

## MERCHANT PROCESSING AGREEMENT

This MERCHANT PROCESSING AGREEMENT which includes the attached MERCHANT APPLICATION, which is an integral part hereof and is expressly integrated herein and made a part hereof (collectively referred to as the "Merchant Agreement") is entered into by and between JPMorgan Chase Bank, located at 100 Duffy Avenue, Hicksville, New York 11801 (the "Bank"), iPayment, Inc. (by and through 1<sup>st</sup> National Processing, a wholly owned subsidiary of iPayment, Inc.), located at 40 Burton Hills, Suite 450, Nashville, TN 37215 ("iPayment") and the undersigned Applicant/Merchant (hereinafter sometimes referred to as "Applicant" or "Merchant" or "Applicant/Merchant").

**WHEREAS**, Bank is engaged in the general banking business, including, but not limited to, providing settlement services to merchants that accept a valid credit card or valid off-line debit card bearing the service mark of VISA, U.S.A. Inc., ("VISA") or MasterCard International, Inc., ("MasterCard") (hereinafter each a "Card") for payment for Products (as defined below); and

**WHEREAS**, iPayment is registered with VISA as an Independent Sales Organization and with MasterCard as a Member Service Provider; and has agreed with Bank to provide certain services, including arranging for Authorization (as defined below) and processing services, for merchants that use Bank's settlement services for Card Transactions; and

**WHEREAS**, Merchant desires to use the Services (as defined below) provided by Bank and iPayment (including by or through authorized third party service providers, including without limitation Processor and/or affiliates) to authorize, process and settle Card Transactions for payment by Cardholders for Products obtained from Merchant; and

**WHEREAS**, Merchant acknowledges that the signature of the iPayment sales representative on the Merchant Application portion of this Merchant Agreement does not constitute an approval by Bank and/or iPayment of this Merchant Agreement and that this Merchant Agreement is not and **shall not be effective** until it has been approved by the Bank and/or iPayment. Such approval, if given, shall be evidenced by the issuance of an approved Merchant Account Number by iPayment to Merchant.

**NOW, THEREFORE**, in consideration of the representations, covenants and/or promises made in this Merchant Agreement (including the Merchant Application), the parties hereby agree as follows:

**1. RECITALS AND DEFINED TERMS.** Merchant hereby acknowledges and affirms each of the Recitals contained above. The parties agree that the Recitals as set forth herein are incorporated herein by reference and made a part of this Merchant Agreement. Capitalized terms used in this Merchant Agreement shall have the meanings set forth herein, including the following capitalized terms set forth below:

**"Address Verification"** or **"AVS"** means the process by which Merchant verifies the address of a Cardholder as part of the Authorization.

**"Applicant" or "Applicant/Merchant"** means the person or entity named in this Merchant Agreement (including the Merchant Application portion hereof), and, if approved and accepted by Bank and/or iPayment, who enters into this Merchant Agreement with Bank and iPayment.

**"Association"** means any entity formed to administer and promote Cards (including without limitation VISA and MasterCard).

**"Authorization"** means approval by, or on behalf of, the Issuing Bank to validate a Transaction for a merchant or another affiliate bank. An Authorization indicates only the availability of the Cardholder's credit limit at the time the Authorization is requested and is not a guarantee that a Transaction is valid.

**"Authorization Center"** means a department or service provider to be contacted by Merchant to obtain Authorization codes on Card Transactions from the Issuing Bank and which transmits such Authorization to Merchant via electronic equipment or by voice Authorization.

**"Batch"** means usually a day's worth of Transactions, including Sales Records and Credit Records, to be processed by the Card Processor.

**"Batch Header Fee"** means the charge Merchant is billed each time a Batch is transmitted to the Processor.

**"Business Day"** means any day on which Bank is open for business, other than Saturdays, Sundays or holidays.

**"Card"** means a valid credit card or valid off-line debit card bearing the service mark of VISA or MasterCard

**"Cardholder"** means the individual whose name is embossed on a valid Card and any authorized user of such Card.

**"Chargeback"** means the procedure by which a Sales Record or other indicia of a Card Transaction (or disputed portion thereof) is denied or returned to Bank or the Issuing Bank after it was entered into the appropriate settlement network for payment, in accordance with the Rules, for failing to comply with the Rules including, without limitation from Cardholder disputes, the liability of which is Merchant's responsibility.

**"Credit Record"** means all documents or the Electronic Record of such documents used to evidence any refund or price adjustment given by Merchant to a Cardholder for a previous sale Transaction, which must conform to the Rules. The format for each Credit Record must be approved by Bank or supplied by Processor.

**"DDA" or "Designated Deposit Account"** means a direct deposit account at a financial institution designated by Merchant as the account to be debited and credited by Processor or Bank for Card Transactions, and by Processor, Bank and/or iPayment for fees, Chargebacks, and other amounts due under or in connection with this Merchant Agreement (i.e. fines, penalties, attorney's fees, etc.).

**"Discount Fee"** means the amount charged to Merchant for processing its daily credit Card Transactions, which is computed as a percentage of the gross amount of Merchant's Sales Records and Credit Records.

**"Electronic Record"** means data which is transcribed in a form acceptable to Processor and suitable for electronic processing.

**"Event of Default"** means those events listed in Paragraph 16.

**"Interchange Fee"** means the fee which is paid daily by Bank to VISA, MasterCard or other Association for entering Sales Records and Credit Records into their respective settlement networks.

**"Issuing Bank"** means the Cardholder's bank, or the bank which has issued a Card to an individual.

**"Merchant"** means the person or entity named in this Merchant Agreement (including the Merchant Application portion hereof) and, if approved by Bank and/or iPayment, who enters into this Merchant Agreement with Bank and iPayment. Merchant is also sometimes referred to as "Applicant" in this Merchant Agreement.

**"Merchant Account Number"** means the number assigned and issued by iPayment or Bank to Merchant, if and only if, Merchant is approved and this Merchant Agreement is accepted by Bank and iPayment, that numerically identifies Merchant to Processor, Bank and iPayment for accounting, billing, customer service and other related purposes in connection with the Services. Issuance of the approved Merchant Account Number to Merchant will evidence the acceptance and approval of Merchant for the Services under this Merchant Agreement.

**"Merchant Reserve Account" or "Reserve Account"** means an account established at and managed by Bank for the deposit of funds received from Merchant pursuant to this Merchant Agreement as collateral to protect Bank and/or iPayment against actual or contingent liability or losses (i.e. reserves) that might be incurred by Bank and/or iPayment should Merchant be unable or fail to pay Chargebacks, adjustments, fees and other charges and obligations due to Bank and/or iPayment under this Merchant Agreement.

**"Monthly Sales Processing Volume" or "Monthly Sales Volume"** means the gross dollar amount of Card Sales Records, before return, refund, or exchange that are generated by Merchant and processed by Processor during a calendar month pursuant to this Merchant Agreement. **"Approved Monthly Sales Processing Volume Limit"** or **"Approved Monthly Sales Volume Limit"** means the maximum Monthly Sales Processing Volume or maximum Monthly Sales Volume that Merchant is approved to process during a calendar month pursuant to this Merchant Agreement.

**"Processor"** means an entity engaged in the business of processing and transmitting electronic data exclusively of a financial, banking or economic nature, including but not limited to Card Transactions. Processor initially means First Data Merchant Services Corporation ("FDMS"). For purposes of this Merchant Agreement, any reference to Processor shall also mean the provider(s) of services in replacement of FDMS, selected from time to time by iPayment and approved by Bank, to provide certain services on behalf of iPayment and Bank in connection with the Services provided under this Merchant Agreement.

**"Products"** means goods and/or services sold, rented or rendered by Merchant.

**"Recurring Transaction"** means a transaction whereby Merchant charges a Cardholder's Card periodically for recurring goods or services (e.g., monthly insurance premiums, yearly subscriptions, annual membership fees, etc.) which are to be delivered or performed periodically.

**"Rules"** means the written rules and regulations, system manuals, procedures and requirements, releases and interpretations thereof and other requirements (whether contractual or otherwise) imposed or adopted by any Association as the same may be amended from time to time.

**"Sales Record"** means all documents or the Electronic Record of such documents used to evidence the sale of Products through the use of Cards. The format for each Sales Record must be approved by Bank or supplied by Processor.

**"Services"** means the collective activities undertaken by Bank, Processor and iPayment (including by or through authorized third party service providers) to authorize, process and settle United States denominated VISA and MasterCard Card Transactions undertaken by Cardholders at Merchant's location in the United States and all other activities necessary for Processor, Bank and iPayment to perform the functions required by this Merchant Agreement for all other Cards, if any, that may be covered by this Merchant Agreement.

**"Transaction"** means the initiation of a sale inquiry, or a consummation of a sale/rental of Products or of a credit to a Cardholder by Merchant by means of a Sales Record or Credit Record, respectively, as well as a Batch closing to Processor.

**"Transaction Fee"** means the cost charged to Merchant on a per Transaction basis.

**"Transmittal"** means the process whereby Sales Records and Credit Records are electronically transferred in the form of Electronic Records.

**2. TERM.** This Merchant Agreement shall become effective upon the date that Merchant is assigned and issued a Merchant Account Number (the "Effective Date"). iPayment will advise Merchant in writing of such Merchant Account Number. The initial term ("Initial Term") shall commence on the Effective Date and shall continue in force for two (2) calendar years after it becomes effective (the "Initial Term") and shall thereafter automatically renew for additional one-year terms, unless at least thirty (30) days prior to expiration of the then existing term a written notice of termination (to be effective at the expiration of the then existing term) is given either by Merchant to Bank and iPayment or by Bank or iPayment to Merchant, unless sooner terminated in accordance with the provisions of this Merchant Agreement. Notwithstanding anything in this Merchant Agreement to the contrary, the parties hereby further agree and acknowledge that in addition to any other remedies contained in this Merchant Agreement or otherwise available under applicable law, if (a) Merchant breaches this Merchant Agreement by improperly terminating it prior to the expiration of the Initial Term; or (b) if this Merchant Agreement is terminated by Bank and iPayment prior to the expiration of the Initial

Term due to any Event of Default by Merchant, then in either event, Bank and iPayment will suffer a substantial injury that is difficult or impossible to accurately estimate. Accordingly, after giving due consideration to the costs that Bank and iPayment may incur by reason of such early termination, including without limitation those incurred in processing the Merchant Application and approving Merchant for the Services, and in an effort to liquidate in advance the sum that should represent such damages, the parties have agreed that Merchant shall pay, as liquidated damages the sum of (i) \$350.00 if terminated before completion of the first year of the Initial Term; or (ii) \$250.00 if terminated after completion of the first year of the Initial Term but prior to the end of the second year of the two year period of the Initial Term, which the parties agree is a reasonable pre-estimate of the probable loss to Bank and iPayment in such event, and shall not be construed as a penalty. Merchant's obligation with respect to the Monthly Minimum Discount Fee will end simultaneously with Bank's receipt of the payment of the respective liquidated damage amount required pursuant to this Paragraph 2.

**3. HONORING CARDS.** Merchant agrees to follow the procedures for Card acceptance set forth throughout this Merchant Agreement in connection with each Card Transaction and agrees to fully comply with and abide by all applicable Rules, as such may be changed from time to time by the Associations. Merchant acknowledges that the following Rules set forth below in this Paragraph 3 are requirements that are strictly enforced by VISA and MasterCard and agrees, without limitation thereto, to fully comply with and abide by the following requirements: (a) Shall honor, without discrimination, all valid Cards when properly presented as payment by a bona fide Cardholder for a bona fide Transaction; and (b) Shall not establish procedures that discourage, favor, or discriminate against the use of any particular Card. If Merchant does not deal with the public at large (e.g. private club), Merchant must honor all valid Cards of Cardholders who have purchasing privileges or memberships with Merchant; and (c) Shall not establish minimum or maximum Transaction amounts as a condition for accepting Cards; and (d) Shall not impose any surcharge or fee for accepting a Card or establish any special conditions for accepting a Card; and (e) Unless permitted under the Rules, Merchant shall not require a Cardholder to provide any personal information, such as a home or business address or telephone number, or a driver's license or other proof of identification as a condition of honoring a Card, unless instructed by the Authorization Center. The exception to this is for a mail/telephone order or delivery required Transaction and zip code for a card-present key-entered Transaction in order to obtain AVS; and (f) Any taxes that Merchant collects (and any other similar handling fees) must be included in the total Transaction amount and not collected separately in cash nor processed as an additional Transaction; and (g) Shall adequately display Visa, MasterCard and, if applicable, other Association decals and program marks on promotional materials as required by Association Rules. You may not indicate that Visa, MasterCard or any other Association endorses your goods or services. Merchant understands and agrees that it shall have no right to use the proprietary name and/or symbol of Bank, VISA or MasterCard, unless the materials containing such are provided to Merchant by Bank and/or are approved in advance by Bank, and, in either event, only while this Merchant Agreement is in effect, or until Merchant is notified by Bank or by VISA or MasterCard to cease usage.

**4. AUTHORIZATION.** Merchant understands and acknowledges that an Authorization only confirms the availability of the Cardholder's credit at the time of the Authorization. It does not warrant that the person presenting the Card is the rightful Cardholder, nor is it an unconditional promise, guarantee or representation by Bank, iPayment, Processor, and/or the Authorization Center that a Transaction is or will be deemed valid and not subject to dispute, debit or Chargeback. Merchant understands and acknowledges that Bank and iPayment will add a surcharge to the Discount Fee stated in the Merchant Application section of this Merchant Agreement that is charged for "qualified" Transactions whenever there is an exception to normal Transaction processing procedures which surcharge amount is reflected in the applicable higher Discount Fees for "mid-qualified" and/or "non-qualified" Transactions which are set forth in the Merchant Application section of this Merchant Agreement which will be charged whenever there is an exception to normal processing procedures which results in Bank being charged a higher Interchange Fee rate as determined by the applicable Rules. Merchant understands that without limitation thereto, processing of Transactions when a Card is **not present** may result in an exception to normal processing, including if, unauthorized software, POS devices or direct data transmission information results in erroneously transmitted data Merchant also understands and agrees that failure to abide by the procedures and Rules, including without limitation, those set forth below, which are in addition to and not in lieu of the Rules and/or terms of this Merchant Agreement, may subject Merchant to increased risk of possible Chargeback, an increase in the applicable Discount Fee charged, additional Transaction Fees, and/or termination of this Merchant Agreement hereby confirms that it understands and agrees that: (a) The floor limit is zero and that all Transactions must be authorized; (b) Failure to authorize sales Transaction may result in a Chargeback and/or the termination of this Merchant Agreement; (c) Merchant may not attempt to obtain multiple Authorizations for a single Transaction; (d) Authorizations cannot be "forced in" by reducing the Transaction amount to find an approved authorized amount; (e) Once a Transaction is declined, Merchant must wait for next day availability; (f) If the POS device fails, an Authorization must be obtained through voice back up. For Cards other than VISA and MasterCard (if any, that Bank and iPayment have expressly approved for the Services), Merchant must follow the procedures and Rules for Authorization and acceptance for each such other Card Association; (g) The following additional Rules and requirements are applicable to Travel & Entertainment ("T&E") and Restaurant Pre-Authorization and Acceptance: If Merchant provides travel and/or entertainment services (e.g. car rentals, hotels, motels, etc.) or it is in the restaurant business, and, in either case, engages in the practice of "pre-authorization" then Merchant agrees that it will (in addition to, and not in lieu of, other applicable procedures and Rules) comply with the following procedures and Rules for Authorization and acceptance; (i) If Merchant's business is travel and/or entertainment services, lodging (hotel or motel) or car rental it may obtain an estimated VISA or MasterCard Authorization at the time of check-in; (ii) if Merchant's business is a restaurant it may obtain a "pre-authorization" for an amount which includes anticipated gratuities; (iii) regardless of the terms and conditions of any written pre-authorization agreement between Merchant and Cardholder, the Sales Record amount of any lodging or vehicle rental Transaction which has been pre-authorized shall include only that portion of the Transaction amount, including any applicable taxes, and shall not include any consequential charges in connection with the rental of vehicles, the pre-authorized amount may not include any amounts to cover potential vehicle damage or insurance deductibles when insurance has been waived at the time of rental by the Cardholder; (iv) Merchant must notify the Cardholder of the dollar amount it intends to "pre-authorize"; and (v) if the final amount charged to the Cardholder exceeds the estimated pre-authorized amount by more than fifteen percent (15%) (for lodging or car rental) or twenty percent (20%) (for bars, restaurants and nightclubs), Merchant must authorize any additional amounts. Nothing herein is intended to restrict Merchant from enforcing the terms and conditions of any pre-authorization agreement with its customer through means other than a Card Transaction; and (h) The following additional Rules and requirements are applicable to Delayed Delivery or Deposit Balance Transaction Authorization: If Merchant engages in the practice of delayed delivery or accepting deposits then Merchant agrees that it must also (in addition to, and not in lieu of, other applicable procedures and Rules) comply with the following procedures and Rules for Authorization: (i) where merchandise is to be shipped or services provided at a later date, an Authorization is considered to be valid if (1) the merchandise shipping date is within seven (7) calendar days of the date Authorization was obtained or the services are provided; and (2) the Transaction amount does not exceed the authorized amount plus fifteen percent (15%), representing shipping costs. In any case, all Transactions with an Authorization dated more than twenty-five (25) days prior to the shipping date or date services are rendered are subject to an increased risk of Chargeback.

**5. VISA AND MASTERCARD ACCEPTANCE.** Merchant agrees that in connection with the acceptance of Cards that (in addition to, and not in lieu of, other applicable procedures and Rules) it will comply with the following procedures and Rules: (a) Shall use due diligence to verify that a Cardholder is authorized to use the Card presented and that at the point of sale must (i) carefully examine the signature on every Card presented and carefully compare the signature on the Card to the Sales Record; (ii) check the date on which the Card becomes valid and the date on which the Card expires. Merchant agrees that it shall not accept any Card that is not yet valid or has expired, and must verify that such Card is not stolen, fraudulent or counterfeit; (b) For Card present Transactions when the signature panel for a VISA Card is not signed Merchant shall in addition to requesting an Authorization; (i) review positive identification bearing the Cardholder's signature (such as a passport or driver's license that has not expired) to validate the Cardholder's identity; (ii) indicate the positive identification, including any serial number and expiration date, on the Transaction receipt; and (iii) require the Cardholder to sign the signature panel of the Card prior to completing the Transaction; (c) When the signature panel for a MasterCard Card is not signed if the Card is not signed and the Cardholder refuses to sign the Card, Merchant shall not accept it for a Transaction. If the Cardholder is willing to sign the Card in the presence of Merchant, Merchant shall request two pieces of valid and current identification (e.g., driver's license, another bankcard, etc.); and (d) For VISA and MasterCard, a signature panel bearing the words "See I.D." or equivalent language shall be deemed to be blank. In either case, if such identification is uncertain, or if Merchant otherwise questions or has suspicions regarding the validity of the Card, Merchant shall contact Bank's designated Authorization Center for instructions. If Merchant is directed by the Authorization Center to retain a Card, or has reasonable grounds, information or reason to believe that a Card presented is lost, stolen, fraudulent or counterfeit, Merchant shall use its best efforts to retain the Card by peaceful means and with respect to any occurrence of any event relating to a Card that may be lost, stolen, fraudulent or counterfeit, notify the appropriate authorities of the facts known to Merchant related to said event. Merchant acknowledges that Merchant is not authorized to commit any breach of the peace or to cause any personal injury to any person, or to injure or destroy any property in connection with such Card recovery actions.

**6. COMPLETION OF SALES RECORDS AND CREDIT RECORDS.** Merchant agrees to use a Point of Sale ("POS") device, computer, telephone and related equipment approved by Bank or iPayment for transmission of all Transaction data; to record each Transaction by "swiping" the Card through the correctly programmed POS device whenever a Card is present, or if a Card cannot be electronically read, the Card number and expiration date must be manually entered into the POS device. Merchant understands that each outlet, retail location or business entity is required by Bank and iPayment to have its own POS device, and that sale Transactions authorized at one location cannot be processed through a terminal at another location unless authorized by Bank and iPayment. Merchant agrees that in connection with the completion of Sales Records and/or Credit Records that (in addition to, and not in lieu of, other applicable procedures and Rules) it will comply with the following procedures and Rules: (a) In the event of a breakdown of the POS device or other system failure, Merchant is required to and will: (i) call customer service for assistance; (ii) imprint each Sales Record with the embossed data on each Card and Merchant's plate on an imprint and call the Authorization Center for a voice Authorization and obtain Cardholder's signature; (iii) shall "key-in" the Transaction data to the POS device as soon thereafter as the POS device and/or the system becomes operational; and (iv) if Merchant uses an electronic printer connected to the POS device, Merchant shall also obtain the Cardholder's signature on the printed Sales Record; (b) All items, goods, and services purchased, or rented, in a single Transaction shall be included in the total amount of a Sales Record; (c) The following information must be included on the Sales Record: (i) A clear imprint of the Card on each Sales Draft with the embossed data on each Card and Merchant's plate on an imprint; and (ii) the Cardholder's account number and expiration date; and (iii) obtain the Cardholder's signature. The term "imprint" refers to the process of using a manual imprinting machine to make an impression of the Card on a Sales Record, it does not include the printout from a roll printer attached to an electronic device. If Merchant uses the printout of a roll printer attached to a POS device (e.g., authorization/draft capture terminal, cash register, etc.) and "swipes" the Card to read and capture the Card information via the magnetic stripe, Merchant understands that it does not have to imprint the Card. The Cardholder's account number located on the Cardholder's receipt must be masked so that only the last four digits appear. This is referred to as PAN Truncation (contact your state legislature to find out if truncation laws apply to your state); (d) When imprinting Sales Records, Merchant shall not alter the Cardholder account number, circle or underline any information on the Sales Record, or alter a Sales Record in any way after the Transaction has been completed and signed. Merchant understands that stray marks and other alterations on a Sales Record may render it electronically unscannable or unreadable/illegible and may result in a Chargeback to Merchant's Account; (e) Merchant's Doing Business As ("D/B/A") name and address location (city and state required) as shown on the face of this Merchant Agreement (Merchant Application); (f) The date of the Transaction; (g) A brief description of the Products involved in the Transaction (if there are too many items, combine them into one description (e.g., "clothing" instead of "one pair of pants, one shirt"). Merchant shall not carry information onto a second Sales Record; (h) A valid Authorization code number; (i) The total amount of the sale Transaction (including all applicable state, federal and local taxes, **except** for partial payments or deposits, in which case: (A) where the amount to be charged is a partial payment and the balance is paid in cash or by check at the time of the Transaction; or (B) the amount to be charged if a partial payment is made as a deposit in cases of delayed delivery Transaction; or as an installment payment or, as the final

amount of the balance owing after a deposit has been made; and (B) the words "deposit", "delayed delivery", "installment", or "balance", if full payment is to be made in this manner in various times, respectively, and each partial payment or deposit shall be evidenced on a separate Sales Record; (j) A copy of the completed Sales Record must be given to the Cardholder at the time of the Transaction. The Merchant's copy must include the full Cardholder account number; and (k) For telephone order Transactions, the letters "TO" shall be typed or legibly printed on the signature line, and for mail order Transactions, the letters "MO" shall be typed or legibly printed on the signature line, and for E-Commerce (Internet) order Transactions, the letters "IO" shall be typed or legibly printed on the signature line, and for Recurring Transactions, the words "Recurring Transaction" (and "PO" for MasterCard Transaction) shall be typed or legibly printed on the signature line.

#### **7. ADDITIONAL RULES FOR MAIL, TELEPHONE, E-COMMERCE (INTERNET), RECURRING AND PRE-AUTHORIZED TRANSACTIONS.**

**Mail, Telephone and E-Commerce (Internet) Order and Sale Transactions.** Merchant understands that Mail, Telephone and E-Commerce (Internet) orders and sale Transactions have substantially higher risk of Chargeback and Cardholder dispute than Card "present" (e.g. in a face-to-face) Transactions, as Merchant will not have an imprinted or magnetically "swiped" Transaction with the Cardholder's signature on the Sales Record. Merchant understands that it will be assuming a greater risk associated with accepting Card "not present" Transactions, including Mail, Telephone and E-Commerce (Internet) Transactions. Merchant understands that it may engage in Mail, Telephone and E-Commerce (Internet) Transactions, only if requested in the Merchant Application and only for the approved percentage of Merchant's total Monthly Sales Processing Volume Limit reflected on the Merchant Application portion of this Merchant Agreement, or as may otherwise have been approved in writing by iPayment. Merchant understands that Sales Records submitted for Mail, Telephone, Recurring Transactions, Pre-Authorized Orders and E-Commerce (Internet) Transactions are subject to Bank's and/or iPayment's increased risk management and security review procedures and may result in delays or holds of funds being released to Merchant.

**Mail, Telephone, Recurring Transactions, Pre-authorized Orders and E-Commerce (Internet) Transactions.** Merchant acknowledges that all mail order Transactions, telephone order Transactions, Recurring Transactions, Pre-authorized order Transactions and E-Commerce (Internet) Transactions are difficult to defend against Chargeback and agrees that it shall take reasonable precautions to protect against Chargebacks, including, but not limited to the following: (i) Delivering merchandise only to the Cardholder's billing address where the Issuing Bank sends the Cardholder's billing statement; (ii) Using a delivery service that maintains shipping logs and requires signatures by a person receiving merchandise; (iii) Using AVS and not processing sales unless all information matches the AVS; (iv) Obtaining CVV2/CVC2 verification from the Issuing Bank; (v) Obtaining the expiration date of the Card; and (vi) on the Sales Record, clearly print the Cardholder's account number; effective and expiration dates; date of Transaction; description of the goods and services; amount of the Transaction (including shipping, handling, insurance, etc.); Cardholder's name, billing address and shipping address; Authorization code; and Merchant's name and address (city and state required).

**Recurring Transaction and Pre-Authorized Order Regulations.** If Merchant processes Recurring Transactions and charges a Cardholder's account periodically for recurring Products (e.g., monthly insurance premiums, yearly subscriptions, annual membership fees, etc.) Merchant must also (in addition to, and not in lieu of, other applicable procedures and Rules) comply with the following: (i) have the Cardholder complete and deliver to Merchant a written request for such Products to be charged to Cardholder's account. The written request must at least specify the transaction amounts, the frequency of recurring charges and the duration of time for which the Cardholder's permission is granted and be provided promptly in response to a Cardholder's request for copy; (ii) If the Recurring Transaction is renewed, the Cardholder must complete and deliver to Merchant a subsequent written request for the continuation of such Products to be charged to the Cardholder's account; (iii) Merchant may not complete a Recurring Transaction after receiving a cancellation notice from the Cardholder or Issuing Bank or after a request for Authorization has been denied; (iv) Merchant must obtain an Authorization for each Transaction and type or print legibly on the signature line of the Sales Record for Recurring Transactions the words "Recurring Transaction" (and "PO" for MasterCard Transaction) in lieu of the Cardholder's signature and must provide both an invoice number and the appropriate "Recurring Transaction" indicator must be included in each Authorization request; (v) Merchant must perform an AVS inquiry for at least the first Transaction and then annually thereafter, if applicable. Merchant understands that penalties can be assessed by the Associations for failure to use the Recurring Payment Indicator; (vi) A Recurring Transaction or Pre-Authorized Order may not include partial payments for Products purchased in a single Transaction; and (vii) No finance charge may be imposed in connection with a Recurring Transaction or Pre-Authorized Order. In any case, all Transactions with an Authorization date more than thirty (30) days prior to shipping date or date services are rendered are subject to a greater risk of possible Chargeback.

**E-Commerce (Internet).** If Merchant is an E-Commerce (Internet) merchant, and accepts orders via the Internet, Merchant agrees that it must also (in addition to, and not in lieu of, other applicable procedures and Rules) comply with the following: (i) post its privacy and security policies on its websites, where such policies shall be clearly marked for consumers to see and review; (ii) website must include all the following information in a prominent manner: (1) Complete description of the Products offered; (2) Returned merchandise and refund policy; (3) method for the Cardholder to acknowledge their acceptance of the terms and conditions for returned merchandise or for the refund policy; this acknowledgement should be in a format that complies with Association guidelines for proper disclosure; (4) Customer service contact, including email address and/or telephone number; (5) Transaction currency (U.S. dollars, unless permission is otherwise received from Bank and iPayment); (6) Any applicable export or legal restrictions; (7) Delivery policy; (8) Consumer data privacy policy; and (9) A description of the Transaction security used on Merchant's website. Merchant acknowledges that the Electronic Commerce Indicator must be used to identify E-Commerce Transactions in the Authorization request and clearing record. Penalties can be assessed for failure to use the correct Electronic Commerce Indicator.

**8. APPROVED MONTHLY SALES PROCESSING VOLUME LIMIT.** Merchant understands and acknowledges that Bank and/or iPayment will determine the Approved Monthly Sales Processing Volume Limit. In the event the Approved Monthly Sales Processing Volume Limit is different from the amount indicated in the submitted pre-printed form Merchant Application portion of this Merchant Agreement, iPayment will prior to final approval and issuance of a Merchant Account Number notify Merchant of the amount of the Approved Monthly Sales Processing Volume Limit and Merchant will be required as a condition of approval and issuance of a Merchant Account Number, to acknowledge and agree in writing, to the revised Approved Monthly Sales Volume Limit (and any other terms, if any, that may differ from the submitted Merchant Application terms). If, after approval, the Monthly Sales Volume Limit is exceeded, Bank and/or iPayment in their sole discretion, without limitation to other rights provided elsewhere in this Merchant Agreement, may do one or more of the following: (a) Charge an over-limit fee; (b) Suspend processing Services; (c) Divert all funds from the over-limit processed Transactions into the Reserve Account, where they will be held; (d) Charge the applicable higher Discount Fee; and/or (e) Terminate this Merchant Agreement.

Merchant acknowledges that if the Approved Monthly Sales Processing Volume Limit is exceeded it may also cause a new underwriting review of the approved terms and may result in the possible interruption of Services and/or the delay of transmission of funds and/or the diversion of the funds into the Reserve Account which may be held until the expiration of the disbursement period for Reserve Account funds pursuant to Paragraph 15 below. Notwithstanding any terms to the contrary in this Merchant Agreement, Bank and/or iPayment on not less than ten (10) days prior written Notice to Merchant, may elect for whatever reason or for no reason whatsoever, to reduce the Approved Monthly Sales Processing Volume Limit (as may be in effect from time to time) provided, however, that such reduced Approved Monthly Sales Processing Volume Limit may not be reduced to less than the amount equal to twenty-five percent (25%) of the amount that was approved on the approval of Merchant and the issuance of the Merchant Account Number to Merchant.

**9. PAYMENT (ACH).** Merchant shall at all times maintain a commercial checking account with Bank or with another financial institution of Merchant's choice that belongs to the Automated Clearing House ("ACH") network and can accept ACH transactions and that Processor and Bank will use to debit and/or credit funds on a daily or monthly basis. Processor and Bank will debit Merchant's Designated Deposit Account (DDA) daily for the Discount Fees. Merchant agrees to work with Processor, Bank, and iPayment to help resolve any problems in crediting/debiting Merchant's DDA. Merchant agrees to be bound by the terms of the operating rules of the National Automated Clearing House Association as in effect from time to time. Merchant hereby authorizes Processor, Bank and/or iPayment to access information from the DDA and to initiate credit and/or debit entries and adjustments to Merchant's DDA by bankwire or ACH transfer process and/or through direct instructions to (or such other arrangements as we deem appropriate) the financial institution where Merchant's DDA is maintained for amounts due under this Merchant Agreement and under any agreements with Bank or its affiliates for any related services, as well as for any credit entries in error. Merchant hereby authorizes the financial institution where Merchant's DDA is maintained at to effect all such debits and credits to the Merchant DDA. This authorization is without respect to the source of any funds in the DDA, is irrevocable and is coupled with an interest, and shall remain in full force and effect until Bank and/or iPayment have given written notice to the financial institution where Merchant's DDA is maintained that all monies due under this Merchant Agreement and under any other agreements with Bank or its affiliates for any related services have been paid in full. All settlements for VISA and MasterCard Card Transactions will be net of credits/refunds, adjustments, applicable Discount Fees when due, Transaction Fees, Chargebacks, Reserves, lease payments, rental fees, Minimum Discount Fees or other adjustments, charges and any other amounts then due from Merchant. All credits to Merchant's DDA or other payments to Merchant are provisional and are subject to, among other things, final audit by Bank and/or iPayment, Chargebacks (including Bank and/or iPayment related losses) fees, assessments, and fines imposed by the Associations. Merchant agrees that Bank and/or iPayment may debit or credit Merchant's DDA for any deficiencies, overages, fees, fines, charges, and pending Chargebacks, or may deduct such amounts from settlement funds due to Merchant. Merchant hereby also agrees and authorizes Bank and/or iPayment at it's/their sole discretion, to debit any other banking account maintained by Merchant for any and all such amounts. Alternatively, Bank and/or iPayment may elect to invoice Merchant for any such amounts, net due 30 days after the invoice date or on such earlier date as may be specified. Bank and/or iPayment cannot guarantee the timeliness with which any ACH payment may be credited by Merchant's bank. Merchant understands that, due to the nature of the ACH and the electronic networks utilized for the movement of funds and the fact that not all banks belong to the ACH Network, payment to Merchant can be delayed. Bank, Processor, and iPayment will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties, by Processor, Bank and/or iPayment, including but not limited to any Association or Merchant's financial institution. Merchant acknowledges that the funds due for VISA and MasterCard Transactions will generally be processed and transferred to the Merchant's DDA within two (2) Business Days from the time a Batch is closed (by 7:00 p.m. ET). Bank and/or iPayment reserve the right to divert and hold all funds when Bank and/or iPayment is investigating the breach of any warranty, covenant, representation, or agreement by Merchant or has reasonable cause to believe that Merchant may have violated a provision of this Merchant Agreement, the Rules and/or is engaged in illegal, fraudulent or suspicious activity. In the event that a payment is rejected by Merchant's bank or fails to arrive within five (5) Business Days after Bank's attempted ACH payment, Bank may periodically wire transfer any funds due Merchant until the ACH problem is resolved, and all such wire transfers and resolution of all issues shall be solely at the Merchant's expense. If Merchant receives settlement funds by wire transfer, Bank and/or iPayment may charge a wire transfer fee per wire, notwithstanding any lesser amount shown in this Merchant Agreement. Merchant understands and hereby acknowledges that the Discount Fee is earned at the time of the Transaction and is not subject to refund. Not all fees will be debited on a daily basis, but may be subject to a month end debit to the DDA or other available funds.

**10. RETRIEVAL AND STORAGE OF SALES RECORDS, CREDIT RECORDS, TRANSACTION DATA AND INFORMATION.** Merchant understands and agrees that the Rules require the presentation of printed or imprinted Sales Records and Credit Records to Issuing Banks upon request. Merchant shall establish a system to store and maintain copies of sales Transactions in such a manner as to forward said information within twenty-four (24) hours of request. Merchant understands that failure to respond to such a retrieval request constitutes a violation of this Merchant Agreement which may result in a Chargeback, assessing a Chargeback fee and/or establishing a Reserve Account. Merchant must and does hereby agree to preserve all records pertaining to Sales and Credit Records for at least twenty four (24) months for VISA Card Transactions and for Interchange Information Documents (TIDs) for MasterCard, and for all other documents, at least three (3) years for MasterCard Transactions, said periods start from the date of the document and to properly comply with all requests by Bank and/or iPayment for production of said records. All media containing Card account numbers must be stored for eighteen (18) months in an area limited to selected personnel until discarded and then must be destroyed in a manner that will render the data unreadable and unusable.

**11. VISA CARDHOLDER INFORMATION SECURITY PROGRAM, NON-DISCLOSURE, RETENTION, AND STORAGE OF CARDHOLDER AND TRANSACTION INFORMATION REQUIREMENTS.**

Merchant understands that it must comply with the Rules, including without limitation, those relating to Cardholder information security issues, non-disclosure of Cardholder information and Transaction documents, retention and storage of Cardholder and Transaction information and other security procedures adopted by the Associations. Merchant hereby confirms its agreement to abide by and fully comply with such Rules, including without limitation the Rules and procedures described below:

**VISA Cardholder Information Security Program.** VISA has implemented a program to protect Cardholder data. The Cardholder Information Security Program ("CISP") applies to Merchant if Merchant processes or stores Cardholder data as a result of Internet or Mail/Telephone acceptance of VISA Card account information. A copy of the complete VISA Cardholder Information Security Standards manual and a Self-Assessment Worksheet can be obtained online at [www.visa.com/cisp](http://www.visa.com/cisp) or from iPayment's customer service department. VISA may impose restrictions, fines, or prohibit Merchant from participating in VISA programs if it is determined that Merchant is non-compliant. Merchant may be required to comply with an audit to verify compliance with security procedures. The following is a highlight of the current CISP program requirements, all of which Merchant shall comply with, if applicable, to Merchant: (i) Install and maintain a working network firewall to protect data accessible via the Internet; (ii) Keep security patches up-to-date; (iii) Encrypt stored data; (iv) Encrypt data sent across networks; (v) Use and regularly update anti-virus software; (vi) Restrict access to data by business "need to know"; (vii) Assign a unique ID to each person with computer access to data; (viii) Don't use vendor-supplied defaults for system passwords and other security parameters; (ix) Track access data by unique ID; (x) Maintain a policy that addresses information security for employees and contractors; and (xi) Restrict physical access to Cardholder information.

**Transaction Information.** Merchant acknowledges that the sale or disclosure of databases containing Cardholder Account numbers, personal information, or other Card Transaction information to third parties is strictly prohibited by the Rules. Unless Merchant obtains consents from Bank and iPayment, and each applicable Association, Issuing Bank and Cardholder, Merchant must not use, disclose, sell or disseminate any Cardholder information obtained in connection with a Card Transaction (including without limitation, the names, addresses and Card account numbers of Cardholders, copies of imprinted Sales Records and/or Credit Records, mailing lists, tapes or other media obtained in connection with a Sales Record and/or Credit Record) except for purposes of authorizing, completing and settling Card Transactions and resolving any Chargebacks, retrieval requests or similar issues involving Card Transactions, other than pursuant to a court or governmental agency request, subpoena or order. Merchant shall use proper controls for, limit access to, and render unreadable prior to discarding all records containing Cardholder account numbers and Card imprints. Merchant may not retain or store magnetic stripe data after a Transaction has been authorized. If Merchant stores any electronically captured signature of a Cardholder, Merchant may not reproduce such signature except upon the specific request of Bank or iPayment. Merchant shall store all media containing Cardholder names, Cardholder account information, and other personal information, as well as Card imprints (such as Sales Records and Credit Records, auto rental agreements, and carbons) in an area limited to selected personnel and, prior to discarding any such information, destroy it in a manner that renders the data unreadable. Merchant further warrants and agrees that in the event of its failure, including bankruptcy, insolvency, or other suspension of business operations, it will not sell, transfer, or disclose any materials that contain Cardholder account numbers, personal information, or Transaction information to third parties, and shall return the information to Bank or iPayment and provide acceptable proof of destruction to Bank and iPayment.

**12. RETURNS AND CREDITS.** If, with respect to any Transaction, any goods are accepted for return or any services are refunded, terminated or canceled, or any price adjustment is allowed by Merchant (other than involuntary refunds by airlines or other carriers when required by applicable tariffs and except where otherwise required by law or governmental regulations) Merchant shall not make any cash refund to the Cardholder during the term of this Merchant Agreement, but Merchant shall utilize a Credit Record evidencing such refund or adjustment. Merchant must process the Credit Record Transaction within three (3) Business Days. Merchant shall date each Credit Record with the Transaction date and include thereon a brief description of the Products canceled or adjustment made and the amount of the credit in sufficient detail to identify the Transaction. One completed copy of the Credit Record shall be delivered to the Cardholder at the time of each return or cancellation of a Transaction. Every credit issued will be subject to Transaction Fees and Discount Fee and there shall be no refund of any fees or charges associated with the original Transaction. With proper disclosure at the time of the Transaction, Merchant may: (a) Refuse to accept goods in return or exchange and refuse to issue a refund to a Cardholder; or (b) Accept returned goods in exchange for the Merchant's promise to deliver Products of equal or greater value available from Merchant at no additional cost to Cardholder. Proper disclosure shall be deemed to have been given only if, at the time of the Transaction (which is evidenced with an acknowledged Cardholder signature), the following notice appears on all copies of the Sales Record (or disclosure if Card is not present) in legible letters at least one-quarter (1/4) inch high and in close proximity to the space provided for the Cardholder's signature stating "NO REFUND" or "EXCHANGE ONLY" or "IN STORE CREDIT ONLY" as applicable, or equivalent language. Even with this provision being adhered to it does not guarantee avoidance of Chargeback.

**13. WARRANTIES BY MERCHANT.** Merchant represents and warrants to Bank and iPayment that it has the authority to enter into this Merchant Agreement and that the person(s) signing on behalf of Merchant is/are specifically authorized and directed to do so by Merchant. Without limiting any other warranties, covenants and agreements hereunder, Merchant agrees, represents and warrants to Bank and iPayment that at all times during the term of this Merchant Agreement that: (a) It is lawfully engaged in the business described on the Merchant Application and is duly licensed under the laws of the state, county and city in which it is located to conduct such business; (b) It will fully comply with all federal, state and local laws, and the Rules; (c) Not to change the nature of its business as indicated on the Merchant Application portion of this Merchant Agreement or to modify the ownership of the business without the prior written consent of Bank and/or iPayment; (d) All of its business locations engage in the same or substantially similar business activity as that listed on the Merchant Application portion of this Merchant Agreement; (e) The percentage of mail and/or telephone order sales does not exceed five percent (5%) of all sales made by Merchant, unless specifically disclosed in the Merchant Application portion of this Merchant Agreement; (f) It offers no enticements or incentives to Cardholders in connection with the sale of Merchant's Products; (g) It will not use any personal Card owned by Merchant, or any Guarantor, or any Card which Merchant or any Guarantor is authorized to use on the Merchant's POS device, through its electronic terminal, or otherwise at its location. Such use is deemed a "cash advance" which is prohibited by the Rules and this Merchant Agreement and can result in immediate termination of this Merchant Agreement; (h) It uses both the name and address shown on the Merchant Application portion of this Merchant Agreement on all Sales Records and Credit Records and does not use any other name (unless a descriptor is used to further identify the Transaction and agreed to by Bank and/or iPayment); (i) It will not engage in the practice of "split-ticket" sales; (j) It will not submit any sale Transaction that was previously charged back or declined; (k) It shall not, without the Cardholder's prior written consent, sell, purchase, provide or exchange Card account information in the form of Sales Records, mailing lists, tapes or any other media obtained by reason of a Transaction to any third party other than Merchant's agents for the purpose of assisting Merchant in its business to Bank and/or iPayment or pursuant to any lawful government demand; and (l) As to each Transaction covered under this Merchant Agreement, Merchant specifically represents and warrants that: (i) the sales Transaction is valid in form and has been completed in accordance with all applicable requirements and the Rules; (ii) Merchant has delivered the goods to the Cardholder or completed the service described on the Sales Record in accordance with Merchant's agreement with the Cardholder, and that Merchant has, in inventory, the goods sold if not delivered at the time of sale; (iii) each Sales Record represents the Cardholder's indebtedness for the total amount shown; (iv) the Cardholder has no defense right of offset or counterclaim against Merchant in connection with the purchases of the Products; (v) Merchant has not charged Cardholder directly or indirectly any separate or additional fee(s) such as a surcharge or portion of any discount or charge imposed upon Merchant by this Merchant Agreement in connection with the Transaction other than as may be required by law (this Paragraph shall not, however, be construed as prohibiting discounts to customers or for charges (such as bona fide commissions, fees for special handling or expedited services, postage and handling, and similar charges) that are charged to the Cardholder regardless of the form of payment; (vi) each Transaction was placed by a person who is the Cardholder of the Card; (vii) has included all items of Products purchased in a single Transaction and the total amount on a single Sales Record; (viii) does not represent the refinancing of an existing obligation of the Cardholder (including any obligation owed to Merchant or arising from the dishonor of a personal check); (ix) is not a "cash advance"; and (x) Merchant shall not submit any Transaction for entry into interchange, directly or indirectly, any Card Transaction that it knows to be (1) fraudulent or (2) not authorized by the Cardholder. Merchant shall never accept or deposit, or enter into Merchant's POS device, a fraudulent sale or sale made by any other Merchant. Merchant understands and agrees that violation of any of the foregoing warranties, representations, covenants and agreements or otherwise provided in this Merchant Agreement, shall be an Event of Default, and may cause this Merchant Agreement to be immediately terminated, or subject to termination, have all funds placed into a Reserve Account pursuant to Paragraph 15 below, and result in Merchant and each Guarantor placed on the Combined Terminated Merchant File (CTMF) or MATCH File pursuant to Paragraph 17 below.

**14. CHARGEBACKS.** Merchant is responsible for any and all Chargebacks, as well as Association fines, assessments and fees related to or arising out of such Chargebacks, and will pay Bank and/or iPayment, upon demand, the face amount of any Chargebacks. Merchant shall reimburse Bank for any Chargebacks, return items, or other losses resulting from Merchant's failure to produce a Card Transaction record requested by Bank within the applicable time limits. Bank shall have the right to debit Merchant's incoming Chargebacks, through the DDA or any other funds of Merchant or of any Guarantor in Bank's direct or indirect control by reason of the security interest granted to Bank by Merchant pursuant to Paragraph 18 hereinbelow, and to charge such Chargebacks to Merchant, including without limitation, and by way of example, in any of the following situations: (a) Where goods have been returned or services canceled by a Cardholder and the Cardholder requested a Credit Record and such Credit Record was not processed by Merchant within three (3) Business Days; (b) Where the purchase has not been Authorized in advance by the Authorization Center as required hereunder or by the Rules and the Transaction was charged back by the Issuing Bank; (c) Where the Transaction is for a type of Product sold other than as disclosed in the Merchant Application portion of this Merchant Agreement and approved in advance by Bank and/or iPayment and the sales Transaction was charged back; (d) Where a Cardholder contends or disputes in writing to Bank, iPayment or the Issuing Bank that: (i) Products were not received by the Cardholder; or (ii) Products received by a Cardholder do not conform to the description on the Sales Record; or (iii) Products were sold in a misleading fashion or manner by Merchant; or (iv) Products were defective; or (v) The dispute reflects a claim or defense authorized against issuers or creditors by a governmental agency, a relevant statute or regulation; (e) Where a Sales Record or Credit Record was not received by Bank as required in accordance with the terms of this Merchant Agreement; (f) Where the Sales Record was not completed as required by this Merchant Agreement or the Rules; (g) Merchant failed to obtain specific Authorization in advance from the Authorization Center to complete the Transaction and/or the Cardholder has certified in writing to Bank, iPayment or the Issuing Bank that the Cardholder did not make or authorize such Transaction; (h) Where the signature on the Sales Record is obviously different from the signature appearing on the signature panel of the Card and the Sales Record is charged back; (i) Where the Issuing Bank, Bank or iPayment has information or belief that Merchant fraud occurred at the time of the Transaction(s), whether or not such Transaction(s) was properly Authorized by the Issuing Bank, and the Cardholder neither participated in nor authorized the Transaction(s); (j) In any other situation where the Sales Record was executed or depository credit was given to Merchant in circumstances constituting a breach of any representation or warranty of Merchant or in violation of the Rules, whether or not a Transaction is charged back by the Issuing Bank. If, with respect to any one of Merchant's outlets, the amount of any Card counterfeit or fraud incidences becomes excessive, in the sole and absolute discretion of Bank or iPayment, Merchant may be charged back for all Transactions, terminated immediately for cause, and Merchant's funds, including but not limited to those incoming Transactions and in Merchant's DDA and Reserve Account shall be held pursuant to the provisions of this Merchant Agreement, including without limitation pursuant to the provisions of Paragraphs 15 and 18 below. Merchant agrees to accept and understands that it is responsible for all Chargebacks and understands that some Chargebacks cannot be rebutted or remedied. Merchant understands that Bank and iPayment will assess a Chargeback Fee for each Chargeback plus the amount of any Chargeback fines or penalties assessed by VISA or MasterCard against the Bank and/or iPayment for Transactions arising from the activities of Merchant, or any other charges as may be established by Bank and/or iPayment from time to time. Furthermore, Bank and/or iPayment may assess Merchant a fee for processing any fines or penalties that may be charged by VISA or MasterCard at the sole and absolute discretion of Bank and/or iPayment. If the actual Card is "not present", Merchant understands and acknowledges that Merchant bears one hundred percent (100%) of the risk of Chargeback under the Rules, for all Card Transactions and any fees resulting from such Card "not present" Transactions and hereby agrees, without limiting any other provisions in this Merchant Agreement, to hold Bank and iPayment harmless from any losses, claims, and costs arising from or associated with such all Card Transactions, including any Authorizations.



**15. RESERVE ACCOUNT.** Notwithstanding any other provision to the contrary contained in this Merchant Agreement, Merchant hereby expressly acknowledges that Bank reserves the right to establish and Merchant hereby authorizes Bank and/or iPayment to establish, at any time prior to, at, or after termination of this Merchant Agreement and with or without prior notice to Merchant a non-interest bearing Reserve Account. The initial amount of the Reserve Account shall be set by Bank and/or iPayment in their sole discretion, based upon, but without limitation thereto, Merchant's processing history and potential overall credit risk to Bank and iPayment. At Bank's and/or iPayment's sole discretion such Reserve Account may be funded as a "rolling reserve" from a portion (percentage) of the funds from each Sales Transaction and/or by requiring a deposit of funds to the Reserve Account. Reserve Account funds may be used to cover Chargebacks, credits, fines, costs, assessments, and other obligations of Merchant that are incurred under this Merchant Agreement. If a Reserve Account is required at the time that the Merchant Application is approved, the amount of the Reserve Account and the funding method (up-front deposit, fixed amount or "rolling reserve"), including the percentage applicable for each Sale Transaction and the number of months used for the "rolling reserve" will be as stated on the Merchant Application unless otherwise modified and agreed to in writing by Merchant and Bank and/or iPayment. If a Reserve Account is required at a later time, Bank and/or iPayment may establish the Reserve Account immediately and notify Merchant of that fact (or any changes in the required reserve amount, funding method, rolling reserve percentage or period, or other terms). Merchant acknowledges and understands that the Reserve Account Maintenance Fee disclosed in the Merchant Application will be deducted monthly from funds in said Reserve Account. Merchant hereby authorizes Bank and/or iPayment, without notice or demand, to offset any related fees, losses, charges, costs and amounts for any other obligations of Merchant due Bank and/or iPayment under this Merchant Agreement from and against Merchant's Reserve Account funds when adequate funds are not available in the DDA or from funds otherwise due Merchant under this Merchant Agreement. Merchant also hereby authorizes Bank and/or iPayment, without notice or demand, to offset any related fees, losses, charges, costs and amounts for any other obligations due Bank and/or iPayment under this Merchant Agreement from and against any other deposit accounts of Merchant maintained at any financial institution, when adequate funds are not available in Merchant's Reserve Account or DDA. Merchant hereby agrees that any financial institution at which Merchant maintains a deposit account may rely upon an executed copy of this Merchant Agreement provided by Bank and/or iPayment as Merchant's, express written instruction and authorization to permit such offset by Bank and/or iPayment, and Merchant's agreement that said financial institution shall be released from any liability for any good faith compliance with the express written instruction and authorization as set forth herein to permit such offset by Bank and/or iPayment. After payment or adequate provision for payment is made by Merchant to Bank and iPayment for all obligations on the part of Merchant to Bank and iPayment under this Merchant Agreement, including, without limitation, any and all amounts due for any lease or rental of any POS equipment and/or any payment gateway utilized by Merchant under this Merchant Agreement and the Rules, Merchant may request Bank and iPayment to disburse any and all funds due Merchant remaining in the Reserve Account. Unless otherwise agreed to by Bank and/or iPayment, such funds will not be disbursed to Merchant until the end of two hundred and seventy (270) days from the date of the last Chargeback or Transaction, whichever is later, unless Bank and iPayment in their sole and absolute discretion, has reason to believe that Chargeback rights under the then applicable Rules may be longer than such two hundred and seventy (270) day period of time, in which event such funds will not be disbursed until the expiration of the period of time for such Chargeback rights. If requested by Merchant, Bank and/or iPayment will set the date when funds in the Reserve Account, held beyond such two hundred and seventy (270) day period referenced above will be released and will notify Merchant of such date. No funds held in the Reserve Account shall accrue or bear interest. Without limiting the rights of Bank and/or iPayment set forth above, Merchant acknowledges that the establishment of, or a change in the amount percentage or other terms of Reserve Account and/or increase to the Discount Fee or Transaction Fee may, without limitation thereto, result from the Bank's and/or iPayment's determination that any of the following has occurred: (a) Merchant engages in any processing of charges which represents an overcharge to the Cardholder by duplication of charges; (b) Any activity designed by Merchant to circumvent an Authorization Center message when attempting to process a Transaction for a Cardholder; (c) Failure by Merchant to fully disclose the true nature of its business to Bank and iPayment to permit a fully-informed decision as to the suitability of Merchant for approval of the Merchant Application and acceptance of this Merchant Agreement; (d) Failure by Merchant to fully disclose the true ownership, or any change in such ownership, of Merchant's business entity; (e) Processing by Merchant of unauthorized charges; (f) Processing by Merchant of charges for any other merchant or third party; (g) Merchant processes any credits through Merchant's POS device to any VISA or MasterCard Cardholder account of Merchant or controlled by Merchant or any of its Guarantors; (h) Any misrepresentation made by Merchant in completion of the Merchant Application portion of this Merchant Agreement or any breach of any other covenant, warranty or representation of Merchant contained in this Merchant Agreement, including, without limitation, a change of type of business without prior approval by Bank and/or iPayment; (i) Merchant has Chargebacks which exceed one percent (1%) of the total number of Sales Record Transactions completed by Merchant in any thirty (30) day calendar period, such thirty (30) day calendar period not limited to any specific monthly cycle; (j) Excessive number of requests for retrieval of documentation; (k) Excessive credits that exceed sale Transactions by ten percent (10%); (l) Any form of Merchant financial instability or diminishment of the financial condition of Merchant or any of its Guarantors; or (m) Whenever Bank and/or iPayment in its/their sole discretion, believes that Bank and/or iPayment has a credit risk exposure and that recovery of any amounts due or which may become due from Merchant, are in jeopardy or that the Bank and/or iPayment may incur losses in connection with or related to the Services provided to Merchant under this Merchant Agreement.

**16. TERMINATION AND EVENTS OF DEFAULT.** Bank and/or iPayment, in addition to any rights of immediate termination without notice as may be contained elsewhere in this Merchant Agreement, may terminate this Merchant Agreement, and at Bank's and/or iPayment's discretion, any merchant processing agreement(s) of any other business that is commonly owned or controlled by Merchant for any reason or cause (or for no reason) whatsoever upon ten (10) Business Days prior written notice to Merchant. Such termination shall become effective on the later of ten (10) Business Days from the date such notice is given in the manner prescribed for notices herein or the date specified in such notice; provided, however, that in the event of termination due to breach by Merchant of any of the terms and conditions of this Merchant Agreement, such termination shall become effective upon the giving of such notice by Bank and/or iPayment. Notices of termination due to breach by Merchant, may be given orally, in writing or by closing the Merchant's POS device or payment gateway at the discretion of Bank and/or iPayment. This Merchant Agreement may also be terminated effective upon the giving of notice at the discretion of Bank and/or iPayment for reasons including but not limited to: (a) Bank and/or iPayment determines that Merchant's type of business as indicated on the Merchant Application differs from the actual type of business Merchant operates; (b) Merchant moves or relocates to a new location without giving Bank and iPayment at least thirty (30) days prior written notice; (c) The business as conducted by Merchant could endanger the safety and/or soundness of Bank; (d) The owner, officer or corporate entity has a separate relationship with Bank and/or iPayment and such relationship has been terminated by Bank and/or iPayment; (e) Merchant and/or any of its Guarantors files for bankruptcy or is otherwise shown to be insolvent; (f) Merchant has Chargebacks which exceed one percent (1%) of the total number of Transactions completed by Merchant in any thirty (30) calendar day period; or (g) Merchant owes money to Bank and/or iPayment and fails to make a timely payment thereof.

**17. COMBINED TERMINATED MERCHANT FILE (CTMF) OR MATCH FILE.** Merchant expressly acknowledges that a Combined Terminated Merchant File (CTMF) or MATCH File is maintained by MasterCard containing the business name(s) of merchants and the names and identification of principals of merchants which have had their merchant processing agreements terminated for one or more of the reasons specified in VISA or MasterCard Rules. Merchant acknowledges that Bank and/or iPayment is/are required to report the business name(s) of Merchant and the names and identification of its principals to the CTMF or MATCH File in the event that this Merchant Agreement is terminated because of one or more of the reasons specified in VISA or MasterCard Rules, which include without limitation, those that constitute an Events of Default under this Merchant Agreement. Merchant expressly agrees and consents to such reporting by Bank and/or iPayment of each and all of the items specified herein above in this Paragraph 17. All obligations of any party to this Merchant Agreement to pay funds to another shall survive any expiration or termination of this Merchant Agreement.

**18. SECURITY INTEREST.** To secure Merchant's obligations to Bank and iPayment and their affiliates under this Merchant Agreement and any other agreement for the provision of related equipment or related services ("Obligations"), Merchant hereby grants Bank and iPayment a lien and security interest in and to any of Merchant's funds pertaining to the Card transactions contemplated by this Merchant Agreement now or hereafter in Bank and iPayment's possession, whether now or hereafter due or to become due to Merchant. In addition to any rights granted under applicable law, we are hereby authorized (any related notice and demand are hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of Merchant's Obligations, whether such Obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. Merchant agrees to duly execute and deliver to Bank and iPayment such instruments and documents as may be reasonably requested to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Merchant Agreement.

**19. INDEMNIFICATION AND LIMITED LIABILITY.** Merchant agrees to indemnify and hold Bank and iPayment harmless from and against any Association fines or fees (pursuant to Section 21 of this Merchant Agreement) and all losses, liabilities, damages and expenses (including attorney's fees and collection costs) resulting from any breach of any warranty, covenant or agreement or any misrepresentation by Merchant under this Merchant Agreement (including, without limitation, a violation of the Rules), or arising out of Merchant's or Merchant's employees' negligence or willful misconduct, in connection with Card Transactions or otherwise arising from Merchant's provision of Products to Cardholders. Bank agrees to indemnify and hold Merchant harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by Bank under this Merchant Agreement or arising out of Bank's or its employees' gross negligence or willful misconduct in connection with this Merchant Agreement. iPayment agrees to indemnify and hold Merchant harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by iPayment under this Merchant Agreement or arising out of iPayment's or its employees' gross negligence or willful misconduct in connection with this Merchant Agreement. **THIS MERCHANT AGREEMENT IS A SERVICE AGREEMENT. BANK AND IPAYMENT DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO MERCHANT OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS MERCHANT AGREEMENT. NOTWITHSTANDING ANYTHING IN THIS MERCHANT AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL BANK AND IPAYMENT, OR THEIR AFFILIATES OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY, FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING IN THIS MERCHANT AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SUBSECTIONS (b) AND (c) OF THIS PARAGRAPH 19) BANK'S AND IPAYMENT'S CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS MERCHANT AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED (I) \$50,000; OR (II) THE AMOUNT OF FEES RECEIVED BY BANK AND IPAYMENT PURSUANT TO THE MERCHANT AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS, WHICHEVER IS LESS.**

**20. SERVICE FEES, DISCOUNT FEES, AND TRANSACTION FEES.** Merchant shall be charged the fees for the Services, which shall be calculated and payable pursuant to this Merchant Agreement and any additional pricing supplements. Merchant acknowledges that the fees agreed to are based upon the qualification of Merchant's Transactions for certain reduced Interchange Fees as set by the applicable Association. If Merchant's Card Transactions fail to qualify for the reduced Interchange Fees, Bank and/or iPayment will process such Card Transactions at the higher applicable Interchange Fees and Merchant shall be charged the higher Discount Fee for each non-qualifying (or mid-qualification, if applicable) Transaction, as set out in the Merchant Application. The fees for Services set forth in this Merchant Agreement are based upon assumptions associated with, among other things, the Products offered by Merchant, Merchant's method of doing business, including without limitation, refund and exchange policies, the anticipated annual and Monthly Sales Processing

Volume, number of Transactions and average Transaction ("ticket") size for all Services as set forth in this Merchant Agreement. If the actual annual and/or Monthly Sales Processing Volume, or number of Transactions or average Transaction amount are not as expected or if Merchant significantly alters Merchant's method of doing business, Bank and iPayment may adjust the Discount Fee and Transaction Fees without prior notice. The fees for Services set forth in the Merchant Application portion of this Merchant Agreement may be adjusted to reflect increases or decreases by Associations in Interchange Fees, assessment and other Association fees or to pass through increases charged by third parties for on-line communications and similar items. All such adjustments shall be Merchant's responsibility to pay and shall become effective upon the date any such change is implemented by the applicable Association or third party. Bank and iPayment may also change or increase any (and more than one) of the fees for Services for any other reason by notifying Merchant thirty (30) days prior to the effective date of any such change. Merchant acknowledges that Bank and iPayment have relied on the information contained in the Merchant Application portion of this Merchant Agreement, including but not limited to, the type of business in which Merchant is engaged, the Product sold, the average sales or Sales Record amount and projected Monthly Sales Processing Volume, the amount of telephone and mail order sales, and the ratio of keyed (non-swiped Transactions) and "card not present" Transactions in determining whether to accept the Merchant Application submitted by Merchant and in setting the Discount Fee and Transaction Fees and other charges to Merchant. Merchant acknowledges that the Discount Fee may be increased if Merchant does not use the correct POS device/PC software application or does not close Batches at least once every Business Day. Merchant agrees that a Minimum Discount Fee will be imposed for any month that the Minimum Fee indicated on the Merchant Application is not met. Merchant acknowledges that Bank and/or iPayment will assess a Monthly Statement Fee on a monthly basis. Merchant acknowledges that Bank and iPayment also reserve the right to charge an Annual Membership Fee as set forth on the Merchant Application portion of this Merchant Agreement. Additional fees may also be assessed for processing of sales or credit Transactions emanating from foreign Cardholders. Bank and iPayment will charge a fee for purposes of reimbursing research costs incurred by Bank and/or iPayment due to Merchant moving to an undisclosed location. Merchant is required to inform Bank and iPayment in writing of Merchant's business location at all times during the Term of this Merchant Agreement, and, if Bank holds Reserve Account funds for Merchant after the expiration or termination, for such time until any Reserve Account funds are fully disbursed or applied by Bank against amounts due from Merchant. All settlements for VISA and MasterCard Card Transactions will be net of credits/refunds, adjustments, applicable Discount Fees when due, Chargebacks and any other amounts then due from Merchant. All credits to Merchant's DDA or other payments to Merchant are provisional and are subject to, among other things, final audit, Chargebacks (including Bank's and/or iPayment's related losses), fees and fines imposed by the Associations. Merchant agrees that Bank may debit or credit Merchant's DDA for any deficiencies, overages, fees and pending Chargebacks, or may deduct such amounts from settlement funds due to Merchant. Alternatively, Bank and/or iPayment may elect to invoice Merchant for any such amounts, net due 30 days after the invoice date or on such earlier date as may be specified. Bank and/or iPayment will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties including but not limited to any Association or Merchant's financial institution.

**21. FINES AND EXCESSIVE CHARGEBACK FEES.** Merchant also agrees to pay for and indemnify and hold harmless Bank and/or iPayment from any fines or penalties imposed on Bank and/or iPayment by any Association resulting from Merchant's activities, acts or omissions, Chargebacks and any other fees or fines imposed by an Association with respect to Merchant's acts or omissions, whether the activities occur or the fines, penalties, or other assessments are imposed, during or after the Term of this Merchant Agreement. If Merchant's Chargeback percentage for any line of business exceeds the estimated industry Chargeback percentage, Merchant shall, in addition to the Chargeback fees and any applicable Chargeback handling fees or fines, pay Bank an excessive Chargeback fee for all Chargebacks occurring in such month in such line(s) of business. Each estimated industry Chargeback percentage is subject to change from time to time by Bank and iPayment in order to reflect changes in the industry Chargeback percentage reported by VISA or MasterCard.

**22. REQUESTS FOR ADJUSTMENTS OR REFUNDS.** If Merchant believes any adjustments should be made with respect to Merchant's DDA, Merchant must notify Bank, and/or iPayment in writing within 45 days after any debit or credit is or should have been effected. If Merchant notifies Bank and/or iPayment after such time period, Bank and/or iPayment may, in their discretion, assist Merchant, at Merchant's expense, in investigating whether any adjustments are appropriate and whether any amounts are due to or from other parties, but Bank and/or iPayment shall not have any obligation to investigate or effect any such adjustments. Any voluntary efforts by Bank and/or iPayment to assist Merchant in investigating such matters shall not create any obligation to continue such investigation or any future investigation.

**23. FORCE MAJEURE.** No party shall be liable for any default or delay in the performance of its obligations under this Merchant Agreement if and to the extent such default or delay is caused, directly or indirectly, by (i) fire, flood, elements of nature or other acts of God; (ii) any outbreak or escalation of hostilities, war, riots or civil disorders in any country; (iii) any act or omission of the other party or any government authority; (iv) any labor disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); or (v) the nonperformance by a third party for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications or other equipment. In any such event, the non-performing party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable.

**24. NOTICES.** Unless otherwise provided herein, any notice, request, instruction or other document required permitted or to be given under this Merchant Agreement shall be in writing and if given by Bank and/or iPayment to Merchant shall be deemed to have been given on the date and at the time the same shall be delivered personally or deposited in the United States mail by first class mail, postage prepaid and addressed to Merchant at the addresses on the execution page of this Merchant Agreement or at such other addresses as Merchant may give to Bank and iPayment from time to time by written notice, and if given by Merchant to Bank and/or iPayment shall be deemed to have been given on the date and at the time the same shall be delivered personally or mailed by certified mail, postage prepaid, return receipt requested (such mailed notice to be effective on the date such receipt is acknowledged or refused) or at such other addresses as Bank and/or iPayment, as applicable, may give to Merchant from time to time by written notice. Notice may also be sent by facsimile or other electronic means of communication but, if such transmitted notice is by Merchant to Bank and/or iPayment, the original of any such communication shall be mailed by first class mail, postage prepaid and addressed to Bank and/or iPayment, as applicable, on the date of the electronic transmission and it shall not be deemed served until the United States Mail copy is received and confirmed by Bank and/or iPayment, as applicable. If Bank and/or iPayment, gives notice by facsimile or other electronic communication to Merchant, service shall be deemed to have been duly given on the day of transmission (with receipt acknowledged).

**25. SEVERABILITY.** If any part of this Merchant Agreement is held unenforceable or invalid or prohibited by law, the part shall be deemed stricken therefrom and this Merchant Agreement shall be read and interpreted as though said part did not exist.

**26. WAIVER:** Neither the failure nor any delay on the part of Bank and/or iPayment to exercise any right, remedy, power or privilege hereunder shall operate as a waiver or give rise to an estoppel nor be construed as an agreement to modify the terms of this Merchant Agreement, nor shall any single or partial exercise of any right, power or privilege with respect to any occurrence to be construed as a waiver of such right, remedy power or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then such waiver shall apply only to the extent specifically stated in such writing.

**27. ASSIGNMENT AND DELEGATION.** Any transfer or assignment of this Merchant Agreement by Merchant, without the prior written consent of both Bank and iPayment, by operation of law or otherwise, is voidable by Bank and/or iPayment. Furthermore, you shall indemnify and hold Bank and iPayment harmless from all liabilities, Chargebacks, expenses, costs, fees and fines arising from such transferee's or assignee's submission of Card transactions to Bank and iPayment for processing. For purposes of this Paragraph 22, any transfer of voting control shall be considered an assignment or transfer hereof. Upon notice to Merchant, another VISA and MasterCard member may be substituted for Bank under whose sponsorship this Merchant Agreement is performed. Upon substitution, such other VISA and MasterCard member shall be responsible for all obligations required of Bank, including without limitation, full responsibility for its bankcard program and such other obligations as may be expressly required by applicable Association Rules. Subject to Association Rules, Bank and iPayment may assign or transfer this Merchant Agreement and their rights and obligations hereunder and/or may delegate their duties hereunder, in whole or in part, to any third party, whether in connection with a change in sponsorship, as set forth in the preceding sentence, or otherwise, without notice to Merchant or Merchant's consent.

**28. GOVERNING LAW AND VENUE.** Bank has substantial facilities in the State of New York and many of the services provided under this Merchant Agreement are provided from these facilities. This Merchant Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to its choice of law provisions). In performing its obligations under this Merchant Agreement, each party agrees to comply with all laws and regulations applicable to it. The exclusive venue for any actions or claims arising under or related to this Merchant Agreement shall be in the appropriate state or federal court located in Nassau County, New York. ALL PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS MERCHANT AGREEMENT.

**29. FINANCIAL AND OTHER INFORMATION.** Upon request, Merchant will provide Bank and/or iPayment quarterly financial statements within forty-five (45) days after the end of each fiscal quarter and annual audited financial statements within ninety (90) days after the end of each fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles. Merchant will also provide such other financial statements and other information concerning Merchant's business and its compliance with the terms and provisions of this Merchant Agreement as Bank and/or iPayment may reasonably request. Merchant authorizes Bank and iPayment to obtain from third parties financial and credit information relating to Merchant in connection with their determination whether to accept this Merchant Agreement and Bank and iPayment's continuing evaluation of the financial and credit status of Merchant. Bank and/or iPayment may also access and use information which Merchant has provided to Bank for any other reason. Upon request, Merchant shall provide to Bank and/or iPayment or their representatives reasonable access to Merchant's facilities and records for the purpose of performing any inspection and/or copying of Merchant's books and/or records deemed appropriate. Merchant will provide Bank and/or iPayment with written notice of any judgment, writ, warrant of attachment, execution or levy against any substantial part (twenty-five percent (25%) or more in value) of Merchant's total assets not later than three (3) days after Merchant becomes aware of same.

**30. AMENDMENTS.** No provision of this Merchant Agreement may be amended, modified or waived except by a writing signed by all the parties. Except as otherwise provided to the contrary elsewhere in this Merchant Agreement, this Merchant Agreement may be amended by Bank and iPayment from time to time upon thirty (30) days written notice of change(s) in terms and conditions. Any amendment to this Merchant Agreement shall be effective on the effective date specified in the notice to Merchant in the manner prescribed for notices herein.

**31. SURVIVAL.** All representations, warranties, covenants and indemnities shall survive the expiration or termination of this Merchant Agreement.

**32. CONSTRUCTION.** The captions contained in this Merchant Agreement are for the convenience of the parties and shall not be construed or interpreted to limit or otherwise define the scope of this Merchant Agreement.

**33. COUNTERPARTS.** This Merchant Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, such counterparts to constitute but one and the same instrument.

**34. ENTIRE AGREEMENT.** This Merchant Agreement (including the Merchant Application portion) signed and submitted by Merchant and the CONTINUING PERSONAL GUARANTY constitute and express the entire understanding between Merchant and Guarantor(s), individually and jointly, on the one hand, and Bank and iPayment on the other hand, with respect to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings, inducements, or conditions by Bank, iPayment, and any other sales representative, whether express or implied, oral or written.

**35. LEGAL FEES AND COSTS.** Merchant agrees to pay the legal fees and costs Bank and/or iPayment incur in seeking legal advice in matters not in the ordinary course of the Services relationship established under this Merchant Agreement, including, without limitation, contract disputes, legal procedures, bankruptcy or similar events, whether the fees or costs are incurred during or after the Term of this Merchant Agreement.