



Referring Entity Agreement

Netbilling, Inc. - Referring Entity Agreement

THIS Agreement (this "Agreement") is made this _____ day of _____, 200_ by and between NETbilling, Inc. ("NBI") and _____, ("Contractor")

WHEREAS, NBI is engaged in the business of marketing and selling a credit/debit card and check verification processing service, call center and related services (collectively, the "Processing Service") to retail merchants and others (the "Subscribers"); and

WHEREAS, NBI requests that Contractor enter into this Agreement so NBI may protect its legitimate business interests through non-disclosure and other contractual provisions contained herein, and

WHEREAS, Contractor has agreed to enter into this Agreement and to be bound by the non-disclosure and other contractual provisions contained herein in order to receive the substantial benefits set forth herein and which NBI would not otherwise be obligated to confer upon Contractor;

NOW, THEREFORE, in consideration of the premises and mutual promises contained in this Agreement, the parties agree as follows:

1. **REFERRING ENTITY**. NBI HEREBY AUTHORIZES Contractor to act as a Referring Entity on behalf of NBI in connection with the selling and marketing of the Processing Service. As a Referring Entity, Contractor shall (I) refer persons to NBI, including but not limited to employees of Contractor, to act as sales representatives on behalf of NBI, and (ii) supervise and manage those persons who have entered into an independent sales representative agreement with NBI (a "Sales Representative Agreement") to insure such persons perform their duties in accordance with the terms and provisions of such Sales Representative Agreement. Contractor may also, at its option, as a sales representative pursuant to the terms and provisions of Section 2 herein.
 - 1.1 **FINAL APPROVAL**. Contractor shall promptly provide NBI with an executed agreement and any other documentation NBI may request for each person Contractor has referred to NBI, and NBI, in its sole and absolute discretion, shall make the final determination as to whether or not such person shall be allowed to market processing services. Each person referred to NBI by Contractor as a sales representative and approved by NBI (as evidenced by an executed Sales Representative Agreement) shall be referred to herein as an "Approved Sales Representative".
 - 1.2 **FRAUDULENT ACTIVITIES**. Contractor shall promptly inform NBI of any and all fraudulent activities or misrepresentations made in connection with the sale or marketing of the Processing Service.
 - 1.3 **TERMINATION**. Contractor and NBI shall each have the option to terminate the services of any Approved Sales Representative for any reason at any time; provided that Contractor shall provide NBI with prompt notice of any such termination and NBI shall have the option to reinstate such Approved Sales Representative.

2. SALES REPRESENTATIVE: If Contractor chooses to act as sales representative on behalf of NBI, it shall assist NBI in marketing and selling the Processing Service by soliciting potential Subscribers and calling on existing Subscribers on a non-exclusive basis upon the terms and conditions set forth below.
 - 2.1 GUIDELINES. Contractor shall act in accordance with the written guidelines prepared by NBI (The “NBI Guidelines”), and Contractor acknowledges receipt of such guidelines. The NBI guidelines may be amended, supplemented or otherwise modified at any time and from time to time by NBI without the consent of Contractor, and , as so amended, supplemented or otherwise modified , are hereby incorporated by reference as if set out in full herein. NBI from time to time will also provide Contractor with all NBI sales materials as NBI deems in its sole discretion to be requisite for Contractor to perform its Duties hereunder. Contractor is solely responsible for identifying themselves as the referring entity to NBI via the processing Services Signup Form in the field labeled “Referring Entity”.
 - 2.2 DUTIES. Using the NBI Guidelines, Contractor shall, during the term of this Agreement on a non-exclusive basis, market and sell the Processing Service for NBI, , distribute a licensed Java Client to interface to the Processing Service, make presentations of the Processing Service to potential Subscribers, complete market surveys and/or merchant application paperwork, instruct Subscribers on deposit or other bank related requirements of the Processing Service and perform such other duties related to the Processing Services as NBI may, from time to time, designate. Contractor may perform such duties at such times and at such locations within the designated territories, if any, as Contractor may determine. Contractor shall forward any paperwork within Contractor’s care directly to NBI or such person or place as NBI may, from time to time, designate.
3. GOOD FAITH. Contractor shall act honestly and in good faith in all dealings with Prospective Subscribers. Contractor shall notify NBI immediately of any action or omission by a Subscriber of which Contractor is aware which could result in any loss or liability to NBI. Merchants who do not meet the established processing criteria of NBI must not be solicited or induced into paying application fees and processing.
4. RIGHT OF TERMINATION. NBI in its sole and absolute discretion, shall make the final determination as to whether or not to accept any prospective Subscriber. Contractor may not state or imply that the approval of NBI is guaranteed or unnecessary. NBI shall have the right, in its sole and absolute discretion, to terminate any contract between NBI and a Subscriber without consulting with Contractor.
5. LIMITATIONS OF AUTHORITY. Contractor shall have no authority whatsoever (i) to bind NBI to any contract or agreement or to incur any obligation on behalf of NBI, to release, assign or transfer an NBI agreement, claim, security or any other asset belonging to NBI, (ii) to borrow any money in the name of NBI, (iii) to represent NBI in any way other than as described herein or in the NBI Guidelines or sales procedures provided to Contractor, or (iv) to submit any claim or liability related to the Processing Service to arbitration or confess a judgement against NBI. Contractor specifically agrees to the terms and conditions of any contractual agreement between a Subscriber and NBI. Contractor has no authority to make any representations, warranties, agreements or guarantees with respect to such contracts. Contractor will, at all times, use, without modification or change, the forms of the agreement between a Subscriber and NBI as are furnished to Contractor by NBI.

6. INDEPENDENT CONTRACTOR. Contractor understands, represents and warrants that he/it is an independent contractor and not an employee, officer or director of NBI. NBI will not (i) furnish any work materials to Contractor other than those set forth in the NBI Guidelines, (ii) furnish a work place, phone, automobile or any other equipment to Contractor or (iii) reimburse Contractor for any cost whatsoever incurred by Contractor in the course of performing his duties hereunder.
7. COMPENSATION. The sole compensation for his services hereunder, Contractor shall be paid on a commission basis as specified in Schedule A attached hereto. Such Compensation shall be payable in arrears by the 20th day of each month thereafter (or, if such day is not a business day, then the next business day). Contractor shall not be entitled to any benefits, vacation, compensation or reimbursement for his services hereunder.
8. TERM. The term of this Agreement shall commence on the date hereof and continue until terminated as provided herein.
9. REPRESENTATIONS, WARRANTIES AND COVENANTS.
 - 9.1 AUTHORITY. Contractor has been duly formed and is validly existing in good standing under the laws of the state of his organization, with requisite power and authority to perform his obligation under this Agreement and to transact the business set forth herein and in all jurisdiction applicable the terms of this Agreement.
 - 9.2 BINDING OBLIGATION. This Agreement has been duly authorized, executed and delivered and constitutes the valid and legally binding obligation of Contractor, enforceable against it in accordance with its terms.
 - 9.3 REPRESENTATIONS TO MERCHANTS. Neither Contractor nor its employees shall make any representations to a merchant other than those set forth in the contract between NBI and the Subscriber and neither Contractor nor its employees shall conceal any material facts from the merchant.
 - 9.4 POLICIES AND PROCEDURES. Contractor shall abide by the policies and procedures of NBI and their designated representatives from time to time.
 - 9.5 DECEPTIVE ACTS. Contractor shall not engage in any illegal, fraudulent or deceptive acts or practices in the course of its business or undertake any action or inaction, which is against the best interests and expectations of NBI.
10. INDEMNIFICATION.
 - 10.1 INDEMNIFICATION AND HOLD HARMLESS. Contractor hereby agrees to indemnify NBI and hold NBI harmless from and against any and all claims, damages, liability, fines, penalties, and expenses, including without limitation attorney's fees and litigation costs, arising from or related to (i) any act, actions or omissions by Contractor or its employees outside the scope of this Agreement, including but not limited to, any intentional or negligent tort, (ii) any fraud in connection with Contractor's selling and marketing of the Processing Services, (iii) any breach by Contractor of the covenants and Agreements made by it in this Agreement, and (iv) any fine or penalty imposed upon NBI. This Agreement by Contractor to indemnify shall continue and

survive the termination of this agreement.

- 10.2 NON-LIABILITY. Notwithstanding any representation, statement or act made by Contractor, NBI shall have no liability or obligation to Contractor, its employees or any other person, firm or entity for any debt, contract, agreement, obligation or liability of Contractor incurred inside or outside the scope of this Agreement. In particular, and without limitation, NBI shall have no liability on any agreement entered into by Contractor or debt incurred by Contractor in the name of NBI or otherwise. Under no circumstance shall NBI be liable to the Contractor for damages incurred by Contractor in the performance of its Duties hereunder, including any special, indirect, consequential or exemplary damages of any kind.
11. CONFIDENTIAL INFORMATION. Contractor acknowledges that all information related to the Processing Service, including but not limited to fees, rates, charges, sales data, operational procedures, memoranda, sales kits, lists of Subscribers and lists of Potential Subscribers have been prepared and maintained by NBI at significant cost and expense, that such information represents a method of business operation unique to the business of NBI being made available to Contractor pursuant to the terms of this Agreement, and that NBI deems such material confidential and that NBI has a proprietary interest therein. Contractor agrees it shall treat all confidential information as strictly confidential and proprietary to NBI, except to the extent that disclosure thereof is necessary in fulfilling Contractor's obligations under this Agreement. All confidential Information is and at all times shall be the property of NBI, it being agreed that such Information is confidential and that NBI has a proprietary interest therein. Contractor agrees that during the term of this Agreement and thereafter, neither it nor its employees will, directly or indirectly, either individually or as an employee, agent, partner, shareholder, consultant or in any other capacity, use or disclose, or cause to be used or disclosed, any confidential information, regardless of whether Contractor may have participated in the development of any such confidential information, except to the extent that use or disclosure thereof is necessary in fulfilling Contractor's obligations under the Agreement. The promises made in this paragraph by Contractor shall be construed independently of any other provisions contained in this Agreement and shall be enforceable in both law and equity, including by temporary or permanent restraining orders. This Agreement by Contractor not to use or disclose shall continue and survive the expiration or the term of this Agreement.
12. CONTRACTOR ACKNOWLEDGMENT. Contractor acknowledges that the restrictions herein are reasonable and necessary in order to protect legitimate and proprietary interests of NBI and that any violation thereof would result in irreparable injury to NBI.
13. TERMINATION OF AGREEMENT. Either NBI or Contractor may terminate this Agreement at any time, for any reason whatsoever, upon thirty (30) day's prior notice to the other party. In the event of such termination, Contractor shall be entitled to receive all accrued but unpaid compensation as provided in Schedule A attached hereto: Provided if Contractor shall be terminated for violating any of the terms or provisions of this Agreement, Contractor shall receive no additional compensation. Upon termination of this Agreement and prior to final compensation being paid., Contractor promptly shall surrender all items furnished by NBI to Contractor or developed by Contractor pursuant to this Agreement and related to the Processing Service including, but not limited to, the NBI Guidelines, lists of Subscribers, lists of potential Subscribers, forms, supplies, manuals, and any other written information or property furnished by NBI to Contractor. Notwithstanding anything to the contrary contained herein, if Contractor breaches any Representation, warranty, or covenant set forth herein. NBI may terminate this Agreement immediately, without notice.

Schedule A WAIVER. The failure of either NBI or Contractor to insist, in any one or more instances upon performance of the terms of conditions of this Agreement, shall not be construed as a waiver or a relinquishment of any right granted hereunder or in the further performance of any such term, covenant or condition.

14. NOTICES. Any and all notices, requests, demands, and other communications which are required or may be given under or in connection with this Agreement shall be in writing and shall be deemed given when delivered in person or by telecopy or, if mailed, seventy-two (72) hours after being deposited in the United States Mail, certified or registered, postage and certification or registry fee prepaid, addressed to the party to whom it is to be given at the address hereinafter specified.

15. MISCELLANEOUS.

- (a) This is the entire agreement between Contractor and NBI, with respect to the subject matter hereof, and supersedes any prior agreement, oral or written, between Contractor and NBI. The Schedules attached hereto and the NBI Guidelines are herein by reference as if set out in full herein.
- (b) Without the prior written consent of NBI, Contractor shall not assign its rights nor delegate its duties under this Agreement nor grant or permit to exist a lien or security interest with respect to such rights.
- (c) This Agreement and all questions arising in connection herewith shall be governed by and construed in accordance with the internal laws of the State of California, and all suits hereunder or in respect hereto by either party hereto shall be instituted in the California courts or in the United States District Court and in no other venue or jurisdiction. Contractor HEREBY SUBMITS TO THE JURISDICTION AND VENUE OF THE COURTS OF THE STATE OF CALIFORNIA OR IN THE UNITED STATES DISTRICT COURT, AND HEREBY CONSENTS TO SERVICE OF PROCESS AT CONTRACTOR'S ADDRESS SET FORTH HEREIN.
- (d) 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.
- (e) In the event that more than one Approved Sales Representative claims to have recommended a Subscriber in connection with this Agreement or similar agreements, NBI shall determine in its sole discretion which Approved Sales Representative shall receive compensation therefore.
- (f) Nothing contained in this Agreement shall be construed to constitute a joint venture or partnership between or among any persons or entities referred to herein. Contractor may act as an agent for NBI only to the extent provided in this Agreement.
- (g) If any provision of this Agreement is at any time adjudged invalid or unenforceable to any extent by any court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to render it valid and enforceable and such invalid or unenforceability shall not affect any other provision of the Agreement.
- (h) If an individual and not a corporation is executing this Agreement as Contractor, references herein to "its" shall be interpreted to mean his or hers, as appropriate, and any representations, warranties or covenants contained herein relating to the corporate structure of the Contractor shall be inapplicable.

16. CREDIT REPORT AUTHORIZATION. Contractor and Sales Representative applicant authorizes NBI to obtain an investigation or consumer report about the commercial and/or personal finances of Contractor or Representative applicant from a consumer and/or credit reporting agency or other investigative agency in connection with the application process.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

Schedule A

NETBILLING SALES REFERRAL PROGRAM (Processing & Call Center Merchants)

Commissions: (Based on Paid Invoices) 10.0% / Mo.
Monthly Gateway Fee: \$10.00 / Mo.

The commitment to pay commission and gateway fees will be in effect as long as the merchant is processing with NBI and/or utilizing call center services.

Termination of representation: In the event that referrals to NBI or processing with NBI cease from Contractor for a period greater than 60 days.

Termination for Cause: When a Contractor is terminated for cause such as mis-representation and or fraudulent practices, NBI reserves the right to retain all or part of future residuals.

Contractor

Name of Entity: _____

Print Name: _____

Signature: _____

Title: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Social Security or Federal Tax I.D. #: _____

NETBILLING INC.

Approved by: _____

Title: _____

Date: _____

NETBILLING INC.

Sales Standards and Procedures for Independent Sales Organization (ISO)

At Netbilling Inc.,(NBI), one of our priorities is establishing long term relationships with our customers. It is equally important that our partners establish these same types of relationships. Because the customer perceives the partner as a direct extension of NBI, it is imperative that Sales representatives and ISOs of NBI with all NBI sales standards, procedures, and VISA/MasterCard regulations.

A violation of standards is classified as a Termination Breach or a Probation Breach. A substantiated Termination Breach will lead to immediate termination of the partner and a Probation Breach will lead to the sales agency being suspended and placed on probation. The ISO/representative will have 30 days to remedy the breach or he/she will be terminated.

Netbilling Sales Standards and Procedures Policy

This policy is designed to outline common breaches of Net Etiquette (Sales Standards and Procedures), and the actions Netbilling will take in cases where these Sales Standards and Procedures are breached. This document pertains to breaches of Sales Standards and Procedures that include but not limited to Net Abuse or "spamming."

Net Abuse can be defined as (but is not limited to)...

- Sending any kind of unsolicited or unwelcome email to a substantial number of network users, anywhere on the Internet.
- Posting a single article or substantially similar articles to an excessive number of newsgroups or mailing lists (i.e., 20 or more)
- Repeated or deliberate posting of articles that are off-topic according to the charter of that newsgroup or mail list
- Posting commercial advertising in almost any conference or newsgroup, unless it is specifically permitted within that group.

Net Abuse is undesirable because...

- Some Internet Service Providers will block all access to the Netbilling payment processing gateway, web site, and email support department.
- This affects not only the offending Netbilling customer, but all Netbilling customers.
- Recipients of abuse messages occasionally get quite angry and will retaliate with Denial of Service (DoS) attacks, affecting all Netbilling customers.

What happens if your account is associated with Net Abuse?

Netbilling investigates all reported occurrences of net abuse, and we will take action according to the circumstances and severity of the abuse. For first offenders, Netbilling will normally issue a Probation Breach, and take necessary action to minimize any damage. If it is not your first offense

or it is clear you intended to breach the Sales Standards and Procedures, Netbilling may immediately take any of the following actions:

- Probation Breach will lead to the ISO/representative being suspended and placed on probation. The ISO/rep will have 30 days to remedy the breach or he/she will be terminated.
- A substantiated Termination Breach will lead to immediate termination of the ISO and/or representative.

Reports and Questions about Net Abuse

Please send all questions about Net Abuse and reports of Net Abuse to abuse@netbilling.com. While it is not Netbilling’s role to police the Internet, we are committed to maintaining Internet etiquette. Remember: Net Abuse is contrary to the Netbillings Sales Standards and Procedures’ conditions of use, and can seriously threaten the operation of our network services for all customers. Netbilling will not tolerate Net Abuse of any kind.

Termination Breach

Misrepresentation of information contained on the NBI Merchant Division application is included but not limited to:

- Completing merchant agreement after processing with NBI has already been established.
- Misleading the merchant (“no other fees”, “trial basis”, or intentionally leaving out pertinent information).
- Intentionally falsifying information.
- Forgery and / or altering documents.
- Aiding in falsifying documents, merchant location, or ownership.
- Anyone selling NBI services for you or your organization without notifying NBI of an employee Agreement.

Probation Breach

Receiving money from a merchant and not delivering agreed services, such as taking payment for an application fee and not submitting to NBI for processing.

- Portraying to a merchant that you are a partner of any other organization other than NBI, Visa/MasterCard, or regional debit networks with intent to undermine NBI of merchant.
- Selling materials/products to NBI merchant(s), that is not supported by NBI or does not appear to be compatible with NBI processing.
- Using logos or trademarks associated with NBI including but not limited to NETBILLING INC. Merchant Division, ISO/MasterCard , or regional debit networks.
- Presenting an unacceptable amount of substantiated merchant fraud accounts in any given month.

In order for the agreement between NBI and the ISO and sales representatives to remain in effect, the ISO and all sales representatives must comply with all the terms stated in the agreement.

I have read and will comply with the above standards and procedures.

Print Name

Date

Signature