



National Debit Corp. Financial Division  
 21 Penn Plaza, Suite 1006  
 New York, NY 10001  
 Toll free 1-800-603-0169  
 Fax 1-866-390-7010

## Merchant Processing Agreement

ISC Office Number:	ISC/Representative Name	Representative Number
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### Business Information

Doing Business As (DBA) Name	Telephone Number ( )	Date Business Started:	Length of Current ownership:	Number of Locations
Federal Tax ID Number (nine digits)	FAX Number ( )	Type of Business	Type of Products/Services Sold	
Location/Site Address:		Have You Filed for Bankruptcy <input type="checkbox"/> Yes <input type="checkbox"/> No		Has Bankruptcy Been Discharged <input type="checkbox"/> Yes <input type="checkbox"/> No
City:	State:	Zip Code:	Are You Currently Accepting Transactions <input type="checkbox"/> Yes <input type="checkbox"/> No	
Legal Business Name		Telephone Number ( )	Do You Operate a Seasonal Business? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Mailing/Billing Address (If different from Location/Site Address):		FAX Number:	Average Business-to-Business:	
City:	State:	Zip Code:	Card Present Swiped: _____%	Average Mthly Vol. (\$) / High Mthly Vol. (\$)
E-mail Address:		Web Site Address:	Card Present Keyed/Imprint: _____%	/
			Card Not Present (Mail/Phone): _____%	Average Ticket (\$) / High ticket (\$)
			Internet: _____%	/
			Total 100%	/

### Ownership Information

Ownership Type					
<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> C-Corporation <input type="checkbox"/> S-Corporation <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Not For Profit <input type="checkbox"/> Other					
Owner/Partner/Officer Name 1:		Title in Business		Owner/Partner/Officer Name 2:	
Title in Business		Title in Business		Title in Business	
Equity ownership %	State Driver's License Number	Social Security #(9 digits)	Equity ownership: %	State Driver's License Number	Social Security #(9 digits)
Home Address:		Telephone Number	Home Address:		Telephone Number
City:	State:	Zip Code:	City:	State:	Zip Code:

### Authorization to ACH

Bank Name:	Telephone Number ( )	Trade Reference Name 1	Telephone Number
Transit (ABA Routing) Number	DDA Account Number:	Trade Reference Name 2	Telephone Number

### Schedule of Charges

Retail Discount Rate (%)	Mail/Tel./Internet Discount Rate (%)	Transaction Fee (\$)	
Visa <sup>3</sup>	_____	\$ _____	Optional Services and Fees:
MasterCard <sup>3</sup>	_____	\$ _____	
<input type="checkbox"/> Retail Bundled Rate <sup>4</sup> (Visa/MasterCard Discount Rate and Transaction Fee Combined)			<input type="checkbox"/> National Debit Transaction Fee <sup>6</sup> : _____
Processing Fees:			<input type="checkbox"/> National Debit Monthly Access Fee: _____
Monthly Maintenance Fee:		\$12.00	<input type="checkbox"/> Electronic Benefit Transfer
Monthly Visa/MasterCard Minimum Fee:		\$25.00	Transaction Fee:
Monthly Integrity Advantage <sup>6</sup> Fee <sup>5</sup> :		\$ 9.50	<input type="checkbox"/> Online Access Mthly Maintenance Fee: _____
Voice authorization fee per item		\$ .95	<input type="checkbox"/> Fast Funding <sup>7</sup> Monthly Service Fee: _____
Batch Fee Per Occurrence:		\$ .25	<input type="checkbox"/> Internet Gateway Monthly Access Fee: _____
AVS Fee Per Item:		\$ .05	Internet Gateway Setup Fee: _____
Chargeback Fee Per Item:		\$25.00	<input type="checkbox"/> Wireless Network <sup>7</sup> Mthly Access Fee: _____
Retrieval Fee Per Item:		\$15.00	
ACH Return Fee Per Item:		\$28.00	
Annual Renewal Fee:		\$59.00	

<sup>2</sup> Seasonal Merchants may pay additional fees for setup and deactivation.

<sup>3</sup> Retail Visa/MasterCard credit card transactions that are swiped, electronically authorized and closed in a daily batch will receive the discount rates and transaction fees shown. A surcharge of up to 1.79% and \$0.10 may apply to: 1) manually keyed retail Visa/MC credit card transactions; 2) manually keyed retail Visa/MC credit card transactions that are not closed in a daily batch within 24 hrs of card authorization; 3) manually keyed and mail/tel/ internet transactions that do not receive an "exact match" from the Address Verification Service (AVS) prompt; and 4) business, foreign card and non-PIN-based transactions.

<sup>4</sup> A bundled rate is the combination of the discount rate and the transaction fee. A bundled rate is based on the merchant's average ticket and monthly processing volume, as projected at the time of filling the Merchant Agreement. Deviation in the average ticket and monthly processing volume of 10 percent or more measured over a calendar month may result in an increase in charges.

<sup>5</sup> The first month is free. See the Credit Card Acceptance Manual for details.

<sup>6</sup> Any Additional Fees charged by the Debit Networks will be passed through to the Merchant.

<sup>7</sup> An activation fee of \$53 will be added if the merchant requires wireless data capture services.

First Savings Bank, F.S.B., Beresford, South Dakota

Member Bank for Visa/MasterCard    White copy - Integrity Payment Systems, Yellow Copy - Merchant, Pink Copy - Sales Office    See reverse side for terms and conditions





National Debit Corp. Financial Division  
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New York, NY 10001  
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Fax 1-866-390-7010



This Merchant Processing Agreement ("Agreement") is entered into as of the date the Agreement is executed ("Effective Date") by Integrity Payment Systems, LLC ("IPS"), a Delaware limited liability company, by and among the business ("Merchant" or "you") indicated on this Agreement, and by First Savings Bank, F.S.B., Beresford, South Dakota, a Federally chartered savings bank, ("Bank"), as a principal member of MasterCard International Inc. ("MC") and Visa USA, Inc. ("Visa").

Merchant desires to accept credit cards validly issued by Visa and MasterCard. IPS and Bank desire to provide credit and debit card processing services and other related products and services to Merchant. Therefore, Merchant, IPS, and Bank agree to the **Terms and Conditions** as follows:

#### 1. Honoring Cards:

**A. Without Discrimination.** You will honor, without discrimination, any Card properly tendered by a Cardholder. "Cardholder" means a person possessing a Card and purporting to be the person in whose name the Card is issued.

**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; (iii) the account number embossed on the Card does not match the account number on the Card's magnetic stripe (as printed on electronic form); or (iv) the account number embossed on the Card is listed on a current Electronic Warning Bulletin file. 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) if the printed four digits above the embossed account number, on Visa Cards only, do not match the first four digits of the embossed account number; (ii) if you are advised by Bank (or its designee), the issuer of the Card, or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Card is counterfeit, fraudulent, or stolen, or use of the Card has not been authorized by the Cardholder; (iv) the embossed account number, indented printed account number, and/or encoded account number, on MasterCard Cards only, do not agree; or (v) the Card does not have a Visa or MasterCard hologram on the lower right corner of the Card face. b. 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 in writing, 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 unless Bank or IPS refuses to accept the Sales Draft (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 IPS.

**G. Disputes with Cardholders.** All disputes between you and any Cardholder, relating to any Card transaction, will be settled between you and the Cardholder. Neither Bank nor IPS 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 the 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 Cards that are expired, whether or not an Authorization has been obtained. For electronic commerce transactions, you must attempt to obtain the Card expiration date and forward it as part of the authorization request.

**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 validate a fraudulent transaction or a transaction involving the use of an expired Card. You are fully liable for all chargebacks.

**C. Unreadable Magnetic Stripes and/or Manually Keyed Transactions.** If you authorize and present Card transactions electronically and your terminal is unable to read the magnetic stripe on the Card, you will obtain an imprint of the Card and the Cardholder's signature on the imprinted draft before presenting the Sales Draft to Bank and IPS for processing. Transactions that do not utilize Address Verification Service (AVS) may result in a surcharge of up to 1.79% and \$0.10.

#### 3. Presentation of Sales Drafts.

**A. Forms.** You will use a sales draft or other form approved by the Bank and IPS ("Sales Draft") to document each Card transaction. Each Sales Draft will be legibly imprinted with the: (i) Merchant's name and account number; (ii) information embossed on the Card presented by the Cardholder (either electronically or manually); (iii) date of the transaction; (iv) brief description of the goods or services involved; (v) transaction authorization number; (vi) total amount of the sale (including applicable taxes) or credit transaction; and (vii) if applicable, adjacent to the signature line, a credit policy notation that all sales are final and that special orders will take a period of time, if applicable.

**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 order or telephone order or electronic commerce Card Transaction that fully complies with the requirements set forth in this 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. Additionally, you will legibly reproduce the name of the bank that issued the Card as it appears on the face of the Card.

**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 seven 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 an electronic point of sale 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, or you lease a terminal from a third party, such terminals must meet IPS 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 IPS, Bank or its agent in the form IPS from time-to-time, specifies or as required under the Laws or Rules. If Bank or IPS 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 Drafts.

**A. Deposit of Sales Drafts.** 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, Bank will deposit to the designated account (defined in Section 6 below) all Sales Drafts (whether evidence in writing or by electronic means) that comply with the terms of this Agreement and the Rules and will provide you with provisional credit for such Sales Drafts (less any credits, adjustments and chargebacks). You acknowledge that your obligation to IPS and Bank for all amounts owed under this Agreement arise out of the same transaction as Bank's obligation to deposit funds to the Merchant Account. Notwithstanding the previous sentence, under no circumstances will Bank or IPS be responsible for processing credits or adjustments related to original sales

transactions not processed by Bank or IPS. All Sales Drafts and deposits are subject to audit and final checking by Bank and IPS, 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. Bank and IPS may elect to grant conditional credit for individual or groups of any Sales Drafts. Final credit for those conditional Sales Drafts will be granted within Bank or IPS' sole discretion.

**B. Chargebacks.** You are fully liable to IPS and Bank for all transactions returned to IPS and Bank for whatever reason, otherwise known as "chargebacks." You will pay IPS and Bank on demand, the value of all chargebacks. You agree to accept for chargeback, and will be liable to IPS and Bank in the amount of any sale for which the cardholder disputes the validity of the sale. You authorize IPS and Bank to offset from incoming transactions and to debit the Merchant Account, the Reserve Account, or any other account held at Bank or at another financial institution the amount of all chargebacks. You will fully cooperate with IPS and Bank in complying with the Rules regarding chargebacks. Guarantors are personally liable for all chargebacks.

**C. Excessive Activity.** Your presentation to IPS 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 1% of the average monthly dollar amount of your Card transactions or returns in excess of 3% of the average monthly dollar amount of Sales Drafts. You authorize, upon the occurrence of Excessive Activity, IPS and Bank 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. IPS and Bank will debit the Merchant Account for the total face amount of each credit memorandum submitted to IPS. You will not submit a credit relating to any Sales Draft not originally submitted to IPS, 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 IPS with a credit memorandum or credit statement for every return of goods or forgiveness of debt for services that was the subject of a Card transaction. ii. Revocation of Credit. IPS or Bank 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 all terms and conditions of this Agreement, the Laws, and the Rules; (b) the Bank or IPS receives notification that the Cardholder disputes his or her liability to Merchant 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 Bank and IPS, as appropriate, any amount previously credited to you for a Sales Draft not accepted by IPS or where accepted, that is subsequently revoked.

**E. Reprocessing.** Notwithstanding any authorization or request from the Cardholder or customer, you will not reenter or reprocess any Card transaction that 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. You will not deposit Sales Drafts evidencing Sales that were solicited by telemarketers. 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 IPS 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. IPS and Bank will have no liability for any losses you may attribute to any suspension of funds disbursement.

#### 5. Other Types of Transactions.

**A. Mail Order.** You may not solicit or accept mail or telephone orders or any transaction in which the Cardholder and Card are not present ("mail/telephone orders") without prior consent from IPS. Mail/telephone orders completed without prior consent of IPS will be a breach of this Agreement and cause for immediate termination, in addition to any other remedies available under the Laws and Rules. You may be required to use an address verification service ("AVS") on mail/telephone transactions. AVS is not a guarantee of payment and the use of AVS will not waive any provision of this agreement or validate a fraudulent transaction. You will obtain the expiration date of the Card for a mail/telephone order and submit the expiration date when obtaining authorization of the Card transaction. For mail/telephone order transactions, you will type or legibly print on the signature line of the Sales Draft the following applicable words or letters: "telephone order" or "TO" or "mail order" or "MO."

**B. Recurring Transactions.** For recurring transactions, you must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder's account, the frequency of the recurring charge and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder; (ii) notice from IPS that authority to accept recurring transactions has been revoked; or (iii) a response that the Card is not to be honored. You must print legibly on the Sales Draft the words "Recurring Transaction."

**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. Partial Completion.** 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 IPS. The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed to be a breach of this Agreement and cause for immediate termination, in addition to any other remedies available under the Laws or Rules. ii. Acceptance. If you have obtained prior written consent, then you will complete such Card transactions in accordance with the terms set forth in this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft upon making a deposit with a Card and a second Sales Draft upon paying the balance. You will note upon the Sales Draft the words "deposit" or "balance" as appropriate. You will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or you have fully performed the services.

**E. Future Delivery.** You will not present any Sales Draft or other memorandum to IPS for processing (whether by electronic means or otherwise) that relates to the sale of goods or services for future delivery without prior written authorization from Bank and IPS. If IPS has previously given such consent, you represent and warrant to IPS 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. Internet and ACH Transactions.** i. Internet. You must receive consent to process Internet transactions from IPS, and you may process such transactions only if the transactions have been encrypted by a third party vendor acceptable to IPS. If you submit Internet transactions without the consent from IPS, IPS may immediately terminate this Agreement. You understand that transactions processed via Internet are high risk and subject to a higher incidence of chargebacks. You are liable for all chargebacks and losses related to Internet transactions, whether or not: (i) Internet transactions have been encrypted; and (ii) you have obtained consent from IPS 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. All communication costs related to Internet transactions will be your responsibility. You understand that IPS will not manage the Internet telecommunications link, and that it is your responsibility to manage that link. Other than a terminal help desk, you also understand that IPS does not have a seven days per week, 24-hour operation. All Internet transactions will be settled by Bank into a depository institution of the United States in U.S. currency. ii. Requirements. For goods to be shipped on EC transactions, you may obtain authorization up to seven calendar days prior to the shipment date. You need not obtain a second authorization if the Sales



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**Integrity**  
Payment Systems

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 (e.g., U.S. or Canadian dollars); (e) if known, export or legal restrictions; 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. iii. ACH Transactions. You may request IPS to convert your Internet transactions into a format that can be processed by an automated clearing house ("ACH Transactions"). If IPS agrees to provide that service to you, IPS and Bank will forward such transactions to the relevant automated clearing house ("ACH") for processing. You will follow the procedures established by IPS and the ACH for ACH Transactions, which procedures are incorporated into this Agreement. You authorize IPS or Bank to initiate ACH debits, credits, and adjustments to the Merchant Account. Confirmation from IPS of a credit or debit ACH Transaction does not constitute a warranty that you will be paid for the transaction. All relevant terms of this Agreement apply to ACH Transactions.

**G. American Express ("AMEX"), Diners Club ("Diners"), Discover Card ("Discover"), and Japanese Credit Bureau ("JCB") Transactions.** Upon your request, IPS will provide access to authorization and/or data capture services for AMEX, Diners, Discover, and JCB transactions. You must enter into a separate merchant agreement with American Express, Citigroup Diners Club, NOVUS Services, Inc., or Japanese Credit Services, Inc. Neither IPS or Bank are responsible for funding such transactions. Further, IPS or Bank may notify you that AMEX, Diners, Discover, JCB, or other cards ("Additional Cards") may be accepted by you. If you do not decline this offer in writing, IPS or Bank will forward certain information, including, but not limited to, your Merchant Account number, to the Additional Card issuer. The terms of this Agreement will apply to Additional Card transactions. IPS or Bank 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 IPS or Bank will constitute your agreement to the terms of this Agreement with regard to Additional Cards.

**H. Nonbankcard Services.** From time-to-time, IPS may offer you certain additional products and services which may or may not be related to the processing of Card transactions. You will indicate your desire to IPS to decline such offers or be deemed to have accepted the offers and be liable to pay IPS for the services provided.

#### 6. Merchant Account.

**A. Establishment and Authority.** You will establish and maintain with Bank and IPS (or with an ACH-receiving depository institution acceptable to Bank) one or more commercial checking account(s) to facilitate payment for Card transactions (collectively, the "Merchant Account"). You will maintain sufficient funds in the Merchant Account to accommodate all transactions contemplated by this Agreement, including, but not limited to, fees, fines, and chargebacks. You irrevocably authorize IPS to debit the Merchant Account for chargebacks in accordance with the Rules and for fees and any other penalties or payments under this Agreement. You also authorize vendors or agents of IPS or Bank to debit the Merchant Account as appropriate. This authority will remain in effect for two years after termination of this Agreement, whether or not you have notified IPS of a change to the designated account. You must obtain prior written consent from IPS to change an Account. If you don't get that consent, IPS may immediately terminate the Agreement and may take other actions necessary to protect IPS and Bank within its discretion.

**B. Deposits.** IPS or Bank have the right to delay, within their discretion, crediting the Merchant Account with funds evidenced by submitted Sales Drafts. You authorize IPS to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant you conditional credit for any entry. IPS or Bank will make deposits to the Merchant Account pursuant to this Agreement and the ACH Authorization (defined below). You authorize and appoint IPS and Bank to act as your agent to collect Card transaction amounts from the Card issuing bank. As the collecting agent, IPS or Bank, in its sole discretion, may grant you provisional credit for transaction amounts, in the process of collection, subject to receipt of final payment by IPS or Bank, and subject to all chargebacks, returns, fees, and fines.

**C. Asserted Errors.** You must promptly examine all statements relating to the Merchant Account and immediately notify IPS, 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, if known, the cause of it. That written notice must be received by IPS or Bank within 30 days after you received the periodic statement containing the asserted error. You may not make any claim against IPS or Bank for any loss or expense relating to any asserted error for 60 days immediately following the IPS or Bank receipt of your written notice. During that 60-day period, IPS or Bank will be entitled to investigate the asserted error.

**D. Indemnity.** You will indemnify and hold IPS or Bank harmless for any action they take against the Merchant Account or Reserve Account pursuant to this Section. You will also indemnify and hold harmless the institution at which you maintain your Merchant Account for acting in accordance with any instruction from us regarding the Merchant Account. This section will survive termination of this Agreement.

**E. ACH Authorization.** You authorize IPS or Bank, to initiate debit/credit entries to the Merchant Account, the Reserve Account, or any other account maintained by you at any institution that is a receiving member of ACH, all in accordance with this Agreement. This authorization will remain in effect after termination of this Agreement and until all of your obligations to IPS or Bank have been paid in full. In the event you change the Merchant Account, you will notify IPS, and this authorization will apply to the new account.

#### 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 Bank and IPS a security interest in and lien upon: (i) all funds at any time in the Merchant Account, regardless of the source of such funds; (ii) all funds at any time in the Reserve Account (as defined below), regardless of the source of such funds; (iii) present and future Sales Drafts; and (iv) 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 IPS and Bank upon request. Upon request of IPS or Bank, you will execute one or more financing statements or other documents to evidence this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. These security interests and liens will secure all of your obligations under this Agreement and any other agreements now existing or later entered into between Merchant, IPS, and Bank including, but not limited to, your obligation to pay any amount due to IPS or Bank. This security interest may be exercised by IPS or Bank without notice or demand of any kind by making an immediate withdrawal or freezing the secured assets. Further, with respect to such security interest and liens, IPS and Bank will have all rights afforded under the Uniform Commercial Code, as any other applicable law and equity. You will obtain from IPS or Bank 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 IPS or Bank 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 IPS or Bank.

**B. Reserve Account.** i. Establishment. You will establish and maintain a non interest bearing deposit account ("Reserve Account") at IPS or Bank initially or at any time in the future as requested in good faith by IPS or Bank, with the sums sufficient to satisfy your current and future obligations to IPS or Bank. IPS or Bank may establish a Reserve Account by depositing incoming items into a Reserve Account if it determines in good faith that a reserve is necessary, including but not limited to a determination that transactions are outside the risk parameters indicated by you on this Agreement. You authorize IPS or Bank to debit the Merchant Account to establish or maintain funds in the Reserve Account. IPS or Bank may deposit into the Reserve Account funds it would otherwise be obligated to pay you for the purpose of establishing or maintaining the Reserve Account if it determines such action is reasonably necessary to protect its interests. ii. Authorizations. IPS or Bank 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 IPS or Bank. iii. Funds. Funds in the Reserve Account will remain in the Reserve Account until 270 days following termination of this Agreement, provided, however, that you will remain liable to IPS or Bank for all liabilities occurring beyond such 270 day period. IPS or Bank will have sole control of the Reserve Account. IPS may be entitled to collect from Merchant, as either a debit to your Merchant Account or charge against funds held in your Reserve Account, a fee

necessary to cover the cost related to administration of your Reserve Account.

**C. Recoupment and Set-Off.** IPS or Bank has the right of recoupment and set-off. This means that it may offset any outstanding/uncollected amounts owed to it from: (i) any amounts it would otherwise be obligated to deposit into the Merchant Account, and (ii) any other amounts IPS or Bank may owe you under this Agreement or any other agreement. You acknowledge that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code 0362 to IPS, you must create or maintain the Reserve Account as required by IPS, and IPS will have the right to offset against the Reserve Account for any and all obligation which you may owe to IPS and Bank, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

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

#### 8. Fees and Other Services.

**A. Fees.** Merchant will pay IPS fees for services, forms or equipment in accordance with the rates set forth in the Agreement. Such fees will be calculated and debited from the Merchant Account once each business day or month as determined by IPS for the previous business days or monthly activity, or will be netted out from the funds due Merchant under this Agreement. IPS may adjust the fees set forth in the Agreement. Merchant agrees that all fees and charges are considered accurate and final unless Merchant disputes them in accordance with the provision of Section 6.C. Furthermore Merchant understands that every credit voucher issued will be subject to a transaction fee and discount fee and there will be no refund of any fees or charges associated with the original transaction. Visa/MasterCard transactions may receive a surcharge of up to 1.79% and \$0.10 as set forth in the Schedule of Charges section of this Agreement.

**B. Other Amounts Owed.** You will immediately pay IPS or Bank any amount incurred by IPS or Bank 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 Merchant Account, the Reserve Account, or any other account you have at Bank or at any other financial institution for any amount you owe IPS or Bank under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between you and IPS or Bank, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint, or several. In the event such ACH does not fully reimburse IPS or Bank for the amount owed, you will immediately pay IPS or Bank such amount.

**C. Fee Amendments.** IPS or Bank, at its discretion, may amend the fees from time-to-time. Your continued submission of transactions after the effective date of the increase will be deemed your consent to the increased fee.

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

**E. Other Services.** IPS or Bank will provide those products and services designated in the Schedule of Charges section of this Agreement.

**F. Integrity Advantage<sup>SM</sup> (optional merchant club fee).** Merchant shall be entitled to the benefits of the Merchant Club. Membership fee (\$9.50 monthly) and benefits are subject to change or cancellation in accordance with Section 13 of the Merchant Processing Agreement. All monthly applicable Merchant Club fees shall be debited against the Merchant Account beginning on the month following approval of this Merchant Processing Agreement and shall be subject to Merchant's ACH authorization contained in Section 6. of this Agreement. The first month of this service is free. Thereafter, you will be billed on a monthly basis. To cancel this service, please reference the Credit Card Acceptance Manual you will receive in your Welcome Kit, which is included into this Agreement and is incorporated into this document by this reference.

**G. Chargeback Fee.** Merchant understands that IPS or Bank will assess up to \$25.00 per each chargeback, and up to \$28.00 per each chargeback that is debited to the Merchants Account and subsequently returned to IPS or Bank through ACH for insufficient funds or any other reason. Furthermore, IPS or Bank may assess Merchant for any fines imposed by MasterCard/Visa plus a fee for processing such fine as may be required by IPS or Bank at its sole discretion.

**H. Transaction Fee.** Transaction fee is a fee charged on each sales and credit draft regardless of the total stated and shall also mean a fee charged for any other transaction which utilizes a POS device for transaction or reception of data or information, including but not limited to debit card transactions, batch closing, authorizations, and any other communication using the POS terminal. A transaction fee surcharge of up to \$0.25 may apply to certain business types and transactions that do not qualify for Visa/MasterCard electronic data capture interchange requirements.

**I. Retrieval Fee.** Merchant understands that IPS or Bank will assess up to \$15.00 per each retrieval request.

**J. Annual Fee.** Merchant understands that IPS will charge a nonrefundable annual fee at the end of each calendar year in the amount set forth in the schedule of charges on this Agreement.

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

**A. Application.** You represent and warrant to IPS and Bank that all information in the Application is correct and complete. You must notify IPS in writing of any changes of 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), type of goods and services provided and how sales are completed (i.e., by telephone, by mail, in person at your place of business). The notice must be received by IPS or Bank within 10 business days of the change. You will provide updated information to IPS or Bank within a reasonable time upon request. You are liable to IPS or Bank for all losses and expenses incurred by IPS or Bank arising out of your failure to report changes to it. IPS or Bank retains the right to review your processing activity to confirm Merchant is processing transactions as stated in the Application, and to reprice or terminate its services based on changes to the facts stated in the Application.

**B. Indemnification.** You will be liable for, hold harmless, and will indemnify IPS and Bank, and its employees and agents: (i) against all claims by third parties arising out of this Agreement and (ii) for all attorneys' fees and other costs and expenses paid or incurred by IPS or Bank in the enforcement of the Agreement, including but not limited to those resulting from any breach of this Agreement by you.

**C. Limitation of Liability.** Any liability of IPS or Bank under this Agreement, whether to you or any other party, whatever the basis of the liability, will not exceed in the aggregate the difference between (i) the amount of fees IPS received from you during the month in which the transaction out of which the liability arose accrued and (ii) assessments, chargebacks, and offsets against such fees which arose during that month. If more than one month is involved, the aggregate amount of IPS and Bank's liability will not exceed the lowest amount determined in accordance with the previous sentence for any one month involved. In no event will IPS, Bank, or their agents, officers, directors, or employees be liable for loss of profits, indirect, special, or consequential damages.

**D. Performance.** IPS and Bank will perform all services in accordance with this Agreement. IPS and Bank make no other warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such warranty. IPS and Bank disclaim all implied warranties, including those of merchantability and fitness for a particular purpose. No party will be liable to the other for any failure or delay of its performance of the Agreement if such failure of delay arises out of causes beyond the control and without the fault or negligence of such party.

#### 10. Representation and Warranties.

You represent and warrant to IPS and Bank, at the time of execution and during the term of this Agreement, the following:  
**A. Information.** All information contained on the Application or any other document submitted to IPS or Bank is true and



National Debit Corp. Financial Division  
21 Penn Plaza, Suite 1006  
New York, NY 10001  
Toll free 1-800-603-0169  
Fax 1-866-390-7010



complete and properly reflects the business, financial condition, and principal partners, owners or officers of Merchant. You are not engaged or affiliated with any business, products or methods of selling of those set forth on the Application, unless you obtain the prior written consent of IPS or Bank.

**B. Corporate Power.** Merchant and the person signing this Agreement have the power to execute and perform this Agreement. This Agreement will not violate any law or conflict with any other agreement that 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 as it is now conducted or which would adversely affect your financial condition or operations.

**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 IPS

**E. Rule Compliance.** You will comply with the Laws and the Rules.

#### 11. Audit, Financial Information and Personal Guarantee.

**A. Audit.** You will authorize IPS and Bank to audit your records to confirm compliance with the Agreement. You will obtain and submit a copy of an audit of your business when requested by IPS and Bank.

**B. Financial Information.** i. Authorizations. You authorize IPS and Bank to make any credit 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 IPS and Bank. ii. Documents. You will provide IPS or Bank personal or business financial statements and other financial information as requested. At the discretion of IPS and Bank, you will furnish within 120 days after the end of each fiscal year to IPS or Bank 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.** The owners/officers ("Guarantors"), by their execution of this Agreement unconditionally and irrevocably personally guarantee the full and faithful performance of payment by Merchant of all its duties and obligation under this capitalized Agreement and after termination. Merchant and Guarantors unconditionally and irrevocably guarantee the full and faithful performance or payment of all duties and obligations owed to IPS and Bank under any agreement between Merchant and IPS and Bank, whether that other agreement was executed before or after the execution of this Agreement. Merchant and each Guarantor acknowledge that this obligation is in the interest of the marriage of each Guarantor and his/her spouse, that IPS and Bank may obtain updated credit information on the Guarantors and the IPS and Bank may request additional security as the situation warrants at IPS and Bank's sole discretion.

#### 12. Third Parties.

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

**B. Use of Terminals Provided by Others.** You will notify IPS immediately if you decide to use electronic authorization or data capture terminals provided by any entity other than IPS or its authorized designee (third party terminals) to process transactions including leasing a terminal from a third party. If you would like 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 IPS and Bank; and (ii) to assume full responsibility and liability of any failure of that third party to comply with the Rules or this Agreement. IPS and Bank will not be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or a malfunction in a third party terminal.

#### 13. Terms and Termination.

**A. Term.** The Agreement will become effective on the date IPS and Bank approves and assigns Merchant Identification Number ("Effective Date"). The Agreement will remain in effect for a period of two years ("Initial Term") and will renew for successive 1-year terms ("Renewal Term") unless terminated as set forth below.

**B. Termination.** i. Without Cause. The Agreement may be terminated by either party to be effective at the end of the Initial Term or Renewal Term by giving written notice of the intention not to renew at least 90 days before the end of the current term. Further, this Agreement may be terminated at any time with 30 days prior notice by IPS or Bank. ii. With Cause. The appropriate party may terminate this Agreement immediately upon the occurrence of an Event of Default, defined below. Notice of termination may be given orally or in writing, at the discretion of IPS and Bank. Termination will be effective on the date specified by the notice.

**C. Events of Default.** The following will constitute an event of default. i. Adverse Financial Condition. Your financial condition changes adversely. ii. Garnishment. Your Merchant Account, or any of your property in the possession of IPS and Bank is garnished or attached. iii. Asset Assignment. You assign your assets generally for the benefit of creditors. iv. Bankruptcy. A proceeding is commenced by or against you under any bankruptcy, insolvency or similar law seeking an order to adjudicate you bankrupt or insolvent of other relief with respect to you or your debts, or seek appointment of a receiver or similar official for you or any substantial part of your assets. v. Breach. A party fails to perform a material obligation of this Agreement, and such failure continues for a period of 30 days after the breaching party receives notice of the breach. vi. False Representation. Any representation and warranty is or becomes false or misleading in any material respect as of the date made or becomes false or misleading any time during the term of this Agreement. vii. Fraud. IPS and Banks' reasonable determination that fraud is occurring.

**D. Action Upon an Event of Default.** Upon the occurrence of an Event of Default, IPS and Bank may take the following action: i. suspend processing privileges and terminate this Agreement; ii. create a Reserve Account; or iii. any other reasonable action deemed necessary by IPS and Bank to protect their interests.

**E. Action Upon Termination.** i. Terminated Merchant File. You acknowledge that IPS is required to report your business name and the name of Merchant's principals to Visa and MasterCard when Merchant is terminated due to reasons listed in the Rules. You will waive and hold harmless IPS and Bank for all claims and liabilities you may raise as a result of such reporting. ii. Merchant Account. All your obligations regarding accepted Sales Drafts will survive termination. You must maintain in the Merchant Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time. You authorize IPS and Bank to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Merchant Account and Reserve Account is not adequate, you will pay IPS and Bank amount you owe upon demand, together with all costs and expenses incurred to collect the amount including reasonable attorneys' fees. iii. Equipment. Within 14 business days of the date of termination, you must return all equipment owned by IPS and immediately pay IPS any amounts you owe IPS for equipment costs. iv. Early Termination. If you terminate this Agreement before the end of the initial term, you will immediately pay IPS and Bank as liquidated damages, an early termination fee equal to \$295 if termination is within the first year of the agreement, or \$195 if termination is after the first year of the Agreement. You agree that the early termination fee is not a penalty, but rather is reasonable in the light of 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 IPS and Bank ("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 state, federal and local laws, rules and regulations ("Laws"), as amended for time to time. You will assist IPS and Bank in complying with all Laws and Rules now or hereafter applicable to any Card transaction or This Agreement. You will execute and deliver to IPS and Bank all instruments it may from time to time reasonably deem necessary.

#### 15. Use of Trademarks and Confidentiality.

**A. Use of Trademarks.** Your use of Visa and MasterCard marks will fully comply with the Rules. Your use of Visa and MasterCard or other cards promotional material 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 indicating eligibility for your products or services.

**B. Confidentiality.** i. Cardholder Information. You will not disclose to any third party Cardholders' 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 material systems and media containing account, Cardholder, or transaction information (physical or electronic, including, but not limited to account numbers, card imprints, Sales Drafts, 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 CW2 data after authorization. ii. Prohibition. You will not use for your own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of IPS and Bank (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information.

**C. Return to IPS.** 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 IPS and will be immediately returned to IPS upon termination of this Agreement. You will be fully liable for any and all loss, cost, and expense suffered or incurred by IPS and Bank arising out of failure to return or destroy such materials following termination.

**D. Passwords.** If you receive a password from IPS to access an IPS database, you will: (i) keep the password confidential; (ii) not allow any other entity or person to use the password to gain access to the IPS database; (iii) be liable for all action taken by any user of the password; and (iv) promptly notify IPS if you believe the confidentiality of the database or your information was compromised by using the password.

#### 16. General Provisions.

**A. Entire Agreement.** This Agreement, including the completed Application, the Rules, and any amendment or supplement to this Agreement made in accordance with the procedures set forth in Section 16.K. 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 terminated and superseded by this Agreement.

**B. Governing Law.** This Agreement will be governed by the laws of the State of Illinois. The parties agree that all performances and transactions under this Agreement will be deemed to have occurred in Illinois and that Merchant's entry into and performance of this Agreement will be deemed to be the transaction of business within the State of Illinois.

**C. Construction.** 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.

**D. Assignability.** This Agreement may be assigned by IPS, but may not be assigned by Bank or Merchant directly or by operation of law, without the prior written consent of IPS. If you nevertheless assign this Agreement without the consent of IPS, the Agreement will be binding on the assignee.

**E. Arbitration.** All claims or controversies between the parties related to this Agreement, which are not otherwise settled by agreement of parties, will be submitted to and decided by arbitration held in Chicago, Illinois in accordance with the rules of the American Arbitration Association. The arbitrator will have the authority to award any remedy or relief that a court in Illinois could order or grant, including without limitation specific performance, issuance of an injunction, or imposition of sanctions for abuse or frustration of the arbitration process. The parties agree that anything communicated, exchanged, said, done, or occurring in the course of arbitration, including any private caucus between the arbitrator and any party before or after any joint arbitration session, will be kept confidential.

**F. Notices.** Any written notice under this Agreement will be deemed given upon the actual receipt and addressed, if to IPS, to: 1700 Higgins Road, Suite 690, Des Plaines, Illinois 60018-5621, and if to other parties: to the last address shown on the records of the sender.

**G. Bankruptcy.** You will immediately notify Bank and IPS of any bankruptcy, receivership, insolvency, or similar action or proceeding initiated by or against the Merchant. You will include Bank and IPS 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 IPS under applicable Law. You acknowledge that this Agreement constitutes an executory contract to make a loan or extend other debt financing or financial accommodations to or for the benefit of you, and, as such, cannot be assumed or assigned in the event of your bankruptcy.

**H. Attorney's Fees.** You will be liable for and will indemnify and reimburse Bank and IPS for all attorney's fees and other costs and expenses paid or incurred by Bank and IPS in the enforcement of this Agreement or in collecting any amounts due from Merchant to Bank or IPS or resulting from any breach by Merchant of this Agreement.

**I. Customer Contact.** You authorize Bank and IPS 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.** IPS may propose amendments or additions to this Agreement. IPS will inform you of a proposed change in a periodic statement or other written notice. You will be deemed to have agreed to the change if you continue to present transactions to Bank and IPS after 30 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, IPS 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 IPS or Bank to exercise, or the 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 IPS.

**L. Independent Contractors.** IPS, Bank, and Merchant will be deemed independent contractors and none will be considered agent, joint venture, or partner of the other except as provided in Sections 6. and 7.A.

**M. Survival.** Sections 4.A., 4.B., 6., 7., 8., Q., IO., II., 13.H., 15, and 16. will survive termination of this Agreement.