

Agency Agreement (Retailer Compliance Form for Visa & Discover Products)

THIS AGENCY AGREEMENT, ("Agreement") made this ____ day of _____, 2010, between nFinanSe Payments Inc., a Nevada corporation located at 3923 Coconut Palm Dr., Suite 107, Tampa, Florida 33619 ("nFinanSe"), and _____, a _____ corporation located at _____ ("Agent").

WHEREAS, nFinanSe has obtained a license as a money transmitter in a number of states, a list of which is available at nFinanSe's headquarters; nFinanSe provides stored value cards ("Cards") to consumers through authorized agents; and nFinanSe wishes to appoint Agent and Agent wishes to act as nFinanSe's agent for distributing and loading cards at Agent's retail location(s).

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein and for other good and valuable consideration, the parties agree as follows:

1. **Duties of Agent.** Agent will serve as nFinanSe's agent for the limited purpose of distributing and loading Cards at Agent's retail locations in accordance with policies and procedures established between Agent and Now PrePay, as required by law. Agent does not otherwise have the authority to bind nFinanSe or act on nFinanSe's behalf. The relationship created by this Agreement does not constitute a partnership, franchise, joint venture or any relationship between the parties other than independent entities contracting solely for the purpose of carrying out the provisions of this Agreement. In order to carry out its responsibilities as a limited agent, Agent hereby agrees to: employ and maintain an efficient staff adequately trained to sell and load the Cards and otherwise carry out Agent's responsibilities under this Agreement; consent to an examination or investigation by the commissioner of the banking department of the state ("Commissioner") in which the Agent sells Cards ("This State"); and, subject itself to regulation by the Commissioner of This State recognizing that the Commissioner may suspend or revoke Agent's designation or require nFinanSe to terminate Agent's designation.
2. **Expenses.** Agent will pay all expenses in connection with the performance of its duties hereunder. nFinanSe shall have no responsibility for any expenses or liabilities incurred by or on behalf of Agent, its affiliates, agents or representatives.
3. **Further Restrictions on Agent's Authority.** Agent shall not: act on behalf of a consumer as a courier for the transmission of money, which activity requires licensing as a money transmitter; retain any Cards sold by Agent, or fail to deliver the Cards to the purchasers of the Cards; sell any of nFinanSe's Cards in This State unless nFinanSe's name shall clearly appear on the face of the instrument; or authorize any Subagents. Agent shall not sell any of nFinanSe's Cards in the State unless Agent provides the Commissioner of This State with irrevocable consent to examine, have access to, and retain copies of all of its books and records, wherever maintained, relating to these activities, with or without notice to nFinanSe, and that the expenses incurred in making any such inspection shall be borne by Agent. This Agreement constitutes such consent, and the Commissioner of This State is hereby deemed a third party beneficiary of this provision. Agent shall not sell or load Cards outside the United States or in the following states: Hawaii and Vermont.
4. **Representations, Warranties, and Covenants.** Each party hereto represents, warrants, and covenants that it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement; this Agreement has been duly authorized, executed and delivered by the party; and assuming the due authorization, execution and delivery by each party hereto, this Agreement constitutes the legal, valid and binding obligation of the party.
5. **Representations and Warranties of Agent.** Agent hereby represents and warrants to nFinanSe that: Agent has complied and will comply fully with all applicable laws, regulations, statutes and ordinances as well as all applicable state and federal laws, rules, and regulations pertaining to money transmission adopted under the laws of This State, relevant provisions of the Bank Secrecy Act and the USA PATRIOT ACT; Agent will only sell and load the Cards as an agent of nFinanSe and will not engage in the transmission of money or any other activity that requires licensing as a money transmitter without obtaining all required licenses and permits.

6. **Duties of nFinanSe.** nFinanSe shall: (i) maintain records at its principal office location provided herein and; (ii) not condition its engagement as obligor under any payment instrument upon the remittance of the proceeds of sale from Agent.

7. **Termination.** This Agreement shall be terminable upon thirty (30) days notice from any party to any other party. The Agreement shall also be terminated immediately if nFinanSe fails to retain its money transmitter license in This State. Notwithstanding the foregoing, at any time upon the occurrence of any of the following events, nFinanSe may immediately terminate this Agreement: (a) Agent commits fraud, gross negligence, or willful misconduct with respect to the sale or load of the Cards; (b) Agent exceeds its authority under this Agreement; (c) Agent, or any owner, officer or director thereof, is convicted of or pleads guilty or no contest to a felony or any crime related to the business of handling money, including money transmission; (d) Agent attempts to assign or delegate its rights, duties or obligations hereunder without the prior written consent of nFinanSe; or, (e) Agent discontinues or abandons its business.

8. **Audit; Examination; Inspection.** Agent agrees that any government entity with regulatory or supervisory authority over nFinanSe (collectively the "Auditing Party"), shall have the right to inspect, audit, and examine all of Agent's facilities, records and personnel relating to the Cards at any time during normal business hours upon reasonable notice. The Auditing Party shall have the right to make copies and/or abstracts from Agent's books, accounts, data, reports, papers, and computer records directly pertaining to the subject matter of this Agreement, and Agent shall make all such facilities, records, personnel, books, accounts, data, reports, papers, and computer records available to the Auditing Party for the purpose of conducting such inspections and audits.

9. **Indemnification.** Each party shall defend, hold harmless, and indemnify the other party against any claims or liabilities, including reasonable attorney fees, that such party may become obligated to pay as the result of (i) the negligence or misconduct of the other party; (ii) any breach by such party of its covenants, obligations, or representations set forth herein; or (iii) any act or omission of such party or its agents, employees, or representatives. Each party shall promptly notify the other party of any claim, suit or proceeding against such party for which indemnification may be sought hereunder. Each party shall be entitled to participate in such action, or assume the defense of such action, with counsel of its choice. If such party assumes the defense of any such action, it shall not be liable to the other party for any legal or other expenses incurred by such party in connection with such action after the assumption of said defense.

10. **General Provisions.**

A. **Amendment/Counterparts.** Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated except by a writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original, which taken together shall constitute one and the same instrument. This Agreement shall be binding upon the parties, their affiliates and their successors and assigns.

B. **Governing Law.** This Agreement shall be subject to and shall be construed in accordance with the laws of the State of Florida.

C. **Notices.** All communications hereunder shall be in writing and shall be deemed to have been duly given when delivered to the address set forth below by U.S. Mail, return receipt requested, to the identified address or by overnight or priority mail providing evidence of receipt, or, in each case, to such other address as to which the applicable party has notified the other parties in writing pursuant to this Section.

D. **State Specific Addenda.** In the event This State is a state set forth on Schedule 11 hereto, the parties hereto agree to be bound by the provisions of Schedule 11 applicable to This State. The parties agree that nFinanSe may amend Schedule 11 from time to time in its sole discretion.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers as of the date first above written.

**NFINANSE PAYMENTS INC.,
a Nevada corporation**

By: _____
Name: _____
Title: _____

AGENT

By: _____
Name: _____
Title: _____

Schedule 11

STATE SPECIFIC ADDENDA

Statutory references are current as of April 1, 2009

Alaska (§06.55.810, Alaska Statutes): As required by the State of Alaska, nFinanSe Payments' authorized delegates shall display at each location a notice which provides the Alaska Department of Commerce, Community, and Economic Development's address and telephone number. This notice is provided to assist Alaskan consumers with lodging complaints or expressing any concerns about nFinanSe Payments Inc, the authorized delegate regarding the money services provided.

Arizona (§6.1207.C, Arizona Revised Statutes): Agent shall prominently display at each location a notice, provided by nFinanSe, that indicates that the Agent is an authorized delegate of nFinanSe. Attached is a copy of the Arizona Revised Statutes, Title 6, Chapter 12.

Colorado (§12-52-116 (3) (a), Colorado Revised Statutes): nFinanSe Payments Inc shall post and maintain at its establishment and at each agent location, or other facility located in Colorado where exchange is sold or issued, or the business of money transmission is conducted, a notice furnished by the Commissioner that provides consumer information concerning the Colorado Money Transmitters Act and how to file a consumer complaint with the Colorado Division of Banking. Such notice must be posted conspicuously in an easily accessible and well-lighted area that is available to the consumer.

District of Columbia (§26-1017, District of Columbia Official Code): All funds, less fees, received by Agent from the sale or delivery of Cards or received by Agent for transmission shall, from the time such funds are received by such Agent until such time when the funds or an equivalent amount are remitted by the Agent to nFinanSe, constitute trust funds owned by and belonging to nFinanSe. If Agent commingles any such funds with any other funds or property owned or controlled by Agent, all commingled proceeds and other property shall be impressed with a trust in favor of nFinanSe in an amount equal to the amount of the proceeds due nFinanSe. Agent shall report to nFinanSe the theft or loss of Cards within 24 hours from the time Agent knew or should have known of the theft or loss. The maximum remittance time for Agent to remit all monies owing to nFinanSe shall be thirty (30) calendar days.

Florida (§560.2085, Florida Statutes): Agent shall report to nFinanSe immediately upon discovery any theft or loss of currency received for a Card but not placed upon a Card. Agent and nFinanSe recognize that with instant load products such as the Card, if the Card is correctly loaded Agent should at no time have currency received for a Card but not placed upon a Card. Agent shall display a notice to the public, as prescribed by rule, that Agent is an authorized Agent of nFinanSe. Agent shall remit all amounts owed to nFinanSe for all Card sales in accordance with the Agreement between Agent and its Distributor. Agent shall hold in trust all currency or payment instruments received for the sale and loading of the Card and not commingle such funds until such time as the funds are loaded onto the Card. Agent and nFinanSe recognize that with instant load products such as the Card, if the Card is correctly loaded Agent should at no time have currency received for a Card but not placed upon a Card, therefore Agent should have no obligation to hold such funds in trust or refrain from commingling such funds. Agent shall adhere to the applicable state and federal laws and rules pertaining to a money services business.

Georgia (§80-3-1-.01(3), Georgia Department of Banking and Finance Rules): Every licensee or agent or other representative of a licensee covered by the Georgia Sale of Checks Act shall display prominently in the premises where checks, money orders, or other instruments are issued and sold a certificate in prescribed form indicating that such sales or transmissions are licensed under the Act. In lieu of the foregoing, window decals and other advertising material relative to the sale of checks or money services available within this State shall bear the legend "LICENSED BY THE GEORGIA DEPARTMENT OF BANKING AND FINANCE" in letters at least one-quarter inch high. The Department may waive the required legend as to specific material distributed in more than one licensing jurisdiction. Failure or refusal to so display such certificate where such sales are made will be cause for revocation or suspension of the designation of a representative or agent of a licensee.

Hawaii (§489D-21, Hawaii Revised Statutes): nFinanSe appoints Agent as its delegate with authority to engage in money transmission on behalf of nFinanSe. Neither nFinanSe nor Agent may authorize subdelegates without the written consent of the Commissioner of Financial Institutions. Agent is subject to supervision and rule by the Commissioner of Financial Institutions. Agent is at all times in compliance with the record keeping and reporting requirements under Title 31 United States Code Section 5311 et seq., 31 Code of Federal Regulations Part 103, Section 125, and other federal and state laws pertaining to money laundering.

Idaho (§26-2918, Idaho Code): nFinanSe appoints Agent as its representative with authority to engage in money transmission on behalf of nFinanSe. (1) Neither nFinanSe nor Agent may authorize subrepresentatives without the written consent of the director. (2) nFinanSe is subject to supervision and regulation by the director of Idaho's Banking Department ("Director"). (3) Agent hereby consents to the Director's inspection, with or without prior notice to nFinanSe or Agent, of the books and records of Agent, when the Director has a reasonable basis to believe that nFinanSe or Agent is in violation of the provisions of Chapter 26, Idaho Code; and (4) Agent is under a duty to act only as authorized under this Agreement and in the event that Agent exceeds its authority this Agreement is subject to cancellation and subject to disciplinary action by the Director.

Illinois (§37, Illinois Compiled Statutes): Agent shall prominently display at each location a disclosure notice, provided by nFinanSe, that indicates that the Agent is an authorized delegate of nFinanSe. In the event of termination of this agreement, Agent shall remove the disclosure notice within 10 days of termination.

Iowa (Chapter 533C, Iowa Uniform Money Services Act): Agent will act in accordance with Iowa Uniform Money Services Act, Chapter 533C.

Kentucky (§286.11-035, Kentucky Revised Statutes): Agent shall operate in full compliance with §286.11, Kentucky Revised Statutes, and rules promulgated thereunder, and any order issued by the Kentucky executive director pursuant to said rules and regulations. Agent shall timely remit all money legally due to nFinanSe in accordance with this Agreement.

Louisiana (§1048 of Title 6, Chapter 13, Sale of Checks and Money Transmission Act): Agent shall hold in trust from the moment of receipt the proceeds of a sale or delivery of Cards. Agent may not commingle the proceeds with Agent's own property or funds, except to use the funds in the ordinary course of its business for the purpose of making change. If Agent commingles any proceeds received from the sale of Cards with any other funds or property owned or controlled by Agent, all commingled proceeds and other property shall be considered held in trust in favor of nFinanSe in an amount equal to the amount of the

proceeds due nFinanSe from the sale of Cards. In the event that nFinanSe's license is revoked by the State of Louisiana pursuant to §1039 of Title 6, Chapter 13, Sale of Checks and Money Transmission Act, all proceeds then held in trust by Agent shall be deemed to have been assigned to the commissioner.

Maryland (§12-410(e)(2), Maryland Statutes): Each authorized delegate shall display prominently at each location open to the public a notice in at least 48-point type that states the following:

"The Commissioner of Financial Regulation for the State of Maryland will accept all questions or complaints regarding this authorized delegate of nFinanSe Payments at 500 North Calvert Street, Suite 402, Baltimore, Maryland 21202, toll free phone number of the Commissioner, 1-888-784-0136."

Minnesota (§53B.20, Minnesota Statutes): nFinanSe is subject to supervision and regulation by the Minnesota Commissioner of Commerce and as a part of that supervision and regulation, the Minnesota Commissioner of Commerce may require nFinanSe to cancel this Agreement as a result of Agent's violation of section §53B.21, Minnesota Statutes.

New Hampshire (Chapter 399-G-9, New Hampshire Statutes): Once registered with the State of New Hampshire, each agent will conspicuously post a notice that it is an authorized delegate of nFinanSe Payments Inc.

New York: (Tit. 3, § 406.4(d)(2), N.Y. Comp. Codes R. & Regs.): Every agent shall be provided by nFinanSe Payments Inc with a notice, no less than four inches by six inches, to publicly display on the agent's front window or entrance door containing the following information:

"nFinanSe Payments Inc. is licensed as a Money Transmitter by the Banking Department of the State of New York and it has designated this retailer as one of its agents."

North Carolina (§53-208.19, General Statutes): nFinanSe shall issue a certificate of authority for each location at which it conducts licensed activities in North Carolina through Agents. The certificate shall be posted in public view at each location and shall state as follows: "Money transmission on behalf of nFinanSe is conducted at this location pursuant to the North Carolina Money Transmitters Act."

Texas (§151.403, Texas Financial Code): Agent acknowledges it is in receipt of the written policies and procedures promulgated by nFinanSe regarding agents' compliance with state and federal law regulating money transmission. Agent hereby certifies that Agent is familiar with and agrees to fully comply with all applicable state and federal laws, rules, and regulations pertaining to money transmission, including Chapter 151, Texas Finance Code, relevant provisions of the Bank Secrecy Act and the USA PATRIOT ACT, and Chapter 271, Texas Finance Code. Agent agrees to remit and handle money and monetary value in accordance with Sections 151.403(b) and (c), Texas Finance Code. nFinanSe hereby imposes a trust on money and monetary value received in accordance with Section 151.404, Texas Finance Code. nFinanSe hereby requires Agent to prepare and maintain records as required by Chapter 151, Texas Finance Code. Agent is hereby placed on notice that the commissioner may suspend or revoke an agency designation or require nFinanSe to terminate an agency designation. Agent acknowledges it can access the following regulatory website addresses:

1. www.banking.state.tx.us/sa/msb_home.htm* - to access Texas Finance Code Chapter 151, Regulation of Money Service Businesses, and Chapter 278, Regulation of Currency Transmissions;
2. www.law.justia.com/texas/codes/fi.html - to access the entire Texas Finance Code, including Chapter 271, Financial Transaction Reporting Requirements;
3. www.fincen.gov/statutes_regs/bsa* - to access the Bank Secrecy Act; and
4. www.fince.gov/statutes_regs/patriot* - to access the USA Patriot Act.

*This address contains an underscore.

Dated: _____

_____, a _____
By: _____
Print Name: _____
As its: _____

Virginia (Code 6.1-377): Subject to the Virginia Code, nFinanSe Payments will only enter into direct agency agreements with Virginia retailers under its money transmission license. In no case shall a subagent relationship form with nFinanSe Payments in the state of Virginia.

Wyoming (§40-22-118, Wyoming Statutes): nFinanSe hereby appoints Agent as its delegate with authority to engage in money transmission on behalf of nFinanSe. Neither nFinanSe nor Agent may authorize subdelegates without the written consent of the commissioner. Agent hereby agrees that Agent is subject to supervision and regulation by the director of Wyoming's Banking Department.

Special "In Trust" Indemnification by nFinanSe: The parties hereto recognize that the District of Columbia, Florida, Louisiana and Texas statutes set forth above do not contemplate the instant issue Cards that will be sold by Agent in those jurisdictions. The parties therefore understand that loss pursuant to this schedule is unlikely. Notwithstanding the foregoing, nFinanSe shall defend, hold harmless, and indemnify Agent against any claims or liabilities, including reasonable attorney fees, that Agent may become obligated to pay as the result of the application of the "held in trust" and comingling provisions set forth on this Schedule 11. Agent shall promptly notify nFinanSe of any claim, suit or proceeding against Agent for which indemnification may be sought hereunder. nFinanSe shall be entitled to participate in such action, or assume the defense of such action, with counsel of its choice. If nFinanSe assumes the defense of any such action, it shall not be liable to Agent for any legal or other expenses incurred by Agent in connection with such action after the assumption of said defense.