

## PAYMENT GATEWAY ACCOUNT AND MERCHANT ACCOUNT SETUP FORMS

Welcome to Authorize.Net, and thank you for choosing us for your e-Commerce transaction needs. Depending on what you require, you have two options:

### Option A

If you need an Authorize.Net Payment Gateway Account\* and you already have a Merchant Account\*\*, complete and fax the following pages:

- Payment Gateway Account Setup Form (Page 2)
- Authorization for Single Direct Payment (Page 3)
- Appendix A: Merchant Account Configuration Form

### Option B:

If you need both a Merchant Account\*\* and an Authorize.Net Payment Gateway account\*, complete and fax the following pages:

- Payment Gateway Account Setup Form (Page 2)
- Authorization for Single Direct Payment (Page 3)
- Appendix B: Merchant Account Setup Form

\* **An Authorize.Net Payment Gateway Account** is the communication tool that enables you to authorize, settle and manage credit card and electronic check payments.

\*\* **A Merchant Account** is a bank account that is used specifically for the purpose of collecting proceeds from bank account and credit card payment transactions. A Card Not Present (CNP) merchant account is used by merchants who receive payments electronically or in situations where payment is not physically presented to the merchant by the consumer at the time of the transaction. A Card Present (CP) merchant account is used by merchants who receive payments in a physical location, where payment is physically presented to the merchant by the customer at the time of the transaction.

### Questions?

If you need help determining if you already have a Merchant Account or have any other questions:

Call Mallory Livingston at 801-492-6470.

Or visit the "How it Works" diagram at <http://www.authorize.net/resources/howitworksdiagram/>

# PAYMENT GATEWAY ACCOUNT SETUP FORM

**ATTENTION:** Mallory Livingston

Phone Number: 801-492-6470, Fax Number: 801-492-6546, E-mail Address: mlivingston@authorize.net

**Instructions:** Please fax the completed setup form to 801-492-6546.

## STEP 1: COMPANY INFORMATION

**Company Name:** \_\_\_\_\_

**Company Officer / Owner / Principal Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Company Tax ID (Sole Prop. Can use SS#):** \_\_\_\_\_

**Company Address (No P.O. Boxes):** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **ZIP Code:** \_\_\_\_\_

**Company Phone Number:** \_\_\_\_\_ **Company Fax Number:** \_\_\_\_\_

**E-Mail Address (The address that setup information will be sent to):** \_\_\_\_\_

**Business Type (select one):** Corporation Non-Profit Corporation(must send copy of 501c3) LLC Sole Proprietorship LLP

**Market Type(select one):** Card Not Present (CNP)/E-commerce Mail Order/Telephone Order (MOTO) Card Present (CP)/Retail

**Company Web Address (URL) (If you have one):** \_\_\_\_\_

**Detailed Description of Products or Services Sold:**  
\_\_\_\_\_

## STEP 2: PAYMENT AND ACCOUNT INFORMATION

Authorize.Net Payment Gateway Account Fees: **Non-Refundable Setup Fee\*: \$99.00**

**Monthly Gateway Fee\*\*: \$17.95**

**Per-Transaction Fee\*\*: \$0.10**

**\*Non-Refundable Setup Fee:** Company agrees to pay to Authorize.Net a one-time non-refundable fee in the amount written above for the setup of Company's payment gateway account and access to Authorize.Net Services pursuant to the attached Authorization for Single Direct Payment (ACH Debit) form.

**IMPORTANT: You must also complete the "AUTHORIZATION FOR SINGLE DIRECT PAYMENT" form on Page 3.**

**\*\*Monthly Gateway & Per-Transaction Fee.** Authorize.Net shall charge Company a Monthly Gateway Fee and Per-Transaction Fee in the amounts provided above. Billing shall commence upon the creation of the account, such fees will be billed automatically on a monthly basis to the bank account provided on Page 3.

**Authorization.** By signing below, I acknowledge and agree, on behalf of my Company and myself, that I am entering into binding contract with Authorize.Net and will be bound by the following terms and conditions: (i) I have authority to execute this authorization and agreement on behalf of my Company; (ii) I permit Authorize.Net to share any and all information contained in these Authorize.Net Payment Gateway Account & Merchant Account Setup Forms with its service partners for the purpose of establishing a Merchant Account, if applicable; (iii) billing for the Authorize.Net Payment Gateway Account in the amounts set forth above shall commence upon Company's execution below; and (iv) I agree to be bound by the terms and conditions of the Authorize.Net Payment Gateway Merchant Service Agreement ("Authorize.Net Gateway Agreement"), incorporated herein by reference and located at the following Web address:

[http://www.authorizenet.com/files/Authorize.Net\\_Service\\_Agreement.pdf](http://www.authorizenet.com/files/Authorize.Net_Service_Agreement.pdf).

**CompanyName:** \_\_\_\_\_ **Signature:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_ **PrintTitle** \_\_\_\_\_ **Date:** \_\_\_\_\_

## AUTHORIZATION FOR SINGLE DIRECT PAYMENT (ACH DEBIT)

The Company listed below hereby authorizes Authorize.Net, LLC to initiate a debit entry to Company's account at the depository financial institution named below and to debit the same to such account for the amount listed below. Company acknowledges that the origination of ACH transactions to Company's account must comply with the provisions of U.S. law.

### PAYMENT AND ACCOUNT INFORMATION

**Bank Name:** \_\_\_\_\_ **Account Type** (circle one): *Checking* *Savings*

**Branch City:** \_\_\_\_\_ **Branch State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Routing Number (9 digits):** \_\_\_\_\_ **Account Number:** \_\_\_\_\_

**Amount:** The amount of the Non-Refundable Setup Fee set forth on the Payment Gateway Account Setup Form.

**Effective Date:** The date that Authorize.Net receives Company's completed Account Setup Form and Authorization for Single Direct Payment (ACH Debit).

**Note: See the example below if you need help finding your routing or account number.**

This authorization is to remain in full force and effect for this transaction only, or until such time that my indebtedness to Authorize.Net for the amount listed above is fully satisfied.

Print Company Name: \_\_\_\_\_

Print Corporate Employee Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Please fax a voided check (no deposit slips) along with your completed form. This will be used to verify the bank account information provided.**

**A.B.A Routing Numbers Example**

John Q. Public  
123 Main Street  
Your Town, USA 12345-6789

Date \_\_\_\_\_

101

Pay to the order of: \_\_\_\_\_

\_\_\_\_\_ DOLLARS

Memo \_\_\_\_\_

⑆000067894⑆ ⑆23456789⑆ 0101

Routing/Transit Number      Account Number

# FRAUD DETECTION SUITE™ APPLICATION

Please fill out completely and fax back to (801) 492-6546 Attn: Mallory Livingston

Our Fraud Detection Suite (FDS) is a set of customizable, rules-based filters and tools that identify, manage, and prevent suspicious and potentially costly fraudulent transactions. You can customize FDS filters and tools to match your business needs and control how suspicious transactions are handled, including the ability to approve, decline or hold transactions for manual review.

Credit card fraud exposes Web merchants to potentially significant and ongoing costs. Here's how Fraud Detection Suite can help.

- **Reduce Costs** - Minimize and prevent authorization and chargeback fees as well as possible inventory loss resulting from fraudulent transactions.
- **Protect Profits** - Maximize legitimate transactions, rather than refusing business due to a fear of potential fraud.
- **Maximize Flexibility** - Customize filter settings according to your unique business needs.
- **Improve Intelligence** - Restrict transaction activity from specific Internet Protocol (IP) addresses using powerful IP tools.
- **Easy to use** - A setup wizard guides you through the configuration process.

FDS includes multiple filters and tools that work together to evaluate transactions for indicators of fraud. Their combined logic provides a powerful and highly effective defense against fraudulent transactions.

## Fraud Detection Suite Filters:

- **Amount Filter** - Set lower and upper transaction amount thresholds to restrict high-risk transactions often used to test the validity of credit card numbers.
- **Velocity Filter** - Limit the total number of transactions received per hour, preventing high-volume attacks common with fraudulent transactions.
- **Shipping-Billing Mismatch Filter** - Identify high-risk transactions with different shipping and billing addresses, potentially indicating purchases made using a stolen credit card.
- **Transaction IP Velocity Filter** - Isolate suspicious activity from a single source by identifying excessive transactions received from the same IP address.
- **Suspicious Transaction Filter** - Reviews highly suspicious transactions using proprietary criteria identified by Authorize.Net's dedicated Fraud Management Team.
- **Authorized AIM IP Addresses** - Allows merchant submitting Advanced Integration Method (AIM) transactions to designate specific server IP addresses that are authorized to submit transactions.
- **IP Address Blocking** - Block transactions from IP addresses known to be used for fraudulent activity.

**Terms and Conditions; Fees.** FDS is a value-adding service designed for your Authorize.Net Payment Gateway account. Additional fees, terms and conditions apply.

## Fraud Detection Suite (FDS) Pricing

One-Time Setup Fee:	\$0.00
Monthly Service Fee:	\$5.00

**By signing below, I reaffirm my acceptance of the terms and conditions applicable to FDS set forth in Appendix C, Value-Adding Services, of the Authorize.Net Payment Gateway Agreement.**

## MERCHANT:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Business Name: \_\_\_\_\_

# AUTOMATED RECURRING BILLING™ APPLICATION

Please fill out completely and fax back to (801) 492-6546 Attn: Mallory Livingston

Our Automated Recurring Billing (ARB) is an ideal solution if you provide subscription-based products or services, or would like to provide your customers with an installment-based payment option for high ticket purchases.

ARB allows you to create a "subscription" or recurring transaction on the payment gateway. Simply provide the customer's payment information, a payment schedule and the subscription duration, and ARB does the rest for you—generating subsequent transactions automatically.

Highlights of the ARB service include:

- Flexible billing intervals, from weekly to annually and anything in between.
- Create upfront trial periods and pricing.
- Multiple methods for creating ARB subscriptions manually in the Merchant Interface.
  - Enter subscription information into a form (similar to Virtual Terminal).
  - Create a subscription based on a previous transaction.
  - Upload a file of subscription records.
- Ability for Advance Integration Method (AIM) merchants to create and manage subscriptions automatically using the ARB application programming interface (API).
  - Expedites the creation and management of large volume subscriptions.
  - Provides your customers with subscription or installment-based payment options on your Web site payment form.
  - Easily integrates with proprietary solutions, eliminating the need to update or cancel subscriptions manually.

In addition, with ARB, your customers' payment information is safely stored in our highly secure data center, which complies with the Payment Card Industry (PCI) Data Security Standard.

**Terms and Conditions; Fees.** ARB is a value-adding service designed for your Authorize.Net Payment Gateway account. Additional fees, terms and conditions apply.

Automated Recurring Billing (ARB) Pricing	
One-Time Setup Fee:	\$0.00
Monthly Service Fee:	\$10.00

**By signing below, I reaffirm my acceptance of the terms and conditions applicable to ARB set forth in Appendix C, Value-Adding Services, of the Authorize.Net Payment Gateway Agreement.**

**MERCHANT:**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Business Name: \_\_\_\_\_

## APPENDIX A: MERCHANT ACCOUNT CONFIGURATION FORM

**IMPORTANT:** Appendix A must be completed by merchants with active Merchant Accounts. If you DO NOT yet have a Merchant Account, you need to complete Appendix B.

**Company Name:** \_\_\_\_\_

<b>STEP 1: Credit Card Types that your Merchant Account is Currently Configured to Accept</b>	
Accepted Cards (select all that apply): <i>Visa/MasterCard American Express Discover Diner's Club JCB Enroute</i>	

<b>STEP 2: Merchant Account Processor Configuration Information</b>	
<b>Instructions:</b> Please provide the requested information for the processor that is associated with your merchant account. <b>You need only provide information for ONE processor.</b> If you do not know this information, please contact Mallory Livingston at: 801-492-6470.	

<b>Chase Paymentech – Tampa Platform</b>		
Client (4 digits): ____	Merchant # (Gensar #) (12 digits): _____	Terminal # (TID) (3 digits): ____

<b>FDMS Concord EFSNet</b>	
BuyPass / Terminal # (TID) (6 digits): _____	Merchant ID (MID) (2 digits): ____

<b>First Data Merchant Services (FDMS) – Nashville Platform</b>	
Merchant ID (MID) (6-7 digits): _____	Terminal ID (TID) (6-7 digits): _____

<b>First Data Merchant Services (FDMS) – Omaha Platform</b>	
Merchant ID (MID) (15 or 16 digits): _____	

<b>Global Payments – East Platform</b>	
Acquirer Inst. ID (Bank ID) (6 digits): ____	Merchant ID (MID) (Usually 16 digits): _____

<b>Nova</b>	
Bank # / Term BIN (6 digits): _____	Terminal ID (TID) (16 digits): _____

<b>Pay By Touch (formerly CardSystems)</b>	
Acquirer BIN (6 digits): _____	Terminal ID (TID) (10 digits): _____

<b>RBS Lynk (formerly LynkSystems)</b>		
Acquirer BIN (6 digits): _____	Store # (4 digits): _____	Terminal # (TID) (4 digits): _____
Merchant # (12 digits): _____		Merchant Category Code (4 digits): ____
Market Type (select one): <i>E-Commerce MOTO Retail</i>		

<b>TSYS Acquiring Solutions (formerly Vital)</b>		
Acquirer BIN (6 digits): _____	Agent Bank # (6 digits): _____	
Agent Chain # (6 digits): _____	Category Code (4 digits): _____	Terminal # (TID) (4 digits): _____
Store # (4 digits): _____	Merchant # (12 digits): _____	

## APPENDIX B: MERCHANT ACCOUNT APPLICATION

**IMPORTANT:** Appendix B must be completed by merchants in need of a Merchant Account. If you already have a Merchant Account, you do not need to complete Appendix B.

**STEP 1: MERCHANT ACCOUNT APPLICATION**

**Important Instructions:** Fax the completed application to Mallory Livingston at 801-492-6546.

Authorize.Net has relationships with leading companies in the payment processing industry, including our parent company CyberSource Corporation, to assist you in obtaining an Internet/Card Not Present Merchant Account.

Upon submission of your application, we will review the information provided and match your application to the Merchant Account provider best suited to serve your particular business.

**Please note that this is an application. There may be additional signatures and/or information requested by the account provider “underwriting” your Merchant Account application.**

Authorize.Net will contact you with your Login ID and password for your payment gateway account. Once your Merchant Account is approved, Authorize.Net will also work with the Underwriting Department of the Merchant Account provider to obtain the information needed to allow your Authorize.Net account to process “Live” transactions.

**STEP 2: COMPANY OFFICER / OWNER / PRINCIPAL INFORMATION – All fields required regardless of corporate structure of business.**

**Company Name:** \_\_\_\_\_

**Public company (Y/N):** \_\_\_\_\_. If “Yes”, **Ticker Symbol:** \_\_\_\_\_.

**Company Officer / Owner / Principal Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_ **Date of Birth:** \_\_\_\_\_

**Home Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **ZIP Code:** \_\_\_\_\_

**Home Phone Number:** \_\_\_\_\_ **Mobile Number:** \_\_\_\_\_

**SS Number:** \_\_\_\_\_

**Driver’s License Number:** \_\_\_\_\_ **Driver’s License State:** \_\_\_\_\_

**Owner Since:** \_\_\_\_\_

**What is your ownership percentage?** \_\_\_\_\_ (50% ownership is required.)

**If your ownership does not represent at least 50%, please list additional owners below.**

<i>Name</i>	<i>% Owner ship</i>	<i>Owner Since</i>	<i>Residence Address</i>	<i>City</i>	<i>State</i>	<i>Zip</i>	<i>SS Number</i>

**STEP 3: COMPANY INFORMATION**

How long has your company been in business? Years: \_\_\_\_\_ Months: \_\_\_\_\_

Number of years in current location: \_\_\_\_\_

Is the business home based? Yes No

Do you sell services? Yes No

If you sell services, what is your billing frequency?

One time before delivery One time after delivery Monthly Recurring Quarterly Recurring Semi Annually Other

URL (Web site address) or eBay Seller ID: \_\_\_\_\_

Are your customers required to pay a deposit when ordering? Yes No

Do you currently accept credit cards? Yes No

If yes, Name of Processor: \_\_\_\_\_

If you do not now, have you ever accepted credit cards? Yes No

If yes, Name of Processor: \_\_\_\_\_

Reason for Cancellation: \_\_\_\_\_

Would you like to apply to accept:

American Express? Yes No

Discover? Yes No

If you currently accept American Express, what is your 10 digit account number? \_\_\_\_\_

If you currently accept Discover, what is your 15 digit account number? \_\_\_\_\_

What is your typical time frame until product/service is delivered? \_\_\_\_\_

What is your refund/exchange/cancellation policy? (select one): All Sales Final Exchange Only Other

Is your refund policy on your Web site? Yes No

Number of days that you will issue a full refund? \_\_\_\_\_

What is your warranty policy? (select one): In-House Manufacturer Only Don't Have One

Number of days that the product or service is under full warranty? \_\_\_\_\_

What is your Customer Support phone number? \_\_\_\_\_

Are you certified for PCI compliance? Yes No

For more information on PCI compliance, please visit: <https://www.pcisecuritystandards.org/tech>

**The following three questions are required to "underwrite" your Merchant Account:**

1. The average dollar amount you expect to process per transaction: \_\_\_\_\_

2. The maximum dollar amount you expect to process per transaction: \_\_\_\_\_

3. The maximum dollar amount per month you expect to process\*: \_\_\_\_\_

\* Estimate the realistic maximum total dollar amount your company will process with us in a given month, based on your monthly sales projections for the first/next six months. Please do not give us the total of your six months' projected sales.

Please include any additional comments you may have about your company, such as shipping, fulfillment, return or warranty policies that may help the bank underwrite your merchant account. If your Web site is not complete, please provide a completion time estimate.

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**Your Signature below is required to process your application.**

**STEP 4. AUTHORIZATION & PERSONAL GUARANTY – Owner’s Signature Required**

The individual (“Applicant”) signing this application certifies, acknowledges and agrees that:

- I. Applicant is an authorized principal, partner, officer, or other authorized representative of Company that is authorized to bind Company to contractual obligations, and is authorized to provide the information contained in this Application;
- II. All information and documentation submitted in connection with this application is complete and correct in all material respects;
- III. Authorize.Net and CyberSource may share information contained in the Authorize.Net Payment Gateway Account & Merchant Account Setup Forms with its service partners and affiliates for the purpose of establishing a Merchant Account and to use such information as reasonably necessary during the course of providing the services contemplated hereunder;
- IV. Authorize.Net, CyberSource, their affiliates and partners, may obtain consumer reports, credit checks and/or other personal or credit information about Applicant and its principals, partners, and officers to verify the information contained in this Application and Applicant’s personal information will be retained in a fraud detection database;
- V. This application for Merchant Account services is subject to the approval of a Merchant Account provider. If this application is submitted to and approved by CyberSource Corporation, Applicant agrees to be bound by the terms and conditions of the CyberSource Merchant Service Agreement and any attachments thereto, including the Fee Schedule (collectively the “CyberSource Agreement”), attached hereto and incorporated herein by reference. If CyberSource does not approve your application, you will not be bound the CyberSource Agreement and Authorize.Net may send your application to another partner. In such event and if your application is approved, you will be provided with another Merchant Account agreement and fee schedule which you must agree to obtain a merchant account; and
- VI. Applicant has read, and agrees to all of the terms and conditions of the Guaranty for Merchant Account Services (“Guaranty”), attached and incorporated herein by reference. Applicant authorizes Authorize.Net, CyberSource and their partners and affiliates to obtain and verify, and to continue to obtain and verify, any information regarding Applicant that is reasonably related to Applicant’s obligations hereunder and the Guaranty, including, without limitation, financial credit reports. In any event, submission of card transactions by Company to Harris, N.A. (Bank) for processing constitutes agreement by Applicant to the terms and conditions of the Guaranty. If CyberSource does not approve your application, you will not be bound the CyberSource Guaranty.

YOU AGREE AND ACKNOWLEDGE THAT CYBERSOURCE, AUTHORIZE.NET, ITS AFFILIATES AND PARTNERS RESERVE THE RIGHT IN THEIR SOLE DISCRETION TO REJECT YOUR APPLICATION FOR THE SERVICES WITHOUT ANY FURTHER OBLIGATION TO YOU.

Company Name: \_\_\_\_\_

Owner’s Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

## CyberSource Merchant Services Agreement

This CyberSource Merchant Services Agreement (the "Agreement") is entered into by and between CyberSource Corporation, a Delaware corporation with its principal office at 1295 Charleston Road, Mountain View, California 94043 ("CyberSource"), the undersigned Merchant indicated on the CyberSource Merchant Account Application ("Merchant"), and Harris N.A. ("Bank"). Bank and CyberSource may hereinafter be referred to individually as a "Servicer" or collectively as "Servicers."

## ARTICLE I: DEFINITIONS AND INTERPRETATION

**SECTION 1.1 DEFINED TERMS.** Unless the context requires otherwise, capitalized terms in this Agreement shall have the following meanings.

- a. "Card" shall mean any valid credit card or debit card issued by a member of Visa, MasterCard, or any other association or card issuing organization and bearing its respective trade names, trademarks, and/or trade symbols, that Merchant is approved to accept under this Agreement as payment for the sale of its products and services.
- b. "Card Association" shall mean Visa, MasterCard, or any other card associations or the issuer of any other card of any association or network.
- c. "Card Not Present" or "CNP" transactions shall mean any instance where a Card transaction is initiated by a Cardholder where a physical Card is not presented to the Merchant, as in the case of mail orders ("MO"), telephone orders ("TO"), orders via the Internet ("IO"), pre-authorized orders ("PO").
- d. "Card Present Transaction" shall mean any instance where a Card transaction is initiated by a Cardholder by presenting a physical Card to the Merchant.
- e. "Cardholder" shall mean the individual whose name is embossed on a valid Card and any authorized user of such Card.
- f. "Cardholder Data" shall mean any and all information related to a Cardholder that is obtained by Merchant during the course of effecting a Card transaction, which information includes, without limitation, Cardholder names, addresses, and telephone numbers, Card account numbers, wherever such information may be located or stored, such as copies of imprinted Sales Records and Credit Records, mailing lists, or tapes or other media obtained in connection with a Sales Record or Credit Record.
- g. "Chargeback" shall mean the procedure by which a Sales Record is returned to Bank after such Sales Record was settled in accordance with the Rules, which return is based on a failure to comply with the Rules or a dispute initiated by the cardholder.
- h. "Confidential Information" shall mean any data or information, oral or written, treated as confidential that relates to either party's (or, if either party is bound to protect the confidentiality of any third party's information, such third party's) past, present, or future research, development or business activities, including any unannounced products and services, any information relating to services, developments, inventions, processes, plans, financial information, revenue, transaction volume, forecasts, projections, and the financial terms of this Agreement. Notwithstanding the foregoing, Confidential Information shall not be deemed to include information if: (i) it was already known to the receiving party prior to the Effective Date of this Agreement, as established by documentary evidence; (ii) it is in or has entered the public domain through no breach of this Agreement or other wrongful act of the receiving party; (iii) it has been rightfully received by the receiving party from a third party and without breach of any obligation of confidentiality of such third party to the owner of the Confidential Information; (iv) it has been approved for release by written authorization of the owner of the Confidential Information; or, (v) it has been independently developed by a party without access to or use of the Confidential Information of the other party.
- i. "Credit Record" shall mean all documents, whether in hard copy or electronic form, used to evidence any refund or price adjustment given by Merchant to a Cardholder for a previous sales transaction, which must conform to the Rules. The format for each Credit Record must be approved by Servicers.
- j. "Debit Card" shall mean a Visa or MasterCard card that accesses a Cardholder's asset account within fourteen (14) days after purchase, including, but not limited to, stored value, prepaid, payroll, EBT, gift, and Visa consumer check cards.
- k. "Discount Fee" shall mean an amount charged to Merchant for processing its daily Card transactions, which fee is computed as a percentage of the gross amount of Merchant's Sales Records (and Credit Records if applicable).
- l. "Documentation" shall mean, collectively, the operating instructions, user manuals, help files, and other information and material, including, without limitation, the "CyberSource Merchant Account Instruction Manual," in written or electronic form made available to Merchant by CyberSource and that are intended for use in connection with the Merchant Services, as may be amended by CyberSource from time to time.
- m. "Interchange Fee" shall mean the fee which is paid daily by Bank to the Card Associations for entering Sales Records and Credit Records into their respective settlement networks.

- n. "Issuing Bank" shall mean the financial institution that issued the Card to a Cardholder.
- o. "MasterCard" shall mean MasterCard International, Inc.
- p. "Member" shall mean an acquiring member of Visa and MasterCard.
- q. "Merchant Account Application" shall mean the application completed by Merchant for the purpose of seeking approval by CyberSource and Bank to use the Merchant Services hereunder. The Merchant Account Application is a part of this Agreement and is incorporated into this Agreement by reference.
- r. "Merchant Account Number" shall mean the unique numerical identifier assigned and issued by Servicers to Merchant if, and only if, Merchant is approved and this Agreement is accepted by Servicers, and which number is used to identify Merchant to Processor, Bank, and CyberSource for accounting, billing, customer service, and other related purposes in connection with the Merchant Services.
- s. "Merchant Services" shall mean the collective activities undertaken by Bank, Processor, and CyberSource (including by or through authorized third party service providers) to process and settle U.S. denominated Visa and MasterCard Card transactions initiated by Cardholders at Merchant's location in the United States and all other activities necessary for Processor, Bank, and CyberSource to perform functions required by this Agreement for all other Cards, if any, that may be covered by this Agreement, but not including gateway services that may be provided by CyberSource pursuant to a separate agreement between CyberSource and Merchant that governs the use of gateway services.
- t. "Processor" shall mean any entity contractually obligated to CyberSource to provide electronic data capture and other services on behalf of CyberSource and Bank in connection with the Merchant Services provided under this Agreement.
- u. "Reserve Account" shall have the meaning set forth in Section 4.1 below.
- v. "Rules" shall mean 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 Card Association as the same may be amended from time to time.
- w. "Sales Record" shall mean all documents, whether in hard copy or electronic form, used to evidence the sale of Merchant's goods and/or services through the use of Cards. The format for each Sales Record must be approved by Servicers.
- x. "Settlement Account" shall mean a demand deposit account established at a financial institution capable of receiving credits and debits from the Automated Clearing House ("ACH") systems operated by the U.S. Federal Reserve Bank for the limited purpose of debiting or crediting Merchant for Card transactions under this Agreement.
- y. "Visa" shall mean Visa, U.S.A., Inc.

**SECTION 1.2 ELECTRONIC AGREEMENT:** This Section 1.2 shall apply in the event Merchant executes this Agreement online on CyberSource's website and clicks the "Submit," "Accept," or equivalent indicator.

- a. Each party hereby agrees that this Agreement shall be effected by electronic means and understands that all electronic documents related hereto are legally binding in the same manner as are written documents when the information contained therein is sent or delivered in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not "capable of retention by the recipient" if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record. This Agreement shall be governed by the provisions of the California Uniform Electronic Transaction Act.
- b. Merchant understands that a contract may be executed by the interaction of an individual, acting on his or her own behalf or for another person, with an electronic agent (such as this website and the computer program or programs operating in conjunction with it), so long as the individual knows or has reason to know his or her actions will cause the electronic agent to complete the transaction or performance. In the event, however, that Merchant has unintentionally submitted an online application because of an error made by Merchant in dealing with this website, and Merchant promptly notifies CyberSource of such error and informs CyberSource that Merchant does not intend to be bound hereby, CyberSource agrees that the online application erroneously submitted will be deemed null and void provided that Merchant has not used any Merchant Services hereunder. It is understood and agreed that any use by Merchant of any Merchant Services hereunder shall bind Merchant to this Agreement, whether or not Merchant claims the online application was submitted in error. If any

provision of this paragraph should be held to conflict with California Civil Code §1633.10, the provisions of §1633.10 shall control.

### SECTION 1.3 INTERPRETATION

References to Articles, Sections and Exhibits are to be construed as references to the Articles or Sections of, and Exhibits to, this Agreement, unless otherwise indicated, and terms such as "hereof," "herein," "hereunder" and other similar compounds of the word "here" shall mean and refer to this entire Agreement rather than any particular part of the same.

## ARTICLE II: MERCHANT OBLIGATIONS

### SECTION 2.1 HONORING CARDS

a. With respect to acceptance of Card transactions, Merchant agrees to follow the procedures set forth in this Agreement, the Rules, and applicable laws. Without limiting the foregoing, merchant: (i) shall honor without discrimination all valid Cards when properly presented as payment by a bona fide Cardholder for a bona fide transaction; (ii) shall not establish procedures that discourage, favor, or discriminate against the use of any particular Card; (iii) shall not require the Cardholder to pay a surcharge as a condition for tendering payment using a Card (provided that this shall not be construed to prevent Merchant from offering discounts from the standard price to induce a person to pay by cash, check, or some other form of payment not involving a Card); (iv) shall include any applicable sales tax in the total transaction amount and shall not collect such sales tax separately in cash nor process such sales tax as an additional transaction; (v) shall not establish any minimum or maximum transaction amounts as a condition for accepting Cards; and, (vi) except as otherwise permitted under the Rules or applicable laws or as instructed to do so by the entity authorizing the Card transaction, shall not require a Cardholder to provide personal information, such as a home or business telephone number, home or business address, or driver's license, as a condition of honoring Cards.

b. In the event that Merchant does not deal with the public at large, as in the instance of a private club, Merchant will be deemed to have complied with subpart 2.1a(i) above if it does not discriminate in honoring Cards of Cardholders that have purchasing privileges with Merchant.

c. The restriction in subpart 2.1a(vi) above shall not be construed to prevent Merchant from obtaining personal information to the extent obtaining such information is incidental to the order acceptance process that is applicable regardless of the form of payment used, as in the case of telephone orders, online orders, orders requiring delivery, or as necessary for the purpose of utilizing "AVS".

### SECTION 2.2 VERIFICATION

a. Generally, in accepting any Card, Merchant shall exercise due diligence to verify that the Card presented is valid and that the individual presenting the Card is the authorized Cardholder or otherwise authorized to use the Card.

b. CNP transactions. Merchant acknowledges and understands that CNP transactions are difficult to defend against Chargebacks and will exercise appropriate precautions to minimize Chargebacks. Such precautions may include, without limitation, the following: (i) using one or more industry-standard fraud screening systems; (ii) delivering merchandise only to the Cardholder's billing address on record with the Issuing Bank; (iii) using a delivery service that maintains logs of deliveries and that requires signatures for acceptance of deliveries; (iv) only accepting orders with a full AVS match; (v) obtaining CVV2 or similar verification from the Issuing Bank; (vi) obtaining the expiration date; and, (vii) not permitting a change of delivery addresses after the order has been placed and the Card transaction authorized.

c. Card Present Transactions. For Card Present transactions, at the point of sale Merchant must: (i) carefully examine security features such as the hologram; (ii) verify the signature in the signature panel against the signature on the Sales Record; (iii) check the date on which the Card becomes valid and the date on which the Card expires; and, (iv) verify that the Card number read from the magnetic stripe is identical to the number embossed on the Card. Merchant agrees that it shall not honor any Card that is not yet valid or that has expired and must verify that such Card is not stolen, fraudulent, or counterfeit.

d. Blank Signature Panels. For Card Present Transactions when a signature panel for a Visa Card is blank, in addition to requesting a Card authorization, Merchant shall: (i) review official government issued identification document bearing the Cardholder's signature (such as a valid passport or valid driver's license); (ii) indicate the positive identification, including any serial number and expiration date, on the Sales Record; and, (iii) require the Cardholder to sign the signature panel prior to completing the transaction. When a signature panel for a MasterCard Card is blank, Merchant shall request two forms of valid identification (e.g., a driver's license and another bank card) and require the Cardholder to sign the signature panel of the MasterCard Card in Merchant's presence. In the event the Cardholder refuses to sign the MasterCard Card, Merchant shall not accept such Card for the transaction. For the purposes of

this paragraph, a signature panel bearing the phrase "See I.D." or "Check I.D.", or other similar designation, shall be considered a blank signature panel.

e. Suspicious Transactions. With respect to either Visa or MasterCard Cards, if identification is uncertain or if Merchant otherwise questions or has other suspicions regarding the validity of a presented Card, Merchant shall contact the Bank's designated authorization center for instructions. If Merchant is directed by the authorization center to retain the Card, or if Merchant has reasonable grounds, information or reason to believe that the present Card is lost, stolen, fraudulent or counterfeit, Merchant shall exercise best efforts to retain the Card by peaceful means and to notify the appropriate authorities of the facts known to Merchant related thereto. Merchant agrees not to commit any breach of the peace or to cause any injury to persons and/or property in its efforts to retain any such Card. Merchant further acknowledges and understands that nothing in this paragraph 2.2.e or elsewhere in this Agreement shall be construed to create a duty of physical confrontation or risk of harm in order to retain a Card.

### SECTION 2.3 TRANSACTION REQUIREMENTS

a. Generally. Each Card transaction, regardless of type, must be evidenced by a Sales Record or Credit Record drawn by Merchant or the Cardholder in favor of the Issuing Bank, the forms of which shall be subject to approval by Servicers. Except as otherwise expressly set forth in this Agreement, for all Card transactions, Merchant shall: (i) use a point of sale ("POS") terminal or device approved by Servicers that is properly installed and programmed to transmit all Card transaction data hereunder; (ii) obtain a physical imprint containing all data embossed on the Card and the Merchant's imprinter plate, provided that in the event Merchant uses a POS device that generates a printout containing all required data and captures the Card information by swiping the magnetic stripe of the Card through the POS device, or in the event of CNP transactions, Merchant shall not be required to obtain a physical imprint; (iii) obtain an authorization pursuant to Section 2.5 below; and, (iv) record in each Sales Record the entire purchase amount of all items, goods, and services purchased, including applicable sales tax and other charges, for the Card transaction, the date of the sale, the Card number truncated to show no more than the last four digits, the expiration date, the Cardholder's name, the authorization number, Merchant's unique name, the Merchant I.D. issued by Servicers to Merchant, and a brief description of the goods or services purchased.

b. Card Not Present Transactions.

i. Merchant acknowledges and understands that CNP transactions involve greater risks of Cardholder disputes and Chargebacks. To accept such CNP transactions, Merchant agrees to comply with the requirements set forth in this Section 2.3, in addition to the requirements set forth elsewhere in this Agreement, the Rules, and Documentation. Merchant acknowledges and agrees that any failure to comply with the requirements set forth in this Section 2.3: (a) may result in a Card transaction being downgraded to a non-qualified transaction, (b) shall constitute a waiver by Merchant of any right to dispute Chargebacks resulting from such failure to comply; and, (c) may subject Merchant to penalties by Card Associations.

ii. With respect to each CNP transaction, Merchant: (a) shall obtain the expiration date of the Card and forward the expiration date of the Card as part of the authorization request; (b) shall obtain a Card authorization; (c) assumes all responsibility for identification of the Cardholder and validity of the Card information; (d) shall not present a Sales Record for payment until the goods are shipped or the services rendered; (e) assumes responsibility for Chargebacks if the Cardholder refuses to pay for any reason; (f) shall perform an Address Verification Service ("AVS") inquiry and provide the AVS indicator and the order number in the Sales Record. Merchant understands and agrees that performing an AVS on a Card transaction does not relieve its obligations to verify the identity of the Cardholder. In addition to the foregoing, Merchant shall ensure that Sales Records are completed and marked "MO", "IO", "TO" or "PO", as applicable, whether such indicator is performed by Merchant itself or by a gateway services provider on behalf of merchant; provided, however, that, as between Servicers and Merchant, Merchant shall bear full responsibility for compliance with the foregoing requirements. In the event of any CNP transaction where a written Sales Record will be generated, the appropriate indicator shall be marked on the signature line of the Sales Record.

iii. Electronic Commerce (Internet) Transactions. With respect to electronic commerce transactions and the website through which Merchant conducts such Card transactions, Merchant shall: (i) conspicuously post its privacy policy which includes, without limitation, Merchant's practices with respect to the treatment of Cardholder information; (ii) conspicuously post its security policy which includes, without limitation, a description of the processes Merchant has implemented to prevent unauthorized access to Cardholder information; (iii) conspicuously post its policy regarding returns, exchanges, and refunds; (iv) shall conspicuously post its policy regarding delivery; (v) disclose any applicable export or other

legal restrictions; (vi) include a mechanism for the Cardholder to affirmatively accept the terms of the foregoing policies and disclosures; (vii) include a complete description of goods and services offered; (viii) provide customer service contact information including, without limitation, telephone numbers and/or e-mail address; and, (ix) disclose that all transactions will be conducted in U.S. dollars. Furthermore, Merchant shall include the electronic commerce indicator ("ECI") in the Card authorization request and settlement request.

iv. Recurring Transactions and Pre-authorized Orders. If Merchant agrees to accept a Recurring Transaction from a Cardholder for the purchase of goods or services which are to be delivered or performed periodically, the Cardholder shall complete and deliver to Merchant a written request, whether in hard copy or electronic form, for such goods or services to be charged to the Card periodically. Each of the following provisions shall apply to all Recurring Transactions: (a) the Cardholder's written authorization, whether in hard copy or electronic form, must be retained for the duration of the recurring charges and provided promptly in response to a Cardholder's or any Servicer's request for a copy; (b) Merchant must not complete an initial or subsequent Recurring Transaction after receiving a cancellation notice from the Cardholder, Servicers, or any Member; (c) in the case of a Card transaction evidenced by a physical written Sales Record, Merchant shall type or print legibly, on the signature line of the Sales Records for Recurring Transactions, the words "Recurring Transaction" for Visa Cards and "PO" for MasterCard cards; (d) in the case of a Card transaction evidenced by an electronic Sales Record, Merchant shall ensure that such Sales Record contains the appropriate indicator; (e) the Cardholder's written authorization must include the amount of the transaction, frequency of charge, and the duration of time for which Cardholder's permission is granted; (f) if the Cardholder elects to renew a Recurring Transaction, the Cardholder must complete and deliver to Merchant a new written Recurring Transaction request; (g) Merchant must perform an AVS inquiry for at least the first transaction and then annually thereafter, if applicable; (h) Merchant must provide both an order number and the appropriate "Recurring Transaction" indicator ("PO" for MasterCard transactions) with the authorization record and settlement records; (i) Merchant must obtain a valid authorization if a previous authorization attempt was declined. Regardless of the terms and conditions of any written preauthorization agreement between Merchant and Cardholder, the Sales Record amount of any lodging or vehicle rental transaction that has been preauthorized shall include only that portion of the transaction amount, including any applicable taxes, evidencing a bona fide rental of real or personal property by Merchant to Cardholder, and shall not include any consequential charges. If Merchant violates this provision, it does so at its own risk and waives any right to dispute Chargebacks arising therefrom. Nothing herein is intended to restrict Merchant from legally enforcing the terms and conditions of its preauthorization and/or recurring billing agreement through means other than a Card transaction.

c. Card Present Transactions. If the Card is present at the time of the transaction, Merchant shall deliver to the Cardholder a true and completed copy of the Sales Record or Credit Record, as the case may be. Merchant shall not complete any Card transaction unless the Card is presented to the Merchant. Merchant shall: (i) record each Card transaction by swiping the card through the correctly programmed POS device; (ii) manually enter the Card number and expiration date in the event the Card's magnetic stripe cannot be electronically read by the POS device; (iii) require the Cardholder to sign the Sales Record in Merchant's presence; (iv) not alter any information on the Sales Records at anytime after the transaction has been completed and signed with the understanding that any stray marks or alterations may make the Sales Record illegible therefore resulting in a Chargeback to Merchant; and, (v) in the event of a malfunction or other unavailability of the POS device, (a) contact customer service for assistance, (b) manually imprint each Sales Record with all data embossed on the Card and Merchant's imprinter plate, (c) call the authorization center for a voice authorization, (d) obtain Cardholder's signature on the Sales Record, and (e) manually enter the Card transaction data into the POS device as soon as the POS device becomes operational.

d. Multiple Sales Records and Partial Payments. Merchant shall include all items of goods and services purchased in a single transaction in one total amount on a single Sales Record, except in the case of purchases in separate departments of a multiple department store, or in a partial payment, delayed delivery or advanced deposit as described below. Merchant may only effect a transaction with only a portion of the amount due included on a single Sales Draft: (i) when the balance of the amount due is paid by the Cardholder at the time of sale in cash or by check or both; or, (ii) when the Cardholder executes two separate Sales Records in a delayed delivery sale, where a deposit is made by completion of one Sales Record and payment of the balance is tendered by completion of a second Sales Record conditioned upon delivery of goods or services. Separate authorizations are required for both Sales Records and Merchant shall note on each Sales Record the word

"deposit" or "balance," as applicable. A Sales Record labeled "balance" shall not be presented until the goods or services are delivered.

#### **SECTION 2.4 RESTRICTIONS**

a. With respect to any Card transaction, Merchant shall not honor any Card: (i) that is not yet effective or that has expired; or, (ii) that is listed in the latest "Electronic Combined Warning Bulletin," a list of MasterCard and Visa account numbers for Cards that have been lost, stolen, fraudulently used, or are otherwise invalid.

b. In addition to any other requirements or restrictions set forth in this Agreement and the Rules, Merchant shall NOT: (i) present Sales Records or Credit Records that Merchant knows, or reasonably should know, to be fraudulent or otherwise not authorized by the Cardholder; (ii) divide a single Card transaction into two or more Sales Records; (iii) attempt multiple authorizations on a single Card for the same Card transaction; (iv) submit to Servicers any Sales Records or Credit Records for Cards issued to Merchant, its principals, or guarantors; (v) utilize the credit available on any Card to provide cash advances to Cardholders; (vi) use POS devices located at one Merchant location to submit Card transactions for another Merchant location; (vii) process Card transactions of other entities, person, or merchants; or, (viii) force authorizations by reducing the sale amount until an approved amount is determined.

c. Any violation of the restrictions set forth in this Section 2.4 will be grounds for immediate termination of this Agreement and all funds of Merchant, including any funds in other Merchant/Guarantor accounts, may be garnered by Servicers and placed on hold.

#### **SECTION 2.5 AUTHORIZATION**

a. Merchant shall obtain an authorization from Bank's designated authorization center for each Card transaction prior to completion, which authorization shall apply only to the Card transaction for which such authorization was obtained. Merchant acknowledges and agrees that failure to obtain a Card authorization with respect to a Card transaction may result in Chargebacks to Merchant. A Card transaction involving an expired Card shall be invalid whether or not an authorization was obtained for such Card. In the event a Card transaction is declined by the authorization center, Merchant shall not attempt to obtain another authorization on the same Card transaction on the same business day.

b. Merchant acknowledges and agrees that an authorization only confirms the availability of Cardholder's credit at the time of authorization. In no event will an authorization be deemed to validate the identity of the presenter of the Card as the authorized Cardholder, nor will any authorization constitute an unconditional promise, guarantee, or other representation by Bank, CyberSource, Processor, or authorization center that the Card transaction is valid and not subject to dispute or Chargeback.

#### **SECTION 2.6 CREDIT RECORDS**

Merchant understands that every Credit Record issued may be subject on a daily basis to a transaction fee and discount fee and there will be no refund of any fees or charges associated with the original Sales Record. Merchant shall submit all Credit Records to Servicers within one (1) calendar day of the date the credit was issued to the Cardholder by Merchant. Merchant shall sign, whether physically or electronically, and date each Credit Record and include therein a brief description of the goods returned, services terminated or canceled or refunded, or adjustment made, together with the amount of credit in sufficient detail to identify the transaction. Merchant shall imprint or legibly reproduce on each Credit Record, the embossed data from the Card. Merchant shall deliver to the Cardholder a true and completed copy of the Credit Record. No Credit Record amount shall exceed the amount of the originating Sales Record. If Merchant maintains a policy of permitting refunds, exchanges, returns or adjustments for cash customers, Merchant shall maintain the same policy for persons making purchases using a Card. Merchant may restrict its refund or return policy as to any Card transaction, provided that Merchant discloses its policy at the time of the transaction by printing an appropriate notice (such as "No Refunds or Exchanges") on all copies of the Sales Records in close proximity to the space provided for the Cardholder's signature, or, in the case of Internet Order, a hyperlink to Merchant's refund/exchange/return policy, which link shall be conspicuously displayed on the order page in close proximity to where the Cardholder submits an order. Merchant understands that regardless of proper disclosure of refund policy restrictions, such restrictions may be unenforceable if Cardholder initiates a dispute under applicable Federal, State or local laws. If Merchant accepts any goods for return, or any services are terminated or canceled, or Merchant allows any price adjustment on a sale that was originally consummated using a Card, then Merchant must effect such refund using a Credit Record with the same Card account used on the original Sales Record. Merchant may not issue a credit to a Card for a transaction that was paid by cash or check. In conjunction with each Credit Record submitted to Servicers, Merchant shall have sufficient funds available in Merchant's Settlement Account or sufficient Sales Records in the same batch, to cover the total amount of Credit Records plus any related fees. Merchant understands that a batch consisting solely of Credit Records,

or a batch where the total amount of Credit Records exceeds the total amount of Sales Records, will result in a debit to its Settlement Account.

#### **SECTION 2.7 SETTLEMENT ACCOUNT**

a. Merchant shall designate and maintain a Settlement Account with a balance of available funds sufficient to accommodate Merchant's obligations under this Agreement, which Settlement Account shall be maintained with Bank or at an institution acceptable to Bank. Processor and Bank will debit the Settlement Account daily for the Discount Fees. Merchant agrees to work with Processor, Bank, and CyberSource to help resolve any problems in crediting/debiting the Settlement Account. Merchant agrees to be bound by the terms of the operating rules of the National Automated Clearing House Association, as may be amended from time to time. Merchant hereby authorizes Processor, Bank, and CyberSource to access information from the Settlement Account and to initiate credit and/or debit entries and adjustments to the Settlement Account, by bank wire or ACH transfer and/or through direct instructions to the financial institution where the Settlement Account is held, for amounts due under this Agreement as well as for any credit entries in error. Merchant hereby authorizes the financial institution where the Settlement Account is maintained to effect all such debits and credits to the Settlement Account. This authorization is without respect to the source of any funds in the Settlement Account, is irrevocable, and is coupled with a security interest, and shall remain in full force and effect until either Bank or CyberSource has given written notice to the financial institution where the Settlement Account is maintained that all monies due under this Agreement have been fully satisfied. All settlements for Visa and MasterCard Card transactions shall be net of credits/refunds. Applicable Discount Fees., Transaction fees, Chargebacks, or any other amounts due from Merchant will be debited automatically by ACH from Merchant's Settlement Account when due. All credits to the Settlement Account or other payments to Merchant are provisional and are subject to, among other things, final audit by Bank and/or CyberSource, Chargebacks, fees, assessments, and fines imposed by the Card Associations. Merchant agrees that Bank and/or CyberSource may debit or credit the Settlement Account for any deficiencies, overages, fees, fines, charges, and pending Chargebacks, or may deduct such amounts from settlement funds due to Merchant. Alternatively, Servicers may elect to invoice Merchant for any such amounts, which amounts shall be payable within thirty (30) calendar days of the date of such invoice or on such earlier date as may be specified by Servicers.

b. Merchant acknowledges and understands that, due to the nature of 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 may be delayed. Neither Servicers nor Processor will be liable for any delays in transfer of settlement funds or errors in debit and credit entries caused by third parties, by Processor, Bank, and/or CyberSource, including, without limitation, to any Association or Merchant's financial institution. Servicers reserve the right to divert and hold all funds when Servicers are investigating any breach of warranty, covenant, representation, or agreement by Merchant or has reasonable cause to believe that Merchant may have violated a provision of this Agreement or the Rules or is engaged in illegal or fraudulent activity. While transfer of settlement funds is normally conducted by ACH, Bank may be required to effect the transfers by bank wire transfer for reasons beyond the control of Servicers, in which event Merchant will be assessed a wire transfer fee for each such transfer.

#### **SECTION 2.8 DEPOSIT OF SALES AND CREDIT RECORDS**

a. Except as otherwise agreed to in writing by CyberSource, Merchant shall present each Sales Record to Servicers within one (1) business day after the date of the transaction to which such Sales Record applies, except that Merchant shall not present a Sales Record until the goods have been shipped or the services have been performed and Merchant has otherwise performed all of its principal obligations to the Cardholder in connection with the transaction. Merchant may not present directly or indirectly any Sales Record that was not originated as a result of an act between the Cardholder and Merchant. Upon delivery to Servicers of a Sales Record and subject to the provisions of any warranties of Merchant hereunder and of any chargeback provisions, Servicers will give Merchant provisional credit for the face amount of such Sales Records. Such credit may be given by credit to Merchant's Settlement Account. Applicable fees, based on the rates specified in Article III, and any applicable additional fees provided for in this Agreement may be imposed on the daily total of Sales Records and Credit Records presented by Merchant to Servicers.

b. If Servicers reasonably believe that a chargeback or credit is likely with respect to any Card transaction or Sales Records Servicers have accepted, Servicers may withhold payments due Merchant under this Agreement until such time that: (i) Servicers are charged back by the Issuing Bank, in which event, Servicers shall retain the funds; (ii) the period of time for which the Cardholder may dispute the Sales Record and the Issuing Bank may exercise its chargeback rights has expired; and/or (iii) Servicers determine that a chargeback on the Sales Records will not occur.

c. Merchant shall close any open batches at least once per day, except on days when Merchant's place of business may be closed. Merchant understands that

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transactions are not transmitted to Servicers until the batch is closed. Furthermore, Merchant acknowledges that open batches of transactions that are not properly closed and transmitted to Servicers within thirty (30) days shall be automatically purged and erased from the processing system, and are not recoverable. Merchant shall indemnify and hold Servicers harmless for any and all loss sustained by Merchant for said purged transactions. It is Merchant's responsibility to close, balance, and reconcile batches daily, and to detect discrepancies between transactions processed by Servicers and transactions submitted by Merchant. Merchant understands that minor discrepancies may occur in the normal course of business and that Servicers will exercise all reasonable efforts to correct such discrepancies upon receiving notification from Merchant. It is the Merchant's responsibility to monitor and reconcile the Settlement Account in order to detect discrepancies in a timely manner. Merchant understands that Servicers have no ability to detect discrepancies. Merchant agrees that, upon termination of this Agreement, Servicers may withhold payments to Merchant for such period of time as necessary to establish a reserve to cover any potential Chargebacks, credits and/or uncollected discounts or fees.

#### **SECTION 2.9 RETRIEVAL AND STORAGE OF TRANSACTION RECORDS**

Merchant shall establish a system to store and maintain Sales Records and Credit Records in a manner that enables Merchant to retrieve and present such documentation to Servicers within ten (10) calendar days of request. Merchant understands and acknowledges that Merchant's failure to comply with this Section 2.9 is a violation of the Rules and may result in Chargebacks, assessment of Chargeback fees, and an increase in the Reserve Account requirement. Merchant shall preserve all records pertaining to Sales and Credit Records for no less than two (2) years for Visa Card transactions, two (2) years for Interchange Information Documents related to MasterCard transactions, and for three (3) years for all other records related to MasterCard transactions. All media containing Card account numbers must be stored for eighteen (18) months in an area limited to select personnel, and must be destroyed thereafter in a manner that will render the data unreadable and unrecoverable.

#### **SECTION 2.10 PROTECTION OF CARDHOLDER INFORMATION**

Merchant acknowledges that the sale or disclosure of Cardholder Data is strictly prohibited by the Rules, as well as federal and state laws. Unless Merchant obtains written consents from Servicers, each applicable Card Association, Issuing Bank, and Cardholder, Merchant must not use, disclose, sell, or otherwise disseminate any Cardholder Data to any third parties except as necessary to use the Merchant Services hereunder, resolve Chargebacks, complete retrieval requests, or as required by subpoena or order by a court or other governmental agency. Merchant shall use proper controls to restrict access to all records containing Card Data. Merchant may not retain or store magnetic stripe data after a Transaction has been authorized. If Merchant stores any electronically captured signatures of a Cardholder, Merchant may not reproduce such signature except upon the specific request of Bank or CyberSource. Merchant shall store all media containing Cardholder Data (including Sales Records, Credit Records, rental agreements, etc.) in an area limited to selected personnel, and, prior to discarding any such media destroy the media in a manner that renders the data unreadable and unrecoverable. In addition to the foregoing, Merchant shall comply with the applicable requirements of the Visa Cardholder Information Security Program, which requirements can be found at [www.visa.com/cisp](http://www.visa.com/cisp).

#### **SECTION 2.11 LOGO USAGE**

Merchant shall prominently display any advertising or promotional materials provided or required by Servicers to inform the public that Visa and MasterCard Cards will be honored at Merchant's place of business. Such displays, however, are not required if Merchant is prohibited from doing so by government regulation or to the extent expressly exempted by MasterCard or VISA, as applicable. The MasterCard and Visa logos shall be displayed with equal prominence. In no event will Merchant advertise or display any promotional material containing the name or symbol of CyberSource, Bank, Visa or MasterCard in a manner that states or implies that only Cards issued by Bank will be honored by Merchant. Additionally, Merchant shall not indicate or imply that Servicers, Visa, or MasterCard endorse Merchant's goods or services. Nothing herein is intended to restrict Merchant from honoring other credit cards or from entering into any other transaction with its customers. Merchant may display and advertise any other credit card or credit plan. All advertising media and displays supplied to Merchant by Servicers are the property of each respective Servicer, and upon termination of this Agreement, Merchant shall return all such materials to Servicers. Merchant shall have the right to use and display the proprietary Visa and MasterCard names and symbols only while this Agreement is in effect or until Merchant is notified by Servicers, Visa, or MasterCard to cease such usage, and then only in compliance with applicable Visa and MasterCard rules and regulations concerning such usage. Merchant shall have no right to use the proprietary name and/or symbol of either Servicer unless the materials containing such marks are provided to Merchant by, and/or are approved in advance by, Servicers.

**SECTION 2.12 PROVISION OF BUSINESS RECORDS.** At all times during the term of this Agreement, upon CyberSource's request, Merchant shall provide all

documentation evidencing Merchant's financial condition as well as other documentation deemed reasonably necessary by CyberSource to verify the information contained in the Merchant Account Application. All financial statements of Merchant that are provided to CyberSource shall be prepared in accordance with generally accepted accounting principles. Merchant agrees to provide such documentation within thirty (30) days of CyberSource's request. In the event Merchant fails to provide the requested Documentation, CyberSource shall be entitled to terminate this Agreement immediately pursuant to Section 7.1.c. below.

### ARTICLE III: FEES AND FINES

#### SECTION 3.1 SERVICE FEES

a. Merchant shall be charged the fees for the Merchant Services as such fees shall be calculated pursuant to the Fees Schedule, attached hereto and incorporated into this Agreement by reference. Merchant acknowledges and understands that the Discount Rate quoted in the Fees Schedule is applicable to Card transactions that meet the "Qualified" criteria set forth in the "CyberSource Merchant Account Instruction Manual." If any Card transaction fails to meet the criteria for a qualified transaction, Merchant will be charged the fees applicable to non-qualified transactions. The fees for Merchant Services set forth in this Agreement are based upon assumptions associated with, among other things, the goods and services offered by Merchant, Merchant's business model and policies, anticipated annual and monthly sales volume, number of transactions, and average ticket price. If the actual annual and/or monthly sales volume, transaction volume, or average ticket price materially differs from anticipated levels or Merchant's business model and policies change significantly, CyberSource may adjust the fees accordingly. The fees for Merchant Services may be adjusted to reflect increases or decreases by Card Associations in Interchange Fees, assessments, and other Card Association fees. Furthermore, the fees may be adjusted to pass through increases charged by third parties, such as telecommunications fees.

b. Fees due hereunder for Merchant Services will be collected by Servicers by way of ACH debit from Merchant's Settlement Account when due. In the event that the funds contained in the Settlement Account are insufficient to cover any ACH debit, CyberSource will remit an invoice to Merchant, which shall be due and payable within ten (10) days of the date of such invoice. In the event that Merchant does not remit to CyberSource the full amount due under the invoice within the ten (10) day period, CyberSource shall be entitled to terminate this Agreement immediately with written notice to Merchant and take all other actions necessary to collect any amounts owing, including deduction of such amount from the Reserve Account. Merchant shall be liable to CyberSource for any costs incurred by CyberSource, including attorneys' fees, in collecting past due amounts.

c. Merchant shall also be responsible to pay for any fines or penalties imposed on Bank or CyberSource by any Card Association as a result of Merchant's activities, acts, or omissions as well as for Chargebacks and any other fees or fines imposed by a Card Association related to Merchant hereunder. Collection of any such fines or penalties may be effected by deduction from any settlement amounts due to Merchant, ACH debit to Merchant's Settlement Account, or deduction from the Reserve Account.

d. CyberSource shall be entitled to revise any fees hereunder, effective as of the commencement of the next Renewal Term, provided that CyberSource provides the Merchant with no less than sixty (60) calendar days written notice.

#### SECTION 3.2 CHARGEBACKS

CyberSource shall have the right, at any time and without notice, to charge back to Merchant, and deduct, divert, withdraw or set-off from payments due Merchant from Card transactions, or from the Settlement Account, the Reserve Account, any other account or amounts due Merchant the full amount of any Card transactions designated by Bank or a Card Association or Card Issuing Bank or which fails to meet the requirements of this Agreement. Merchant agrees to be liable for and pay CyberSource for all Chargebacks. Merchant agrees to pay (i) the amount of any Chargeback, including any fine or fee associated therewith, and (ii) the costs and expenses of CyberSource and Bank (including, without limitation, administrative charges, investigations, retrieval and legal fees and costs) related to any Item subject to (a) legal process (including reproduction of records), (b) a bankruptcy or insolvency proceedings, or (c) Chargebacks. If Servicers or any Card Association determines or suspects any Card transaction to be questionable, such transaction may be subject to Chargeback. Servicers shall retain any fee related to a Chargeback transaction. If any of the Card Associations assess a fine in connection with Merchant's activities, including without limitation, due to Chargebacks or credits/returns that exceed the industry standards or constitute excessive Chargebacks, Merchant agrees to pay CyberSource fees associated with the administration of such fines, in addition to the applicable discount rates, fees and charges applicable to the Card transactions.

### ARTICLE IV: RESERVE ACCOUNT AND SECURITY

#### SECTION 4.1 RESERVE ACCOUNT

At any time and for any reason (including, without limitation, notice of termination or actual termination of this Agreement, change in transaction volume, change in business model, unauthorized transactions, cessation of business, insolvency, excessive Chargebacks, suspected or actual fraud, or competing claims regarding funds generated via Merchant's processing activities), CyberSource or Bank may require Merchant to transfer funds to Servicers, which funds shall serve as collateral to protect Servicers against actual or contingent liabilities or losses that might be incurred by Servicers in the event Merchant is unable or fails to pay Chargebacks, adjustments, fees, and other charges and obligations due or anticipated to become due to Servicers hereunder ("Reserve Account"). At anytime, Servicers shall be entitled to require Merchant to increase funds in the Reserve Account, in the event of which CyberSource shall notify Merchant in writing of increased funding requirement, except in the event of notice of termination or actual termination of this Agreement, unauthorized transactions, cessation of business, suspected or actual breach or default, or cessation of processing under this Agreement. If notice is required, Servicers may notify Merchant either before or after the establishment or increased funding requirement of the Reserve Account, but not later than five (5) business days after the establishment or increased funding requirement of the Reserve Account. CyberSource shall specify in its notice, at CyberSource's sole discretion, the amounts to be funded and the timing for establishment or increased funding of such Reserve Account; provided, however, that CyberSource may require that such Reserve Account be funded immediately (including, without limitation, in instances of unauthorized transactions, suspected or actual fraud or termination for cause). Merchant acknowledges and agrees that such funds will be deposited into a non-interest bearing account maintained at Bank. Servicers may, without notice, fund the Reserve Account (whether initially or due to increased funding requirements) with deductions from payments due Merchant from Card transactions or by a charge against the Settlement Account or any other available account of Merchant. Servicers will hold or be entitled to hold the funds in the Reserve Account until such time as Servicers are satisfied that Merchant has no further obligations to Servicers under this Agreement. Merchant's failure to fund the Reserve Account (whether initially or due to increased funding requirements) will result in immediate termination of this Agreement.

#### SECTION 4.2 SECURITY INTEREST

MERCHANT GRANTS SERVICERS A LIEN AND SECURITY INTEREST IN THE SETTLEMENT ACCOUNT, THE RESERVE ACCOUNT, ALL CARD TRANSACTIONS (INCLUDING FUTURE CARD TRANSACTIONS), ANY RIGHTS TO RECEIVE CREDITS OR PAYMENTS UNDER THIS AGREEMENT, AND ALL DEPOSITS AND OTHER PROPERTY OF MERCHANT THAT SERVICERS OR ITS AFFILIATES POSSESS OR MAINTAIN (INCLUDING ALL PROCEEDS OF THE FOREGOING), AND MERCHANT SHALL EXECUTE, DELIVER AND PAY THE FEES FOR ANY DOCUMENTS SERVICERS REQUEST TO CREATE, PERFECT, MAINTAIN AND ENFORCE THIS SECURITY INTEREST. TO THE EXTENT PERMITTED BY LAW, MERCHANT IRREVOCABLY AUTHORIZES SERVICERS TO EXECUTE ANY FINANCING STATEMENTS OR OTHER DOCUMENTS NECESSARY RELATED TO THIS SECURITY INTEREST. Servicers shall also be the beneficiary of any insurance, surety bond or similar indemnity or guaranty (whether voluntary or required by law) of Merchant or for the benefit of Merchant's customers, and Merchant hereby assigns to Servicers the rights to make claims or receive the benefits thereof with respect to Card transactions hereunder. Merchant represents and warrants that no other person or entity has a security interest in the property described herein and that this security interest is a first lien security interest and secures Merchant's obligations to Servicers under this Agreement. Servicers shall have all rights of a secured party and Merchant must obtain the prior written consent of Servicers before granting any subsequent security interest in the property described herein. Merchant agrees that it is Merchant's intent that these accounts and secured property shall to the extent allowed by applicable law not be subject to any preference, claim, or stay by reason of any bankruptcy or insolvency law. Merchant agrees to act consistently with the understanding that said accounts and secured property under this Agreement are free of all such preferences, claims or stays by reason of and as allowed by any such law.

### ARTICLE V: WARRANTIES; DISCLAIMERS

#### SECTION 5.1 MERCHANT WARRANTIES

Merchant warrants to CyberSource and Bank all of the following: (i) that all representations and statements in the Merchant Account Application, or in any other document relating hereto, made by Merchant or on Merchant's behalf are true, accurate and complete in all material respects; (ii) that Merchant is engaged in the lawful business shown on the Merchant Account Application, which includes the sale of goods and/or services, and is duly licensed to conduct such business under the laws of the state, county and city in which Merchant is located, and, further, that Merchant will not process Card transactions for any other type of business; (iii) that Merchant has not been terminated from settlement of Card transactions by any financial institution or determined to be in violation of any Rules except as specifically disclosed in the Merchant Account Application; (iv) that Merchant has the authority to

enter into this Agreement and that the person(s) signing for or on behalf of Merchant is/are specifically authorized and directed to do so by Merchant; (v) that all of Merchant's sales locations engage in the same or substantially similar business activity as that listed on the Merchant Account Application; (vi) that Merchant will not change the nature of its business as indicated in the Merchant Account Application or to modify the ownership of the business without the prior written consent of Servicers; (vii) that Merchant will notify CyberSource no less than thirty (30) days prior to changing addresses or relocating the business; (viii) that it will not use on its POS device any personal Card issued to Merchant, or any guarantor of Merchant, or any Card that Merchant or any guarantor is authorized to use; (ix) that as to each transaction presented to Servicers for payment: (a) the Sales Record is valid in form and has been completed with all applicable requirements, (b) the goods or services described on the Sales Record have been delivered or completed in accordance with Merchant's agreement with the Cardholder, (c) the Cardholder has no defense, right of setoff or counterclaim against Merchant in connection with the purchase of the goods or services, (d) the transaction was placed by the Cardholder or other authorized user of the Card, and (e) the transaction was not previously charged back or declined; (x) that at all times during the term of this Agreement, Merchant does and will comply with all applicable federal, state, and local laws, rules, and regulations, and the Rules; and, (xi) that at all times, in the implementation and operation of its website through which Card transactions will be conducted, Merchant does and will not infringe on any intellectual property rights of any third party.

#### **SECTION 5.2 DISCLAIMERS**

THE SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS" WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES. THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH MERCHANT. THIS DISCLAIMER OF WARRANTY EXTENDS TO MERCHANT AND ALL USERS OF MERCHANT'S GOODS AND SERVICES AND IS IN LIEU OF ALL WARRANTIES AND CONDITIONS WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT WITH RESPECT TO THE PRODUCTS AND SERVICES, AND ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

#### **ARTICLE VI: INDEMNIFICATION AND LIMITATION OF LIABILITY**

##### **SECTION 6.1 INDEMNIFICATION**

In addition to any other indemnities in this Agreement, Merchant agrees to indemnify, defend and hold Servicers and Servicers' parent companies, subsidiaries and affiliates, (including, without limitation, the respective officers, directors, employees, attorneys, shareholders, representatives and agents of all of the foregoing) harmless from and against any and all liabilities, judgments, arbitration awards, settlements, actions, suits, claims, demands, losses, damages, costs (including, but not limited to, court costs and out-of-pocket costs and expenses), expenses of any and every type, litigation expenses, and attorneys' fees, including, but not limited to, attorneys' fees incurred in any and every type of suit, proceeding, or action, including but not limited to, bankruptcy proceedings, in connection with, by virtue of, or arising from, either directly or indirectly: (a) a Card transaction that does not conform to the requirements of this Agreement, the Documentation, or the Rules; (b) any Card transaction or any act or omission of Merchant in connection with a Cardholder; (c) Merchant's breach or default or an alleged breach or default of or under any term, covenant, condition, representation, warranty, obligation, undertaking, promise or agreement contained in this Agreement or in any agreement (whether oral or written) with any cardholder, any agreement with any Card Association, or in any other agreement with Servicers (including, without limitation, Merchant's application to Bank made in connection with this Agreement), any breach or threatened breach by Merchant of laws, rules and regulations applicable to Merchant; (d) the rescission, cancellation or avoidance of any Card transaction, by operation of law, adjudication or otherwise; (e) any claim, counterclaim, complaint, dispute or defense, including, without limitation claims brought against third parties by Merchant, whether or not well-founded, with respect to this Agreement or a Card transaction; (f) damages, including, without limitation, those for death or injury caused by the good or service purchased with the Card; or (g) for all web based, Internet or electronic commerce transactions, including Merchant's insecure transmission of Card transaction data and/or storage of cardholder information. For purposes of this Agreement, including the foregoing indemnities, Merchant is responsible and liable for the acts and omissions of its employees, agents and representatives (whether or not acting within the scope of their duties).

##### **SECTION 6.2 LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCES (i) SHALL SERVICERS OR PROCESSOR BE LIABLE TO MERCHANT FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE, PROFITS OR BUSINESS, COSTS OF DELAY, COSTS OF LOST OR DAMAGED

Last revised: 01/28/2008

DATA OR DOCUMENTATION, OR MERCHANT'S LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE; OR (ii) SHALL THE ENTIRE LIABILITY OF SERVICERS TO MERCHANT UNDER THIS AGREEMENT, WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE FEES PAID BY MERCHANT TO CYBERSOURCE HEREUNDER DURING THE THREE MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE THE CAUSE OF ACTION AROSE.

#### **ARTICLE VII: TERM AND TERMINATION**

##### **SECTION 7.1 TERM AND TERMINATION OF AGREEMENT**

a. The initial term ("Initial Term") of this Agreement shall be two (2) year beginning from the date Merchant receives written notification from CyberSource that this Agreement has been approved by Servicers and that a Merchant Account Number has been issued ("Effective Date"). Thereafter, this Agreement will renew automatically for additional terms of two (2) years (each a "Renewal Term") unless either party provides written notice to the other party, at least thirty (30) days prior to the commencement of any Renewal Term, that the Agreement shall not so renew.

b. Merchant shall be entitled to terminate this Agreement in the event of a material breach by CyberSource that remains uncured more than thirty (30) days after CyberSource's receipt of written notice of such breach.

c. In addition to any rights to terminate this Agreement that CyberSource may have elsewhere in this Agreement, CyberSource shall be entitled to terminate this Agreement at any time with written notice to Merchant in the event that Merchant is in breach of any provisions of this Agreement. For the purposes of this Section 7.1.c, examples of breach include, without limitation, non-payment of fees due hereunder, any breach of warranty, and non-compliance with the Rules or applicable laws.

d. The Agreement may be terminated by CyberSource effective immediately and without any requirement of notice, in the event that (i) CyberSource's review of Merchant's records indicate that Merchant is insolvent or is likely to be insolvent within ninety (90) days, (ii) Merchant files a petition, in bankruptcy, seeking any reorganization, arrangement, composition, or similar relief under any law regarding insolvency or relief for debtors, or makes an assignment for the benefit of creditors; (iii) a receiver, trustee, or similar officer is appointed for the business or property of Merchant; (iv) any involuntary petition or proceeding, under bankruptcy or insolvency laws, is instituted against Merchant and not stayed, enjoined, or discharged within thirty (30) days; or (v) Merchant adopts a resolution for discontinuance of its business or for dissolution.

e. Notwithstanding any provision in this Agreement to the contrary, CyberSource shall be entitled to suspend provision of any and all services hereunder, without the requirement of notice, in the event that CyberSource has reasonable belief that any of the following situations has occurred, is occurred, or is likely to occur: (1) Merchant is not compliant with any applicable Rules or requirements under this Agreement; (2) Merchant is violating any restrictions set forth in this Agreement; (3) information submitted in the Merchant Account Application cannot be verified or is no longer valid; (4) fraud is occurring on Merchant's account; (5) there are excessive Chargebacks on Merchant's account; (6) Merchant is violating applicable laws, (7) Merchant is transmitting inaccurate or incomplete information to CyberSource; or, (8) any conduct by Merchant that poses a threat to CyberSource's systems, equipment, processes, Intellectual Property, or business generally.

f. Notwithstanding any provision in this Agreement to the contrary, CyberSource shall be entitled to terminate this Agreement at any time, without cause, with thirty (30) days prior written notice to Merchant.

#### **ARTICLE VIII: GENERAL TERMS**

##### **SECTION 8.1 Confidential Information.**

a. Each Party (the "Receiving Party") hereby agrees (i) to hold the other party's (the "Disclosing Party") Confidential Information in strict confidence and to take reasonable precautions to protect such Confidential Information (including, without limitation, all precautions the Receiving Party employs with respect to its own confidential materials), (ii) not to divulge any such Confidential Information or any information derived therefrom to any third person; (iii) not to make any use whatsoever at any time of such Confidential Information except as contemplated hereunder, (iv) not to remove or export from the United States or re-export any such Confidential Information or any direct product thereof, except in compliance with, and with all licenses and approvals required under, applicable U.S. and foreign export laws and regulations, including, without limitation, those of the U.S. Department of Commerce, (v) not to copy or reverse engineer any such Confidential Information, and (vi) that any employee, subcontractor, or agent given access to any such Confidential Information must have a legitimate "need to know" and shall be bound in writing to comply with the Receiving Party's confidentiality obligations, whether generally or specific to this Agreement.

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b. Notwithstanding any provision in this Agreement to the contrary, each party may disclose Confidential Information of the other party to the extent it is required to be disclosed pursuant to a valid order or requirement of a governmental agency or court of competent jurisdiction, provided that the owner of the Confidential Information shall be given reasonable notice of the pendency of such an order or requirement and the opportunity to contest it.

**SECTION 8.2 Audit.** During the term of this Agreement and for two (2) years thereafter, CyberSource shall have the right to examine Merchant's records, books, systems, controls, processes and procedures ("Records") for the purpose of verifying Merchant's compliance with the terms and conditions of this Agreement ("Audit"). Merchant shall provide to the auditors and personnel of CyberSource ("Auditors") reasonable access to Records and shall cooperate and provide to such Auditors, in a timely manner, all such assistance as they may reasonably require in connection with any such Audit. Except in the event that CyberSource has reasonable basis to believe that Merchant is in violation of any Rules or laws, or in breach of any warranties, CyberSource will provide Merchant no less than five (5) days written notice prior to the date of an Audit, the Audit will be conducted during Merchant's normal business hours, and Audits shall occur no more than twice in any calendar year.

**SECTION 8.3 Relationship of Parties.** The parties shall perform all of their duties under this Agreement as independent contractors. Nothing in this Agreement shall be construed to give either party the power to direct or control the daily activities of the other party, or to constitute the parties as principal and agent, employer and employee, franchiser and franchisee, partners, joint venturers, co-owners, or otherwise as participants in a joint undertaking. The parties understand and agree that, except as specifically provided in this Agreement, neither party grants the other party the power or authority to make or give any agreement, statement, representation, warranty, or other commitment on behalf of the other party, or to enter into any contract or otherwise incur any liability or obligation, express or implied, on behalf of the other party, or to transfer, release, or waive any right, title, or interest of such other party.

**SECTION 8.4 Governing Law; Consent to Jurisdiction.** This Agreement will be deemed entered into in California and will be governed by and interpreted in accordance with the laws of the State of California, excluding (i) that body of law known as conflicts of law and (ii) the United Nations Convention on Contracts for the International Sale of Goods. The parties agree that any dispute arising under this Agreement will be resolved in the state or federal courts in Santa Clara County, California, and the parties hereby expressly consent to jurisdiction therein.

**SECTION 8.5 Assignment.** This Agreement may not be transferred or assigned by Merchant without the prior written consent of CyberSource, which consent shall be at the absolute discretion of CyberSource. Any attempts by Merchant to assign any of its rights or delegate any of its duties hereunder without the prior written consent of CyberSource shall be null and void.

**SECTION 8.6 Force Majeure.** Neither party hereto shall be responsible for any failure to perform its obligations under this Agreement if such failure is caused by acts of God, natural disasters, war, acts of terrorism, strikes, revolutions, lack or failure of transportation facilities, lack or failure of public utilities, laws or governmental regulations or other causes that are beyond the reasonable control of such party. Obligations hereunder, however, shall in no event be excused but shall be suspended only until the cessation of any cause of such failure. In the event that such force majeure should obstruct performance of this Agreement for more than ten (10) business days, the parties hereto shall consult with each other to determine whether this Agreement should be modified or terminated. The party facing an event of force majeure shall use commercially reasonable efforts to remedy that situation as well as to minimize its effects. A case of force majeure shall be notified to the other party by any of the methods described in the Notices section below within five (5) days after occurrence of the event of force majeure.

**SECTION 8.7 Entire Agreement.** This Agreement, including the Merchant Account Application, Fee Schedules, Documentation, and Guaranty, constitutes and contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior oral or written agreements. Each party acknowledges and agrees that the other has not made any representations, warranties or agreements of any kind, except as expressly set forth herein.

**SECTION 8.8 Modifications, Amendments, and Waivers.**

This Agreement may not be modified or amended, including by custom, usage of trade, or course of dealing, except by an instrument in writing signed by duly authorized employees of both of the parties hereto. The waiver by either party of a breach of any provision contained herein shall be in writing and shall in no way be construed as a waiver of any subsequent breach of such provision or the waiver of the provision itself.

**SECTION 8.9 Counterparts.** This Agreement may be executed in counterparts, including counterparts transmitted by facsimile, each of which shall be deemed an original, and all such counterparts shall constitute one and the same agreement.

**SECTION 8.10 Survival.** The provisions of this Agreement relating to payment of any fees or other amounts owed, payment of any interest on unpaid fees, confidentiality, disclaimers, warranties, limitation of liability, indemnification, governing law, severability, headings, and this paragraph shall survive any termination or expiration of this Agreement.

**SECTION 8.11 Severability.** If any provision of this Agreement shall be held illegal or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

**SECTION 8.12 Headings.** The headings in this Agreement are intended for convenience or reference and shall not affect the Agreement's interpretation.

**SECTION 8.13 Notices.** Unless otherwise expressly set forth in this Agreement, any legal notice required under this Agreement shall be given in writing at the address set forth below, as may be amended in writing from time to time, and shall be deemed to have been delivered and given for all purposes (i) on the delivery date, if delivered by hand courier to the party to whom such notice is directed; (ii) two (2) business day after deposit with a commercial overnight carrier; (iii) five (5) business days when mailed by United States mail; and, (iv) upon completion of transmission, if sent via facsimile with a confirmation of successful transmission.

If to Merchant:

The name and address set forth in the Merchant Account Application.

If to CyberSource:

CyberSource Corporation  
1295 Charleston Road  
Mountain View, CA 94043  
Fax: 650-625-4408  
ATTN: Legal Department

## GUARANTY FOR MERCHANT ACCOUNT SERVICES

This Guaranty for Merchant Account Services ("Guaranty") supplements CyberSource Merchant Services Agreement entered into by CyberSource and Merchant. In consideration of the provision of Services by CyberSource and Bank ("Servicers") to Merchant, pursuant to the terms and conditions of the Merchant Services Agreement and the benefits to the undersigned derived therefrom, the undersigned individual completing this Application ("Guarantor"), guaranties and promises to pay to Servicers any and all Obligations and further agrees as follows:

1. The term "Obligation" is used herein in its most comprehensive sense and includes any and all charges made by Cardholders for purchases of goods and/or services supplied by Merchant and presented to Bank for payment, as set forth in the Agreement, now, or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether direct or acquired by Bank by assignment or succession, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether Merchant may be liable individually or jointly with others, or whether recovery upon any Obligation may be or hereafter becomes barred by any statute of limitations or whether any Obligation may be or hereafter becomes otherwise enforceable.
2. The Guarantor unconditionally guarantees the payment of the Obligations, whether or not due or payable by the Merchant, upon: (a) the dissolution, insolvency or business failure of, or any assignment for benefit of creditors by, or commencement of any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceedings by or against, the Merchant or the Guarantor, or (b) the appointment of a receiver for, or the attachment, restraint of or making or levying of any order of court or legal process affecting, the property of the Merchant or the Guarantor, and unconditionally promises to pay such Obligations to the CyberSource or Bank, or order, on demand, in lawful money of the United States.
3. The liability of the Guarantor hereunder is exclusive and independent of any security for or other guaranty of the Obligations, whether executed by the Guarantor or by any other party, and the liability of the Guarantor hereunder is not affected or impaired by (a) any direction of application of payment by the Merchant or by any other party, or (b) any other guaranty, undertaking or maximum liability of the Guarantor or of any other party as to the Obligations, or (c) any payment on or in reduction of any such other guaranty or undertaking, or (d) any revocation or release of any obligations of any other guarantor of the Obligations, or (e) any dissolution, termination or increase, decrease or change in personnel of the Guarantor, or (f) any payment made to the CyberSource or Bank on the Obligations which the CyberSource or Bank repays to the Merchant pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and the Guarantor waives any right to the deferral or modification of the Guarantor's obligations hereunder by reason of any such proceeding.
4. The obligations of the Guarantor hereunder are independent of the Obligations of the Merchant, and a separate action or actions may be brought and prosecuted against the Guarantor whether or not action is brought against the Merchant and whether or not the Merchant be joined in any such action or actions. The Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof. Any payment by the Merchant or other circumstance which operates to toll any statute of limitations as to the Merchant shall operate to toll the statute of limitations as to the Guarantor.
5. The Guarantor authorizes the CyberSource or Bank (whether or not after termination of this Guaranty), without notice or demand (except as shall be required by applicable statute and cannot be waived), and without affecting or impairing its liability hereunder, from time to time to (a) renew, compromise, extend, increase, accelerate or otherwise change the time for payment of, or otherwise change the terms of Obligations or any part thereof, including increase or decrease of the rate of interest thereon; (b) take and hold security for the payment of this Guaranty or the Obligations and exchange, enforce, waive and release any such security; (c) apply such security and direct the order or manner of sale thereof as the CyberSource or Bank in its discretion may determine; and (d) release or substitute any one or more endorsers, guarantors, the Merchant or other obligors. The CyberSource or Bank may, without notice to or the further consent of the Merchant or the Guarantor, assign this Guaranty in whole or in part to any person acquiring an interest in the Obligations.
6. The Guarantor waives any right to require the CyberSource or Bank to (a) proceed against the Merchant or any other party; (b) proceed against or exhaust any security held from the Merchant; or (c) pursue any other remedy in the CyberSource or Bank's power whatsoever. The Guarantor waives any personal defense based on or arising out of any personal defense of the Merchant other than payment in full of the Obligations, including, without limitation, any defense based on or arising out of the disability of the Merchant, or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of the Merchant other than payment in full of the Obligations. The CyberSource or Bank may, at its election, foreclose on any security held for the Obligations by one or more judicial or nonjudicial sales, or exercise any other right or remedy the CyberSource or Bank may have against the Merchant, or any security, without affecting or impairing in any way the liability of the Guarantor hereunder except to the extent the Obligations have been paid.
7. The Guarantor hereby waives any claim or other rights which the Guarantor may now have or may hereafter acquire against the Merchant or any other guarantor of all or any of the Obligations that arise from the existence or performance of the Guarantor's obligations under this Guaranty or any other of the Documents (any such claims and rights being referred to as the "Guarantor's Conditional Rights"), including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, or indemnification, any right to participate in any claim or remedy which CyberSource or Bank has against the Merchant or any collateral which the CyberSource or Bank now has or hereafter acquires for the Obligations, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, by any payment made hereunder or otherwise, including, without limitation, the right to take or receive from the Merchant, directly or indirectly, in cash or other property or by setoff or in any other manner, payment or security on account of such claim or other rights until such time as the Obligations have been paid and performed in full and the period of time has expired during which any payment made by the Merchant or the Guarantor to the CyberSource or Bank may be determined to be a preferential payment.
8. The Guarantor waives all presentments, demands for performance, protests and notices, including, without limitation, notices of nonperformance, notices of protest, notices of dishonor, notices of acceptance of this Guaranty, and notices of the existence, creation or incurring of new or additional Obligations. The Guarantor assumes all responsibility for being and keeping itself informed of the Merchant's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks which the Guarantor assumes and incurs hereunder, and agrees that CyberSource or Bank shall have no duty to advise the Guarantor of information known to it regarding such circumstances or risks.

## Disclosure Page

### Member Bank (Acquirer) Information

Acquirer Name: Harris Trust and Savings Bank

Acquirer Address: Buffalo Grove, IL

Acquirer Phone: 1-866-319-7450

### Important Member Bank (Acquirer) Responsibilities

1. A Visa / MasterCard Member is the only entity approved to extend acceptance of Visa / MasterCard products directly to a Merchant.
2. A Visa / MasterCard Member must be a principal (signer) to the Merchant Agreement.
3. The Visa / MasterCard Member is responsible for educating Merchant on pertinent Visa / MasterCard Operating Regulations with which Merchant must comply.
4. The Visa / MasterCard Member is responsible for and must provide settlement funds to the Merchant.
5. The Visa / MasterCard Member is responsible for all funds held in reserve that are derived from settlement.

### Important Merchant Responsibilities

1. Ensure compliance with cardholder data security and storage requirements.
2. Maintain fraud and chargebacks below thresholds.
3. Review and understand the terms of the Merchant Services Agreement.
4. Comply with Visa / MasterCard Operating Regulations.

The responsibilities listed above do not supersede terms of the Merchant Services Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the Visa / MasterCard Member (Acquirer) is the ultimate authority should the Merchant have any problems.

## Fee Schedule for Internet Merchant Account

These Merchant Account fees are in addition to the Payment Gateway fees quoted on page 2

Merchant Account Setup Fee:	\$0.00
Monthly Fee:	\$9.95
Authorization Fee:	\$0.25
Visa/MasterCard Qualified Discount Rate:	2.19%
Visa/MasterCard Mid-Qualified Surcharge:	0.70%
Visa/MasterCard Non Qualified Surcharge:	1.20%
Minimum Discount:	\$25.00
Chargeback Fee:	\$19.00
ACH Return Fee:	\$20.00
Batch Fee:	\$0.25
Online Reporting Fee:	\$0.00
Verbal Authorization Fee:	\$1.20
Early Termination Fee:	Waived

Note:  
If you use CyberSource products or services not indicated above, you will be charged the applicable fees in effect at the time for the products or services that you do use.