

AGENT/RESELLER AGREEMENT

Financial Payments, Inc., a Texas corporation, d/b/a **National ATM** (hereinafter "NATM") located at 221 Bedford Road, Suite 310, Bedford, Texas, is entering into this AGENT/RESELLER AGREEMENT (the "Agreement") as of _____ 200____, with _____ (herein after "Agent") whose primary business is located at _____.

WITNESSETH:

Whereas, Agent engages in the business of marketing services to business entities that accept Cards (as hereinafter defined) as payment for goods and services; and

Whereas, NATM presently provides Merchant Card Services (as hereinafter defined), to merchants through bank(s) that are members of the Card Associations (as hereinafter defined), and whereas, NATM wishes to expand its market share by retaining Agent to assist in marketing its Merchant Card Services; and

Whereas, Agent wishes to undertake certain duties and responsibilities for marketing NATM's Merchant Card Services.

Now, therefore, in consideration of the mutual promises and the terms and conditions contained herein, the parties hereto agree as follows:

SECTION 1 - DEFINITIONS

1.0 Except as otherwise indicated, and unless the context otherwise clearly requires, the following terms shall have the following meanings in all parts of this Agreement.

- (a) "Card" means an access device issued by a financial institution for use in initiating Transactions at a Terminal.
- (b) "Card Association" means Visa U.S.A., Inc., Visa International, Inc. (collectively "Visa"), MasterCard International, Inc. ("MasterCard"), Star Systems, PULSE EFT Association, NYCE Corporation, or any other Card Issuers that provide Cards that are accepted by Merchant by agreement with Bank and BSP (Bankcard Service Provider).
- (c) "Cardholder" means any person who uses a Card in originating a Transaction.
- (d) "Member Bank" means any member of a Card Association that has registered NATM as its agent to provide Merchant Card Services.
- (e) "Merchant" means each party solicited by Agent and with which NATM and a Member Bank enter into a Merchant Agreement as a result of such solicitation.
- (f) "Merchant Account" means a specific and unique numbered account established by NATM for the processing of a Merchant's Card Transactions.
- (g) "Merchant Agreement" means any agreement in effect by and among NATM, a Member Bank and a business that has been solicited by Agent under this Agreement, and shall include any application required to determine if a business would be accepted as a Merchant.
- (h) "Merchant Card Service" means the operations relating to the acceptance, processing and collection of Transactions on behalf of Merchants by NATM. Such operations include, but are not limited to solicitation of prospective Merchants, credit review and approval of Merchants, clearing and settlement of Transactions, customer services and chargeback and retrieval services.
- (i) "Merchant Program" means the operations, policies and procedures as established by a Member Bank for NATM for the processing and settlement of Card Transactions for Merchants.
- (j) "Merchant Program Standards" are the written policies and procedures that may be set forth, from time to time, by Member Bank and NATM to govern the operations of the Merchant Processing Program, including credit and standards to be used by Agent in the solicitation of prospective merchants and policies and procedures to ensure that relationships with Merchants are satisfactory and that the Merchant Program is maintained in a financially safe and sound manner.
- (k) "Rules" means the rules and regulations of the Card Associations, as they may exist from time to time, and the rules and regulations of any debit network or federal or state department or agency having jurisdiction over the activities of a Member Bank, NATM or Agent.
- (l) "Sales Person" or "Sales Persons" means those individuals that have been identified by Agent and are managed by Agent to solicit and sign Merchants for NATM under the terms of this Agreement.
- (m) "Terminal" means the automated teller machines, cash dispensing machines, point of sale terminals, or script machines (and all associated equipment and software).
- (n) "Transaction" means any electronic message from a Terminal that is transmitted to and received by NATM or its agents.

SECTION II - MERCHANT PROGRAM MARKETING

2.1 Marketing Duties of Agent. Agent shall identify prospective Merchants that Agent believes will meet Merchant Program Standards. Agent will obtain all information and documentation required by Merchant Program Standards and any other information and documentation that the Member Bank or NATM may reasonably require.

2.2 Merchant Program Standards. Agent shall faithfully and consistently apply Merchant Program Standards to all prospective Merchants and Merchant Agreements, and acknowledges that NATM or its Member Bank may at any time, and from time to time, amend or otherwise change such standards to ensure the financial safety and soundness of the Merchant Program. Agent hereby agrees to accept and thereafter abide by all such amendments and changes.

2.3 Use of Merchant Agreements. Agent shall use only the form of Merchant Agreement that has been approved by NATM for Agent's use with the Merchant Program. Agent shall not make any changes or modifications to any Merchant Agreement without the prior written consent of NATM. NATM reserves the right to amend or change in any manner the Merchant Agreement to be used by Agent, including changes to the discount rate, Transaction fees and all other fees due from Merchants.

2.4 Approval of Merchant Agreements. Agent acknowledges that all Merchant Agreements are to be approved by NATM and/or Member Bank, at its sole discretion, and will become effective only upon such approval. Therefore, Agent will not make any promise to or create any impression with a prospective Merchant that its Merchant Agreement will be approved prior to Member Bank's review and approval. Further, Agent acknowledges that all aspects of the Merchant Program are subject to the management and approval of NATM and/or Member Bank, and Agent shall make no representations to the contrary.

2.5 Acceptable Merchants. Agent shall market the Merchant Program only to bona fide and lawful businesses and in accordance with the Merchant Program Standards and this Agreement. Further, Agent shall promptly notify NATM in writing of any adverse information that Agent receives relating to a Merchant, including information regarding a Merchant's financial condition, use of Cards for any purpose other than bona fide Transactions performed at approved Terminals, changes in Merchant's method of doing business or types of goods or services or any other information relating to Merchant that would have a material effect on Merchant's ability to conform to the terms of its Merchant Agreement.

2.6 Supplies and Merchant Training. Agent shall instruct Merchant to contact NATM in sufficient time to order necessary supplies. Agent shall provide proper training on the use of Terminals and the proper operational procedures for acceptance of Cards at Terminals according to Association Rules. The foregoing shall include training Merchant to recognize any unauthorized use, access to, or modification of Terminals.

2.7 Marketing Materials. Agent shall use only those marketing and promotional materials that have received NATM's prior written approval. Prior to submitting materials for such approval, Agent shall independently determine that the materials comply with Rules, Merchant Program Standards and this Agreement. Provided, however, this section shall not apply to any marketing materials used by Agent that do not relate to the Merchant Program or the provision of services that are not subject to Card Association Rules.

2.8 Marketing Name. Agent agrees to either utilize National ATM as a d/b/a name or if Agent wishes to not utilize the d/b/a name of National ATM then Agent agrees to register its legal and d/b/a name with NATM's Visa and MasterCard Member Bank. Agent agrees it will be responsible for paying all applicable initial and ongoing registration fees for the registration of being an independent Sales Organization and Member Service Provider with NATM's member Bank.

2.9 Sales Persons. Agent shall be responsible for identifying and employing Sales Persons that will solicit Merchants and otherwise market the Merchant Program. NATM must approve all Sales Persons.

2.10 Site Surveys. NATM requires Agent or Sales Person to perform an on-site inspection of a Merchant's place of business. This site inspection must include a photograph of the facade of the business establishment demonstrating Merchant's d/b/a name and a photograph of the inside of the business premises, preferably showing Merchant's inventory. A Yellow Page advertisement may be substituted for the above mentioned photographs. Failure to promptly comply with such request shall be deemed a material default by Agent for failure to comply with the rules and NATM and the Member Bank's policies and procedures, whereupon Agent may be subject to termination as set forth in Section 7.3. If the Agent fails to provide site inspection information within 10 days, this will be considered a breach.

2.11 Sub-Contracting of Services. During the term of this Agreement, Agent shall not enter into any contract, whether written or oral, with any other organization or entity (other than with Sales Persons performing services on behalf of NATM) to market the Merchant Program without NATM's prior written consent. Each such organization or entity approved by NATM must enter into a separate written agreement with NATM that is acceptable to NATM.

SECTION III - EXPENSES AND COMPENSATION

3.1 Expenses. Agent shall be responsible for payment of all expenses relating to its performance of this Agreement, and, except as set forth in Section 3.2, NATM shall have no obligation whatsoever to reimburse Agent for any expenses incurred by Agent in connection with this Agreement. Further, Agent shall be solely responsible for determining whether payment will be made for expenses of any Sales Person and shall be solely liable for any such payment.

3.2 Review of Documents. NATM shall be responsible for expenses and legal fees incurred by NATM in connection with its initial review of all agreements; marketing materials and other documentation relating to the Merchant Program that are proposed by Agent. Agent shall pay expenses and legal fees relating to the review of changes to such documents or new documents proposed or used by Agent. In addition, all legal fees and expenses incurred by NATM relating to the renegotiations of any term or condition of this Agreement or any renewal of this Agreement, if such renewal involves material changes to the Agreement, shall be paid by Agent.

3.3 Compensation during Agreement Term. During any period of time in which this Agreement remains in full force and effect, compensation to Agent will be paid as set forth in Addendum A (Compensation Plan) which is made a part of this Agreement.

3.4 Setoff Rights, Security Interests. NATM shall have the right of setoff against any funds credited to or owing from NATM to Agent for any obligation of Agent. NATM may exercise this right of setoff at any time and without notice to Agent whether or not the obligations of Agent to NATM are then due. As security for the obligations of Agent to NATM, Agent hereby grants NATM a security interest in all money, instruments and other property of Agent that may now or hereafter is held by NATM or the Member Bank.

3.5 Sale or Merger of NATM. NATM may at any time sell or merge its Merchant Portfolio. In the event NATM chooses to exercise this option, Agents in good standing can either continue to be paid on their portfolio by the successor company or will be paid a one-time buy-out equivalent, to be negotiated at the time of the buy out, paid to the Agent based on the prior 4 months average monthly income of the Agents portfolio.

SECTION IV - ADDITIONAL OBLIGATIONS OF AGENT

4.1 Compliance with policies and procedures. Agent agrees to comply with NATM and the Member Bank's policies and procedures and with Rules. Agent agrees that NATM, Member Bank, the Card Associations and any federal or state regulatory agency having jurisdiction over Member Bank or NATM may, from time to time, amend or revise their respective Rules, policies and procedures. Agent hereby agrees to accept and abide by all such amendments and revisions within ten (10) days after receipt of such revisions (or immediately if amendments and revisions relate to Rules and require immediate compliance).

4.2 Credit reporting on Agent. At NATM's request, Agent shall authorize NATM to investigate individual credit bureau reports on each of Agent's principals and Sales Persons which shall include any person directly or indirectly owning ten percent (10%) or more of Agent, any persons collectively directly or indirectly owning ten percent (10%) or more of Agent, any officer or director of Agent, any person actively participating in the control of Agent's business and any spouse of any of the foregoing.

4.3 Merchant Funds. Agent acknowledges that all funds to be paid to or by Merchants in connection with the Merchant Program shall be under the sole control of NATM and Member Bank. Agent agrees that if any such funds are sent to Agent or any sales person, Agent shall be deemed to have received such funds in trust for the benefit of NATM and shall immediately remit such funds directly to NATM.

4.4 Audits. At any time, NATM or its designee may (i) conduct an audit or review of Agent's operations and books and records; or (ii) conduct performance audits of Agent to determine Agent's compliance with this Agreement, including compliance with NATM's and Member Bank's policies and procedures and Rules. Any audit shall be upon (15) days written notice and shall be conducted not more than twice in any (12) month period. All costs and expenses relating to any such review or audit shall be the responsibility of Agent in the event NATM identifies any material irregularities or non-compliance issues. If NATM determines that no such irregularities or non-compliance exist, NATM shall bear costs and expenses of the review or audit.

SECTION V - REPRESENTATIONS AND WARRANTIES OF AGENT

5.1 Agent represents and warrants to NATM as follows:

- (a) Agent has the full power and authority to execute, deliver and perform this Agreement. This Agreement is valid, binding and enforceable against Agent in accordance with its terms and no provision requiring Agent's performance is in conflict with Agent's obligations under any charter or any other agreement (of whatever form or subject) to which Agent is a party or by which it is bound.
- (b) If other than a sole proprietorship, Agent is duly organized, authorized and is in good standing under the laws of the state of its organization and is duly authorized to do business in each other state in which Agent's business, including marketing of the Merchant Program, make such authorization necessary or required.
- (c) Neither Agent or any principal (as set forth in Sec.4.2) has been subject to any (i) criminal conviction (excluding traffic misdemeanors or petty offenses); (ii) bankruptcy filings; (iii) Internal Revenue Service liens; (iv) federal or state regulatory administrative or enforcement proceedings relating to fraud; or (v) restraining order, decree, injunction or judgment in any proceeding or lawsuit alleging fraud or deceptive practices.

5.2 In the event Agent or any principal (as set forth in Section 4.2) is a party to or named in any pending lawsuits, Agent shall provide NATM with a list of the same at the time of Agent's execution of this Agreement. Further, Agent shall promptly notify NATM (within 30 days) of any litigation to which it or any such principal becomes a party or in which they may be named during any time in which this Agreement is in effect.

SECTION VI - NON-SOLICITATION; NON-COMPETITION

6.1 Non-Solicitation of Merchants. Without NATM's prior written consent, Agent shall not cause or permit any of its

employees, agents, principals, affiliates, subsidiaries, Sales Persons (including Sales Personnel) or any other person or entity (i) to solicit or provide services to any Merchant; (ii) to solicit or otherwise cause any Merchant to terminate its participation in the Merchant Program; or (iii) to solicit or market services to any merchant that is already directly or indirectly provided Merchant Card Services by NATM, whether or not such are provided under the terms of this Agreement. This Section 6.1 shall survive for a period of five (5) years following any termination of this Agreement.

SECTION VII – TERM AND TERMINATION

7.1 Term. The initial term of this Agreement shall be for a period of three (3) years, commencing on the date first set forth above. This Agreement shall thereafter be automatically renewed for additional terms of three (3) years each unless either party notifies the other no later than one hundred and eighty (180) days prior to the end of the current term that it does not wish to renew this Agreement.

7.2 Default. Either party shall have the right to terminate this Agreement at any time if:

- (a) The other party breaches any of the provisions of this Agreement and fails to cure such breach within thirty (30) days after written notice thereof has been sent by the non-breaching party; or
- (b) The other party (i) becomes insolvent; (ii) fails to pay its debts or perform its obligations in the ordinary course of business as they mature; (iii) becomes the subject of any voluntary or involuntary proceeding in bankruptcy, liquidation, dissolution, receivership, attachment or composition for the benefit of creditors.

7.3 Failure to Comply with Rules. NATM may immediately terminate this Agreement for any material default by Agent with respect to its obligations to comply with Rules. NATM may, at its sole discretion, effect such termination upon delivery of written notice to Agent without regard to any provisions for cure of default contained in Section 7.2(a).

7.4 Regulatory Demand. If any Card Association or any federal or state regulatory agency having jurisdiction over the subject matter of this Agreement makes a demand that either NATM or Member Bank discontinue or substantially modify the Merchant Program, either party in its sole discretion may terminate this Agreement upon written notice to the other, in which case neither party shall be deemed to be in default by reason of such termination. Agent shall be entitled to continue to receive compensation as provided in Section 8.1 unless prohibited by the entity making the demand for discontinuance or modification.

SECTION VIII - EFFECT OF TERMINATION

8.1 Compensation to Agent Following Termination. Unless this Agreement is terminated for default of Agent, as set forth in, Sections 2.1, 2.2, 2.3, 2.7, 7.2 or 7.3, or by reason of regulatory demand under Section 7.4, NATM agrees to make payments to Agent as set forth in Section 3.3 and addendum's therein for any Merchant obtained by NATM through Agent's performance of this Agreement for any period of time during which such Merchant remains with the Merchant Program and the total monthly payments to Agent under Section 3.3 exceed fifty dollars (\$50.00) per month.

8.2 Termination of Compensation. If Agent violates Section 6.1 relating to the solicitation and marketing of services to Merchants following termination of this Agreement, NATM shall have no further obligations for payment of compensation as set forth in Section 8.1, and Agent shall, upon demand by NATM, be required to pay damages to NATM in an amount equal to the revenue that NATM would have received from Merchants solicited in violation of this Agreement. NATM's rights under this section shall be in addition to all other rights granted to NATM under this Agreement or otherwise available at law or in equity.

SECTION IX - ADDITIONAL TERMS AND CONDITIONS

9.1 Confidentiality of Information. Each party acknowledges that it may directly or indirectly disclose information concerning its trade secrets, methods, processes or procedures and other confidential financial or business information (including, without limitation, information received from third parties and the Card Associations) (the "Confidential Information") to the other party in the course of negotiation of and performance of this Agreement. All such Confidential Information disclosed hereunder shall remain the sole property of the disclosing party (or other third party), and the receiving party shall have no interest in, or rights with respect thereto, except as set forth herein. Each party agrees to treat such Confidential Information with the same degree of care and security as it treats its most confidential information. Each party may disclose such Confidential Information to employees and agents who require such knowledge to perform services under this Agreement. Except as otherwise contemplated by this Agreement, neither party shall disclose the Confidential Information of the other party to any third party without the prior written consent of the disclosing party, and the duty of confidentiality created by this section shall survive any termination of the Agreement.

9.2 Indemnification.

- (a) Each party agrees to indemnify, defend, and hold harmless the other party, its employees, agents or Member Banks from and against any loss, liability, damage, penalty or expense (including attorneys' fees and cost of defense) they may suffer or incur as a result of (i) any failure by such party or any employee or agent of such party to comply with the terms of this Agreement; (ii) any warranty or representation made by such party to the other party being false or misleading; or (iii) any representation or warranty made by such party or any employee or agent of such party to any third person other than as specifically authorized by this Agreement.
- (b) Each party shall promptly notify the other of any claim or threat of claim of which such party becomes aware and that may give rise to a request for indemnification under this section 9.2.

9.3 Injunctive Relief; Specific Performance. Each party agrees that in the event of any action by the other party that in the non-breaching party's reasonable judgment will create an actual or threatened breach of this Agreement, the non-breaching party's remedies shall include specific performance or injunctive relief, or both, in addition to any and all remedies at law or in equity and all such rights shall be cumulative.

9.4 Relationship of Parties. NATM intends no contract of employment, express or implied, with either Agent or Sales Persons, and Agent shall make no representations to the contrary. Without limitation, neither Agent nor any Sales Person has obtained any right to compensation or any other benefits of an employee, by way of this Agreement, except for payment of application fees as set forth in Section 3.3(a) plus any other sales incentives NATM may offer Agent or Sales Persons for the sole purpose of obtaining Merchants for the Merchant Program.

9.5 Waiver. No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Consent by any party to, or waiver of, a breach by the other party, whether express or implied, shall not constitute consent to, waiver of, or excuse for any different or subsequent breach.

9.6 Assignment. Neither party shall assign, delegate, subcontract, license, franchise, or in any manner attempt to extend to any third party any right or obligation under this Agreement without the prior written consent of the other party. NATM may assign this Agreement and its rights hereunder to a purchaser of all or part of the Merchant Program.

9.7 Amendments. NATM may amend this agreement, with 30 days written notice, provided to Agent.

9.8 Notices. All notices and other communication required or permitted under this Agreement shall be in writing and given by personal delivery, telecopy (confirmed by a mailed copy) or first class mail, postage prepaid and shall be deemed received on the third business day after mailing addressed as follows:

If to NATM:

National ATM
221 Bedford Road
Suite 310
Bedford, Texas 76021

If to Agent

9.9 Severability. The invalidity of any section or subsection hereof shall not affect the validity of any other section or subsection hereof.

9.10 Section Headings. The section headings contained in this Agreement are for convenient reference only, and shall not in any way affect the meaning or interpretation of this Agreement.

9.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

9.12 Entire Agreement; Binding Effect. This Agreement, including all schedules, exhibits and attachments thereto, embodies the entire understanding and agreement of the parties with respect to the subject matter hereof. This Agreement shall be binding upon and shall inure only to the benefit of the party's hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to confer or shall be deemed to confer upon any persons or entities not parties to this Agreement, any rights or remedies under or by reason of this Agreement.

9.13 Jurisdiction; Venue; Governing Law. Jurisdiction and venue for any claim or cause of action arising under this Agreement shall be exclusively in the state courts located in the County of NY and this Agreement shall be governed and construed in accordance with the laws of the state of New York.

9.14 Survival. All representations and warranties shall survive the execution of this Agreement, and Section 7.2 shall survive termination of this Agreement for the time period's set forth therein.

SECTION X - SIGNING

WHEREAS, this Agreement is executed by duly authorized officers of the parties and shall be effective as of the date first above written.

NATIONAL ATM

AGENT

By _____

By _____

Title _____

Title _____

Date _____

Date _____

AGENT CREDIT REPORT

An Agent/Peer Investigation Report and/or Consumer Credit Report may be made in connection with the application for registration. With this form, the applicant authorized Concord Payment Systems, or any creditor bureau or credit reporting agency employed by NATM or any agents of NATM, to investigate the references given to NATM by applicant and to check the credit reporting agency's files.

Under the law, you have the right to receive a copy of your credit report directly from the credit bureau free of charge. Your credit report will be mailed to you from the credit bureau.

I have read and understand the above information. YES NO

NAME _____

SOC SECURITY # _____ - _____ - _____

ADDRESS _____

CITY, STATE, ZIP _____

PRINCIPAL'S SIGNATURE _____

DATE _____

.....
NATM USE ONLY:

Submitted to credit bureau by:

NAME _____ DATE _____