

**MERCHANT KIOSK APPLICATION**

<b>Office Use Only:</b>	Merchant #										<input type="checkbox"/> NEW LOCATION <input type="checkbox"/> ADDITIONAL LOCATION <input type="checkbox"/> POS PAYME <input type="checkbox"/> GIFT/LOYALTY													
	Hierachy #										Rep Name													
	Sic Code					Fair Isaac Score					TID					Rep Phone (    ) -    -					Rep Code			

**I BUSINESS NAMES**

Exact Legal Name					Name of Account (Doing Business As)										
Physical Location & Address					DBA Address (if different from physical)										
City, State & Zip					City, State & Zip										
Contact		Telephone #			Fax #			Contact		Telephone #			Fax #		
Federal Tax I.D. Number					E-mail Address										

**BANKING INFORMATION**

Name of Merchant's Bank										Contact										Bank Phone #									
Acct Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings					ABA / Routing #					DDA / Checking Account #																			

**II MERCHANT PROFILE**

Type of Ownership <input type="checkbox"/> Sole Prop. <input type="checkbox"/> Partnership <input type="checkbox"/> Corp. <input type="checkbox"/> LLC <input type="checkbox"/> Non Profit <input type="checkbox"/> Other					Number of Locations					Merchandise/Service Sold									
Years in Business					Length of Current Ownership					Percent of Business					Merchant Type				
Has this Business or any Principal been terminated as a VISA/MasterCard Merchant (TMF)? <input type="checkbox"/> Yes <input type="checkbox"/> No										Card Swiped _____%					<input type="checkbox"/> Retail <input type="checkbox"/> Internet Gateway <input type="checkbox"/> Restaurant <input type="checkbox"/> MOTO <input type="checkbox"/> Lodging <input type="checkbox"/> QSR				
Has Merchant or any Principal disclosed below filed bankruptcy or been subject to any involuntary bankruptcy? <input type="checkbox"/> Yes <input type="checkbox"/> No										Manual Key with Imprint _____%					<input type="checkbox"/> Car Rental <input type="checkbox"/> Other _____				
Do you currently accept VISA/MasterCard? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, Submit 3 months bankcard statements.					Seasonal <input type="checkbox"/> Yes <input type="checkbox"/> No					Month					<input type="checkbox"/> Mail Order/Tel Order _____% <b>Total = 100%</b>				
Monthly Volume		Average Ticket		High Ticket		High Month		Each Merchant certifies that the average ticket size and sales volume indicated is accurate and acknowledges any variance to this information could result in delayed and/or withheld settlement of funds. Also, see paragraphs 4c, 9a and 13b of the MERCHANT Processing Agreement regarding suspension and termination of MERCHANT.											
\$		\$		\$		\$													

**III OWNERS OR OFFICERS**

Principal #1 (print) _____ % Equity Ownership					Principal #2 (print) _____ % Equity Ownership				
Social Security No. _____ Phone No. _____					Social Security No. _____ Phone No. _____				
Residence Address _____					Residence Address _____				
City, State & Zip _____ D.O.B. _____					City, State & Zip _____ D.O.B. _____				

<b>REFERENCES</b>	Trade Reference _____ Contact _____ Account No. _____ Phone No. _____									
	Trade Reference _____ Contact _____ Account No. _____ Phone No. _____									

**IV MERCHANT SITE SURVEY REPORT (TO BE COMPLETED BY SALES REPRESENTATIVE)**

Merchant Location <input type="checkbox"/> Retail Location With Store Front <input type="checkbox"/> Office Building <input type="checkbox"/> Residence <input type="checkbox"/> Other _____										The Merchant <input type="checkbox"/> Owns <input type="checkbox"/> Leases the business premises				
Area Zoned <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Residential					Square Footage <input type="checkbox"/> 0 - 250 <input type="checkbox"/> 251 - 500 <input type="checkbox"/> 501 - 2,000 <input type="checkbox"/> 2,001 +					Photo Attached <input type="checkbox"/> Yes <input type="checkbox"/> No				
Does the amount of Inventory and merchandise on shelves and floor appear consistent with the type of business <input type="checkbox"/> Yes <input type="checkbox"/> No If no, explain										Landlord (Name and Telephone Number)				
Further Comments By Inspector (MUST COMPLETE)														

I hereby verify that this application has been fully completed by merchant and that I have physically inspected the business premises of the merchant at this address and the information stated above is true and correct to the best of my knowledge and belief. Any misrepresentation may result in losses and/or benefits.

Agent Name (please print)			Signature			Agent #			Date					
<b>WHITE - POS    YELLOW - Bank    PINK - Merchant</b> North American Payment Systems, Inc., Registered ISO/MSP for Key Bank National Association, Cleveland, Ohio														

B. Reserve Account.

i. Establishment. For the purpose of providing a deposit and a source of funds to pay NAPS and MEMBER for amounts owed by you, you shall deposit into an account maintained by MEMBER (or other approved depository institution) initially or at any time in the future as requested in good faith by MEMBER or NAPS sums sufficient to satisfy your current and/or future obligations as determined by MEMBER or NAPS. Funds, if any, in the RESERVE ACCOUNT shall remain in the RESERVE ACCOUNT until each of the following has occurred: (a) this AGREEMENT has been terminated; and (b) MERCHANT has paid in full all amounts owing or that could ever be owed under this AGREEMENT, including, without limitation, all outstanding uncollected amounts and potential Chargebacks. MEMBER or NAPS may, at any time, require that the amount on deposit in the RESERVE ACCOUNT be increased. In no event shall you be entitled to a return of any sums remaining in the RESERVE ACCOUNT before 270 days following the effective date of termination of this AGREEMENT.

ii. Funding. MEMBER and NAPS have the right to debit the DESIGNATED ACCOUNT to establish or maintain funds in the RESERVE ACCOUNT. MEMBER and NAPS may deposit into the RESERVE ACCOUNT funds they would otherwise be obligated to pay you, for the purpose of establishing or maintaining the RESERVE ACCOUNT in accordance with this Section, if they determine such action is reasonably necessary to protect their interests. You understand and agree that if you are required to establish a RESERVE ACCOUNT you have an obligation under this AGREEMENT to maintain at all times a balance in the RESERVE ACCOUNT sufficient to protect MEMBER and NAPS against losses resulting from transactions initiated by you.

iii. Authorizations. MEMBER or NAPS 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 or NAPS. After the expiration of such 270 day period you must provide NAPS with written notification indicating you desire a release of any funds remaining in the RESERVE ACCOUNT in order to receive such funds. Starting at the expiration of such 180 day period, a \$200 per month administrative fee will be assessed against any funds remaining in the RESERVE ACCOUNT. Also, NAPS and MEMBER may debit the RESERVE ACCOUNT to exercise their rights under this AGREEMENT to collect any amounts due to MEMBER or NAPS including, without limitation, rights of set-off and recoupment.

C. Recoupment and Set Off. MEMBER and NAPS have the right of recoupment and setoff. This means that they may offset any outstanding uncollected amounts owed to them from: (i) any amount \$ they would otherwise be obligated to deposit into the DESIGNATED ACCOUNT, and (ii) any other amounts NAPS or MEMBER 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 NAPS, you must create or maintain the RESERVE ACCOUNT as required by NAPS and MEMBER will have the right to offset against the RESERVE ACCOUNT for any and all obligations which you may owe to NAPS and MEMBER, without regard to whether the obligations relate to NAPS initiated or created before or after the filing of the bankruptcy petition.

D. Remedies Cumulative. The rights conferred upon MEMBER and NAPS in this Section are not intended to be exclusive of each other or of any other rights and remedies of MEMBER and NAPS under this AGREEMENT, at law or in equity. Rather, each and every right of MEMBER and NAPS at law or in equity will be cumulative and concurrent and in addition to every other right.

**8. Fees and Other Amounts Owed.**

A. Fees. You will pay MEMBER and NAPS fees for services, forms or equipment accordance with the rates set forth on the MERCHANT APPLICATION the following: \$20 per batch, \$25 per chargeback, \$95 per voice authorization, \$20 per excessive authorization, \$30 per ACH reject, a monthly reporting fee. Such fees will be calculated and debited from the DESIGNATED ACCOUNT once each business day or month, as determined by NAPS, for the previous business days or month's activity, or will be netted out from the funds due you under this AGREEMENT. MEMBER may adjust the fees in accordance with Section 16.J below.

B. Other Amounts Owed. You will immediately pay NAPS or MEMBER any amount incurred by NAPS or MEMBER attributable to this AGREEMENT, including but not limited to Chargebacks, fines imposed by Visa or MasterCard, non-sufficient fund fees, and ACH debits that overdraw the DESIGNATED ACCOUNT, RESERVE ACCOUNT, or any other account you have at MEMBER or at any other financial institution for any amount you owe NAPS or MEMBER 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 NAPS or MEMBER, whether your obligation is direct, indirect, or primary, secondary, fixed, contingent, joint or several. In the event such ACH does not fully reimburse NAPS or MEMBER for the amount owed, you will immediately pay NAPS or MEMBER such amount.

C. Taxes. You are also obligated to pay all taxes and other charges imposed by any governmental authority on the services provided under this AGREEMENT.

D. Merchant Supplies. MERCHANT is responsible for purchasing all supplies required to properly process credit card transactions (Sales slips, printer rolls, etc.). If merchant elects to participate in NAPS's Supply/Replacement Program, merchant is entitled to free refurbished replacement equipment. A separate program is required for each terminal merchant may have. If MERCHANT's terminal type is unavailable, at NAPS's discretion, a substitute may be provided. NAPS may choose to cancel the merchant's Supply/Replacement Program at any time without notice. This program is non-transferable without written consent.

**9. Application, Indemnification, Limitation of Liability.**

A. Application. You represent and warrant to MEMBER and NAPS that all information in the MERCHANT APPLICATION ("APPLICATION") is correct and complete, including but not limited to the average ticket size and average monthly volume. Any variance in the stated average ticket size and monthly volume could result in delayed and/or withheld settlement of funds. You must notify NAPS or MEMBER in writing of any changes to the information in the 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 NAPS within 10 business days of the change. You will provide updated information to NAPS within a reasonable time upon request. You are liable to MEMBER and NAPS for all losses and expenses incurred by MEMBER or NAPS arising out of your failure to report changes to us. MEMBER and NAPS may immediately terminate this AGREEMENT upon notification by you of a change to the information in the APPLICATION.

B. Indemnification. You will be liable for, defend, hold harmless, and will indemnify NAPS, MEMBER and their employees, officers, directors and agents against all claims by third parties arising out of this AGREEMENT, for all actions or omissions of any third party with which you have contracted, and/or all attorneys' fees and other costs and expenses paid or incurred by MEMBER and NAPS in the enforcement of the AGREEMENT, including but not limited to those resulting from any transaction processed under this AGREEMENT or any breach by you of this AGREEMENT and those related to any bankruptcy proceeding.

C. Limitation of Liability. Any liability of NAPS or MEMBER under this AGREEMENT, whether to you or any other party, whatever the basis of the liability, will not exceed the aggregate of the difference between (i) the amount of fees NAPS received from you during the month in which the transaction out of which the liability arose occurred, 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 NAPS and MEMBER's liability will not exceed the lowest amount determined in accord with the previous sentence for any one month involved. In no event will NAPS, MEMBER or their agents, officers, directors or employees be liable for indirect, special, or consequential damages, whether or not they have been advised of the possibility of such damages.

D. Performance. NAPS and MEMBER will perform all services in accordance with this AGREEMENT. NAPS makes no other warranty, express or implied, regarding the services, and nothing contained in the AGREEMENT will constitute such a warranty. NAPS disclaims all implied warranties, including those of merchantability and fitness for a particular purpose. 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 negligence of such party. Neither NAPS nor MEMBER will be liable for the acts or omissions of any third party.

**10. Representations and Warranties.** You represent and warrant to NAPS and MEMBER at the time of execution and during this 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 on the APPLICATION or any other document submitted to NAPS 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 APPLICATION, unless you obtain the prior written consent of NAPS.

B. Corporate Power. MERCHANT and the persons signing this AGREEMENT have the power to execute and perform 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 NAPS now or in the future. If MERCHANT has not signed the MERCHANT APPLICATION, you agree that MERCHANT's first transmission of SALES DRAFTS to NAPS constitutes MERCHANT's acceptance of this AGREEMENT. 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, unless you have disclosed this to NAPS.

D. Transactions. All transactions are bona fide. No transaction involves the use of a CARD for any purpose other than the purchase of goods or services from you and does not involve a CARDHOLDER obtaining cash from you unless allowed by the RULES and agreed in writing with NAPS.

E. Rule Compliance. You will comply with the LAWS and RULES.

**11. Audit and Information.**

A. Audit. You authorize NAPS and MEMBER 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 NAPS or MEMBER.

B. Information.

i. Authorizations. You authorize NAPS and MEMBER to make, from time to time, any business and personal credit and other inquiries they consider necessary to review the acceptance and continuation of 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 them.

ii. Documents. You will provide NAPS and MEMBER financial statements and other financial information as requested from time to time. You will furnish within 120 days after the end of each fiscal year to NAPS and MEMBER a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

C. Personal Guarantee. As a primary inducement to MEMBER and NAPS to enter into this AGREEMENT, the GUARANTOR(S) indicated on the APPLICATION, by signing the APPLICATION, jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by MERCHANT of each of its duties and obligations to MEMBER and NAPS pursuant to this AGREEMENT, as it now exists or amended from time to time, with or without notice. GUARANTOR(S) understands that that MEMBER and NAPS may proceed directly against GUARANTOR(S) without first exhausting its remedies against any other person or entity responsible therefore to it or any security held by MEMBER and NAPS of MERCHANT. GUARANTOR(S) authorize NAPS or MEMBER to debit via ACH from any account singly or jointly held by GUARANTOR(S) in the amount of any amount owed by GUARANTOR(S) under this AGREEMENT. This ACH authorization will remain in effect after termination of this AGREEMENT, and until NAPS has received written notice terminating this authorization and all GUARANTOR(S) obligations to NAPS and MEMBER have been paid in full. GUARANTOR(S) will indemnify and hold NAPS and MEMBER harmless against any other financial institution for acting in accordance with any instructions from NAPS or MEMBER pursuant to this Section. This guarantee will not be discharged or affected by the death of the GUARANTOR(S), will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of MEMBER or NAPS. GUARANTOR(S) understand that the inducement to MEMBER and NAPS to enter into this AGREEMENT is consideration for the guaranty, and that this guaranty remains in full force and effect even if GUARANTOR(S) receive no additional benefit from the guaranty.

**12. 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. NAPS has no responsibility for any transaction until that point in time NAPS receives data about the transaction.

B. Use of Terminals Provided by Others. You will notify NAPS immediately if you decide to use electronic authorization or data capture terminals or software provided by any entity other than NAPS 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 via Visa Net or a similar data processing system or network; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the RULES of this AGREEMENT. Neither MEMBER nor NAPS 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.

**13. Term and Termination.**

A. Term. The AGREEMENT will become effective on the date MEMBER executes this AGREEMENT ("EFFECTIVE DATE"). The AGREEMENT will remain in effect for a period of 3 years ("Initial Term") and will renew for successive 2 year terms ("Renewal Term") unless terminated as set forth below.

B. Termination. This AGREEMENT may be terminated by any party effective at the end of the Initial or any Renewal Term by providing 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 by MEMBER and NAPS with or without cause, and without prior notice and ii) this AGREEMENT may be terminated by you in the event of a material breach of the terms of this AGREEMENT by MEMBER or NAPS provided you give MEMBER and NAPS 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. NAPS and MEMBER's rights of termination under this AGREEMENT are cumulative. A specific right of termination shall not limit any other right of NAPS and MEMBER to terminate this AGREEMENT expressed elsewhere. Notice of termination may be given orally or in writing, but if given orally shall be confirmed in writing. Termination shall be effective on the date specified by the oral or written notice.

C. Action upon Termination.

i. Terminated Merchant File. You acknowledge that MEMBER and/or NAPS is required to report your business name and the name of MERCHANT's principals to Visa and MasterCard when MERCHANT is terminated due to the reasons listed in the RULES. You will waive and hold harmless NAPS and MEMBER for all claims and liabilities you may raise as a result of such reporting. You also acknowledge that MEMBER and/or NAPS may file a credit report upon termination of the AGREEMENT for cause.

ii. Accounts. All your obligations regarding accepted SALES DRAFTS will survive termination. Collected SALES DRAFTS will be placed in the RESERVE ACCOUNT until you pay all amounts you owe NAPS or MEMBER or amounts for which you are liable under this AGREEMENT. You must maintain in the DESIGNATED ACCOUNT and the RESERVE ACCOUNT DRAFTS 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. Any balance remaining after chargeback rights have expired and all other amounts owed have been paid will be disbursed to you. You authorize MEMBER to debit those accounts, or any other account maintained under this AGREEMENT, for all such amounts. If the amount in the DESIGNATED ACCOUNT and RESERVE ACCOUNT is not adequate, you will pay MEMBER and NAPS 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 NAPS and immediately pay NAPS any amounts you owe it for equipment costs.

iv. Early Termination. If you terminate this AGREEMENT before the end of the Initial or any Renewal Term, you will immediately pay NAPS as liquidated damages, an early termination fee equal to the greater of \$150, or \$20 multiplied by the number of months remaining in the then-current term per kiosk and/or processing device, in addition to all other amounts you owe. You agree that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by your early termination.

**14. Compliance With Laws And Rules.** You agree to comply with all rules and operating regulations issued from time to time by MasterCard and Visa and any policies and procedures provided by MEMBER or NAPS ("RULES"). The RULES are incorporated into this AGREEMENT by reference as if they were fully set forth in this AGREEMENT. You further agree to comply with all applicable state, federal and local laws, rules and regulations ("LAWS"), as amended from time to time affecting acceptance of the cards, processing of card transactions, and the transactions contemplated by this AGREEMENT. You will assist MEMBER and NAPS 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 and NAPS all such instruments they may from time to time reasonably deem necessary.

**15. Use of Trademarks and Confidentiality.**

A. Use of Trademarks. You will prominently display the promotional materials provided by NAPS in your place of business. Your use of Visa and MasterCard marks will fully comply with the RULES. Your right to use Visa and MasterCard marks will terminate upon termination of this AGREEMENT. Your use of Visa, MasterCard or other cards' promotional materials will not indicate, directly or indirectly, that Visa or MasterCard endorse any goods or services other than their own and you may not refer to Visa or MasterCard in listing eligibility for your products or services.

B. Confidentiality.

i. Cardholder Information. You will not disclose to any third party CARDHOLDER's 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 keep all systems and media containing account, CARDHOLDER or transaction information (physical or electronic, including but not limited to account numbers, card imprints, and TIDS) 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 and the 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 or CVW2 data after authorization.

ii. Prohibitions. You will not use for your own purposes, and 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 MEMBER (including without limitation the pricing and 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 or NAPS to disclose your name and address to any third party who requests or otherwise has a reason to know such information.

C. Returns to MEMBER. All promotional materials, advertising displays, emblems, SALES DRAFTS, credit memoranda and other forms supplied to you and not purchased by you or consumed in use will remain the property of MEMBER and will be immediately returned to MEMBER upon termination of this AGREEMENT. You will be fully liable for any and all loss, cost, and expense suffered or incurred by MEMBER, arising out of any failure to return or destroy such materials following termination.

D. Passwords. If you receive a password from MEMBER to access MEMBER'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 MEMBER's database; iii) be liable for all action taken by any user of the password; and iv) promptly notify MEMBER if you believe the confidentiality of MEMBER's database or your information has been compromised by use of the password.

**16. General Provisions.**

A. Entire Agreement. This AGREEMENT, including the Schedule of Fees, the completed APPLICATION, the RULES and any amendment or supplement to this AGREEMENT made in accordance with the procedures set forth in Section 16.J below, all of which are incorporated into this AGREEMENT, constitutes the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are merged in and superseded by this AGREEMENT.

B. Governing Law. This AGREEMENT will be governed by the laws of the State of New York. The parties agree that all performances and transactions under this AGREEMENT will be deemed to have occurred in New York and that MERCHANT's entry into and performance of this AGREEMENT will be deemed to be the transaction of business within the State of New York. The parties submit to the jurisdiction and venue of the state and federal courts located in Manhattan County, New York for any action arising, directly or indirectly, out of this AGREEMENT or the performance or breach of this AGREEMENT. The parties stipulate that such venue is convenient.

C. Exclusivity. During the initial and any renewal term of this AGREEMENT, you will not enter into an agreement with any other entity that provides credit card or debit card processing services similar to those provided by NAPS and MEMBER as contemplated by this AGREEMENT without NAPS's written consent.

D. Construction. Any alteration or strikeout in the text of this preprinted 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.

E. Assignability. This AGREEMENT may be assigned by MEMBER and by MEMBER upon MEMBER's consent, but may not be assigned by MERCHANT directly or by operation of law, without the prior written consent of NAPS. If you nevertheless assign this AGREEMENT without NAPS's consent, the AGREEMENT will be binding on the assignee. If you sell your business, and the new owners incur Chargebacks, the original owner and all original GUARANTOR(S) will be held personally liable for all Chargebacks and any other liabilities of the new owners.

F. Notices. Any written notice under this AGREEMENT will be deemed given upon the earlier of: (i) actual receipt or (ii) five days after being deposited in the United States mail, and addressed, if to POS Payment Systems, to: 5676 Riverdale Avenue, Suite 103, Riverdale, NY 10471, Attn: President; and if to the other parties: to the last address shown on the records of the sender.

G. Bankruptcy. You will immediately notify MEMBER and NAPS of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against MERCHANT or any of its principals. You will include MEMBER and NAPS 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 or any other action available to MEMBER 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. Attorneys' Fees. MERCHANT will be liable for and will indemnify and reimburse MEMBER and NAPS for all attorneys' fees and other costs and expenses paid or incurred by MEMBER and NAPS in the enforcement of this AGREEMENT, or in collecting any amounts due from MERCHANT to MEMBER or NAPS or resulting from any breach by MERCHANT of this AGREEMENT.

I. Customer Contact. You authorize MEMBER and NAPS 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.

J. Amendments. MEMBER and NAPS may propose amendments or additions to this AGREEMENT. MEMBER or NAPS will inform you of a proposed change in a periodic statement, a fax, an email, or other written notice. You will be deemed to have agreed to the change if you continue to present transactions to MEMBER and NAPS after 7 days following the mailing of the notice. Notwithstanding the previous sentence, changes to fees authorized by this AGREEMENT will be effective upon notice to you, unless a later effective date is provided. Further, MEMBER is entitled to pass through to you any fee increases imposed by Visa, MasterCard, or telecommunication vendors without giving you 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 NAPS or MEMBER to exercise, or partial exercise of, 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 NAPS.

L. Independent Contractors. NAPS, MEMBER and MERCHANT will be deemed independent contractors and none will be considered agent, joint venturer or partner of the other except as provided in Section 6.0 and 7.A (i). M. Survival. Sections 4.A, 4.B, 4.C, 6, 7, 8, 9, 11.C, 13.C, 15, 16.B, 16.G, and 16.H will survive termination of this AGREEMENT.

✓ INDICATES SERVICES APPLIED FOR

VISA/MASTERCARD RETAIL RATES, TIER 1 RETAIL

	Percentage	Per Item
<input checked="" type="checkbox"/> Discount Rate: <u>1.89</u> % <u>.20</u>		
<input checked="" type="checkbox"/> Both (A) Visa/MC Credit/Business Discount Rate and (B) Consumer Signature Debit		
<input checked="" type="checkbox"/> Discount Rate: <u>3.50</u> % <u>.20</u> ¢		
<input checked="" type="checkbox"/> Discount Rate: <u>2.75</u> % <u>.20</u> ¢		
<input type="checkbox"/> Discount Rate: <u>2.95</u> % <u>.20</u> ¢		
<input checked="" type="checkbox"/> Network Interchange: _____ % <u>.25</u> ¢		
<input checked="" type="checkbox"/> Batch: _____ % <u>.20</u> ¢		

\_\_\_\_\_ (Initial) I elect **NOT** to accept Both **A & B**. I understand additional bankcard registration is required. I also understand the establishment of the merchant account will be delayed until all necessary additional forms are submitted.

The Discount Rates specified are for qualified transactions only. Discount Rates are based upon MERCHANTS business type, method of sale and processing procedures. Deviation from the standards established by Visa/MasterCard will result in increased Discount Rates. In Addition, charges made via MasterCard Business™ Card or Visa Commercial Card at travel and entertainment merchant locations will be subject to a surcharge. The "Visa/MasterCard Discount Rate" will be charged on all swiped bankcard transactions that are electronically authorized and closed in a daily batch. All bankcard transactions that do not meet the requirements stated above will be charged a "Non-Qualified Rate". Visa/MasterCard business card transactions and manually keyed foreign card transactions will always be charged the "Non-Qualified Rate".

**FEES**

<input type="checkbox"/> Monthly Fee:	_____
<input checked="" type="checkbox"/> Monthly Minimum:	<u>\$ 25.00</u>
<input checked="" type="checkbox"/> Gateway Fee:	<u>\$ 24.95</u>
<input type="checkbox"/> Wireless Monthly Fees/Transaction Fee:	<u>\$ 20.00/ .10¢</u>
<input type="checkbox"/> Other: _____	_____

**FOR OFFICE USE ONLY:**

**V EXISTING NON-BANKCARD TYPES**

AMEX	DISCOVER	DINERS
	6   0   1   1   0	

**VI AMERICAN EXPRESS**  Reverse PIP

By signing below, I represent that the information I have provided on the Application is complete and accurate. I understand that the Terms and Conditions for American Express® Card Acceptance (Terms and Conditions) will be sent to the business entity indicated above along with the welcome letter upon approval of such business entity to accept the American Express Card by American Express Travel Related Services Company, Inc. By accepting the American Express Card for the purchase of goods and/or services, you agree to be bound by the Terms and Conditions.

**staple voided check here** MERCHANT authorizes NORTH AMERICAN PAYMENT SYSTEMS, INC. or MEMBER to present Automated Clearing House credits, Automated Clearing House debits, wire transfers, or depository transfer checks to and from the following account and to and from any other account for which NORTH AMERICAN PAYMENT SYSTEMS, INC. or MEMBER are authorized to perform such functions under the MERCHANT PROCESSING AGREEMENT, for the purposes set forth in the MERCHANT PROCESSING AGREEMENT. This authorization extends to such entries in said account concerning lease, reporting, rental or purchase agreements for POS terminals and/or accompanying equipment and/or check guarantee fees and amounts due for supplies and materials.

INVESTIGATIVE CONSUMER REPORT: An investigative or consumer report will be made in connection with application. MERCHANT authorizes NORTH AMERICAN PAYMENT SYSTEMS, INC. or its agents or MEMBER to investigate the references provided or any other statements or data obtained from MERCHANT or from any of the undersigned individuals. You have a right, upon written request, to a complete and accurate disclosure of the nature and scope of the investigation requested.

IMPORTANT NOTICE: NORTH AMERICAN PAYMENT SYSTEMS, INC. shall not be responsible for any change in printed terms unless specifically agreed to in writing by an officer of NORTH AMERICAN PAYMENT SYSTEMS, INC., and/or KEY BANK. By signing below you are agreeing to the provisions stated within this merchant application, on the reverse side (the MERCHANT AGREEMENT). Those provisions must be read before signing. MERCHANT warrants that all information in this application is correct.

**FOR ALL CORPORATIONS CORP. RESOLUTION**

The indicated officer(s) identified in number 1 and/or 2 below have the authorization to execute the MERCHANT PROCESSING AGREEMENT on behalf of the herewithin named corporation. MERCHANT UNDERSTANDS THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY NORTH AMERICAN PAYMENT SYSTEMS, INC. AND A MERCHANT NUMBER IS ISSUED.

**PERSONAL GUARANTOR (NO TITLES)**

As a primary inducement to NORTH AMERICAN PAYMENT SYSTEMS, INC. and MEMBER to enter into this AGREEMENT, the undersigned GUARANTOR(S), by signing this AGREEMENT, jointly and severally, unconditionally and irrevocably, personally guarantee the continuing full and faithful performance and payment by MERCHANT of each of its duties and obligations to NORTH AMERICAN PAYMENT SYSTEMS, INC. and MEMBER under this AGREEMENT or any other agreement currently in effect or in the future entered into between MERCHANT or its principals and NORTH AMERICAN PAYMENT SYSTEMS, INC. or MEMBER as such agreements now exist or are amended from time to time, with or without notice. GUARANTOR(S) understands further that NORTH AMERICAN PAYMENT SYSTEMS, INC. or MEMBER may proceed directly against GUARANTOR(S) without first exhausting their remedies against any other person or entity responsible to it or any security held by NORTH AMERICAN PAYMENT SYSTEMS, INC. and MEMBER or MERCHANT. GUARANTOR(S) understands that the inducement to NORTH AMERICAN PAYMENT SYSTEMS, INC. and MEMBER to enter into this AGREEMENT is consideration for the guaranty, and that this guaranty remain in full force and effect even if the GUARANTOR(S) receive no additional benefit from the guaranty.

**AGREED AND ACCEPTED**

X \_\_\_\_\_  
#1 From Application – Signature Date

X \_\_\_\_\_  
#2 From Application – Signature Date

**PRINT LEGAL NAME OF MERCHANT BUSINESS**

X \_\_\_\_\_  
#1 From Application – Signature Date

X \_\_\_\_\_  
#2 From Application – Signature Date

X \_\_\_\_\_  
Accepted by NORTH AMERICAN PAYMENT SYSTEMS, INC.

X \_\_\_\_\_  
Accepted by NORTH AMERICAN PAYMENT SYSTEMS, INC.

## MERCHANT BANKCARD PROCESSING AGREEMENT

This MERCHANT BANKCARD PROCESSING AGREEMENT ("AGREEMENT") is entered into by and among the business entity indicated on the MERCHANT APPLICATION ("MERCHANT" or "YOU"), NORTH AMERICAN PAYMENT SYSTEMS, INC. ("NAPS") and KEY BANK NATIONAL ASSOCIATION ("MEMBER") as of the date signed by NAPS, INC. ("EFFECTIVE DATE"). MERCHANT desires to accept credit cards validly issued by members of Visa U.S.A., Incorporated ("Visa") and MasterCard International, Incorporated ("MasterCard") ("CARD(s)"). NAPS, INC. and MEMBER desire to provide credit card processing services to MERCHANT. Therefore, MERCHANT, NAPS and MEMBER agree as follows:

1. **Honoring Cards.**
  - A. You will honor any CARD properly tendered by a CARDHOLDER as it relates to your choice of acceptance on this MERCHANT APPLICATION. "CARDHOLDER" means a person possessing a CARD and purporting to be the person in whose name the CARD is issued. You will not establish a minimum or maximum transaction amount as a condition for honoring a CARD.
  - 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 form. Unless permitted under the Laws and Rules (defined below), 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. 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 (or its designee), the issuer of the CARD or the designated value 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.
  - D. 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. 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.
  - E. Return Policy. You will properly disclose to the CARDHOLDER, at the time of the CARD transaction and in accordance with the RULES, any limitation you have on accepting returned merchandise.
  - F. No Claim Against CARDHOLDER. You will not have any claim against, or right to receive payment from, a CARDHOLDER or any other customer in any CARD transaction unless MEMBER and NAPS refuses to accept the Sales Draft (as defined in Section 3) 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 payments, you promptly will remit them to MEMBER.
  - G. Disputes With CARDHOLDER(S). All disputes between you and any CARDHOLDER relating to any CARD transaction will be settled between you and the CARDHOLDER. Neither NAPS nor MEMBER bears any responsibility for such transactions.
  - H. Employee Actions. You are responsible for your employees' actions while in your employ.

2. **Authorization.**
  - A. Required on all Transactions. You will obtain a prior authorization via electronic terminal or similar device before completing any transaction. 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. Transactions will be deemed invalid on CARD's 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.
  - 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.
  - 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 not process the transaction and will request another card and/or method of payment.

3. **Presentment of SALES DRAFT.**
  - A. Forms. You will use a sales draft or other form approved by MEMBER and NAPS ("SALES DRAFT") to document each CARD transaction. Each SALES DRAFT will be legibly imprinted with: (i) MERCHANT's name and account number; (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. You may not require the CARDHOLDER to sign the SALES DRAFT before you enter the final transaction amount on the SALES DRAFT.
  - 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 mail/telephone order or electronic commerce CARD transaction which fully complies with the requirements set forth in this SALES AGREEMENT.
  - C. Reproduction of Information. If the following information embossed on the CARD and the MERCHANT's name is not legibly imprinted on the SALES DRAFT, you will legibly reproduce: (i) the CARDHOLDER's name; (ii) account number; (iii) expiration date; and (iv) the MERCHANT's name and place of business.
  - D. 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 will retain the "MERCHANT COPY" of the SALES DRAFT or credit memorandum for at least 3 years following the date of completion of the CARD transaction (or such longer period as the RULES may require).
  - E. 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 NAPS'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 NAPS or its agent in the form NAPS from time to time specifies, or as required under the LAWS or RULES. If MEMBER or NAPS requests a copy of a SALES DRAFT, credit voucher or other transaction evidence, you will provide it within 24 hours following the request.

4. **Deposit of SALES DRAFT.**
  - A. Funds.
    - i. Deposits. 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. Subject to this Section, MEMBER will deposit to the Designated Account (defined in Section 6 below) all funds evidenced by SALES DRAFTS (whether evidenced in writing or by electronic means) complying with the terms of this AGREEMENT and the RULES 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 NAPS and MEMBER for all amounts owed under this AGREEMENT arise out of the same transaction as MEMBER's obligation to deposit funds to the Designated Account.
    - ii. Provisional Credit. Notwithstanding the previous sentences, under no circumstance will MEMBER or NAPS be responsible for processing credits or adjustments related to SALES DRAFTS not originally processed by MEMBER and NAPS. All SALES DRAFTS and deposits are subject to audit and final checking by MEMBER and NAPS, and may be adjusted for inaccuracies. You acknowledge that all credits provided to you are provisional and subject to Chargebacks and adjustments in accordance with the RULES, whether or not a transaction is charged back by the CARDISSUER. Final credit for those conditional funds will be granted within NAPS and MEMBER's sole discretion.
  - B. Chargebacks. You are fully liable to NAPS and MEMBER for all transactions returned to NAPS or MEMBER for whatever reason, otherwise known as "Chargebacks". You will pay NAPS and MEMBER on demand the value of all Chargebacks. You agree to accept for Chargeback and will be liable to MEMBER and NAPS in the amount of any sale for which the CARDHOLDER disputes the validity of the sale. You authorize NAPS and MEMBER to offset from incoming transactions and to debit the Designated Account, the Reserve Account, or any other account held at MEMBER or at any other financial institution the amount of all Chargebacks. You will fully cooperate with NAPS and MEMBER in complying with the RULES regarding Chargebacks. GUARANTOR(S) are personally liable for all Chargebacks.
  - C. Excessive Activity. Your presentation to MEMBER through NAPS of Excessive Activity will be a breach of this AGREEMENT and cause for immediate termination of this AGREEMENT. "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 one percent (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 sales exceeding 25% of the dollar volume indicated on MERCHANT APPLICATION. You authorize, upon the occurrence of Excessive Activity, MEMBER and NAPS 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.
  - D. Credits.
    - i. Credit Memoranda. You will issue a credit memorandum, instead of making a cash advance, a disbursement or a refund on any CARD transaction. MEMBER will debit the Designated Account for the total face amount of each credit memorandum submitted to MEMBER. You will not submit a credit relating to any SALES DRAFT not originally submitted to NAPS 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 NAPS 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.
    - ii. Revocation of Credit. MEMBER or NAPS may refuse to accept any SALES DRAFT or revoke its prior acceptance of a SALES DRAFT in the following circumstances: (a) the transaction giving rise to the SALES DRAFT was not made in compliance with this AGREEMENT, the LAWS and the RULES; (b) the CARDHOLDER disputes his liability to MEMBER for any reason, including but not limited to those Chargeback rights enumerated in the RULES; or (c) the transaction giving rise to the SALES DRAFT was not directly between you and the CARDHOLDER. You will pay MEMBER or NAPS, as appropriate, any amount previously credited to you for a SALES DRAFT not accepted by MEMBER or NAPS, or, where accepted, is subsequently revoked.
  - E. Reprocessing. Notwithstanding any authorization or request from the CARDHOLDER, you will not reenter or reprocess any CARD transaction which has been charged back.
  - F. Fraud and Factoring. 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. You agree that MEMBER and NAPS 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. NAPS and MEMBER will have no liability for any losses you may attribute to any suspension of funds disbursement.

5. **Other Types of Transactions.**
  - A. Mail Order. NAPS will not allow mail order or telephone order transactions or any other transaction where the CARDHOLDER and CARD are not present, due to the high incidence of customer disputes. You may not solicit or accept mail orders or telephone orders or any transaction in which the CARDHOLDER and CARD are not present without NAPS's prior written authorization. Mail/telephone orders completed without prior written consent of NAPS and MEMBER 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.
  - B. Recurring Transactions. Forbidden under this AGREEMENT.
  - 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.
  - 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 NAPS. 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, you will complete such CARD transactions in accordance with the terms set forth in this AGREEMENT, the RULES, and the LAWS. CARDHOLDER's 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 or NAPS for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without MEMBER and NAPS's prior written authorization. If MEMBER and NAPS have previously given such consent, you represent and warrant to MEMBER and NAPS 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.

6. **Electronic Commerce.** You must get MEMBER and NAPS's consent to process electronic commerce ("EC") transactions, and you may process such transactions only if the transactions comply with Visa Cardholder Information Security Program requirements set forth below. If you submit EC transactions without MEMBER and NAPS's consent, MEMBER and NAPS will immediately terminate this AGREEMENT. You understand that transactions processed via EC are high risk and subject to a higher incidence of Chargebacks. You are liable for all Chargebacks and losses related to EC transactions, whether or not: a) EC transactions have been encrypted; and b) you have obtained MEMBER and NAPS's consent 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 NAPS and MEMBER in an acceptable format. All communication costs related to EC transactions are your responsibility. You understand that NAPS 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 into a depository institution of the United States in U.S. currency.
7. **Requirements.** 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 web site 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 Visa and MasterCard guidelines on securing such data.
8. **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 antivirus 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 updates; maintain a policy that addressed information security for employees and contractors; and restrict physical access to cardholder information.
9. **American Express, Discover, and Diner's Transactions.** NAPS will apply to Discover, Diner's and American Express ("ADDITIONAL CARDS") for your access to their authorization and/or data capture services. You must enter into a separate merchant agreement with, Clipper Diners Club, or American Express. The terms of this AGREEMENT will apply to ADDITIONAL CARD transactions. NAPS will notify you in writing of the fees applicable to ADDITIONAL CARD transactions. Your acceptance of Additional Cards and transmission of Additional Card transactions to NAPS will constitute your agreement to the terms of this AGREEMENT with regard to ADDITIONAL CARDS.

6. **Merchant Account.**
  - A. Establishment and Authority. You will establish and maintain with an ACH receiving depository institution acceptable to NAPS at one or more commercial checking account(s) to facilitate payment for CARD transactions (collectively, the "DESIGNATED ACCOUNT"). You will maintain sufficient funds in the DESIGNATED ACCOUNT to accommodate all transactions, including but not limited to fees, fines and Chargebacks, contemplated by this AGREEMENT. You irrevocably authorize NAPS and MEMBER to debit DESIGNATED ACCOUNT for Chargebacks and any other amounts in accordance with the RULES, and for fees and for any other penalties or payments under this AGREEMENT and under any other agreement between you and MEMBER or any MEMBER affiliate. You must obtain prior written consent from MEMBER and NAPS to change the DESIGNATED ACCOUNT. If you do not get that consent, NAPS and MEMBER may immediately terminate the AGREEMENT and may take other actions necessary to protect them within their discretion.
  - B. Designated Account. NAPS will deposit all funds evidenced by SALES DRAFTS to the DESIGNATED ACCOUNT subject to Section 4 and pursuant to this AGREEMENT. NAPS and MEMBER have the right to delay, within their discretion, crediting the DESIGNATED ACCOUNT with funds evidenced by submitted SALES DRAFTS. You authorize MEMBER or NAPS 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 to act as your agent to collect CARD transaction amounts from the CARD issuing bank. As the collecting agent, NAPS grants you provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by MEMBER and NAPS and subject to all Chargebacks, returns, fees and fines. The schedule of deposit availability will be based on your credit history information obtained from the Fair Isaac Credit Reporting Bureau. If you have a Fair Isaac reported score of 625 or greater, the funds represented by SALES DRAFTS will be deposited 2 business days following NAPS's receipt of the SALES DRAFT, except for mail order/telephone order and electronic commerce transactions, which will be deposited 5 business days following receipt of the SALES DRAFT. If you have a Fair Isaac reported score below 625, the funds represented by SALES DRAFTS will be deposited 3 business days following NAPS's receipt of the SALES DRAFT, except for mail order/telephone order and electronic commerce transactions, which will be deposited 5 business days following receipt of the SALES DRAFT. NAPS and MEMBER reserve the right to amend the deposit schedule based on your updated credit history. "Business Day" means Monday through Friday, excluding holidays observed by the Federal Reserve Bank of New York.
  - C. Assorted Errors. Promptly examine all statements relating to the DESIGNATED ACCOUNT, and immediately notify NAPS in writing of any errors. Your written notice must include: (i) MERCHANT name and account 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 NAPS within 30 days after you received the periodic statement containing the asserted error. You may not make any claim against MEMBER or NAPS for any loss or expense relating to any asserted error for 60 days immediately following NAPS's receipt of your written notice. During that 60 day period, NAPS will be entitled to investigate the asserted error. All statements are final 90 days after you receive such statement. NAPS will not make any adjustment on any statement 90 days or more after you receive such statement.
  - D. Indemnity. You will defend, indemnify and hold NAPS and MEMBER harmless for any action they take against the DESIGNATED ACCOUNT or RESERVE ACCOUNT pursuant to this Section. You will also defend, indemnify and hold harmless the institution at which you maintain your DESIGNATED ACCOUNT for acting in accordance with any instruction from NAPS or MEMBER regarding the DESIGNATED ACCOUNT. This section will survive termination of this AGREEMENT.
  - E. ACH Authorization. You authorize MEMBER, NAPS, or their vendors or agents to initiate debit/credit entries via the Automated Clearing House ("ACH") to the DESIGNATED 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. This authorization extends to payments for any other amounts owed by you to NAPS, an NAPS affiliate, or MEMBER, including but not limited to amounts owed for lease, rental or purchases of POS terminals, check guarantee services, and supplies. You will provide NAPS with a voided check from the DESIGNATED ACCOUNT. This ACH authorization will remain in effect after termination of this AGREEMENT, and until NAPS has received written notice terminating this authorization and all your obligations to NAPS and MEMBER have been paid in full. In the event you change the DESIGNATED ACCOUNT, you will notify NAPS, and this authorization will apply to the new account and to any other account you own at any other financial institution. You will indemnify and hold NAPS and MEMBER harmless for any action they take pursuant to this AGREEMENT against the DESIGNATED ACCOUNT, RESERVE ACCOUNT, and any other account you own. You will also indemnify and hold harmless any other financial institution for acting in accordance with any instruction from NAPS or MEMBER pursuant to this Section.
  - F. You hereby authorize NAPS as agent in fact for all depository transactions including but not limited to credit, Chargeback and fee collection as they relate to the processing of all bankcard and travel and entertainment card transactions on behalf of MEMBER.

7. **Security Interests, Reserve Account, Recoupment and Set-Off.**
  - A. Security Interests.
    - i. Security Agreement. This AGREEMENT will constitute a security agreement under the Uniform Commercial Code. You grant to MEMBER and NAPS a security interest in and lien upon: (a) all funds at any time in the DESIGNATED ACCOUNT, regardless of the source of such funds, (b) all funds at any time in the RESERVE ACCOUNT (as defined below), 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, without limitation, all rights to receive any payments or credits under this AGREEMENT (collectively, the "SECURED ASSETS"). You agree to provide other security to NAPS and MEMBER upon request to secure your obligations under this AGREEMENT. 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, NAPS, an NAPS affiliate, and/or MEMBER including, but not limited to, your obligation to pay any amounts due and owing to MEMBER or NAPS or an NAPS affiliate. This security interest may be exercised by NAPS and MEMBER 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, NAPS has control over and may direct the disposition of the Secured Assets, and MEMBER agrees to comply with such direction 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 and NAPS will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from MEMBER and NAPS 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 and NAPS 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 NAPS or MEMBER. You authorize NAPS and appoint NAPS your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.

8. **Security Interests, Reserve Account, Recoupment and Set-Off.**
  - A. Security Interests.
    - i. Security Agreement. This AGREEMENT will constitute a security agreement under the Uniform Commercial Code. You grant to MEMBER and NAPS a security interest in and lien upon: (a) all funds at any time in the DESIGNATED ACCOUNT, regardless of the source of such funds, (b) all funds at any time in the RESERVE ACCOUNT (as defined below), 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, without limitation, all rights to receive any payments or credits under this AGREEMENT (collectively, the "SECURED ASSETS"). You agree to provide other security to NAPS and MEMBER upon request to secure your obligations under this AGREEMENT. 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, NAPS, an NAPS affiliate, and/or MEMBER including, but not limited to, your obligation to pay any amounts due and owing to MEMBER or NAPS or an NAPS affiliate. This security interest may be exercised by NAPS and MEMBER 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, NAPS has control over and may direct the disposition of the Secured Assets, and MEMBER agrees to comply with such direction 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 and NAPS will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from MEMBER and NAPS 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 and NAPS 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 NAPS or MEMBER. You authorize NAPS and appoint NAPS your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.