

ACH Services Merchant Processing Agreement

For All Inquiries Merchant May Call or Write:



NPC

20405 SH 249, Suite 700, Houston, TX 77070
800-683-2289

TERMS AND CONDITIONS

This Agreement by and between the business entity indicated on the Service 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**”) and National Processing Company, a Nebraska corporation (“**NPC**” or “**us**” or “**we**”) is binding on you as of the earlier of the date signed by NPC, the date of the first Electronic Check Transaction processed under this Agreement, or the date we approve your Service Application. If NPC has approved your Service Application in accordance with the preceding sentence, the effective date of the Agreement will be the date that you signed the Service Application (the “**Effective Date**”). By either your signature on the Service Application or by 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 Service 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 §369.010 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 and NPC 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:

“**ACH Confidential Information**” means, as the context requires the following, whether disclosed orally or in writing or by any other media: (a) the terms of this Agreement, all information and materials provided by NPC or the Electronic Check Provider to Merchant for its use in performing its responsibilities under this Agreement, including but not limited to information relating to the business, products, processing services, technology and systems of NPC or the Electronic Check Provider; the intellectual property, computer programs, code, algorithms, schematics, data, know-how, processes, ideas, and inventions of NPC or the Electronic Check Provider or their licensors; names and expertise of employees and consultants; audit reports; and all Merchant Data and NPI Data, and other technical, business, financial, customer and product development plans, forecasts, strategies and information; (b) the trade secrets contained in the Services and Software, respectively, and (c) all information and materials, including customer and consumer nonpublic personal information and data, which is covered by a written agreement and obligation of confidentiality.

“**ACH Network**” means the funds transfer system governed by the rules of the National Automated Clearing House Association (“**NACHA**”), which provides for the interbank clearing of electronic entries for participating financial institutions.

“**Electronic Check Provider**” means Jack Henry & Associates, Inc. ProfitStars Division or such other third party Electronic Check Provider selected by NPC.

“**Electronic Check Transaction**” means an electronic payment transaction originated by Merchant and processed through the ACH Network.

“**Agreement**” means this ACH Services Merchant Processing Agreement, including the attached Service Application, Exhibits, and Agreements.

“**Customer**” means Merchant’s customer who submits a payment to Merchant by means of an Electronic Check Transaction.

“**Entry**” means a transaction submitted by Merchant for processing by the Services and further defined in the NACHA Rules.

“**Mark**” means a trademark, service mark, trade name, logo or any other similar mark or identification of NPC’s, the Electronic Check Provider’s or their licensor(s)’s ownership of its product, material or service or related to its business.

“**NACHA Rules**” means the then-current rules, regulations and procedural guidelines published by the National Automated Clearing House Association (“**NACHA**”) and/or all regional payment alliances associated with NACHA.

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

“**Originating Depository Financial Institution**” or “**ODFI**” means in an Electronic Check Transaction, the financial institution which receives the Entry and transmits the Entry to its ACH Operator for transmittal to a Receiving Depository Financial Institution for debit or credit to the Customer’s account, as these terms are further defined in the NACHA Rules.

“**Receiving Depository Financial Institution**” or “**RDFI**” means in an Electronic Check Transaction, the financial institution which receives the

Entry directly or indirectly from its ACH Operator for debit or credit to the Customer’s account, as these terms are further defined in the NACHA Rules.

“**Services**” mean the ACH services provided to Merchant under this Agreement.

“**Software**” means, as the context requires, the software programs (a) owned by NPC or the Electronic Check Provider and its licensors and provided by the Electronic Check Provider with or incorporated as part of the Services or (b) licensed as separate standalone software products to Merchant.

“**Software License Agreement**” means a written software license agreement, if required, pertaining to the Software which must be signed or accepted by Merchant in order to receive and use the Software product(s) involved.

“**Third Party Service Provider**” means equipment lessors, rental vendors, gift and loyalty card vendors, 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. ACH Services.

A. You represent and warrant to NPC that you shall process only Electronic Check Transactions under this Agreement. However, you acknowledge and agree that you may have the capability to use services related to Visa, Inc. (“**Visa**”), MasterCard International Incorporated (“**MasterCard**”) and DFS Services LLC, d/b/a Discover® Network (“**Discover Network**”) and/or their members Card transaction processing. You shall be solely responsible for any use of such services, and NPC shall have no obligation to prevent you from using such services or any liability whatsoever for your use of such services. If you did not elect to receive Visa, MasterCard or Discover Network services on the Service Application but Merchant uses such services, Merchant shall 1) pay NPC its then-current standard fees and charges for the rendering of such services, 2) be bound by and comply with all of the terms and conditions of NPC’s then current Merchant Processing Agreement, and 3) be bound by and comply with any and all relevant portions of the regulations, rules, policies and procedures, as amended from time to time, of Visa, MasterCard, Discover Network, card issuers, issuers, other associations and third party providers, NPC’s acquiring member bank and NPC.

B. Processing. You will be responsible for the quality and accuracy of all data provided to us. Subject to this Agreement, NPC or the Electronic Check Provider will deposit to the Merchant Account (defined below) the net settlement funds resulting from an Electronic Check Transaction under this Agreement, and will provide you provisional credit for such funds (less recoupment of any refund(s), adjustments, fines, returns or fees). You acknowledge that your obligation to NPC for all amounts owed under this Agreement arises out of the same transaction as NPC’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. Approval of your Service Application does not constitute a guarantee to process any transactions on your behalf.

C. Provisional Credit. Notwithstanding the above, under no circumstance will NPC be responsible for processing refunds or adjustments related to Electronic Check Transactions not originally processed by NPC. All deposits are subject to audit and final checking by NPC, and may be withheld and adjusted for inaccuracies.

D. Transactions. For all Electronic Check Transactions submitted to us: (a) the transaction must represent obligations of the Customer 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; (b) the price charged for the transaction must not be subject to any dispute, setoff or counterclaim; (c) you must have no knowledge or notice of (1) any fact, circumstances or defense which would indicate that the transaction was fraudulent or not authorized by the Customer, (2) the Customer’s revocation or termination of the Customer’s authorization to process the Entry, or (3) any fact which would otherwise impair the validity or collectability of the Customer’s obligation or relieve the Customer from liability for the transaction; (d) each Entry transmitted through the Services contains the correct Customer account number and all other information necessary to enable the RDFI to comply with the requirements of the bank statement; and (e) the transaction does not result from any sale outside of your normal course of business, as described in the Service Application.

E. NPC Rules. NPC may supply you with various manuals and instructions regarding refunds, returns and other operational compliance matters (the “**Manuals/Instructions**”), and may from time to time otherwise advise you of requirements imposed by the NACHA Rules by providing you with relevant portions or summarizations thereof of the rules, regulations, releases, interpretations and other requirements of the ACH Network. You agree to follow the procedures in the NPC Rules and the

Manuals/Instructions in connection with each Electronic Check Transaction and to comply with all requirements of the NACHA Rules. Unless the context clearly requires otherwise, references to this Agreement include the NPC Rules, Manuals/Instructions and the NACHA Rule provisions. If there is any conflict between the terms of this Agreement, the NPC Rules and the Manuals/Instructions, the terms of this Agreement will govern, except to the extent the NPC Rules and/or Manuals/Instructions specifically provides that a particular provision in it overrides any conflicting provision in this Agreement.

F. Merchant Obligations and Liabilities

1. Merchant will only use the Services in the United States.
2. Merchant will execute the Software License Agreement, if applicable, and all required authorizations and documentation necessary to establish and maintain ACH accounts in accordance with the Electronic Check Provider's published procedures, the NACHA Rules and other applicable laws and regulations.
3. Merchant agrees not to use the Services for any activity which is illegal under U.S. law or involves an activity or business with which the Electronic Check Provider declines to accept and conduct business generally ("Excluded Activity or Activities"). These Excluded Activities may be modified from time to time, and currently include but are not limited to the following: Internet gambling; Pornography or other sexually-oriented business; Psychic or horoscope consultation services; Outbound telemarketing; Credit repair or debt consolidation services; Prepaid vacation/timeshare solicitation services; Organizations residing outside of North America; Payday loan business; and Check Cashers or Money Services Businesses. If Merchant utilizes the Services in conjunction with an Excluded Activity, NPC may immediately terminate this Agreement and/or the Electronic Check Provider may immediately terminate the provision of Services, without liability to Merchant.
4. Merchant hereby authorizes NPC and the Electronic Check Provider to originate Entries on Merchant's behalf to Merchant's Customer's accounts.
5. Merchant agrees not to originate Entries that violate the laws of the United States.
6. Prior to submitting an Entry for processing, Merchant will secure all authorizations and approvals from its Customers and deliver any notifications pertaining to that Entry which are required by the NACHA Rules and/or applicable laws and regulations. Merchant is responsible for the accuracy and propriety of all Entries submitted for processing.
7. Merchant has obtained proper authorizations from and has provided notices to its Customers. Merchant will retain such authorizations for at least 2 years from the last Entry or from when the authorization has been terminated or revoked.
8. Merchant shall be solely liable and responsible for all damages, losses, expenses and claims arising from any of the following which are not caused by the gross negligence of NPC:
 - (a) Inaccurate or incomplete data used to create Entries;
 - (b) Debits on accounts with insufficient or frozen funds;
 - (c) Unauthorized or fraudulent entries;
 - (d) Acts of fraud, negligence or willful misconduct committed by employees, agents or subcontractors of Merchant in creating entries or depositing checks using the Services; or
 - (e) Hardware failure or use of scanner hardware not certified by the Electronic Check Provider or NPC.

Merchant shall defend, indemnify and hold harmless the Electronic Check Provider and NPC from any such damages, losses, expenses and claims which arise from the foregoing events.

J. Third Party Beneficiary. NPC's third party processing services partners, including without limitation, the Electronic Check Provider, are providing some of the Services specified in this Agreement, and as a result, these third party services partners shall be an intended third party beneficiary of this Agreement. Each third party services partner shall have the right to enforce directly against Merchant, the terms of this Agreement which relate to the provision of the third party services partner's processing services to Merchant and the ownership and protection of the intellectual property rights of the third party services partner and its licensors in and to its processing services. Merchant acknowledges that the third party services partners shall have no responsibility or liability with regard to NPC's obligations to Merchant under this Agreement.

K. In the event that the Electronic Check Provider's ODFI is acting as the ODFI for Merchant, the following provisions shall apply: The Merchant Account will be used for the settlement of financial payment transactions processed by the Electronic Check Provider on behalf of Merchant. Merchant authorizes the Electronic Check Provider to effect settlement of credits and debits from the Merchant Account in connection with the Services. Merchant shall immediately reimburse NPC and/or the Electronic Check Provider, as applicable, for any shortfalls that occur due to non-sufficient funds in the Merchant Account. NPC and the Electronic Check Provider reserve the right to delay the availability of funds for deposit without prior written notice to Merchant if in its sole discretion NPC and/or the Electronic Check Provider deems itself at financial or relative risk for any and all Services performed under this Agreement. Merchant hereby acknowledges and agrees that NPC and the Electronic Check Provider shall have a right of setoff against any and all fees, returns and refunds owed NPC or the Electronic Check Provider by Merchant under this Agreement.

3. Merchant Account.

A. Establishment and Authority. You will establish and maintain with an Automated Clearing House ("ACH") receiving depository institution acceptable to NPC and the Electronic Check Provider one or more commercial checking account(s) (collectively, the "Merchant Account") to facilitate payment for Electronic Check Transactions. You will maintain sufficient funds in the Merchant Account to accommodate all transactions, including but not limited to fees, fines and returns. You irrevocably authorize NPC and the Electronic Check Provider to debit the Merchant Account for returns, refunds, fees and any other penalties or payments due in accordance with the NACHA Rules and this Agreement, and any other agreement between you and NPC or an NPC affiliate. In addition, you authorize NPC and/or the Electronic Check Provider, to deduct any returns, refunds, adjustments, fees, charges, obligations and other amounts you owe NPC from any settlements due to you. You also authorize NPC'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 NPC to change the Merchant Account. If you do not obtain consent prior to changing the Merchant Account, NPC may immediately terminate this Agreement and may take other actions necessary to protect NPC within its discretion, and this Agreement will apply to such new account.

B. Merchant Account. NPC or the Electronic Check Provider will generally initiate an ACH of settlement funds due to you, subject to the terms of this Agreement, to the Merchant Account with a standard funding time of three business days (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 the Electronic Check Provider processes such transactions, provided that the Electronic Check Provider successfully receives the complete transaction data by the applicable cut off time. Notwithstanding the foregoing, neither NPC nor the Electronic Check Provider will be liable to you if an ACH of your settlement funds is not initiated within such three business day time period. NPC and/or the Electronic Check Provider may change your deposit time frame at any time and without advance notice to you. NPC has a right to delay, within its discretion, crediting the Merchant Account with settlement funds. 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 the Electronic Check Provider are responsible for the availability of funds represented by submitted Electronic Check Transaction, or for any charges you may incur for overdrawing the Merchant Account. You authorize NPC and the Electronic Check Provider to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant you conditional credit for any entry.

C. Asserted Errors. Each day you will balance and reconcile your Merchant Account 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. 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 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.

D. ACH Authorization. You authorize NPC, the Electronic Check Provider, or their vendors or agents to initiate ACH credit/debit entries to or from the Merchant Account or any other account maintained by you at any institution that is a receiving member of ACH, all in accordance with this Agreement. This authorization extends to payments for all amounts owed by you to NPC, an NPC affiliate, or the Electronic Check Provider. You will provide NPC with a voided check from the Merchant Account or a preprinted bank letter for 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 have been paid in full. If you change the Merchant Account upon prior written consent from NPC pursuant to Section 3.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 the Electronic Check Provider and hold NPC and the Electronic Check Provider harmless from the same fees and charges, regardless of cause. Neither NPC nor the Electronic Check Provider 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 ACH Network, a clearing house or your financial institution. All sales and credits accepted by NPC are subject to audit and verification by NPC. You agree that NPC and the Electronic Check Provider may debit or credit your Merchant Account for any inaccuracies.

D. 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 is 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 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.

4. Security Interest, 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 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, (c) present and future Electronic Check Transactions, 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 upon request to secure your obligations under this Agreement. You agree that if at any time there are insufficient funds in your 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. This security interest may be exercised by NPC 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, NPC has 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, NPC will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from 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 NPC is 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. 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.

5. Fees and Other Amounts Owed

A. Fees. Merchant's fees are described on the Service Application. Merchant will pay NPC the fees for the Services and/or equipment in accordance with this Agreement and the Merchant Processing Agreement. Monthly recurring charges will be assessed upon approval for the Services. 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 to you under this Agreement or the Merchant Processing Agreement. NPC may charge you interest at its then current rate for any amounts that are not timely paid by Merchant. All fees are exclusive of applicable taxes, duties and other fees or charges imposed by a government entity on the transaction involved, except for taxes based on NPC's income. NPC may designate a third party provider, currently PaySimple, Inc. (“PaySimple”), to assess and collect the fees due from Merchant under this Agreement. Merchant hereby authorizes NPC's third party provider to make debits from and credits to the Merchant Account for the fees and other amounts due under this Agreement. NPC may adjust the fees in accordance with Section 13.J below. NPC may charge you interest at our then current rate for any amounts that are not timely paid by you.

B. Discount and Transaction Fees. If there are discount fees shown in the Service Application, the discount fees shall be calculated based on the gross amount of all the Electronic Check Transactions submitted to NPC. Transaction fees may be charged as settlement or authorization fees, or a combination thereof. Transaction fees are fees per transaction such as authorizations, rejects, multiple authorizations of the same transaction, any other electronic payment transaction or any other communication attempt from your point of sale device or transaction processing gateway.

C. 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 NACHA Rules. In addition, Electronic Check Transactions that do not meet the necessary criteria for payment are subject to complete denial, reversal and/or return.

D. Other Amounts Owed. You will immediately pay NPC any amount incurred by NPC attributable to this Agreement, including but not limited to returns, fines imposed by NACHA, ACH Network, Third Party Service Providers, 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, or any other account you have at any financial institution for any amount you owe NPC 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, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event such ACH does not fully reimburse NPC for the amount owed, you will immediately pay NPC such amount. From time to time, NPC may assess a lump sum fee to cover common industry expenses. NPC reserves 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 may be required to withhold taxes from amounts otherwise due to you under this Agreement in accordance with the Laws (as defined in Section 7.E.) and that NPC has no liability to you for such amounts withheld.

F. Returns. You are fully liable to NPC for all transactions returned to NPC for any reason, otherwise known as “returns”. You will pay NPC on demand the value of all returns. You authorize NPC to offset from incoming transactions or to debit the Merchant Account, or any other account of Merchant the amount of all returns. You will fully cooperate with NPC in complying with the NACHA Rules regarding returns. Guarantors are personally liable for all returns. Merchant and guarantors will remain liable to NPC even if this Agreement has terminated.

6. Service Application, Indemnification, Limitation of Liability.

A. Service Application. You represent and warrant to NPC that all information in the Service Application is correct and complete, including but not limited to the average ticket size and average monthly volume. You may present Electronic Check Transactions to us only for the activities and in the volumes described on the Service Application. 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 Service 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 NPC for all losses and expenses incurred by 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 Service Application.

B. Indemnification. You will be liable for, defend, hold harmless, and will indemnify NPC, the Electronic Check Provider, the ACH Network 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 Electronic Check 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, regulations or the NACHA Rules, (vi) you or your employees' negligence, fraud, or willful misconduct in connection with this Agreement, use of the Services, or otherwise arising from your provision of goods and services to Customers, and (vii) data submitted to NPC or the Electronic Check Provider by Merchant that was incorrect, inaccurate, fraudulent or incomplete. In addition, you will defend, indemnify and hold harmless NPC and the Electronic Check Provider for any action they take against the Merchant 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 the Electronic Check Provider or NPC regarding any such account.

C. Limitation of Liability. NPC SHALL NOT BE LIABLE TO MERCHANT OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA OR OTHER PECUNIARY LOSS), IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, INCLUDING NEGLIGENCE, EVEN IF NPC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. Any liability of NPC under this Agreement, whether to Merchant 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 Merchant during the month in which the transaction out of which the liability arose accrued, and (ii) offsets against such fees which arose during that month. If more than one month is involved, the aggregate amount of NPC's liability will not exceed the lowest amount determined in accordance with the previous sentence for any one month involved. NPC 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.

D. Performance. NPC will perform all services in accordance with this Agreement. Merchant acknowledges that the availability of the Services depends on many factors, including Merchant's connections to the Internet, the availability of the Internet and the Internet backbone, and equipment that, by its nature, is not fault tolerant. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR REQUIRED BY LAW OR UNDER THE NACHA RULES, NEITHER NPC NOR THE ELECTRONIC CHECK PROVIDER MAKES ANY WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES TO MERCHANT WITH RESPECT TO ITS PERFORMANCE OF THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND NOTHING CONTAINED IN THIS AGREEMENT WILL CONSTITUTE SUCH A WARRANTY. NPC disclaims all implied warranties, including those of merchantability and fitness for a particular purpose. NPC'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 hereunder, will be to use reasonable efforts to commence or resume the services as promptly as reasonably practicable. Should NPC be required to defend a claim brought by you and NPC prevails, NPC 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.

7. Representations and Warranties. You represent and warrant to NPC 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 Service 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.

D. Transactions. All transactions are bona fide. No transaction will be for any purpose other than the purchase and delivery of goods or services from you and does not involve a Customer obtaining cash from you unless 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 your performance and obligations under this Agreement, the completion of Electronic Check Transactions, the use of the Services, and the operation of your business (as amended from time to time, the "Laws"). You further will comply with the NACHA Rules. It is Merchant's responsibility to obtain updates to the NACHA Rules and to evaluate needed procedural or processing changes in order to remain compliant with the NACHA Rules. The NACHA Rules may be found at <http://www.achrulesonline.org>.

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 an Electronic Check Transaction for any illegal transaction; (c) you will prominently and unequivocally inform each Customer of your identity at all points of the interaction between the Customer and you so that the Customer 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 reputation.

8. Audit and Information.

A. Audit. You authorize NPC 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. During the term this Agreement is in effect and for one (1) year after termination of this Agreement, NPC or its representatives may, audit and inspect the agreements and business records

of Merchant relating to transactions conducted under this Agreement to verify compliance with this Agreement. While conducting an audit and inspection, NPC and its representatives will be entitled to photocopy and retain any item that Merchant may possess which documents a violation of this Agreement for evidentiary purposes.

B. Information.

i. Authorizations. You authorize NPC and the Electronic Check Provider 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 or the Electronic Check Provider, 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 as requested from time to time. You will furnish to NPC 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 Service 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 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 may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

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

9. Term and Termination.

A. Term. The Agreement will become effective on the Effective Date. The Agreement will remain in effect until terminated as set forth herein.

B. Termination. This Agreement may be terminated by you by providing NPC with 30 days written notice. NPC may, upon receipt of instructions from the Electronic Check Provider or ACH Network immediately cease to provide to you, including your Customers, access to the Services. Further, the Electronic Check Provider may withdraw the commercial availability of the Services at any time. NPC and the Electronic Check Provider reserve the right to suspend or cease providing the Services to Merchant if continuing to so provide the Services would, in the opinion of NPC or the Electronic Check Provider, be illegal, or would be reasonably likely to cause material liability relating to legal or regulatory issues for NPC or the Electronic Check Provider. This Agreement may be terminated immediately by NPC if Merchant breaches any of the terms of this Agreement or if the Electronic Check Provider ceases to provide the Services. Additionally: i) this Agreement may be terminated at any time, with fifteen (15) days notice, by NPC without cause; ii) NPC may terminate this Agreement immediately (1) in the event that an ACH Network identifies you, your principals, or associated parties under a program designed to monitor merchants or otherwise instructs NPC to close your account, (2) for any circumstances that could cause harm or loss of goodwill to NACHA or the ACH Network, (3) upon a default event set forth in Section 9.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 NACHA Rules or applicable Law, (6) if your business operations cause NPC, or are reasonably likely to cause NPC, to violate the Laws applicable to NPC, regardless of the jurisdiction in which you accept or conduct Electronic Check Transactions, (7) in the event of irregular Electronic Check Transactions, excessive returns, illegal activity or any other circumstances which, in NPC's discretion, may increase NPC's potential exposure for your returns or otherwise present a financial or security risk to NPC, (8) if any guaranty is revoked, (9) 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. NPC'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 Service 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 Electronic Check Transaction processing shall terminate the entire Agreement, including all services on all Agreements. You must notify us in writing if you desire to terminate any particular service set forth on a Agreement.

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 Service Application, (ii) returns considered excessive under the NACHA Rules, (iii) Merchant does not do business as specified in the Service Application, (iv) splitting a sales transaction into multiple tickets, (v) laundering tickets or (viii) any other action constituting Merchant fraud (each a “**Fraudulent Transaction**”). If you have accepted and processed Fraudulent Transactions, NPC will not be obligated to pay you for such Fraudulent Transactions and will have full recourse against you for all such aforementioned Fraudulent Transactions. NPC will also have the right to assess fees and recover all costs associated with the investigation of any suspected fraudulent activity. NPC will not 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.

D. Action upon Termination.

i. Effect of Termination. All of NPC’s and the Electronic Check Provider’s obligations will end upon termination of this Agreement. In the event of any termination of this Agreement, the obligation of the Merchant under this Agreement for fees, fines, expenses or other obligations incurred prior to the effective date of termination, and the obligations of Merchant under this Agreement for expenses or other liabilities arising from or relating to acts or omissions which occurred prior to the effective date of termination, shall survive the termination of this Agreement.

ii. Accounts. Upon termination, all amounts payable to NPC 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 all the data relating to Electronic Check Transactions and credits made up to the date of termination. Electronic Check Transaction settlement funds may be withheld until you pay all amounts you owe NPC 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 returns, credits and adjustments and all other amounts then due, or which later become due, to NPC under this Agreement or to any of NPC’s affiliates for any related equipment or related services. You must maintain in the Merchant Account enough funds to cover all returns, 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 return rights have expired and all other amounts owed have been paid will be disbursed to you. You authorize NPC to debit the Merchant Account or any other account you may own, for all such amounts. If the amount in the Merchant Account is not adequate, you will pay NPC the amount you owe them upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys’ fees.

iii. You will be responsible for all collection and legal fees and expenses NPC incurs in the collection of any delinquent amounts you may owe NPC. In addition, after termination you will remain liable for returns and other adjustments and for other fees, fines, penalties, charges or losses incurred by NPC in connection with this Agreement. You authorize NPC to debit your Merchant Account for, or deduct from any settlement funds otherwise owed to you any and all losses (including costs, expenses and liabilities) incurred by NPC in connection with termination. If your settlement funds or the balance in your Merchant Account is insufficient to cover all such losses, you agree to pay NPC such amounts immediately on receipt of invoice.

10. Compliance With Laws And Rules. The NACHA Rules are incorporated into this Agreement by reference as if they were fully set forth in this Agreement. You will assist NPC in complying in a complete and timely manner with all Laws and NACHA Rules now or hereafter applicable to any Electronic Check Transaction or this Agreement. You will execute and deliver to 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 Electronic Check Transactions and for ensuring that your equipment complies with all Laws and Rules.

11. Use of Trademarks and Confidentiality.

A. Ownership of Intellectual Property Rights. All intellectual property rights in or related to NPC’s or the Electronic Check Provider’s respective products, services and ACH Confidential Information are and will remain the exclusive property of that party and its licensors. Merchant shall not take any action that jeopardizes the proprietary ownership rights of NPC or the Electronic Check Provider nor acquire any right in or to NPC’s or the Electronic Check Provider’s products, services or ACH Confidential Information, except for the rights specifically granted to Merchant in this Agreement. NPC and the Electronic Check Provider and its licensors will own all rights in any copy, translation, modification, adaptation or derivative work of the Services, Software or ACH Confidential Information owned by NPC, the Electronic Check Provider and their licensors, including any customization, improvement or development thereof. Without limiting the foregoing, the work product of all custom solution engineering work performed by NPC or the Electronic Check Provider, including but not limited to any software program interfaces shall be and remain the exclusive property of NPC, the Electronic Check Provider and their licensors. All Marks identifying the Services, NPC or the Electronic Check Provider business are and shall remain the exclusive property of NPC, the Electronic Check Provider and their licensors, as applicable. Merchant shall not take any action that jeopardizes these proprietary rights or acquire any right in the

Marks, except the limited use rights specified in this Agreement. Merchant shall not use or register, directly or indirectly, any trademark, service mark, trade name, copyright, company name or other proprietary or commercial right which is identical or confusingly similar to the Marks.

B. Confidentiality.

i. Agreement. You will treat this Agreement, all Manuals/Instructions, software, products, systems and any other information provided by NPC or the Electronic Check Provider 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 NPC or the Electronic Check Provider, 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 and its 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 (c) generally available to the public other than through any disclosure by or fault of you or your agents or representatives. Merchant acknowledges that the ACH Confidential Information contains valuable trade secrets and other proprietary property or non-public information and that any such ACH Confidential Information is and will at all times remain the sole and exclusive property of NPC or the Electronic Check Provider, as applicable. Merchant shall not allow the removal or defacement of any confidentiality or proprietary notice placed on the ACH Confidential Information. The placement of copyright notices on ACH Confidential Information will not constitute publication or otherwise impair its confidential nature. Merchant shall use the ACH Confidential Information exclusively to perform its responsibilities under this Agreement. Except as specifically authorized in this Agreement, Merchant shall not copy or disseminate the ACH Confidential Information outside of its organization without NPC’s written approval. Merchant shall reproduce the confidentiality and proprietary notices provided on the original copies of the ACH Confidential Information on all such copies. Merchant shall not translate, modify, adapt, create derivative works from, decompile, disassemble or reverse engineer any software component of the ACH Confidential Information unless authorized by NPC in writing or pursuant to applicable law. Merchant shall:

(1) use the ACH Confidential Information only for the purposes for which such disclosure was made, but in no event for any purpose competitive with the business of NPC or the Electronic Check Provider;

(2) restrict dissemination of the ACH Confidential Information to employees, agents and contractors on a need-to-know basis and with respect to contractors and agents, only those contractors and agents who have executed a nondisclosure agreement as protective of the ACH Confidential Information as of its own and who shall use the ACH Confidential Information only to the extent reasonably necessary to fulfill the purposes of this Agreement;

(3) prohibit dissemination and disclosure of the ACH Confidential Information to third parties, except to the extent specifically authorized to do so by this Agreement;

(4) guard such ACH Confidential Information from disclosure with the same degree of care Merchant applies to its own confidential information of a similar nature and importance, but applying no less than a standard of reasonable care; and

(5) refrain from modifying, altering, moving, adapting, divulging, copying, publishing, disseminating or disclosing, for any purpose whatsoever, any of the ACH Confidential Information to any other person or entity, except as specifically authorized to do so by this Agreement.

ii. Customer Information. You will not disclose to any third party any Customer account information or other personal information except to an agent of yours assisting in completing an Electronic Check Transaction, or as required by law. You must not request or use Customer bank account information for any purpose that you know or should have known to be fraudulent or in violation of the NACHA Rules, or for any purpose that the Customer did not authorize, except to an agent of yours assisting in completing an Electronic Check Transaction, or as required by law. You must keep all systems and media containing Customer or transaction information (physical or electronic) 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. Further, you must take all steps reasonably necessary to ensure Customer information is not disclosed or otherwise misused. If you use any third parties who will have access to Customer data (“**Merchant Provider(s)**”), you must notify us of their identity. In addition, you must (1) only allow the Merchant Providers access to the Customer data for purposes that are authorized by the NACHA Rules, (2) have proper security measures in place for the protection of Customer data, (3) ensure that Merchant Providers have proper security measures in place for the protection of Customer data, and (4) 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. 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, the Electronic Check Provider, an ACH Network,

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 the Electronic Check Provider, the ACH Network, 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 Customer 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.

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 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, 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. In accordance with state and federal law, as well as NPC's applicable policies, NPC 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. You authorize NPC and the Electronic Check Provider to provide to any ACH Network, any entity designated by the ACH Network, any governmental, administrative or regulatory entity, as well as any referral source, vendor or affiliate of NPC, including the applicable referrer, ISO/MSP, or Associated Sales Group, any information about you, whether independently obtained by or provided by you, that NPC 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 may provide such entity any information about you that NPC deems reasonably necessary or connected to the provision of services contemplated in the Agreements.

F. Non-Disclosure of ACH Confidential Information. Merchant shall not disclose, in whole or in part, the ACH Confidential Information to any third party, except to a court, subpoena, regulatory agency or other government authority, to the extent that the Merchant is legally required to make the disclosure, provided that NPC is first given a reasonable opportunity to seek a protective order or other legal means for prohibiting or restricting the disclosure of the ACH Confidential Information without appropriate confidentiality obligations.

G. Notification of Release. If an unauthorized use or disclosure occurs by Merchant shall promptly notify NPC of any unauthorized disclosure of the ACH Confidential Information and take, at Merchant's expense, all steps which are necessary to recover the ACH Confidential Information and to prevent its subsequent unauthorized use or dissemination, including availing itself of actions for seizure and injunctive relief. If Merchant fails to take these steps in a timely and adequate manner, NPC may take appropriate steps to pursue this action in its own name.

H. Data Security and Privacy. To the extent that Confidential Information is made available to Merchant which constitutes the personal, nonpublic information and data ("NPI Data") of NPC or the Electronic Check Provider and their respective customers or consumers and which is subject to applicable data security and privacy laws and regulations, the following provisions shall apply:

(a) Merchant shall apply commercially reasonable efforts to ensure that all NPI Data maintained by Merchant will be transmitted and stored via secure channels, and employ industry-standard security, firewall and virus protection technology to safeguard the NPI Data transmitted or stored by Merchant.

(b) Merchant shall not disclose or permit access to or use of the NPI Data for any purposes other than those specifically required to fulfill Merchant's contractual obligations under this Agreement. Merchant shall not sell the NPI Data for any reason. In connection with using the Services, Merchant shall take all commercially reasonable steps to ensure the privacy and security of the NPI Data and protect against anticipated threats and hazards to the security of the NPI Data. Merchant shall take all commercially reasonable steps to prevent unauthorized access to or use of the NPI Data that could result in substantial harm or inconvenience to NPC or the Electronic Check Provider and their respective customers and consumers. Merchant agrees to implement policies and procedures to ensure the proper disposal of NPI Data in accordance with applicable Federal and State requirements. In the event a court, regulatory agency or other government authority seeks to compel disclosure of the NPI Data, Merchant shall, if legally permissible, promptly notify NPC of the disclosure requirement and will cooperate so that NPC or the Electronic Check Provider involved may at its expense seek a protective order or other legal means to prevent or restrict this disclosure of its NPI Data.

(c) If a breach of security results in an unauthorized intrusion into Merchant's systems which directly and materially affects NPC or the Electronic Check Provider or its respective customers or consumers, Merchant will take appropriate measures to stop the intrusion; report on the intrusion to NPC within a reasonable time after discovery of the intrusion; subsequently report the corrective action taken by Merchant in response to the intrusion; and provide reasonable assistance to NPC and the Electronic Check Provider to support any mandatory disclosures about the intrusion required by law. If Merchant has notified law enforcement agencies about the intrusion, Merchant may delay its notification of the intrusion to NPC to the extent prohibited from doing so by the law enforcement agencies.

I. Remedies. The parties agree that the obligations hereunder are necessary and reasonable in order to protect the ACH Confidential Information, and expressly agree that monetary damages would be inadequate to compensate NPC, the Electronic Check Provider or their licensors for any breach by Merchant of any covenants and agreements set forth herein. Accordingly, the parties agree and acknowledge that any such violation or threatened violation will cause irreparable injury to NPC, the Electronic Check Provider or their licensors and that, in addition to any other remedies that may be available in law, in equity or otherwise, NPC, the Electronic Check Provider or their licensors shall be entitled to seek permanent injunctive relief against the threatened breach of this provision or the continuation of any such breach, by Merchant or its employees, agents, or contractors, without the necessity of proving actual damages.

12. 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 BASED UPON ANY CLAIMS ARISING FROM THIS AGREEMENT. Any legal action brought against NPC 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.

13. General Provisions.

A. Entire Agreement. This ACH Services Merchant Processing Agreement, including the attached Service Application, Exhibits, and Agreements, and any amendment or supplement made in accordance with the procedures set forth in Section 13.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 and NPC 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 and NPC 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 and NPC 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 term of this Agreement, you will not enter into an agreement with any other entity that provides services similar to those provided by NPC pursuant to this Agreement without NPC's written consent. Notwithstanding the foregoing, NPC will not process any Electronic Check Transactions 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 Service Application and this ACH Services Merchant Processing Agreement or the NPC Rules attached as Exhibit A, the terms of the Service Application (unless left blank) will control.

E. Assignability. This Agreement may be assigned by NPC 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 returns, the original owner and all original guarantors will be held personally liable for all returns and any other liabilities of the new owners. Merchant shall not assign transfer or encumber its present or future payment rights under this Agreement; NPC shall not be obligated to honor such purported attempt to assign, transfer or encumber such rights or funds unless NPC consents in writing.

F. Notices. Any written notice under this Agreement (unless involving normal operational matters and except for notices pursuant to Section 13.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 Service 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 NPC of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. You will include 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 NACHA 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 NPC for all attorneys' fees and other costs and expenses paid or

incurred by NPC in the enforcement of this Agreement, or in defending its rights under this Agreement, or in collecting any amounts due from Merchant to NPC or to any agent of NPC, or resulting from any breach by Merchant of this Agreement.

I. Customer Contact. You authorize NPC to contact your Customers if we determine that such contact is necessary to find out information about any Electronic Check Transaction between you and the Customer.

J. Amendments. NPC may amend this Agreement, including but not limited to changes to fees, rates, rate descriptions and rate categories at any time. 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 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 ACH Network, Electronic Check Provider 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.

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 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.

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 is 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. Certain Rights of ACH Network. The parties acknowledge that the NACHA Rules give the ACH Network certain rights to investigate you and to require termination or modification of this Agreement with respect to transactions involving said entity's systems.

O. 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 3, 4, 5, 6, 8, 9.D, 11, 12, and 13.A., B., D., F., H., K., L and M.

Attachments to this Merchant Processing Agreement include:

- Exhibit A – NPC Rules

EXHIBIT A

NPC Rules

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

1. **Responsibility for Electronic Check Transactions.** Merchant is responsible for ensuring that the Customer 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 Customer of the identity of the Merchant at all points of interaction so that the Customer readily can distinguish the Merchant from any other party such as a supplier of goods or services to the Merchant.

2. **Processing Services Requirements.** All checks deposited electronically through use of the Services shall be subject to the following requirements:

- a) The original paper check will not be deposited through the Services more than once;
- b) All checks will conform to the requirements of Merchant's deposit agreement with its financial institution;
- c) All checks will conform to the requirements of the applicable NACHA Rules;
- d) Merchant, as applicable, shall review and validate the accuracy and completeness of the check data being captured including but not limited to the amount of the check and the legibility of the check image generated from use of the Services.

3. **Types of Entries:** The Electronic Check Provider will transmit debit and/or credit Entries initiated by Merchant to the ACH Network as provided in the NACHA Rules for the following ACH Standard Entry Class Codes (SEC):

- a) **CCD – Corporate Credit or Debit –** Either a credit or debit where funds are either distributed or consolidated between corporate entities.
- b) **“PPD” -Prearranged Payment and Deposit:** A debit application that includes one-time payments as well as recurring bills that do not vary in amount, insurance premiums, mortgage payments, charitable contributions, and installment loan payments or standing authorizations where the amount does vary, such as utility payments.
- c) **“TEL” Telephone Initiated Entry –** This is used for the origination of a single Entry debit transaction to a customer's account pursuant to an oral authorization obtained from the consumer via the telephone.
- d) **“WEB” Web Initiated Entry:** A debit Entry or enrollment in recurring debit to a consumer account initiated by a Customer pursuant to an authorization that is obtained via the Internet.

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

5. **Disputes With Customers.** You must ensure that the Customer 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 Customer relating to any transaction will be settled between you and the Customer. Neither NPC nor the Electronic Check Provider bears any responsibility for such transactions. You shall not require a Customer to waive his or her rights to dispute the transaction as a condition of the sale.

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

7. **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, returns and/or retrieval requests in excess of 1% of the average monthly dollar amount of your Electronic Check Transactions or returns in excess of 3% of the average monthly dollar amount of sales. You authorize, upon the occurrence of Excessive Activity, NPC to take additional actions as it may deem necessary, including but not limited to suspension of processing privileges.

8. **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 an Electronic Check Transaction directly between you and a Customer or any transaction you know or should know to be fraudulent or not authorized by the Customer. Perpetrators of Fraudulent Transactions will be referred to law enforcement officials. You will not sell or disclose to third parties bank account information other than in the course of performing your obligations under this Agreement. You will not submit any ACH Transactions representing the refinancing of an existing obligation of a Customer. You agree that NPC may, within its sole discretion, suspend the disbursement of settlement funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. NPC 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.

9. **Deposits.**

- i. **Prior Consent.** You will not accept for payment by Electronic Check Transaction any amount representing a deposit or partial payment for goods or services to be delivered in the future without NPC's prior written consent. The acceptance of an Electronic Check Transaction 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.

ii. **Acceptance.** If you have obtained prior written consent, then you will complete such Electronic Check Transactions in accordance with this Agreement, and the Laws.

10. **Future Delivery.** You will not present any Electronic Check Transaction to NPC for processing which relates to the sale of goods or services for future delivery without NPC's prior written authorization. If NPC has previously given such consent, you represent and warrant to 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 Electronic Check Transactions in connection with future delivery transactions.

11. **The Electronic Check Provider.** NPC reserves the right and you agree and consent to allow NPC to share your credit report and credit history with the Electronic Check Provider. 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 the Electronic Check Provider and other financial entities and processors.

12. **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 Customer. To verify legal age, you will also require the Customer to present a valid, government-issued photo identification card in the same name and address as the Customer. 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 Customer, and (2) require, without exception, the signature of the Customer, 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 ACH privileges, as well as termination of your account with NPC.

13. **Cash Transactions.** Cash disbursement by you to a Customer is not permitted. Additionally, you shall not make any cash advance to an employee, principal, or family member of Merchant, who is a Customer. You will not accept sales from Customers 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.

14. **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 Software Provided by Others.** You will notify NPC immediately if you decide to use software provided by any entity other than NPC or its authorized designee (“third party software”) to process transactions. If you elect to use third party equipment, you agree (i) the third party providing the equipment will be your agent in the delivery of Electronic Check Transactions to NPC via a data processing network; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the NACHA Rules or this Agreement. NPC will not 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.

15. **Equipment.** If you enter into a lease or rental agreement for the use of ACH 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. NPC is not 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 NPC with respect to Electronic Check Transaction processing. You acknowledge that you have selected the equipment set forth on the Service 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 without the express written consent of NPC.

17. **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 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 may request from you additional information to further verify your identity.