cannot be processed through a check imaging device at another location. **YOU UNDERSTAND THAT IT IS A FEDERAL VIOLATION TO PROCESS DEBIT REQUESTS AGAINST A CONSUMER BANK ACCOUNT WITHOUT THE CHECK WRITER'S EXPRESSED AUTHORITY. YOU HEREBY ACKNOWLEDGE RECEIPT OF PROPER NOTICE THAT THE USE OF ANY COUNTERFEIT, FICTITIOUS, LOST, STOLEN, OR FRAUDULENTLY OBTAINED DEBIT INSTRUMENT TO UNLAWFULLY INITIATE A DEBIT TRANSACTION IS PUNISHABLE BY IMPRISONMENT. IT IS SPECIFICALLY UNDERSTOOD BY YOU THAT ANY TRANSACTION INITIATED AS AN UNAUTHORIZED ENTRY OR DEPOSIT BY YOU AFTER YOU HAVE RECEIVED APPROVAL FOR DEPOSIT OF CHECK (S) OR IS INTENDED FOR ELECTRONIC DEPOSIT SHALL BE INTERPRETED AS AN UNLAWFUL DEBIT TRANSACTION PURSUANT TO THIS NOTICE. IN THE EVENT OF SUCH A VIOLATION, MERCHANT AGREES AND WARRANTS TO HOLD GETI AND ALL OF ITS ASSIGNS AND ASSOCIATES HARMLESS AND REIMBURSE GETI FOR THE TRANSACTION (S) WITHIN 24 HOURS OF SAID OCCURRENCE. IF MERCHANT REFUSES OR IS UNABLE TO REIMBURSE GETI FOR ANY SUCH OCCURRENCE, IT IS EXPRESSLY STATED AND UNDERSTOOD THAT THE MERCHANT IS IN DIRECT VIOLATION OF THIS AGREEMENT AND FEDERAL LAW, AND GETI WILL PURSUE ALL LEGAL, CIVIL, AND COLLECTION REMEDIES AS ARE POSSIBLE UNDER LAW AS REMEDY.**

### **3.3 SECTION OMITTED**

**3.4 UNACCEPTABLE TRANSACTIONS.** In addition to the restrictions set out above and in any event, the following transactions are unacceptable for Remote Check Deposit (Check 21 Plus) processing, and MERCHANT agrees not to submit any of the following transactions to GETI for processing: (a) MERCHANT shall not process any checks drawn on the personal checking account of MERCHANT or any of its agents or employees, (b) MERCHANT shall not accept any third party items for Remote Check Deposit (Check 21 Plus) processing or checks made payable to "cash" or "bearer", (c) MERCHANT shall not submit for processing any transaction representing the financing of an existing obligation whether previously owed to MERCHANT, arising from the dishonor of a check or arising from a credit card, debit card or smart card dispute with the MERCHANT, (d) MERCHANT shall not submit a transaction for processing which represents an attempt to collect a chargeback, (e) MERCHANT shall not submit a check written for goods or services that are not concurrently provided to the customer, including any check given for a service contract, gift certificate, a layaway (except for the final payment) or for a similar transaction, or for goods or services provided to a third party, (f) MERCHANT shall not submit a check which contains erasures, or which is altered, unless the alteration is initiated by the customer at time of presentation, (g) MERCHANT shall not knowingly submit a check on an account which GETI previously denied authorization. MERCHANT'S submission of any of the above transactions for electronic processing may subject the MERCHANT to immediate suspension or termination, and all funds of MERCHANT, including those in MERCHANT'S account, may be placed on hold. This will also remove the Guarantee coverage from ALL checks.

**3.5 SURCHARGES AND TAXES.** MERCHANT shall not impose any surcharge on any Remote Check Deposit (Check 21 Plus) processed check transaction. MERCHANT shall collect all required taxes at time of sale. All required taxes must be included in the total transaction amount at the time such is submitted for authorization by GETI and must be reflected in the face amount of the check. In any event, MERCHANT shall not collect any required taxes separately in cash, or otherwise. MERCHANT is responsible for paying all taxes collected to the appropriate authorities in a timely manner.

**4.1 EQUIPMENT.** MERCHANT shall furnish each outlet, retail location, or business entity with a GETI approved check imaging device that captures the front and back of the check and/ or other GETI approved software. GETI shall assign each MERCHANT'S check imaging device an identification number. MERCHANT is responsible for all telecommunication fees and charges, including but not limited to telephone fees, associated with and related to the use of the software or the check imaging device. MERCHANT shall maintain all equipment related to electronic check processing in good working order at MERCHANT'S expense. MERCHANT shall advise GETI immediately in the event of a breakdown of a GETI approved imaging device, software, or of any other system failure. MERCHANT acknowledges that GETI is not responsible for any equipment or software problems. Moreover, GETI'S approval of such equipment does not constitute nor express an implied warranty, representation or endorsement of such equipment. Refer to Image Requirements and Virtual Terminal (if applicable).

**4.2 USE OF EQUIPMENT.** MERCHANT agrees to utilize only equipment approved by GETI for the processing of checks and in a format and medium of transmission acceptable to GETI.

**4.3 VIRTUAL TERMINAL.** If MERCHANT has marked the Virtual Terminal option box on the application form of this Agreement then MERCHANT wishes to use the GETI Virtual Terminal in place of a traditional credit card terminal. GETI'S Virtual Terminal performs the basic functions of a traditional credit card terminal including check processing, and transaction voids. **Remote Check Deposit (Check 21 Plus) Services requires use of a GETI compatible two-sided check imaging device connected to the PC.** MERCHANT may utilize a compatible credit card terminal 3.5 inch printer or standard PC printer to print receipts. If a compatible two-sided check imaging device is not used, then MERCHANT understands that GETI will only provide Verification Services, and there will be no transactions processed via Remote Check Deposit (Check 21 Plus). The GETI Virtual Terminal requires Internet Explorer 6.0 or higher. Supported Operating Systems: Windows XP®, Windows Vista®. Merchant is responsible for all telecommunication fees and charges, including but not limited to telephone fees associated with and related to the use of the GETI Virtual Terminal Software.

**4.4 IMAGE REQUIREMENTS.** In order for a check to be processed via Remote Check Deposit (Check 21 Plus) the check image must meet the following guidelines: (a) The check imaging device must capture the front and back of the check and be of minimum required size; (b) The image must not be too dark, too light, or too bright; (c) The check MICR information must be machine-readable and contain the bank routing number, account number, and check serial number printed on the check; (d) The MICR "on us" field value must contain valid data; (e) Check image cannot be missing or incomplete; (f) The check must be filled out in its' entirety for the check to be processed and/or guaranteed. Any check not meeting these standards will need to be manually deposited by merchant and cannot be processed via Remote Capture Deposit. Refer to section 13.1 regarding Check Retention.

**4.5 SOFTWARE.** GETI may select software and related user materials ("Software") for use in GETI'S electronic check deposit services and the processing of Transactions. From time to time, modifications or updates to the Software may be available. Customer agrees to adopt such updates or modifications as they become available. MERCHANT acknowledges that any Software supplied by GETI for use in Transactions, including, but not limited to, any Software created or modified by GETI to be specific to MERCHANT'S environment is the property of GETI or a third party from whom GETI may have licensed rights in Software and that GETI claims and reserves all rights and benefits therein afforded under copyright and this agreement. MERCHANT'S license of and permission to use the Software is non-exclusive and nontransferable, and it extends only to MERCHANT'S own use of such Software for the purpose of processing Transactions as set forth in this Agreement. GETI'S Software may not be used to process transactions with or through any other party without the express written consent of GETI, and may not be exported in contravention of U.S. or foreign export laws. MERCHANT further acknowledges that GETI'S Software contains confidential information and trade secrets, which GETI has entrusted to MERCHANT in confidence. MERCHANT shall protect GETI'S property and its interest in the trade secrets contained in the Software by controlling access to the Software, permitting none of its employees nor any other person not an employee or agent of GETI to examine, alter, attach, add to, modify, decode, reverse engineer, transcribe, extract or reproduce, in whole or in part, the Software in any way. Without limiting the generality of the foregoing, MERCHANT specifically agrees that it will not delete, mask or obscure any proprietary notices, which GETI places on any Software.

**4.6 OWNERSHIP OF NEW INTELLECTUAL PROPERTY.** All rights and title to all inventions, derivative works, improvements and/or discoveries, including software, know-how, copyright, patent, technology, data, trade secrets, and other intellectual property arising directly or indirectly from the Solutions ("New Intellectual Property Rights") during the Term of this Agreement shall belong to GETI. To the extent that such New Intellectual Property Rights do not automatically vest in GETI, MERCHANT hereby assigns and transfers over such rights to GETI, grants GETI power of attorney to accomplish all such assignments and transfers and agrees to take any and all actions that GETI or its counsel deem necessary to transfer and vest good title in such rights in GETI.

**4.7 AUTHORIZED TRANSACTIONS.** Under any of the following circumstances, GETI shall be conclusively entitled to deem the Transactions to be authorized by, and binding upon, MERCHANT: (a) if the Transactions and the electronic transmission of a file are made by MERCHANT or its actual or apparent agent, or (b) if GETI reasonably believes the Transactions and the electronic transmission of a file were sent by an authorized representative of MERCHANT, or (c) if MERCHANT utilizes the services of a third party for lockbox or other similar services to facilitate the processing of Transactions, provided that the Transactions and the electronic transmission of a file are in the name of MERCHANT and GETI reasonably believes that the Transactions and transmission of a file by such third party are sent on behalf of MERCHANT.

**5.1 DAILY SETTLEMENT OF TRANSACTIONS.** MERCHANT agrees to "batch out" each check imaging device that is used on a daily basis. "Batch out" shall mean that MERCHANT totals and settles all of the transactions by midnight (12:00 am) of the day GETI authorizes the sale and transmits the information contained in the batch out to GETI. MERCHANT agrees to upload images from the check imaging device daily and acknowledges that GETI cannot process any transactions where the image has not been made available by MERCHANT. In addition, any transactions contained in an untimely batch out may be refused or become subject to chargeback or held until after a sixty-day period for consumer chargebacks by GETI. If MERCHANT account is Remote Check Deposit (Check 21 Plus) with Guarantee then checks contained in an untimely batch out are not covered under the Guarantee program. MERCHANT acknowledges that failure to batch out on a timely basis may be grounds for suspension or termination at GETI'S sole discretion. **MERCHANT acknowledges that failure to batch out will delay funds being deposited and loss of guarantee coverage on those checks and GETI may apply a \$25.00 fee for each terminal daily on which MERCHANT fails to transmit a timely batch out.**

**5.2 NETTING OF TRANSACTIONS.** MERCHANT acknowledges that all transactions between GETI and MERCHANT under this Agreement, except assessment of fees, shall be treated as a single transaction for purposes of daily settlement between MERCHANT and GETI.

**5.3 PROVISIONAL SETTLEMENTS.** MERCHANT acknowledges that all settlements between GETI and MERCHANT are provisional and are subject to the customer'S rights to dispute the charges against the customer'S account. In submitting Remote Check Deposit (Check 21 Plus) checks to GETI, MERCHANT endorses and assigns to GETI all right, title and interest to such checks with rights of endorsement. MERCHANT acknowledges that GETI has the right to receive payment on all Remote Check Deposit (Check 21 Plus) processed checks acquired and MERCHANT will not attempt to collect on any such transactions. If any payment is tendered to MERCHANT, MERCHANT will notify GETI by telephone of the payment, endorse the check, sign it over to GETI and immediately mail the payment to GETI by certified mail. If customer pays cash, MERCHANT shall reimburse GETI by MERCHANT'S check. In addition, MERCHANT acknowledges that GETI will have no responsibility for the delayed return of a Substitute Check that includes any message text or other information added by MERCHANT or MERCHANT'S third party designee in the depository financial institution endorsement area. Any credit or consideration given by GETI to MERCHANT with respect to any Transactions shall be deemed provisional, and GETI shall be entitled to revoke same without prior notice in the event one or more Transactions are rejected or returned to GETI for any reason.

**5.4 PAYMENT.** MERCHANT acknowledges that this Agreement provides for the provisional settlement of MERCHANT'S transactions, subject to certain terms and conditions, fees, credit transactions, contingent claims for chargebacks, adjustments and final settlement including but not limited to those enumerated herein. All payments to MERCHANT for legitimate and authorized transactions shall be made by GETI through the ACH (Automated Clearing House) Network and shall normally be electronically transmitted directly to MERCHANT'S designated account. However, GETI cannot guarantee the timeliness with which any payment may be credited by MERCHANT'S bank. MERCHANT understands that due to the nature of the ACH and the electronic networks involved and the fact that not all banks belong to an ACH, payment to MERCHANT can be delayed. In such cases, MERCHANT agrees to work with GETI to help resolve any problems in crediting MERCHANT'S designated account. In the event that a payment is rejected by MERCHANT'S bank or fails to arrive within five (5) days from the date of settlement due to problems beyond GETI'S control, GETI may periodically wire transfer all funds due MERCHANT until the problem is corrected, at MERCHANT'S EXPENSE. All payments to MERCHANT shall be made after first deducting therefrom any discount fee, transaction fee, credit, chargeback, reserve or other fee or charge for which MERCHANT is responsible pursuant to this Agreement. Said charges and fees shall be deducted from incoming transactions or may be debited against MERCHANT'S designated Account at GETI'S sole discretion, without any further notice or demand.

**5.5 AUTHORIZATION TO ACCESS MERCHANT'S ACCOUNT.** MERCHANT hereby authorizes GETI to initiate debit and credit entries to MERCHANT'S designated account. MERCHANT'S authorization shall continue in effect for at least 180 days after termination of this Agreement, or for a longer period as determined necessary by GETI in the exercise of its sole discretion in order to properly terminate business. Unless a reserve or delay is placed on the MERCHANT'S account, GETI will transmit settlement to MERCHANT'S bank by the fourth bank business day following the day MERCHANT batches out a GETI approved check imaging device'S transactions. Returns received after a transaction has been settled may be deducted from current outstanding funds due to MERCHANT, or returns may be charged back to MERCHANT'S account at GETI'S discretion. MERCHANT specifically authorizes GETI to debit MERCHANT'S account via Automated Clearing House (ACH) transfer for any previously funded transaction that is returned, and MERCHANT warrants to GETI that MERCHANT will maintain a sufficient balance to cover return entries and to promptly notify GETI of any changes to MERCHANT'S accounts. In addition, GETI may require additional monetary sums for the reserve account from MERCHANT, and GETI reserves the right to hold additional monies as necessary to reduce any risk associated with the daily processing of checks, as requested by MERCHANT. In the event of processing termination, GETI may hold outstanding funds due to MERCHANT for up to one-hundred-eighty (180) days from the transaction date if GETI determines that the return history reasonably justifies the holding of funds. GETI may hold back certain amounts where GETI is investigating a transaction for breach of warranty or transactional requirements by MERCHANT or for other reasons. GETI shall monitor MERCHANT'S transactional activity and MERCHANT agrees that GETI may delay funds for a reasonable period to investigate account activity. GETI will attempt to notify MERCHANT of any investigation, but GETI shall have no liability to MERCHANT or any other party, for any such actions taken by GETI. MERCHANT agrees that GETI may hold, setoff or retain funds to protect against amounts owed GETI or based on MERCHANT'S financial condition. GETI will not be liable for any dishonor of any item as a result of actions taken hereunder. Any account is subject to review, verification, audit and acceptance by GETI. GETI may return any item to MERCHANT for correction or proper processing.

**5.6 RETURNS AND CREDITS.** MERCHANT shall maintain a fair policy permitting refunds, exchanges, returns and adjustments. During the term of this Agreement, MERCHANT shall be responsible for making all cash or check refunds to customer after a transaction has been batched out for settlement. Unless MERCHANT has been approved by GETI in advance to initiate credit entries for a lesser amount than the original check entry, MERCHANT must initiate a credit receipt for the same amount as the original check entry to effect voids, which occur the same day as the day of authorization and prior to batching out. MERCHANT shall obtain proper written authorization from the Customer whose name is printed on the face of the check or the customer'S authorized representative prior to crediting Customer. The customer or its authorized representative shall sign the completed credit receipt and a copy of the credit receipt shall be delivered to the customer at the time of each cancellation of a transaction. Each debit and void entry shall constitute a separate transaction for which a processing fee will apply. If it becomes necessary for a reversal of a transaction to be initiated, MERCHANT shall request in writing to GETI to initiate such reversal. MERCHANT shall give GETI enough information to create such reversal. A fee of no more than twenty-five dollars for each transaction reversal may be charged by GETI.

**6.1 WARRANTIES BY MERCHANT.** MERCHANT warrants and agrees to fully comply with all federal, state, and local laws, rules and regulations, as amended from time to time, including those with respect to consumer protection. MERCHANT also warrants not to change the nature of its business as indicated on the Application attached hereto and submitted herewith or to modify the ownership of the business without the prior written consent of GETI. As to the Transactions transmitted to GETI, MERCHANT represents and warrants to GETI that: (a) MERCHANT'S customer has authorized MERCHANT to endorse all checks and other cash items for collection; (b) the preparation and presentation of the Transactions comply with the terms and conditions set forth in this Services Agreement; (c) the digital image of the check transmitted to GETI is a sufficient copy that is a true, correct, and accurate image that represents all the information on the front and back of the original check at the time the original check was truncated so that a Substitute Check created from the image will satisfy legal equivalence requirements and the image has not been altered in any manner by MERCHANT or any third party acting on behalf of MERCHANT; (d) MERCHANT, or any third party acting on behalf of MERCHANT, has reviewed and confirmed that the transmission of MICR line information is identical in all respects to the original check and that the encoded check amount is accurate, (e) MERCHANT understands that any message text or other information MERCHANT elects to add to the check image transmitted to GETI may cause the depository bank'S endorsement not to be legible which may result in the delayed return of the Substitute Check or electronic representation if it is not paid, (f) the original check, or a paper or electronic representation, has not previously been deposited for collection with any financial institution, and no depository bank, drawee, drawer, or endorser will be asked to pay a check that it already has paid, (g) MERCHANT will retain the original check, or in the event MERCHANT utilizes the lockbox services of a third party or other similar services that MERCHANT'S third party designee will retain the original check, until final settlement of the Transaction and for such additional period as may be required in the event of a disputed truncated or Substitute Check, including claims that the Substitute Check or electronic representation does not satisfy legal equivalence requirements, so that the original check can be processed for collection, and that MERCHANT or MERCHANT'S third party designee will take reasonable efforts to safeguard any original checks until they are destroyed, (h) MERCHANT understands that the appearance of the original check and the use of certain background colors, decorative images, and choices in ink on the original check may affect the ability to produce a readable digital image of the check or the creation of a Substitute Check that meets legal equivalence requirements which may require the original check to be processed for collection (i) MERCHANT has no knowledge or notice of information to indicate that the transaction is fraudulent; (j) that each check is for an amount agreed to by the customer; (k) the total amount of each sales receipt evidences all goods and services purchased in a single transaction (No splitting check transactions to multiple checks); (l) MERCHANT has delivered the goods or completed the services identified in the authorized sales receipt; (m) each check represents a bona fide direct sales transaction between the MERCHANT and the person presenting the check in the MERCHANT'S ordinary course of business and that the amount of the check evidences the customer'S total indebtedness for the transaction involved; (n) the person presenting the check has no claim, defense, right of offset, or dispute against MERCHANT in connection with the purchase of the goods or services and MERCHANT will provide adequate services to the person presenting the check and will honor all warranties applicable thereto; (o) MERCHANT has not charged any separate or additional fee(s) in connection with the transaction other than as may be required by law. The foregoing shall not prohibit MERCHANT from extending discounts to customers paying by Merchant Processing Agreement Schedule II - Check Services



cash or by any means other than Remote Check Deposit (Check 21 Plus) check processing; (p) all of MERCHANT'S business locations engage in the business activity listed on the face of this Agreement; (q) MERCHANT warrants that ALL types of its business are clearly and precisely stated on this application; (r) the percentage of mail order sales listed by MERCHANT for each location is consistent with the information provided in the application; (s) MERCHANT, nor any of its employees have submitted checks drawn from their personal checking accounts on the MERCHANT'S GETI approved check imaging device; (t) MERCHANT uses only the name and address shown on the front of the Agreement on all its sales drafts; (u) MERCHANT warrants that no transaction submitted for authorization to GETI is with or through an entity other than MERCHANT; MERCHANT further acknowledges that if for any reason funds are credited to MERCHANT in excess of the amount that MERCHANT is entitled to receive under this Agreement, MERCHANT shall return all such excess funds to GETI upon demand by GETI. Such excess funds may be collected by GETI by a debit to MERCHANT'S designated account initiated by GETI as provided in this Agreement. If for any reason such account does not have sufficient funds, then MERCHANT shall promptly remit the excess funds to GETI. Until the return of such funds to GETI, MERCHANT acknowledges that it shall hold all such funds in trust for the benefit of GETI.

**7.1 LIMITATION OF LIABILITY AND MERCHANT'S WAIVER OF DAMAGES.** GETI shall be responsible for performance of the Remote Check Deposit (Check 21 Plus) services as a third-party provider in accordance with the terms of this Agreement. GETI shall not be responsible for any other person's or entity's errors, acts, omissions, failures to act, negligence or intentional conduct, including without limitation entities such as GETI's communication carrier or clearing houses, and no such entity shall be deemed to be a representative or an agent of GETI. **IN NO EVENT SHALL GETI BE LIABLE TO MERCHANT FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES WHICH MERCHANT OR ITS CUSTOMERS, AFFILIATES, PARENT COMPANIES, ASSOCIATES, AGENTS, OFFICERS, DIRECTORS OR EMPLOYEES MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, INCLUDING LOSS OR DAMAGE FROM SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM GETI'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.**

**7.2 FORCE MAJEURE.** GETI shall not be responsible for delays, nonperformance, damages, lost profits or other losses caused directly or indirectly by any Act of God, including, without limitation, fires, earthquakes, tornadoes, hurricanes, wars, labor disputes, communication failures, legal constraints, power outages, data transmission loss or failure, incorrect data transmission or any other event outside the direct control of GETI.

**8.1 CONFIDENTIALITY OF CUSTOMER INFORMATION.** MERCHANT further warrants and agrees that it shall not sell, purchase, provide, or exchange checking account information in the form of sales drafts, mailing lists, tapes, or any other media obtained by reason of a transaction or otherwise, to any third party other than to GETI, MERCHANT'S agents approved by GETI for the purpose of assisting MERCHANT in its business to GETI, the financial institution named on the check, or pursuant to lawful government demand without the account holder's explicit written consent. All media containing checking account numbers must be stored in an area limited to selected personnel until discarding and must be destroyed prior to or in connection with discarding in a manner that will render the data unreadable. MERCHANT will not disclose and will keep confidential the terms and conditions of this Agreement.

**9.1 CHARGEBACKS AND RETURNS.** MERCHANT shall bear all risk of loss, without warranty or recourse to GETI for the amount of any transaction, or other amounts due GETI (including GETI's actual costs and expenses) due to or caused by chargebacks and returns of any kind, whether for customer chargebacks, insufficient funds returns, or any other type of returns, except as set forth in the Remote Deposit Capture (Check 21 Plus) with Guarantee provisions below (provided that MERCHANT has purchased and GETI agreed to provide Guarantee service). GETI shall have the right to debit MERCHANT'S incoming transactions, designated account or any other funds of MERCHANT in GETI's direct or indirect control by reason of GETI's security interest granted to GETI by MERCHANT hereunder, and to chargeback such transactions to MERCHANT including, but not limited to any of the following situations: (a) where goods have been returned or service canceled by the person submitting the check for Remote Deposit Capture (Check 21 Plus) processing and that person has requested a credit draft and such credit draft was not processed by MERCHANT; (b) where the sales draft or purchaser breaches any representation, warranty or covenant or failed to meet the requirements of this Agreement, or applicable law, or has not been authorized in advance by the authorization center as required hereunder; (c) where the transaction is for a type of goods or services sold other than as disclosed in the MERCHANT application or approved in advance by GETI or the amount shown on the sales receipt differs from the copy given to the customer; (d) where a customer contends or disputes in writing to GETI, or the customer's financial institution named on the check that: (1) Goods or services were not received; or (2) Goods or services received do not conform to the description on the sales receipt; or (3) Goods or services were defective or the customer has a claim, dispute or defense to payment related to the transaction; or (4) The dispute reflects a claim or defense authorized by a relevant statute or regulation, (e) where a check is subject to indemnification charged back by the customer's financial institution; (f) where the transaction was generated through the use of an account that was not valid (As in, but not limited to, R03 return code) or effective (As in, but not limited to, R02 return code) on the transaction date or which was made on an altered or counterfeit check authorization document or of which MERCHANT had notice not to honor and failed to reject the transaction or if MERCHANT disregarded any denial of authorization; (g) where MERCHANT failed to obtain specific authorization in advance from GETI to complete the transaction and/or a valid authorization number was not on the sales receipt (h) where security procedures were not followed; (i) where the customer's financial institution or GETI has information that MERCHANT fraud occurred at the time of the transaction(s), or the transaction is not a sale by MERCHANT whether or not such transaction(s) was authorized by the customer; (j) in any other situation where the check authorization was executed or a credit was given to MERCHANT in circumstances constituting a breach of any representation or warranty of MERCHANT or in violation of applicable law or where MERCHANT has not provided documents or resolved a customer dispute whether or not a transaction is charged back; (k) a sales receipt was charged back and represented whether or not the customer knows or consents to this representation. If, with respect to any one of MERCHANT'S outlets, the amount of or number of any counterfeit or fraud incidents becomes excessive, in the sole determination of GETI; MERCHANT may be charged back for all transactions, this Agreement may be terminated immediately without notice, and MERCHANT'S funds, including but not limited to those in incoming transactions and in MERCHANT'S designated account, shall be held pursuant to the provisions herein. GETI shall retain any discount or fee related to a chargeback transaction. MERCHANT agrees that GETI will assess up to twenty-five dollars for each chargeback, or such increased or additional charges as may be established by GETI from time to time. **Additionally, GETI shall have the same rights to debit MERCHANT'S account for transactions returned or not honored for any reason, including but not limited to insufficient funds, administrative returns, or any other kind of returned transaction. If MERCHANT has requested the Guarantee service, and GETI has accepted the application for Guarantee service, certain transactions are guaranteed, as listed in the Remote Check Deposit (Check 21 Plus) with Guarantee provisions below.**

**9.2 CHARGEBACK AND RETURNS RESERVE ACCOUNT.** Notwithstanding any other language to the contrary contained in this Agreement, GETI reserves the right to establish, without notice to MERCHANT, and MERCHANT agrees to fund a non-interest bearing Chargeback and Return Reserve Account, or demand other security and/or to raise any discount fee or transaction fee hereunder, upon GETI's reasonable determination of the occurrence of any of the following: (a) MERCHANT engages in any processing of charges which create an overcharge to the customer by duplication of charges; (b) **Failure by MERCHANT to fully disclose the true nature or percentage of its actual or expected losses due to insufficient funds transactions, fraud, theft or deceit on the part of its customers, or due to administrative chargebacks/returns, or chargebacks or rejections by customers;** (c) **Failure by MERCHANT to fully disclose the true nature of its business to GETI to permit a fully informed decision as to the suitability of MERCHANT for processing through GETI;** (d) Failure by MERCHANT to fully disclose the true ownership of MERCHANT'S business entity or evidence of fraud; (e) Processing by MERCHANT of unauthorized charges or any other action which violates applicable risk management standards of GETI or is likely to cause loss; (f) **Any misrepresentation made by MERCHANT in completion of the MERCHANT Application or breach of any other covenant, warranty, or representation contained in this Agreement or applicable law including a change of type of business without prior written approval by GETI;** (g) MERCHANT has chargebacks or returns of any kind which exceed 1% of the total number of transactions completed by MERCHANT in any thirty (30) calendar day period; (h) MERCHANT'S financial stability is in question or MERCHANT ceases doing business; or (i) Upon notice of or termination of this Agreement. After payment or adequate provision for payment is made by GETI, for all obligations on the part of MERCHANT to GETI under this Agreement, MERCHANT may request GETI to disburse to MERCHANT any funds remaining in the Chargeback and Return Reserve Account unless otherwise agreed to by GETI. Such funds will not be disbursed to MERCHANT until the end of one hundred eighty (180) days after termination of this Agreement or ninety (90) days from the date of the last chargeback or return activity, whichever is later, unless GETI in its sole discretion has reason to believe that customer chargeback rights may be longer than such period of time or that loss is otherwise likely, in which event GETI will notify MERCHANT of such fact and GETI will set the date when funds shall be released. No monies held in the Chargeback and Return Reserve Account shall bear interest. Provisions applicable to the designated account are also applicable to this account.

**9.3 COLLECTIONS.** MERCHANT acknowledges and agrees that when collection services are required, GETI may utilize an appropriately licensed third party to perform such collection services. MERCHANT further authorizes GETI to continue collection efforts for MERCHANT. If collections are unsuccessful after sixty (60) days, GETI shall discontinue collections and be absolved of all responsibility.

**10.1 REMOTE CHECK DEPOSIT (CHECK 21 Plus) with Guarantee.** The Remote Check Deposit (Check 21 Plus) with Guarantee provisions are operational only if MERCHANT has marked the Check 21 Plus with Guarantee box on the application form of the Agreement. If so marked, MERCHANT wishes GETI to provide a guarantee for reimbursement of losses sustained by MERCHANT in accepting checks for Remote Check Deposit (Check 21 Plus) processing. In addition to the provisions previously set forth and notwithstanding any provisions to the contrary, GETI has established a per account Guarantee Limit, as per the Schedule (located in the Application Approval Box), based on a percentage of the face amount of any and all checks (and a local access [Transaction Fee] fee) as set forth in the pricing section of the agreement presented at MERCHANT'S place of business or at other locations which are listed in any attachments to this Agreement, subject to the terms and conditions set forth in this Agreement. GETI shall reimburse MERCHANT per Schedule, up to the Guarantee Limit, as measured from the date of verification of non-payment, subject to MERCHANT'S compliance with all of the terms and conditions contained in this Agreement or any of GETI's other published instructions. GETI shall have the right to adjust MERCHANT'S rate including Remote Check Deposit (Check 21 Plus) with Guarantee rate based upon its sole determination. Each month MERCHANT shall have access to an itemized summary of Remote Check Deposit (Check 21 Plus) check deposits. GETI shall process up to the check limit established for MERCHANT, but will not be responsible for reimbursement of checks exceeding the MERCHANT's approved guarantee limit. The following transaction types are not included in the Remote Check Deposit (Check 21 Plus) with Guarantee service, and GETI assumes no liability for and will provide no reimbursement for transactions as follows: Incorrect MICR data reads, unable to locate account or invalid account number returns, customer chargebacks or customer revocations of any transaction. **Guarantee reimbursement shall only serve to cover MERCHANT losses due to, NSF returns, and Insufficient Funds returns up to the per account guarantee limit placed in the approval section of the contract.**

**10.2 MERCHANT SHALL PAY.** A Discount Fee, as per Schedule, based upon a percentage of the face amount of checks required to the database during the month. As per schedule: a Monthly Check 21 Access Fee, a Monthly Minimum fee and service fee to be paid each month, a transaction fee for each ACH deposit, and a transaction fee for each Remote Check Deposit (Check 21 Plus) inquiry to the database that does not result in a transaction approval and a "batch out" fee equal to the transaction fee, and a Return Fee. A fee of no more than twenty-five dollars may be charged per transaction return. An annual subscription fee of \$59.95 may be debited each year. If MERCHANT terminates this agreement within the first three (3) years of the contract, a one-time termination fee of one hundred twenty five dollars (\$125.00) will be assessed and electronically debited from the MERCHANT'S account for administrative processing. MERCHANT must promptly notify GETI in writing of any dispute regarding fees under this Agreement. MERCHANT'S written notice must include: (i) MERCHANT name and account number; and (ii) the dollar amount and description of the disputed fees. Such written notice must be received by GETI no later than ninety (90) days after the disputed fees have been paid by MERCHANT or charged to MERCHANT'S account by GETI. MERCHANT'S failure to so notify GETI will waive and bar the dispute.

**10.3 CHECK PROCESSING.** MERCHANT shall submit all documentation related to the guaranteed transactions to GETI within forty-eight hours of GETI's request, including but not limited to sales receipts, invoices, or other documentation related to the transaction.

**10.4 ASSIGNMENT OF CHECKS.** As of the date of this Agreement and by subscribing to Remote Check Deposit (Check 21 Plus) with Guarantee, MERCHANT shall be deemed to have assigned to GETI, without recourse, all of MERCHANT'S right, title and interest in any and all checks, including any rights to treble or punitive damages permitted under applicable law. MERCHANT shall execute and deliver endorsements, instruments, and papers and shall do whatever is necessary under the laws of any applicable jurisdictions to secure and defend GETI'S rights and shall do nothing to prejudice those rights. MERCHANT shall cooperate with GETI in pursuing GETI'S rights, including suing or prosecution of the customer under all applicable laws.

**10.5 NOTIFICATION OF PAYMENTS RECEIVED.** MERCHANT shall notify GETI pursuant to the provision set forth in Section 5.3

**11.1 CHECKS FOR WHICH MERCHANT WILL NOT BE REIMBURSED UNDER REMOTE CHECK DEPOSIT (CHECK 21 Plus) with Guarantee.** In addition to the provisions set forth in this Agreement and notwithstanding any other provisions to the contrary, GETI shall have no obligation to reimburse MERCHANT for checks that are: (a) Not honored by the customer's financial institution because of the customer's instructions to "stop payment" on the check; (b) Fraudulent, whether MERCHANT, its employees or agents are involved, either as a principal or as an accessory, in the issuance; (c) Accepted by MERCHANT or its employees with advance knowledge of the likelihood of its being dishonored even though authorized by GETI; (d) Lost, stolen, altered or counterfeit, and GETI has reason to believe that MERCHANT failed to use reasonable care in verifying the customer's identity; (e) Given as a substitute for a previously accepted check, whether or not the previous check was authorized by Company or, any check upon which MERCHANT has accepted full or partial payment (f) One of multiple checks presented to MERCHANT in a single transaction for Remote Check Deposit (Check 21 Plus) processing; (g) For goods, if the goods are subsequently returned by customer or repossessed by MERCHANT or lien holder, within 65 days of date of purchase; (h) Not honored by the customer's financial institution because of the failure of, the closing of, or government-imposed restrictions on withdrawals from the financial institution; (i) Checks for which MERCHANT returns cash back to the customer, unless MERCHANT is approved in writing by GETI for such cash back; (j) Checks for which GETI previously denied authorization; (k) Not in compliance with this agreement and not processed in accordance with the check processing provisions of this Agreement; (l) Incorrect MICR data scans or reads; (m) unable to locate account or invalid account number returns. In addition, before processing the check and as a condition to honoring the check, MERCHANT shall obtain sufficient personal information to locate the person presenting the check, including but not limited to a current home or business telephone number including area code, a current home address consisting of a street or rural route address, not a post office box, and the customer's valid, unexpired driver's license number or non-driver identification number together with the state of issuance. MERCHANT shall ensure that this identifying information is legibly printed on the check prior to imaging the check.

**11.2 QUALIFIED INSTRUMENTS FOR REMOTE CHECK DEPOSIT (CHECK 21 Plus) with Guarantee.** GETI has set the following guidelines that each instrument must meet to qualify for reimbursement under the Remote Check Deposit (Check 21 Plus) with Guarantee option: (a) At the time of authorization, the individual name or business name must be commercially imprinted on the instrument. In the case of a business entity, the instrument must have the business name and current business address and phone number (as listed with information) commercially imprinted on the check. Temporary checks or checks without commercially imprinted check numbers will not qualify for check guarantee. Drafts will not qualify for check guarantee; (b) Checks drawn on a United States Government entity or account, Cashier's Checks, Certified Checks, Money Orders, Traveler's Check will not qualify for check guarantee; (c) Checks written by one person for goods or services provided to a 3<sup>rd</sup> party do not qualify for guarantee. (d) An instrument must be authorized with a driver's license presented by the consumer to Merchant and viewed by Merchant at the time of authorization; (e) The customer's valid driver's license and the state code found on the "Quick Reference Guide" or if the guide is not available the abbreviation of the state that issued the identification card must be noted on the instrument at the time of authorization; (f) The authorization number received through the GETI approved check imaging device and/or software vehicle must be noted on the instrument at the time of authorization prior to MERCHANT storing the check; (g) A street address must be commercially imprinted on the check. If the current street address is not the one imprinted on the instrument at the time of the authorization, it must be crossed out and the most current address should be written on the check prior to scanning the check through the imaging device. Post Office (PO) Boxes only are not acceptable addresses; (h) If the phone number is not imprinted on the instrument, Merchant must note the phone numbers (home phone and business phone) on the instrument at the time of authorization prior to scanning the check through the imaging device; (i) The date of the instrument must be the date on which the instrument was authorized by GETI (no post-dated or held checks) if merchant was approved for Face to Face Check 21+ POS program; The date of the instrument must be no more than 14 days prior to the date the instrument was authorized by GETI if merchant was approved for Consumer Not Present Check 21+ Remote program; (j) The instrument must be payable to the Merchant's business (checks written to "cash" or "bearer", or to a 3rd party do not qualify for guarantee). (k) The amount authorized and the amount shown in words and figures on the check must agree; (l) The check number of the instrument being authorized must be the same check number given at the time authorization is attempted. No represented check is guaranteed unless the instrument was authorized with the same dollar amount as when the instrument was originally authorized; (m) In the event of a personal instrument, the signature on the check must be the same as the commercially imprinted name on the check and drivers license provided at the time of authorization; (n) The instrument has been filled out completely by the customer, has not been altered, or has not been tendered in whole or in

part in exchange for cash, or was not payment for a prior debt due or a financed obligation; (o) The Merchant did not subsequently receive value in full or in part for the dishonored instrument from the presenter in the form of cash payment, credit, service, exchange or repossession; (p) The instrument was not dishonored as a result of a "stop payment" order issued by the presenter to the financial institution.; (q) The instrument was not previously denied by GETI based on the same or different driver's license number, which was previously presented for authorization by Merchant. The instrument must be authorized by entering the correct ID number into the GETI approved check imaging device and/or an approved software vehicle at the time of authorization; (r) The instrument was not one of multiple instruments or payment methods presented to Merchant for sales made that day (no splitting of checks); (s) GETI reserves the right and Merchant acknowledges that a receipt for the products and services provided to the check writer may be requested. The delivery of this receipt must be postmarked or faxed within 48 hours of the request and its acceptance by GETI will be required to qualify the claim for payment; (t) Merchant must have followed instructions contained in GETI's Merchant Quick Reference Guide or other authorized, current published instructions; (u) Merchant acknowledges that first time check writers may have a lesser check limit than those of frequent check writers and check limits are based on not only dollar amount, but number of checks written in a period of time to be determined solely by GETI; (v) The instrument was not issued in connection with a transaction described herein. Merchant must comply with the terms and conditions of this agreement, including but not limited to, the requirements described herein; (w) The Merchant, or its agents, and employees must not accept any instrument with prior knowledge that the instrument is likely to be dishonored or that the identification used was forged, stolen, or otherwise did not belong to the check writer, or that the transaction for which the instrument was tendered is illegal, void, or invalid.

**11.3. STOP PAYMENT COVERAGE.** GETI agrees to waive section 11.2 (n) and to guarantee Stop Payment instruments up to the limit which was approved by GETI's underwriting department at the time of acceptance, provided that Merchant shall have performed all of his obligations related to the issuance of said qualified instrument and is compliant with Section 11.1 and 11.2. At GETI's request, Merchant shall provide written information regarding any claim for reimbursement of a Stop Payment instrument. Stop Payment Coverage must be indicated (separate addendum) by Merchant upon the initial acceptance by GETI and must be approved and accepted by GETI in addition to this agreement. Stop Payment Coverage does not cover business account checks, only personal accounts. This coverage is not available to all business types and GETI reserves the right to determine which business types will be eligible for Stop Payment Coverage.

**11.4. PAYROLL CHECK CASHING COVERAGE.** GETI agrees to waive section 11.1 (i) and 11.2 (j) and to guarantee Payroll Checks cashed by MERCHANT up to the limit which was approved by GETI's underwriting department at the time of acceptance (maximum \$500.00 limit unless approved in writing by GETI in advance), provided that Merchant shall have performed all of his obligations related to the issuance of said qualified instrument and is compliant with all other requirements of Sections 11.1 and 11.2. Payroll Check Cashing Coverage must be indicated by marking the Payroll Guarantee section on the front of this Agreement upon the initial acceptance by GETI and must be approved and accepted by GETI in addition to this agreement. Merchant agrees that Payroll Checks will be funded on a different schedule than Sale transactions and will usually be made available in Merchant's account within 8 banking days. Payroll Check Guarantee does not cover checks drawn on personal accounts or any check payable to "cash", only valid business payroll checks drawn on a valid business account. Payroll check must contain a preprinted business address on the face of the check and the work phone number for the employee cashing the check must be hand written on the face of the check prior to imaging the check in order to qualify for guarantee reimbursement. Merchant is required to have payee place their thumbprint on the check prior to imaging the check. Merchant must carefully inspect the employee's valid photo driver's license to insure that the photo and descriptive information correctly identifies the person whom the check is made payable to; payee must be the same person attempting to cash the check. GETI will assign Merchant's equipment or software a separate Terminal ID specifically for Payroll Check cashing. Merchant must process all Payroll Checks under the GETI assigned terminal ID labeled "Paycheck". Additionally, if prompted by the terminal, Payroll Checks must be processed by selecting Payroll/Business check type on the GETI approved check imaging device. Merchant shall be charged an additional discount for all checks processed as Payroll/Business if Payroll Check Cashing Coverage is in effect. This coverage is not available to all business types and GETI reserves the right to determine which business types will be eligible for Payroll Check Cashing Coverage.

**12.1. COMPLIANCE AND DISCLOSURE OF INFORMATION.** MERCHANT agrees to comply with all applicable state or federal laws, rules and regulations affecting the use of checks, drafts and ACH transactions, including but not limited to rules and procedural guidelines established by the Federal Trade Commission ("FTC") and Regulation E (Reg. E). MERCHANT is solely responsible for any and all losses incurred by MERCHANT or GETI in the event MERCHANT initiates any transaction prohibited by Regulation E Rules or other rules or laws of the United States of America ("USA") or in breach of this Agreement. MERCHANT shall provide such information and certifications as GETI may reasonably require from time to time to determine MERCHANT'S compliance with the terms and conditions of this Agreement and applicable law. MERCHANT further agrees to produce and make available for inspection by GETI or its officers, agents, attorneys, accountants, or representatives, such books and records of MERCHANT as GETI may deem reasonably necessary to be adequately informed of the business and financial condition of MERCHANT, or the ability of MERCHANT to observe or perform its obligations to GETI pursuant to this Agreement. MERCHANT further agrees to provide to GETI from time to time such information including, but not limited to, credit reports, personal and/or business financial statements, income tax returns, or other such information as GETI may request. MERCHANT grants to GETI continuing authority to conduct credit checks and background investigations and inquires concerning MERCHANT and MERCHANT'S owner(s) including, but not limited to, character and business references and the financial condition of MERCHANT and MERCHANT'S owner(s). MERCHANT expressly authorizes GETI or its agents, attorneys, accountants, and representatives to provide and receive such information from any and all third parties directly, without further consent or authorization on the part of MERCHANT. GETI may share with others its credit, sales and other information. MERCHANT will not transfer, sell, or merge or liquidate its business or assets or otherwise transfer control of its business, change its ownership in any amount or respect, engage in any joint venture partnership or similar business arrangement, change its basic nature or method of business, types of products sold or engage in sales by phone or mail order without providing notice to GETI and provide GETI with the opportunity to terminate this Agreement.

**13.1. CHECK RETENTION.** GETI requires that MERCHANT retain and store the original check in a secure location for the period of at least ninety (90) days. In the event a Remote Capture Deposit (Check 21 Plus) transaction cannot be processed due to a poor quality check image, MERCHANT shall be notified by GETI in writing (and/or by phone, fax, or email) to manually deposit the check. Once notification has been received, MERCHANT is to deposit the check at their bank within 48 hours. Failure to deposit the check in Merchants' bank account within 48 hours may result in a loss of guarantee. If the manually deposited check is subsequently returned by the check writers bank, MERCHANT shall mail the check to GETI (P.O. Box 6867, Destin, FL 32550) to submit for a claim for reimbursement (if merchant selected the Remote Check Deposit (Check 21) with Guarantee program on the front of this application). In any event, the instrument must be received by GETI within 45 days of GETI's initial authorization of the instrument (if guarantee service is selected). **If original check was not returned or was lost by merchant then MERCHANT acknowledges that GETI will not be able to process the Remote Check Deposit (Check 21 Plus) transaction, provide any sort of guarantee, or provide check collection services.** Refer to section 4.4 regarding Image Requirements.

**14.1. ADDITIONAL MERCHANT REPRESENTATIONS.** MERCHANT agrees to permit GETI to audit MERCHANT upon reasonable notice. MERCHANT agrees that any outstanding amount(s) owed to GETI shall be subject to a 1.5% finance charge monthly. Any outstanding sums will be sent to an outside collection agency and charged the maximum amount of civil, legal, and collection fees/charges as is allowed by law.

**15.1. ADDITIONAL GETI RESPONSIBILITIES.** GETI will accept double sided check images from a GETI approved check imager/software vehicle on a 24-hour per day basis. GETI is only responsible for processing entries that have arrived at its premises in a proper format and on a timely basis. GETI will use information provided by MERCHANT to originate its entries in the Remote Check Deposit (Check 21 Plus) network. MERCHANT understands and agrees that GETI may reject MERCHANT'S entries for any reason permitted in this Agreement and/or if acceptance of such entry would cause GETI to potentially violate any federal, state or local law, rule statute, or regulation, including without limitation any Federal Reserve or other regulatory risk control program. At MERCHANT'S written request, GETI will make reasonable efforts to reverse or delete an entry, but will under no circumstance be liable for the failure to comply with such request.

**16.1. INDEMNIFICATION.** MERCHANT agrees to indemnify GETI for any cost, expense, and damage, lost profit and/or attorneys' fees caused by any breach of its obligations or representations in this Agreement.

**17.1. NON-WAIVER.** Neither the failure nor any delay on the part of GETI to exercise any right, remedy, power or privilege hereunder shall operate as a waiver thereof or give rise to an estoppel nor be construed as an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then such waiver shall apply only to the extent specifically stated in such writing.

**18.1. ASSIGNMENT.** MERCHANT may not assign or transfer any rights under this Agreement unless and until it receives the prior written approval of GETI. GETI may freely assign this Agreement, its rights, benefits and duties hereunder.

**18.2. TERMINATION.** This Agreement shall continue indefinitely unless and until terminated by either party. MERCHANT must provide sixty (60) days written notice to GETI of termination and monthly minimum and subscription fees will continue in effect for this time. If Merchant terminates this agreement within the first three (3) years of the contract, a one-time fee of one hundred twenty five dollars (\$125.00) will be assessed and electronically debited from MERCHANT'S account. GETI shall have the right to suspend or terminate this Agreement immediately and without notice to MERCHANT.

**19.1. COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, such counterparts to constitute but one and the same instrument.

**20.1. SCHEDULE OF FEES.** Attached to this Agreement and incorporated herein by reference is a Schedule of Fees, which contains the Discount Fee, Transaction Fees, Return Fee per returned item, Minimum Monthly Discount Fee, Subscription Fee, Monthly Check 21 Access Fee, Batch Out Fee, Termination Fee and other terms and conditions in effect on the commencement date of this Agreement. GETI reserves the right at all times to unilaterally change all or part thereof, or any other terms of this Agreement upon written notice to MERCHANT.

**20.2. APPLICATION FEE.** Any application fee paid to GETI is non-refundable whether or not MERCHANT and this Agreement are accepted by GETI.

**21.1. ENTIRE AGREEMENT.** This Agreement, including the attached Schedules, together with the Account Agreement, is the complete and exclusive statement of the agreement between GETI and the MERCHANT with respect to the subject matter hereof and supersedes any prior agreement(s) between GETI and the MERCHANT with respect to the subject matter. In the event of any inconsistency between the terms of this Agreement and the Account Agreement, the terms of this Agreement shall govern. In the event the performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which GETI, the Originating Depository Financial Institution (ODFI) or MERCHANT is subject, and which governs or affects transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy and GETI, the ODFI and MERCHANT shall incur no liability as a result of such changes except as provided in the following paragraph.

**22.1. AMENDMENTS.** As stated in paragraph 21.1, GETI, the ODFI or MERCHANT may amend operations or processing procedures in order to conform to and comply with any changes in applicable Federal or State Regulations. The changes would be, without limitation, those relating to any cut-off time and the close of any business day. Such amendments to operations or procedures shall become effective upon receipt of written notice to the other party, as provided for herein, or upon such date as may be provided in the applicable law or regulation referenced in the written notice, whichever is earlier in time. Use of the Remote Check Deposit (Check 21 Plus) services after any such changes shall constitute acceptance of the changes by the parties. No other amendments or modifications to this Agreement will be effective unless such changes are reduced to writing and are signed by the duly authorized party or parties to this Agreement and such Amendments are incorporated into and made a part of this document.

**23.1. BINDING AGREEMENT- BENEFIT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement is not for the benefit of any other person or entity and no other person or entity shall have any right against GETI.

**24.1. ATTORNEYS' FEES.** In the event that it becomes necessary for GETI to employ an attorney to enforce, interpret, mediate or arbitrate this Agreement, or collect a debt from MERCHANT GETI shall be entitled to recover its reasonable attorneys' fees, costs, and disbursements related to such dispute from MERCHANT.

**25.1. CHOICE OF LAW, VENUE & JURISDICTION.** Notwithstanding any language to the contrary, all issues related to the electronic processing of checks under the terms of this Agreement shall be determined in accordance with the Federal Trade Commission and Regulation E Rules. In the event of a conflict between the Rules and applicable local, state or federal law, the Rules shall prevail unless otherwise prohibited by law. To the extent that an issue arises which is not covered by the Rules, this Agreement shall be governed by and construed in accordance with Florida law and it is expressly agreed that venue and jurisdiction for all such matters shall lie in Okaloosa County, Florida. MERCHANT acknowledges that this Agreement was formed in Destin, Florida, upon its acceptance by GETI.

**26.1. SEVERABILITY.** If any provision of the Agreement is held to be illegal, invalid, or unenforceable, in whole or in part, by court decision, statute, or rule such holding shall not affect any other provisions of this Agreement. All other provisions or parts thereof shall remain in full force and effect and this Agreement shall, in such circumstances, be deemed modified to the extent necessary to render enforceable the provision hereof.

**27.1. HEADINGS.** The headings in this Agreement are used for referenced purposes only. They shall not be deemed as part of this Agreement and shall not affect its interpretation.

**28.1. EFFECTIVE DATE.** This Agreement shall be effective only upon acceptance by GETI.

**29.1. IN WITNESS WHEREOF.** The parties hereto have caused this Agreement to be executed by their duly authorized officers.

**Check Resultz, LLC. or a successor service provider as agreed upon by NPC shall be the Service Provider for all Check Recovery Services.**

#### *SPECIFIC TERMS FOR CHECK RECOVERY SERVICES*

Check Resultz, LLC, an Indiana corporation, or such other service provider as otherwise designated by NPC shall be the Service Provider for all check recovery services.

1. Merchant authorizes Check Resultz, LLC an Indiana Limited Liability company, or such other service provider designated by NPC (any such service provider, "Check Recovery Provider"), to act as its processor to re-present, in accordance with the RCK rules of National Automated Clearing House Association (NACHA), all returned check items forwarded to Check Recovery Provider by Merchant. Merchant understands that Check Recovery Provider is acting as a 3rd party processor of ACH transactions and NOT in the capacity of a collection agency. Check Recovery Provider agrees to perform all services hereunder in a good and professional manner, and agrees to keep all information about Merchant, its affiliates and its customers confidential.
2. In addition to re-presentation of returned checks, Merchant authorizes Check Recovery Provider to originate separate electronic debits for return fees in an amount posted by the Merchant and authorized by the check writer as described in the Merchant application. Returned item fees must not exceed the maximum allowed by State law(s).
3. Merchant agrees to display check writer notices as reasonably required by Check Recovery Provider at all point of sale locations.
4. Merchant agrees to complete and forward a Return Item Release Authorization to the bank(s) utilized by Merchant instructing the bank to forward all returned items to Check Recovery Provider after first presentation.
5. In the event Check Recovery Provider overpays Merchant due to miscalculation, Merchant agrees to return excess funds to Check Recovery Provider. Thus, if Check Recovery Provider deposits in error, an amount to Merchant less the face value of check, Check Recovery Provider agrees to remit correct payment to Merchant up to face value of check.

6. Check Recovery Provider will notify Merchant of new returned items every 1 day(s) and will deposit collected items to the Merchant's account via ACH credit or a paper check after successful electronic re-presentation of the item. These payments will be made via check \_7\_ day(s) after recovery or via ACH to account.
7. Merchant understands that Check Recovery Provider is debiting items on Merchant's behalf and that Check Recovery Provider will charge a transaction fee to the check writer equal to an amount equal to or less than allowed by the applicable state where the Merchant is located for each item successfully processed, with the maximum number of \_2\_ attempts per item. Check Recovery Provider does not guarantee successful electronic re-presentation or payment of any return item presented to Check Recovery Provider.
8. Check Recovery Provider retains the right to refuse to process any transactions not properly submitted by Merchant. Merchant must agree to obtain proper authorization for any return fee to be charged before submitting return.
9. Any dispute between Merchant and check writer relating to a check transaction shall be settled between Merchant and check writer. Unless due to Check Recovery Provider negligence or willful misconduct, Merchant agrees to indemnify and hold Check Recovery Provider harmless from any claim, liability, loss or expenditure resulting from Merchant's actions, including but not limited to failing to obtain written authorizations or post check writer notices as required by NACHA and this agreement.
10. Where applicable, all transactions covered by this Agreement are governed by NACHA's Operating Rules, Regulation E established by the Federal Reserve Board, UCC Article 4, The Electronic Funds Transfer Act and other applicable laws and regulations. Otherwise, the laws of the State of Indiana shall govern this Agreement.
11. In the event the Merchant's bank has not forwarded to Check Recovery Provider any returned check items for any preceding six (6) month period, Check Recovery Provider shall have the right to assess Merchant a \$5 per month inactivity fee ("Inactivity Fee").
12. If either party fails to comply with any term of this Agreement or any applicable laws or regulations cited in this Agreement, after 30 days written notice and opportunity to cure, the non-defaulting party may terminate this Agreement by giving notice to the defaulting party. If this Agreement is terminated for any reason, Check Recovery Provider will continue to process any and all returned check items currently in the electronic re-presentation process.
13. Either party may terminate this Agreement without any cancellation fee by giving the other party thirty (30) days written notice of termination. Termination will have no effect on items already in the electronic re-presentation process.



**SCHEDULE III**  
*Voyager Fleet Card Terms and Conditions*

If you elect to accept Voyager Fleet Cards, the following terms and conditions shall apply. Capitalized terms used but not defined in these Terms and Conditions shall have the means ascribed to them in the Agreement.

**1. GENERAL.**

- A. NPC and Voyager Fleet Systems, Inc. ("VFSI") each have adopted rules and regulations relating to all aspects of acceptance and processing of Voyager Fleet Cards ("Voyager Cards"). Such rules and regulations, as amended from time to time, are incorporated into these Terms and Conditions by reference and shall be referred to as the "Voyager Rules". The current Voyager Rules are set forth in Section 5 of these Terms and Conditions.
- B. As a result of Merchant submitting transactions resulting from acceptance of Voyager Cards ("Voyager Sales") for processing to NPC, NPC will process such Voyager Sales and credit or debit your Merchant Account with the resulting proceeds. In addition, when a disputed transaction or chargeback occurs, Merchant agrees to provide all requested information to NPC and NPC agrees to forward such information to VFSI in accordance with the Voyager Rules. NPC is not responsible for the outcome of any chargeback.
- C. Merchant agrees that these Terms and Conditions are confidential and will not disclose them to any third party without the prior written consent of NPC.
- D. Merchant shall comply with the Voyager Rules as amended from time to time. NPC may amend the Voyager Rules at any time. Submission by Merchant of Voyager Sales any time after 7 days from the date of distribution of amended Voyager Rules to Merchant's address, shall be evidence that Merchant has received the amended Voyager Rules and has agreed to abide by them.

**2. PROCESSING RESTRICTIONS DUE TO THIRD PARTY PROVIDERS.**

NPC can only process Voyager Sales received by NPC, and you are responsible for ensuring Voyager Sales are formatted and transmitted to NPC in accordance with the then current requirements of NPC and VFSI. NPC may increase processing fees if a third party presents Voyager Sales transactions not in accordance with the then current requirements. Merchant assumes full responsibility and liability for a Third Party Service Providers' failure to comply with the Voyager Rules. Merchant is responsible for obtaining from the Third Party Service Provider any information needed by NPC. Merchant understands that disputes involving a Third Party Service Provider must be dealt with independently from NPC. If disputes are unresolved and relate to these Terms and Conditions, Merchant shall notify NPC at the address set forth below. You must pay NPC pursuant to the Agreement and these Terms and Conditions regardless of any disputes you have with any Third Party Service Provider.

**3. TAX CALCULATION, PAYMENT AND INDEMNITIES.**

- A. **Tax Liability.** Merchant shall be liable for the reporting, calculating, remittance or payment of tax, interest and penalties associated with the use of Voyager Cards at its location(s). NPC shall not be liable for and Merchant agrees to indemnify and hold harmless NPC, its parent, their subsidiaries and affiliates, and all of the foregoing entities' respective officers, directors, employees and agents from and against any claims, demands, or judgments, made or recovered against it, arising out of the reporting, calculating and payment of tax associated with the use of the Voyager Card at Merchant location(s). NPC may defend on its own any such claims or demands or request Merchant to take up such defense. In either event Merchant will further indemnify NPC for reasonable attorney's fees or any other necessary expenses incurred by NPC by reason of such defense.
- B. **Registration Form.** For tax calculation purposes, Merchant shall be required to sign the Registration Form attached hereto and fully incorporated by this reference. Receipt of the signed registration

form must be received by NPC prior to acceptance of any Voyager Cards by Merchant.

**4. VOYAGER DISCOUNT PROGRAM AND DISCOUNT PAYMENT.**

- A. **Participation in Voyager Discount Program.** Merchant shall immediately notify NPC in writing if Merchant is participating in a Voyager Discount Program. NPC will begin processing the discount 60 days from the date NPC receives written notice of participation.
- B. **Liability Related to Discount Program.** Merchant shall be liable for the reporting, calculating, remittance or payment of the discount. NPC shall not be liable for and MERCHANT agrees to indemnify and hold harmless NPC, its parent, their subsidiaries and affiliates, and all of the foregoing entities' respective officers, directors, employees and agents from and against any claims, demands, or judgments, made or recovered against it, arising out of the reporting, calculating and payment of the discount. NPC may defend on its own any such claims or demands or request Merchant to take up such defense. In either event Merchant will further indemnify NPC for reasonable attorney's fees or any other necessary expenses incurred by NPC by reason of such defense.

**5. RULES**

- A. Merchant shall honor all valid Voyager Cards for purchases pursuant to the Agreement. Merchant shall check the expiration date and any printed restrictions for both electronic and manual transactions.
- B. Merchant shall obtain a valid authorization for each transaction. Merchant shall bear all risks of accepting a Voyager Card without obtaining a valid authorization. If Merchant receives a decline, the Voyager Card shall not be used to complete the Voyager Sale. There shall be a \$0.00 floor limit for all electronic transactions.
- C. For customer-activated terminals, Merchant shall pre-authorize the Voyager Card to VFSI with values indicating that the Voyager Sale is a customer-activated sale. Upon approval, Merchant shall insure that the fuel dispenser authorizes for up to \$150.00 It is the responsibility of Merchant to find a third party processor or system integrator that is certified by VFSI to process Voyager transactions.
- D. Merchant shall insure that all cashier-assisted electronic sales drafts and credit vouchers shall be completed to include POS terminal print showing the Voyager Card account name encoded in the mag-strip (if POS function is applicable), account number (if permitted by Law), sub number, expiration date of the Voyager Card, the signature of the authorized user, the transaction date and time, type of fuel sold, a description of the service rendered (if requested), odometer reading (as permitted by the electronic POS device), total Voyager Sale price, and the authorization number.
- E. Merchant shall not process manually prepared sales drafts.
- F. If there is a time-out or response message on the POS device indicating that the authorization system is unavailable, Merchant must telephone VFSI for authorization.
- G. If an electronic authorization cannot be achieved at a card-activated POS device due to technical difficulties, the Voyager cardholder shall be referred to the station attendant if during Merchant's open business hours.
- H. Merchant shall establish a fair policy for the exchange and return of merchandise. Merchant shall promptly submit credits for any returns that are to be credited to the Voyager cardholder account.
- I. Merchant shall not give any cash refunds to any Voyager cardholder in connection with a Voyager Sale.

## Schedule IV EBT Transactions

Capitalized terms that are used herein but not defined herein will have the meaning as set forth in the Agreement.

If elected by you on the Application, you wish to purchase from NPC and Member Bank and NPC and Member Bank wish to sell to you certain services necessary for the authorization, processing and settlement of point of sale EBT transactions submitted to the EBT Networks and which transactions are initiated through you in connection with the authorization, providing and/or issuance of United States Department of Agriculture, Food and Nutrition Services ("FNS") food stamp benefits ("FS Benefits") and/or Temporary Assistance to Needed Families ("TANF") benefits and/or other government delivered cash assistance benefits ("Cash Benefits" with FS Benefits, "Benefits") to benefit recipients in the EBT Project areas ("Recipients") supported by NPC and Member Bank through the applicable gateway through the use of a State-issued Benefit Security Card ("EBT Card") issued by a state participating in the EBT Project and benefit recipients of other states not within the Project area ("Other Recipients"). You agree to provide and/or issue Benefits at each of your locations to the Recipient as hereinafter provided and in accordance with the procedures specified by NPC and/or Member Bank, the applicable EBT Network or State's EBT rules and regulations as amended from time to time and all applicable laws governing the issuance and/or provision of Benefits. You will provide each Recipient a receipt for each Benefit issuance transaction undertaken by you. You will be solely responsible for your issuance of Benefits other than in accordance with authorizations received from us.

You will provide NPC, upon execution of this Agreement, with a complete list of all of your locations in the continental United States where you desire to accept EBT Cards, with correct and complete mailing addresses and complete telephone numbers, in location number order. You will provide an updated list at NPC's request or as changes occur. All locations from which you accept EBT Cards will be subject to this Agreement and will be included on the lists provided from time to time by you.

You will honor any valid EBT Card properly tendered for use when it is presented with a valid personal identification number (PIN). You will not engage in acceptance practices or procedures that discourage the use of any valid EBT Card. You will not complete any point-of-sale EBT Card transaction that has not been authorized. You will ensure that if Recipient enters a valid PIN, you will not require another form of identification from Recipient unless you have grounds to suspect fraud.

You will provide and/or issue Benefits to Recipients, in accordance with the policies and Rules in the amount authorized through your point-of-sale terminal, with PIN Pad and printer ("Equipment"), upon presentation by Recipient of an EBT Card and Recipient entry of a valid PIN. You agree that in the event of failure of the Equipment to print Benefit issuance information as approved and validated as a legitimate transaction, you will comply with NPC's and Member Bank's procedures and rules for authorization of Benefits in such instance.

If you have agreed to Cash Benefits, you agree to maintain adequate cash on hand to issue and/or provide confirmed Cash Benefits and will issue and/or provide Cash Benefits to Recipients in the same manner and to the same extent cash is provided to your other customers. You will not require, and will not in the advertising suggest, that any Recipient must purchase goods or services at your facilities as a condition to the issuance and/or provision of Cash Benefits to such Recipient, unless such condition applies to other customers as well. You will not designate special checkout lanes restricted to use by Recipients, provided that if you designate special checkout lanes for electronic debit, or credit cards and/or other payment methods such as checks or other than cash, Recipients may be directed to such lanes so long as other customers are directed there as well.

If you support the issuance and/or provision of FS Benefits through manual benefit issuance procedures during the period of time when normal benefit issuance is not possible, then the following limitations will apply to manual issuance and/or provision of FS Benefits by you.

- (i) You must receive an authorization number for the amount of the purchase via telephone at the time of sale.
- (ii) Specified Recipient, clerk and sales information, including the telephone authorization number, must be entered properly and legibly on the manual sales draft form.
- (iii) The manual sales draft must be submitted to the applicable EBT Network for processing within ten (10) calendar days following the date of authorization or any such earlier period of time specified in any applicable Rules or regulations.
- (iv) Except as otherwise specifically provided by any applicable Rules or laws, you will not be reimbursed and will be solely responsible for all manual transactions when you fail to obtain an authorization number at the time of sale or otherwise fail to process the manual transactions in accordance with any applicable Rules or laws.
- (v) Except as otherwise specifically provided by any applicable Rules or laws, you may not "resubmit" a manual sales draft for payment if insufficient funds exist at the time that the manual sales draft is presented for processing and payment.

You agree to comply with all applicable laws and Rules in the performance of your obligations under this Schedule V and the Agreement, including without limitation, laws pertaining to delivery of goods and services to Benefit Recipients and Benefit Recipient confidentiality, and the federal Civil

Rights Act of 1964, Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Clean Air Act, Clean Water Act, Energy Policy and Conservation Act, Immigration Reform and Control Act of 1986, and regulations issued by the Department of Agriculture pertaining to Food Stamp Program regulation.

You agree to comply with Quest Operating Rules issued by the National Automated Clearing House Association ("NACHA") as approved by FNS or the Federal Reserve Bank and such other Rules and regulations as may be applicable to the providing and/or issuance of Benefits by you hereunder. You agree to comply with all additional procedures specified by the State or EBT Networks, regarding lost EBT Cards, forgotten PINs, discrepancies in Benefits authorized and similar matters.

You will not accept any EBT Card for any purpose other than the providing and/or issuance of Benefits, including without limitation as security for repayment of any Recipient obligation to you. In the event of any violation of this provision, you will be obligated to reimburse the State for any Benefits unlawfully received by either Recipient or you.

You agree to separately maintain records of EBT transactions as may be reasonably requested or required by the State or its designated agent and to promptly make such records available for audit upon request to representatives of the State or its designated agent, or other authorized State or Federal government agency during normal business hours.

To assure compliance with this Agreement, the State, its designated agent, or other authorized State or Federal governmental agency, will at all times have the right to enter, during normal business hours, your premise to inspect or evaluate any work performed under this Agreement, or to obtain any other information required to be provided by you or otherwise related to this Schedule V or the Agreement.

You agree to maintain and preserve all financial records or documentation arising hereunder during the course of this Agreement and for a period of three (3) years following Benefit provision and/or issuance, or for such additional period as applicable regulations or law may require. Records involving matters in litigation will be kept for a period of not less than five (5) years following the termination of the litigation.

If you provide or issue FS Benefits under this Agreement, you represent and warrant to NPC and Member Bank that you are a FNS authorized retailer and you are not currently disqualified or withdrawn from redeeming food stamps or otherwise disqualified or withdrawn by FNS. You agree to secure and maintain at your own expense all necessary licenses, permits, franchises, or other authorities required to lawfully effect the providing and/or issuance and distribution of Benefits under this Schedule V and the Agreement, including without limitation, any applicable franchise tax certificate and non-governmental contractor's certificate, and covenants that you will not issue Benefits at any time during which you are not in compliance with the requirements of any applicable law.

Your authority to issue Benefits may be suspended or terminated by the State or its agents or contractors, in their sole discretion, effective upon delivery of a notice or suspension or termination specifying the reasons for such suspension or termination if there will be (i) any suspension, injunction, cessation, or termination of NPC's or Member Bank's ability to provide EBT processing services, or (ii) failure by you, upon not less than thirty (30) days prior written notice, to cure any breach by you of the provisions of these terms and conditions, including without limitation, your failure to support the issuance of Benefits during your normal business hours consistent with your normal business practices, your failure to comply with issuance procedures, your impermissible acceptance of an EBT card, or your disqualification or withdrawal of the FS program. NPC and/or Member Bank may terminate this Schedule V if you are disqualified or withdrawn from the Benefit issuance program(s) indicated on the Merchant Application.

If you provide and/or issue EBT Benefits in more than one State pursuant to this Schedule V and the Agreement, the laws of the State in which the Benefits were issued will apply to information arising out of that transaction.

NPC and Member Bank will charge you a fee for each EBT Card transaction as set forth on the Merchant Application regardless of whether said transaction is approved, declined or determined invalid. You acknowledge that the fees set forth on the Merchant Application are based upon certain EBT Network, State, gateway and access fees currently in effect, and upon certain sponsorship arrangements made by us with an EBT Network for your sponsorship needed to participate in the EBT project and to certain other States not within the EBT Project area. You agree that should any State or U.S. government entity or any of a State's or U.S. government's designated agents charge a fee or assess any charges or increase any fees on or in connection with EBT Card transactions, then NPC and Member Bank will have the right to adjust its fees. You agree to pay for all gateway and access fees, EBT Network fees, setup, adjustment or chargeback fees which may be imposed by NPC or Member Bank, an EBT Network or a State participating in the EBT Project. NPC and Member Bank will charge you the daily/monthly fees as set forth on the Merchant Application for the services to be provided pursuant to this Schedule V and such amounts will be payable as provided for in Section 6. Said fees may be collected hereunder in accordance with the terms and provisions of this Schedule V, the Agreement and the Merchant Application.