



N WHEN COMPLETED DELIVER TO:

- New Account
- Additional Location

MID # Existing Location

710 Quail Ridge Drive
Westmont, IL 60559

CARD PROCESSING APPLICATION

ISO # _____ ISO Name _____

Rep. Name _____

Rep # _____ Rep SS # _____

BUSINESS LOCATION

Business/Corporate Name	Statement Mailing Address (if different location address)		
DBA (Doing Business as) Name	City, State, Zip		
Location/Site Address	Federal Tax ID Number		
City, State, Zip	E-mail Address	Telephone Number	Hours of Operation

- Sole Proprietorship
 Partnership
 Corporation
 LLC
 Not for Profit

How long in present business? _____ yrs
 Do you currently accept credit cards? Yes No
 Has business or associate principal been previously terminated as a Visa/MC merchant? Yes No

MERCHANDISE/SERVICE SOLD	MONTHLY BANK CARD LIMIT \$ _____	AVERAGE TICKET AMOUNT \$ _____	HIGHEST TICKET AMOUNT \$ _____		
PERCENT OF BUSINESS (MUST = 100%)			SALE METHOD (MUST = 100%)		
CARD SWIPED %	KEYED WITH IMPRINT CARD %	KEYED WITHOUT IMPRINT CARD %	STORE FRONT %	OFF PREMISE %	MAIL/PHONE ORDER %
TRADE SHOW %	INTERNET %	OTHER %			

Equipment/Software Information

Terminal/Software: _____

Serial Number: _____

Printer _____

Serial No: _____

PIN Pad: _____

Dial Access Code: 9 8 Call Waiting Other _____

OWNERS / OFFICERS INFORMATION (MUST REFLECT 50% OR MORE OWNERSHIP)

Name (Print)	Title	Residence Address	City, State, Zip
Social Security Number	Telephone Number	% Equity Ownership	Drivers License #
Name (Print)	Title	Residence Address	City, State, Zip
Social Security Number	Telephone Number	% Equity Ownership	Drivers License #

TRADE REFERENCES (PLEASE COMPLETE SECTION IN FULL)

EXISTING ACCOUNT NUMBERS

Name	Name	1. Amex
Address	Address	2. Discover
City, State, Zip	City, State, Zip	3. Diners
Contact	Contact	4. Other
Phone	Phone	

MERCHANT SITE SURVEY (TO BE COMPLETED BY SALES REPRESENTATIVE)

Merchant Location
 Store Front
 Office Building
 Warehouse
 Residence
 Other

The Merchant <input type="checkbox"/> Owns <input type="checkbox"/> Leases the business premises	Landlord Name	Landlord Telephone #
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Yes **No** **Yes** **No**
 Merchant appears to be conducting business as represented in this application
 Have you taken pictures inside and outside of the premise?
 Merchant is adequately staffed and stocked to do business.
 Have you confirmed the identity of the person who signed the contract?

Comments: _____

I hereby verify that I have physically inspected the business premises of the merchant at this address and the information stated above is correct to the best of my knowledge.

Inspected by (Print Name)	Signature	Date
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CARD PROCESSING AGREEMENT

THIS CARD PROCESSING AGREEMENT ("Agreement") is among the person (the "Merchant") identified in the Application (which is incorporated herein and constitutes a part of this Agreement as fully set forth herein), National City Bank of Kentucky, a bank chartered under the laws of the United States and Best Payment Solutions, Inc. ("BPSI"), an Illinois corporation and a wholly owned subsidiary of National Processing Company, L.L.C. BPSI is engaged in the business of processing and transmitting electronic data of a financial banking or economic nature, including, but not limited to, card transactions, sometimes referred to as "Sales Drafts". National City Bank of Kentucky is a member of Visa U.S.A. Inc. ("Visa") and Master Card International Inc. ("MasterCard"). In this Agreement, "Card" means a credit or off-line debit card bearing the service mark of Visa or MasterCard and a card issued by any of the other card issuers specified in the Application as being covered by this Agreement. "Card Association" means Visa, MasterCard and any other issuer of Cards you agree to accept as specified on the Application. Unless the context clearly indicates otherwise, the word "Bank" as used herein refers collectively to National City Bank of Kentucky and BPSI. The Bank may allocate its rights and obligations hereunder as between National City Bank of Kentucky and BPSI as it deems appropriate. As used in this Agreement, "the Application" means both the Application first executed by the Merchant and any supplemental versions of the Application to which the parties agree. During the term of this Agreement and unless the parties specifically agree in writing, this will be a "requirements contract" which means the parties agree that the Bank (directly or through others providing services on its behalf) will be the sole provider of all services necessary to authorize, process and settle all of the Merchant's Visa and MasterCard transactions and all services specified in the Application for any other Cards specified therein, except for any Card transactions beyond the authority of a U.S. member of Visa and MasterCard.

1.0 Rights, Duties, and Responsibilities of Merchants

1.1 Merchant shall honor all cards provided:

- The Card is valid and is presented to Merchant at the time of the sale by the Cardholder or an authorized user of the Card account. A Card is valid only if it is presented on or after the valid date, if any, and before the expiration date shown on its face.
- The Card is used as payment for goods or services ("Products") which are sold or rendered by Merchant under this Agreement.
- The Merchant has followed procedures as established by Bank for completion of Sales Drafts, including the requirements that regardless of dollar amount each transaction must be authorized.

1.2 Merchant agrees to complete Sales Drafts in conformity with the terms of this Agreement and the rules and regulations of the Card Associations (hereinafter the "Rules and Regulations"). Each sales draft will include:

- For transactions that are not mail/order/telephone order/Internet order ("MO/TO/IO"), the imprint of the Card, including the name of the person to whom the Card has been issued and/or the authorized user (the "Cardholder"), the Cardholder account number and the Card's expiration date;
- Merchant may not accept MO/TO/IO transactions unless Merchant has specifically informed Bank of the percent of MO/TO/IO transactions to be conducted and Bank, in writing, has specifically authorized Merchant to accept such transactions. Acceptance of such transactions without written authorization from Bank will constitute a breach of this Agreement. If Merchant is authorized to accept MO/TO/IO transactions, Merchant must, in addition to the other provisions hereof, conduct such activity in accordance with Section 9;
- The signature of the Cardholder;
- The date of the sale;
- A short description of the Products sold or rendered;
- The total cash price of the sale or the words "deposit" or "balance" if full payment is to be made in this manner at different times on different Sales Drafts; and
- The city and state wherein such transaction occurred.

1.3 Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered shall be established and posted in accordance with operating regulations of the applicable Card Association's regulations. Merchant agrees to disclose, if applicable, to a Cardholder before a Card sale is made, that if merchandise is returned:

- No refund, or less than full refund, will be given;
 - Returned merchandise will only be exchanged for similar merchandise of comparable value;
 - Only credit toward purchases will be given; or
 - Special conditions or circumstances apply to the sale (e.g. late delivery, delivery charges, or other non-credit terms).
- If Merchant does not make these disclosures, any refund must be in the form of credit to the Cardholder's Card account. Merchant shall under no circumstances issue cash for returns of Products where Products were originally purchased in a Card transaction. Disclosures must be made on all copies of Sales Drafts or invoices in letters approximately 1/4 inch high in close proximity to the space provided for the Cardholder's signature or on an invoice issued at the time of the sale or an invoice being presented for the Cardholder's signature.

1.4 Merchant may not process for payment any transaction(s) representing the refinancing of an existing obligation of a Cardholder including, but not limited to, obligations (i) previously owed to Merchant, (ii) arising from the dishonor of a Cardholder's personal check, and/or (iii) representing the collection of any other pre-existing indebtedness.

1.5 Unless Merchant obtains consent from the applicable Card Associations, card issuers and Cardholders, Merchant must not use, disclose, sell or disseminate any Cardholder information obtained in connection with a Card transaction (including the names, addresses and Card account numbers of Cardholders) for any purpose other than authorizing, completing and settling Card transactions and resolving any chargebacks, retrieval requests or similar issues involving Card transactions, except pursuant to a court or governmental agency request or order. Merchant must use proper controls to secure storage of a period of at least seven (7) years, and limit access to, and must render unreadable prior to discarding, all records containing Cardholder account numbers, Card imprints, and Cardholder signatures. Merchant must not retain or store magnetic stripe data after a transaction has been authorized. If Merchant stores any electronically captured Cardholder signature, Merchant may reproduce such signature only upon Bank's request. Additionally, Merchant must comply with the Rules and Regulations as they relate to the protection of Cardholder information. Merchant shall immediately notify Bank of any suspected or confirmed loss or theft of any transaction information. In addition, Merchant must provide reasonable access to a Card Association or independent third party to verify Merchant's ability to prevent future security breaches in a manner consistent with the requirements of the Rules and Regulations. Failure to provide Bank with requested documentation within five (5) business days after receipt of such request may result in the transaction being charged back to Merchant. During the term of this Agreement and for two (2) years thereafter, Merchant shall treat this Agreement, the Manuals and Instructions and any other information provided by Bank as confidential and shall not disclose to any third parties the terms of this Agreement, the provisions of the Manuals and Instructions or any other such information; provided, however, that these restrictions shall not apply to information: (a) rightfully obtained by Merchant on a non-confidential basis from an entity or person other than Bank and Bank's agents and representatives, whose identity or person was not subject to a duty of confidentiality, (b) rightfully and independently known by Merchant on a non-confidential basis prior to its disclosure by Bank or (c) generally available to the public other than through any disclosure by or fault of Merchant or Merchant's agents or representatives.

1.6 Merchant shall not require any Cardholder to pay any part of any discount fee or charge imposed upon Merchant by this Agreement, whether through any increase in price or otherwise. Merchant shall not require a customer presenting a Card for payment to pay any charge not also required from a person paying cash. This term shall not, however, be construed as prohibiting discounts to customers for payment in cash.

1.7 Merchant agrees to obtain an authorization on all transactions. Any transaction which cannot be authorized electronically through a terminal is subject to a voice authorization call at a cost of \$0.95 per call. Any transaction which is not properly authorized is made with full recourse and may be charged back to Merchant; furthermore, any keyed transaction will be subject to additional charges for a mid- or non-qualifying transaction. Merchant hereby acknowledges that an authorization received indicates the availability of credit for the Card at the time the authorization is given, but does not constitute a warranty that the person presenting the Card is the rightful Cardholder, nor an unconditional promise or guarantee that Bank will arrange for a payment for the debt that underlies the requested transaction (or will not charge back to Merchant a debit against any payment thus arranged.)

1.8 Merchant agrees to electronically deposit Sales Drafts and credit vouchers no later than the business day following the transaction date.

1.9 Merchant shall at all times maintain an account ("Account") at a bank that is a member of the Federal Reserve ACH System. Merchant will maintain sufficient funds in the Account to accommodate all transactions, including fees, contemplated by this Agreement. At Bank's option, Bank may deduct any chargebacks, adjustments, fees, charges, obligations and other amounts Merchant owes Bank pursuant to any provisions of this Agreement from any settlements due to Merchant, or Bank may debit the Account for any such amounts Merchant owes Bank, or Bank may invoice Merchant, in which case Merchant must pay Bank for the invoiced amounts within thirty (30) days of the date of Bank's invoice or such shorter time as may be specified. Except for amounts Bank elects to collect by invoice, if there are insufficient funds available to be withheld or debited to pay amounts Merchant owes, Merchant must immediately reimburse Bank upon demand. Merchant authorizes Bank to debit the Account, or any other account Bank is otherwise authorized to debit, for any amounts due pursuant to this Agreement, or due to Bank or any of Bank's affiliates for any related services. Merchant may not close or change the Account without written notice to Bank. Bank will assess a \$5.00 fee for each change to the Account made by Merchant. Merchant will be solely liable for all fees and costs associated with the Account and for all overdrafts. Merchant hereby grants to Bank a security interest in the Account to the extent of any and all fees, payments and chargebacks which may arise under this Agreement, and Merchant shall execute any document and obtain any consents or waivers from the bank at which the Account is maintained as requested by Bank to protect its security interest therein.

1.10 Merchant will promptly examine all statements relating to the Account, and immediately notify Bank in writing of any errors. Merchant's 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 Merchant believes an error exists and the cause of it, if known. That written notice must be received by Bank within thirty (30) days after Merchant receives the periodic statement containing the asserted error.

1.11 Merchant shall pay any fees charged to Merchant by the telephone company for the preparation of the site(s) prior to the installation of electronic data capture terminals and/or peripheral equipment.

1.12 Merchant shall provide Bank with a minimum of sixty (60) days prior written notice of intent to:

- Transfer or sell any substantial part of its total assets, or liquidate;
- Change the basic nature of its business, including selling any Products or services not related to its current business;
- Change ownership or transfer control of its business; or
- Enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Merchant's business.

Failure to provide notice as required above may be deemed as a material breach and shall be sufficient grounds for immediate termination of Merchant. In the event any of the changes listed above should occur, Bank shall have the option to renegotiate the terms of this Agreement or provide Merchant with written notice of termination.

1.13 Merchant agrees that it shall not submit any Sales Draft to Bank if Merchant is aware of any circumstance which would give the Cardholder any right to initiate a credit or chargeback or which would allow the Bank to refuse a Sales Draft or revoke a prior settlement as allowed hereunder. Merchant agrees that it is liable for repayment to Bank for all valid chargebacks. Bank will comply with Card Associations' prevailing Rules and Regulations in processing any chargebacks which result from Cardholder disputes. However, all disputes which are not or cannot be resolved through established chargeback procedures shall be settled between Merchant and the Cardholder.

1.14 Merchant will use its best efforts to recover any Card:

- On Visa Cards, if the printed four (4) digits above the embossed account number do not match the first four (4) digits of the embossed account number;
- If Merchant is advised by Bank (or its designee), the issuer of the Card or the designated voice authorization center to retain it;
- If Merchant has reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder; or
- 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.

1.15 Merchant warrants and agrees that Merchant shall fully comply with all federal, state, and local laws, rules and regulations, as amended, from time-to-time, including the Federal Truth-in-Lending Act and Regulations of the Board of Governors of the Federal Reserve System.

1.16 Merchant agrees to comply with any manuals or instructions (the "Manuals/Instructions") regarding chargebacks, terminal processing and other operational compliance matters supplied to Merchant by the Bank. Merchant agrees to follow the procedures in the Manuals/Instructions in connection with each Card transaction. If there should ever be any conflict between this Agreement and the Manuals/Instructions, this Agreement shall control.

2.0 Discount Schedule and Fee Schedule

2.1 Through ACH, Bank will debit Merchant's Account daily or monthly, at the option of the Bank, for discounts and fees. Discounts shall be calculated by Bank by multiplying the discount rate, expressed in the "Pricing Schedule" section of the Application by the gross dollars deposited by Merchant on a daily basis. Bank reserves the right to immediately increase the discount rate without notice to Merchant if there is any material variance in any information asserted in the Application and/or this Agreement, including, but not limited to, average ticket size, projected monthly volume, type of goods or services sold, the ratio of keyed to swiped transactions or the amount of mail and telephone order or Internet transactions.

2.2 The discount rate in the "Pricing Schedule" is applicable only to qualified transactions. Merchant acknowledges that there are many different types of transactions which will be assessed additional discount. Any transaction which is subject to the following Visa and MasterCard interchange categories shall be assessed a 1.07% mid-qualified addition to discount rate: Key-Enter, Merit I, Data Rate II, Data Rate III, CPS/Retail 2, CPS/Hot/Car Not Present, CPS/Car Not Present, CPS/CAT, EIR, Int'l Std and Int'l Comm. Any transaction which is subject to the following Visa and MasterCard interchange categories or any other non-qualifying category shall be assessed a 1.72% non-qualified addition to discount rate: Standard; World MasterCard T & E, Data Rate I, Corporate T&E 1, Corporate Standard; International Corporate; International Standard; Standard Interchange Rate; Commercial Electronic Interchange Rate; Standard Interchange Rate; Signature Elec and Signature Std. NOTE: Days allowed for settlement are calculated by excluding the transaction date, Saturdays and holidays, and including the processing (settlement) date.

2.3 Fee Schedule: Through ACH, Bank will debit Merchant's Account, daily or monthly, at the option of the Bank, for the fees due under this Agreement. See Sections 1.7, 1.9, 2.6, 8.1 and 8.4 and the "Pricing Schedule" on the Application for additional fees which may apply. Except as may be provided in the Application or the Card Rules and Regulations, the following fees apply:

- \$0.20 ACH fee.
- Debit/EBT: \$0.25 per item plus network fees.
- \$25.00 fee per chargeback; \$5.00 fee per retrieval request.
- \$25.00 fee for each returned ACH debit.
- \$10.00 audit fee for each diversion or suspension of Merchant's funds by Bank pursuant to its monitoring of Merchant's account (see Section 8.0).
- \$25.00 monthly statement fee for any diverted account established by Bank in Merchant's name (see section 4.0).
- \$45.00 annual fee.
- Merchant may be assessed a monthly investigation fee of up to ten percent (10%) of the dollar amount investigated for any suspicious or unusual transaction activity or any transaction activity which deviates from this Agreement.
- There shall be a 1.5% discount rate surcharge assessed to the total monthly volume of keyed transactions in any particular month in which Merchant's keyed transaction percentage is 15% or more than that represented in the Application. This surcharge shall be in addition to any other applicable discount fee assessed.

2.4 Merchant is obligated to pay all taxes and other charges imposed by any governmental authority on the services provided under this Agreement.

2.5 Upon written notice to Merchant, unless a later date is provided, Bank may immediately adjust discount rate and/or fee charges.

2.6 If Merchant has opted for Merchant Club Services, Bank shall provide Merchant with a terminal/printer replacement service, described below, and a maximum quantity of two (2) rolls of paper per quarter and one (1) printer ribbon per six (6) months. Merchant hereby authorizes Bank's agent to initiate debit/credit entries to Merchant's checking account for any additional supplies or services ordered from Bank or Bank's agent, or for any additional program fee assessed, as specifically described below. The right to purchase the above described quantity of supplies shall, with regard to rolls of paper, extinguish each quarter and, with regard to printer ribbons, extinguish each 6 month period. Any supplies shipped pursuant to the terms of this program shall be shipped at the Bank's cost. With regard to terminal/printer replacement, at the request of Merchant, Bank shall replace broken or malfunctioning units ("failed units") with a limit of one (1) terminal and one (1) printer replacement per year. Units which have suffered abuse, physical breakage or electrical surge at the sole determination of Bank's agent shall not be covered by this program. All replacement requests received by Bank before 3:00 p.m. CST Monday through Friday, holidays exempted, shall be deployed on the same day. Shipping of the replacement shall be at Merchant's sole expense. Any replacement request canceled post shipment or a returned and refused order shall be assessed a \$20.00 administration fee plus a 15% restocking fee. Replacement units shall be warranted by Bank's agent for ten (10) calendar days, and units failing during this period shall be replaced at no cost to Merchant, provided the failure was not as a result of electrical surge, abuse or breakage by Merchant, which determination shall be in Bank's agent's sole discretion. Bank makes no other warranties to Merchant, either express or implied. Merchant shall ship, at Merchant's sole expense, the failed unit(s) to Bank and failure to do so within ten (10) business days of the replacement request shall result in a debit to Merchant's checking account for the full replacement cost of the failed unit(s). In the event Merchant returns the failed unit(s) within thirty (30) days after the debt has been initiated, Merchant shall receive a credit in the amount of the aforementioned debit less a \$25.00 processing fee. If Merchant does not want to become a Merchant Club member, Merchant must notify Bank in writing. Merchant Club membership may be canceled at any time during the term of this Agreement upon receipt by Bank of ten (10) calendar days prior written notice.

3.0 Rights, Duties and Responsibilities of Bank

3.1 Bank will accept for processing valid Sales Drafts presented by Merchant that comply with the terms of this Agreement. Except as may otherwise be allowed under this Agreement, Bank will generally initiate provisional payment to Merchant two (2) business days after successful receipt and processing of the Sales Drafts and receipt of settlement funds from the respective Card Associations, the total face amount of each Sales Draft, less any credits, discounts, fees or adjustments determined daily or monthly. However, Bank cannot guarantee the timeliness with which any payment may be credited to and/or by Merchant's bank. All payments, credits and charges are subject to audit and final checking by Bank, and prompt adjustment shall be made for inaccuracies discovered. This Agreement is a contract whereby the Bank is extending financial accommodations to Merchant within the meaning of Section 365(c) of the Bankruptcy Code.

3.2 Notwithstanding any other provisions of this Agreement, Bank may refuse to accept any Sales Draft, or revoke its prior acceptance, in any of the following circumstances:

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

3.3 Bank will provide electronic data capture, monthly activity statements, and will assign customer service phone numbers which will accept all customer service calls and other communications from Merchant relating to the services provided under this Agreement including, but not limited to, disbursement of funds, account charges, monthly statement and chargebacks.

3.4 Bank will process all request for drafts and chargebacks from Card issuers and will provide Merchant with notice of requests and chargebacks for documentation.

3.5 Merchant acknowledges that Bank may use an independent sales organization/member service provider ("ISO/MSP") operating under applicable Visa and MasterCard Rules and Regulations. ISO/MSP is an independent contractor and not an agent of Bank. ISO/MSP has no authority to execute the Agreement on Bank's behalf or to alter the terms hereof without Bank's prior written approval. Any alteration of the terms of this Agreement must be initiated and approved by Bank.

3.6 If Merchant applies for check guarantee services, Merchant is contracting directly with the provider of such services. Bank shall not be responsible for check guarantee services.

3.7 The Bank's sole responsibility for transactions involving Cards issued by American Express, Diners Club/Carte Blanche, Discover Financial Services, Inc. (the issuer of Discover Cards and certain other cards), and JCB (each a "Card Issuer") and any other Cards specified in the Application, will be to provide the services as specified in the Application. Unless the Bank otherwise agrees in writing to provide settlement services for any of these additional Card transactions, the Bank will provide authorization and/or processing services only, and all settlement and chargeback obligations and similar financial responsibilities arising from the Merchant's transactions involving Cards other than Visa and MasterCard will be governed exclusively by the Merchant's agreement with the respective Card Issuer and Merchant must not seek authorization for or submit for processing or settlement any transactions involving Cards other than Visa and MasterCard unless the Merchant has in effect a valid agreement with the applicable Card Issuer (the "Issuer Agreement"), except to the extent the Bank has agreed to provide settlement services with respect to JCB, Diners Club/Carte Blanche or Discover Card transactions. The Merchant must notify the Bank immediately upon termination of any Issuer Agreement. Upon such termination,

the Bank will have no further obligation to provide any services for transactions involving the Cards covered by the terminated Issuer Agreement (except to the extent the Bank has agreed to provide settlement services with respect to JCB, Diners Club/Carte Blanche or Discover Card transactions). The Bank does not warrant or bear any responsibility for any Card Issuer or for its performance in any obligations to the Merchant. If any Issuer Agreement requires a Card Issuer's consent for the Bank to perform the services contemplated by this Agreement, the Merchant is responsible for obtaining that consent.

4.0 Account Monitoring

4.1 Merchant acknowledges that Bank may monitor Merchant's daily credit card transaction activity. Merchant agrees that Bank may upon reasonable grounds divert into an escrow/security account the disbursement of Merchant's funds and/or temporarily suspend processing under this Agreement. Reasonable grounds shall include, but not be limited to, the following: suspicious or unusual transaction activity; material variance in the nature of Merchant's business, type of product and/or service sold, average ticket size, monthly volume or swiped/ keyed percentages, from such disclosures made by Merchant in this Agreement; Merchant does not authorize transactions; Bank receives excessive retrieval requests against Merchant's prior activity; excessive chargebacks are debited against Merchant's prior activity; Merchant does not deliver product or render full service on or before the transaction date; or Merchant keys a foreign card transaction. If the Merchant's funds are diverted by Bank or Bank has temporarily suspended processing under this Agreement, such diversion or suspension shall be for any reasonable period of time required by Bank to fully investigate Merchant's account activity and resolve, to Bank's sole satisfaction, the subject transaction or activity of Merchant. Any funds diverted shall be maintained by Bank in a non-interest bearing account, which may be a commingled account. Bank shall have no liability for any losses, either direct or indirect, which Merchant may attribute to any diversion of funds, or suspension of processing.

5.0 Warranties

5.1 Merchant unconditionally represents and warrants to Bank that all Sales Drafts submitted to Bank hereunder will represent the indebtedness of a Cardholder, with whom Merchant has completed a Card sale in amounts set forth herein for Products or for fully rendered services, shall not involve any element of credit for any other purposes, and shall not be subject to any defense, dispute, offset or counterclaim which may be raised by a Cardholder under the Card Associations' Rules and Regulations, the Consumer Credit Protection Act (15 USC 1601) or other relevant state or federal statutes or regulations. Further, Merchant warrants that any credit voucher which it issues represents a bonafide refund or adjustment on a Card sale or for services fully rendered by Merchant with respect to which a Sales Draft has been accepted by the Bank.

6.0 Limitations of Liability; Indemnification; Due Care

6.1 Bank shall have no liability for any negligent design or manufacture of any point-of-sale terminal, printer or other equipment used by Merchant for the acceptance of credit card transactions. Bank MAKES NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, CONCERNING ANY EQUIPMENT, OR OTHER SERVICE PROVIDED BY OTHERS AND, IN PARTICULAR, MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

6.2 Merchant agrees to indemnify and hold the Bank harmless from and against all losses, liabilities, damages and expenses (including attorneys' and collection fees and expenses) resulting from: any breach of any covenant or agreement or any misrepresentation by Merchant under this Agreement; any Cardholder claim against the Bank which is pursued outside Card Association Rules and Regulations; Merchant's negligence or willful misconduct in connection with Card transactions; or otherwise arising from Merchant's provision of goods and services to Cardholders. Further, the Merchant agrees to indemnify and hold the Bank harmless from and against all losses, liabilities, damages and expenses (including attorneys' and collection fees and expenses) the Bank may incur pursuant to any Card Association Rule or Regulation resulting from Merchant's action or inaction, including but not limited to, all losses and expenses the Bank may incur as a result of any action Merchant may institute against any Card Association or Card issuer following a chargeback.

6.3 Bank will use due care in providing services covered by this Agreement, and the performance of all services called for in this Agreement shall be consistent with industry standards. The liability, if any, of Bank under this Agreement for any claims, costs, damages, losses and expenses for which it is or may be legally liable, whether arising in negligence or other tort, contract, or otherwise, will not exceed in the aggregate the amount of fees paid by Merchant, less interchange and assessments, over the previous twelve (12) month period, calculated from the date the liability accrued. In no event will Bank or its agents, officers, directors or employees be liable for indirect, special, or consequential damages, including, but not limited to, any losses which may result from Merchant being unable to process transactions.

7.0 Display of Materials; Trademarks

7.1 Merchant agrees to prominently display the promotional materials provided by Bank in its place(s) of business. Use of promotional materials and use of any trade name, trademark, service mark or logo type ("Mark") associated with Card(s) shall be limited to informing the public that Card(s) will be accepted at Merchant's place(s) of business. Merchant's use of promotional materials and Marks is subject to the direction of Bank.

7.2 Merchant may use promotional materials and Marks during the term of the Agreement and shall immediately cease use and return any inventory to Bank upon any termination thereof.

7.3 Merchant shall not use any promotional materials or Marks associated with Visa or MasterCard in any way which suggests or implies that either endorses any goods or services of Merchant.

8.0 Terms; Default; Escrow/Security Account

8.1 This Agreement is binding upon the earlier of (i) its execution by all parties as evidenced by signatures on the Application or (ii) the settlement by Bank of (A) any Card transaction submitted by Merchant to Bank pursuant to this Agreement if Merchant is a new customer that does not already have an agreement with Bank for Card transaction services or (B) any Card transaction submitted by Merchant ten (10) or more days after Merchant's receipt of this Agreement if Merchant is an existing customer whose current agreement with Bank for Card transaction services is being replaced by this Agreement. A \$3.50 MID Activation Fee shall be assessed at the beginning of the term. Unless otherwise agreed by the parties, the initial term of the Agreement shall be three (3) years. The Agreement shall continue in full force thereafter for successive one-year periods until terminated in writing, by notice given to the other party or parties not less than ninety (90) days prior to the then current expiration date, or until any earlier termination as provided below.

8.2 If any of the following events (each a "Default") occurs, Bank may terminate this Agreement immediately without notice and exercise all of its other rights and remedies under this Agreement and applicable law: (i) a material adverse change in Merchant's business, financial condition, business procedures, products or services, a sale of all or substantial portion of Merchant's assets, or a change in control of Merchant's business (directly or indirectly); (ii) irregular Card sales, excessive chargebacks or any other circumstances which, in the Bank's discretion, may increase its potential exposure for Merchant's chargebacks or otherwise present a financial or security risk to Bank; or (iii) a default by Merchant in any material respect in the performance or observance of any term, covenant, condition or agreement in this Agreement, or in any other agreement with Bank or any of its affiliates; (iv) any non-compliance by Merchant with the terms of the Agreement or any Card Association Rules or Regulations; or any reasonable belief by Bank that Merchant may fail to comply with the terms of the Agreement, which failure would constitute as substantial risk to Bank or (v) Merchant files 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 Merchant, Merchant generally becomes unable to pay Merchant's debts or trade obligations as they become due, or Merchant makes a general assignment for the benefit of creditors.

8.3 The provisions of this Agreement that govern processing of Card sales and credits and settlement will continue to apply even after this Agreement is terminated, until all transactions are settled or resolved. The provisions of Sections 1.5, 1.9, 1.10, 1.11, 1.13, 1.15, 1.16, 2.34, 5.6, 7.8, 8.9 and 11 will survive any termination. Upon termination, all amounts payable to Bank will be due and payable in full without demand or other notice of any kind (all of which Merchant agrees to expressly waive) and Merchant must immediately send Bank all the data relating to Card sales and credits made up to the date of termination. Bank will not be liable to Merchant for any direct or consequential damages Merchant may suffer as a result of the termination of this Agreement.

8.4 If this Agreement is terminated at any time other than upon expiration in accordance with Section 8.1, Bank will be entitled to recover, and Merchant will pay on demand, any and all losses (including consequential damages, loss of profits, costs, expenses and liabilities) incurred by Bank in connection with termination. Merchant also acknowledges that Bank will incur costs and expenses to provide certain routine services following termination of the Agreement, similar to those provided during the term of this Agreement, including processing chargebacks relating to transactions that initially occurred prior to termination, providing monthly statements to Merchant to report any such chargebacks or other adjustments and responding to telephone calls and other inquiries. If this Agreement is not terminated prior to expiration of the initial term, Bank will provide those routine post-termination services at no additional service charge to Merchant, but if this Agreement is terminated prior to the end of the initial term, Merchant agrees to pay Bank a deconversion fee of \$250 to cover its routine post-termination services, or such greater amount as may be due hereunder pursuant to Section 2. Whether or not Bank charges a deconversion fee for its services, Merchant will remain liable for chargebacks and other adjustments as provided in Section 2 and for other costs, damages, losses, expenses and liabilities incurred by Bank in connection with an early termination of this Agreement. Merchant authorizes Bank to debit Merchant's Account for, or deduct from any settlement funds otherwise owed to Merchant, the deconversion fee, plus any and all amounts due under Merchant's obligation to indemnify incurred by Bank in connection with termination. Merchant also agrees that Bank may debit any of the foregoing in order to satisfy obligations of Merchant to vendors who have provided services to Merchant in connection with or ancillary to this Agreement. If Merchant's settlement funds or the balance in the Account is insufficient to cover the deconversion fee and all such losses, Merchant agrees to pay Bank such amounts immediately on receipt of invoice.

8.5 After any termination of this Agreement, Merchant will continue to bear total responsibility for any and all chargebacks, credits and adjustments resulting from transactions processed under this Agreement and all other amounts then due, or which later become due, to Bank under this Agreement to either of Bank or any of its affiliates or vendors for any related equipment or related services (including any check guarantee or verification services). In connection with termination, and without waiving any rights or remedies hereunder, and without notice, Bank may in its sole discretion require Merchant to establish or re-establish itself as a holder of Merchant's escrow/security account with Bank for such time as may be necessary to protect the interests of the Bank, which in no event shall be for less than two hundred seventy (270) days from the date of termination, in an amount equal to the greater of an amount reasonably determined by the Bank as necessary to protect its interests under this Agreement or:

- Bank's reasonable estimate of Merchant's dollar volume of incoming chargebacks for a 9-month period and Merchant's credits (for returns or otherwise) for a 2-month period (which may be based on actual volume during the preceding two hundred seventy (270) days for chargebacks and sixty (60) days for credits or nine (9) times Merchant's average monthly dollar volume of incoming chargebacks and two (2) times Merchant's average monthly dollar volume of credits, as determined during a recent 12-month period or any shorter term of this Agreement) or such higher amount that Bank deems necessary and sufficient to cover its potential liability for chargebacks and credits; plus
- Bank's reasonable estimate of all fees, charges, obligations and other amounts that may be owed to Bank under or in connection with this Agreement at or following termination (including all adjustments needed to reconcile any discrepancies, to reflect increased interchange fees because of failure to comply with intended rates or interchange fees, or otherwise), any and all fines assessed against Merchant, any other fees and charges not collected by Bank prior to termination, and damages and other amounts due under Section 8.4 upon premature termination; plus
- Bank's reasonable estimate of all uncollected fees, charges, obligations and other amounts (including damages and other amounts due upon premature termination) payable to either of Bank or to any of its affiliates for related equipment or related services.

8.6 Without exercising or waiving either the Bank's right to terminate this Agreement immediately without notice or any other rights or remedies hereunder, if any of the events in Sections 8.2 occur, Bank may, in its sole discretion, require Merchant to establish or may itself establish on behalf of Merchant an escrow/security account with Bank during the term of this Agreement equal to the same amount as set forth in Section 8.5, change processing or payment terms, and/or suspend for any reasonable period of time required credits or other payments of any and all amounts now due or to become due to Merchant pursuant to this Agreement. Bank shall have no liability to Merchant for any losses, either direct or indirect, which Merchant may suffer as a result of any such suspension of funds disbursement or

failure to pay for transactions.

8.7 In connection with the termination of this Agreement or any other event entitling Bank to require an escrow/security account from Merchant (and continuing thereafter until two hundred seventy (270) days after termination), Bank may use any funds otherwise due to Merchant, or Bank may debit Merchant's Account, to establish or maintain on Merchant's behalf (or restore/supplement) an escrow/security account containing Merchant's funds equal to the amount set forth in Section 8.5. Merchant escrow/security funds required hereunder may be held in a commingled escrow/security account without involvement by an independent escrow agent.

8.8 The requirement to maintain an escrow/security account will not limit Bank's right to debit or withhold ongoing settlement payments for chargebacks, potential chargebacks, adjustments, fees, charges, obligations and other amounts due hereunder. Merchant funds in the escrow/security account may be used to settle chargebacks, adjustments, fees, charges, obligations and other amounts described in this Agreement (including any amount for which Merchant is obligated to indemnify to the Bank), whether arising before, on or after termination and whether such obligations or other amounts are liquidated, fixed, contingent, matured or unmatured, whenever there are not sufficient settlement funds due to Merchant to cover such chargebacks, adjustments, fees or other charges or obligations. If Merchant funds in the escrow/security account are not sufficient to cover the chargebacks, adjustments, fees, charges, obligations and other amounts due from Merchant, or if Merchant funds in such account have been released, Merchant agrees to promptly pay Bank such sums upon request.

8.9 In the event Merchant fails to establish or maintain any required escrow/security account, Bank may immediately terminate this Agreement and may exercise any other rights Bank have under this Agreement.

9.0 Telephone and Mail Orders; Electronic Commerce; Recurring Sales or Other Preauthorized Orders or Sales

9.1 If Merchant accepts and Bank authorizes Merchant to accept telephone or mail orders or electronic commerce transactions or recurring sales or other preauthorized orders or sales, each such Card transaction must be authorized regardless of the face amount, and Merchant must write "MCO," "EC," "Recurring Transaction" (for Visa and other non-MasterCard Card transactions) or "PO" (for MasterCard Card transactions) as applicable, on the signature line of the sales record in lieu of the Cardholder's signature, and a Card imprint. Merchant may require additional identification information from a Cardholder, such as a telephone number or home address, if such information is required by Merchant to complete the transaction, i.e., for delivery of Merchant products or services, or as otherwise required by the Rules and Regulations. Merchant must retain and make available to the Bank upon Bank's request, the Cardholder's written request to Merchant for preauthorization. A preauthorized order is a Cardholder's written authorization to make one or more charges to a Cardholder's Card account in the future. Merchant assumes all responsibility for identification of the Cardholder and the validity of the Card information for telephone and mail orders and electronic commerce transactions and recurring or other preauthorized sales. Merchant must attempt to obtain the Card expiration date and forward it as part of the authorization request. For telephone and mail order and electronic commerce transactions where merchandise is to be shipped or delivered to or for the Cardholder, the shipping date should not be more than seven (7) calendar days after the authorization is obtained, and any shipping costs not included in the authorization amount must not exceed 15% of the amount authorized. Stricter requirements than those in the preceding sentence must be satisfied to qualify for certain incentive programs.

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

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

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

9.5 In addition to the above requirements for electronic commerce transactions, Merchant must follow the following procedures for Electronic Commerce Card transactions over the Internet. The "Internet" is a vast computer network through which with the proper equipment, a person can access information and communicate with other persons or devices on-line. Merchant acknowledges and agrees that this Agreement pertains only to Electronic Commerce Card transactions that arise from a cardholder's purchase over the Internet for Card transactions effected in U.S. dollars. All transactions must be in U.S. dollars and will be settled in U.S. dollars. Electronic Commerce Card transactions are viewed by the Card Associations as non-face-to-face transactions and all such rules regarding non-face-to-face transactions shall apply to Electronic Commerce Card transactions, if it appears reasonably applicable to an Electronic Commerce Card transaction. In addition, Merchant must properly identify an Electronic Commerce Card transaction in the authorization and settlement record. Merchant agrees to develop and maintain a point of presence on the Internet at Merchant expense. Merchant Internet web site must contain (a) a complete description of the goods or services offered, (b) Merchant return merchandise and refund policy, (c) Merchant customer service contact, including e-mail address and/or telephone number, (d) transaction currency, (e) export or legal restrictions (if known), and (f) Merchant delivery policy. In addition Merchant must disclose, at all points of Cardholder interaction (including any supplier's Internet web site, any promotions and any invoices), to the Cardholder that Merchant, and not any supplier of goods or services, is the merchant of record and is responsible for any transaction. Merchant must also notify the Cardholder that Merchant is responsible for, even if Merchant uses a third party to assist Merchant with, (a) payment transactions, (b) products and services (c) dispute resolution, and (e) all terms and conditions of the sale. The Rules and Regulations also require that Merchant post Merchant's consumer data privacy policy and method of transaction security on Merchant's web site(s). Merchant must display on Merchant's Internet web site the Card Association's brand mark wherever Merchant displays payment options. Merchant shall, in accordance with the Rules and Regulations governing the protection of Cardholder information, (a) install and maintain a working firewall to protect data accessible via the Internet; (b) keep security patches up to date; (c) encrypt stored data; (d) encrypt data sent across networks; (e) use and regularly update anti-virus software; (f) restrict access to data on a "need to know" basis; (g) assign a unique ID to each person with computer access to data; (h) not use vendor-supplied defaults for system passwords and other security parameters; (i) track access to data by unique ID; (j) regularly test security systems and processes; (k) maintain a policy that addresses information security for employees and contractors; and (l) restrict physical access to cardholder information. Merchant shall be responsible for all costs of connectivity and communication between Merchant business, the Internet, and Bank. Merchant acknowledges that Bank does not control or warrant Merchant's data on the Internet. Merchant agrees to utilize Secure Sockets Layer (SSL) or a secure compatible encryption method acceptable to Bank in providing Merchant Electronic Commerce Card transactions to the Bank for authorization, processing and settlement. Merchant agrees that Merchant's authorization request will include a request for address verification and a positive AVS response. Merchant may not refuse to complete a Card transaction solely because a Cardholder does not possess a digital certificate. Merchant agrees to pass the Card Verification Value 2 ("CVV2") security number in the authorization message, if available. Also, Merchant agrees to identify separately any high-risk transactions Merchant submits. The high-risk transactions include MCC 5967 Direct Marketing Inbound Telemarketing Merchants. If software is to be purchased by Merchant, Merchant shall be responsible for sublicensing fees and all other fees for software and the software program utilized by Merchant which enables Merchant to connect to and maintain communication between Bank, Merchant and the Internet. Merchant will at all times maintain in effect a Sublicense Agreement for its any such software. Merchant agrees to use any such software and the software program properly and for the purposes for which it was intended.

10.0 Notices

10.1 All notices and other communications required or permitted under this Agreement shall be deemed delivered when mailed first class mail, postage prepaid, addressed as follows: With a copy to:

(a) <u>To Bank</u>	National Processing Company, LLC, Best Payment Solutions, Inc. 710 Quail Ridge Drive Westmont, IL 60559	1231 Durrett Lane Louisville, KY 40213 Attn: Bankcard Contract Management
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(b) To Merchant, to any owner or officer stated on the Application at the Merchant's place of business or statement mailing address also as stated on the Application.

11.0 Additional Terms

11.1 This Agreement is subject to the bylaws and rules promulgated by Visa and MasterCard or any other Card Association. The parties hereto agree to abide by and fully comply with these bylaws and rules and by such amendments or additions as may be made hereto.

11.2 Representatives of Bank may, during normal business hours, inspect, audit and make records of Merchant's books, accounts, records and files pertaining to any Card transaction. Merchant will preserve its records of any Card sale, any refund or credit adjustment thereon for at least seven (7) years from the date of such sale, credit, refund or adjustment.

11.3 Bank shall not be liable for any damages resulting from any delay in performance or non-performance caused by circumstances beyond Bank's control including, but not limited to, Acts of God, fire, flood, war, governmental action, accident, labor trouble or shortage, or other events of similar effect in connection with Bank's obligations herein.

11.4 Bank may change this Agreement, the Manuals/Instructions, or other operating procedures by giving Merchant at least fifteen (15) days advance notice. However, in the event of changes in the Card Association Rules or Regulations or due to security or risk control reasons, certain changes may become effective on shorter notice. Bank may provide this notice in a periodic statement or other written notice. In addition, Bank may from time to time notify Merchant in writing or through other means of requirements that must be satisfied to qualify for various incentive programs. Any Card sales made by Merchant after the effective date of such change will constitute consent to the new terms. Notwithstanding the above, changes to discount rates or fees will be effective upon written notice to Merchant, unless a later effective date is provided.

11.5 All section headings contained herein are for descriptive purposes only, and the language of such section shall control.

11.6 Merchant may not assign this Agreement, directly or by operation of law, without prior written consent of Bank. Bank may assign its right, title and interest in Agreement without obtaining the Merchant's consent.

11.7 This Agreement shall be construed and governed by the laws of the State of Illinois. Any action or proceeding on this Agreement by or against Bank must be initiated and maintained in Illinois under the jurisdiction of the State of Illinois or the federal courts with venue in the courts of Cook County. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in effect.

