

iPayment, Inc.

Thank you for your consideration of **iPayment, Inc.** as your bankcard processing solution. We are dedicated to providing you with the highest level of customer service and satisfaction.

The first step this relationship is the completion of the enclosed Merchant Application Package. In order for **iPayment, Inc.** to provide you with a timely response, we will need the following documents and attachments. If you have any questions regarding specific requirements for your merchant account, please contact your **iPayment, Inc.** sales representative.

We look forward to being your payment processing partner into the next millennium.

Sincerely,

iPayment, Inc.

Merchant Application Checklist

All applications submitted will require:

- Completed & Signed Merchant Application
- Application Fee
- Signed Merchant Processing Agreement
- Copy of Drivers License (*not required for retail storefront merchant less than \$10k per month.*)
- Completed Site Inspection (*provided by iPayment, Inc. sales representative*)
- Voided Business Check
- * Articles of Incorporation or partnership agreement
- * If sole owner, assumed business name filing or business license
(** over \$10k per month only*)

Travel Merchants over \$10k per month require:

- Travel Form

Accounts processing over \$50k per month will require:

- Business Tax Returns (*signed and dated for last 2 years*)
- Personal Tax Returns (*signed and dated for last 2 years for both principals*)
- Business Financial Statements (*signed and dated for the last 2 years*)
- Current Personal Financial Statement(s) (*signed and date for each principal*)
- 3 months bank statements
- 3 months processing statements (*if applicable*)
- Business Description Summary
- Samples of ads and products
- Fraud Control Form

GENERAL INFORMATION	Legal Business Name:		Doing Business As:	
	Business Address:		Billing Address:	How Long at this address?
	City/State/Zip:		City/State/Zip:	County:
	Contact Name:	Business Phone:	Business Fax:	
	Federal TaxID:	# of Locations:	Time in Business: Years: _____ Months: _____	Business Hours:
	E-Mail:		Website:	

BUSINESS INFORMATION	Card Swipe % _____	Type of Ownership: <input type="checkbox"/> Sole Owner <input type="checkbox"/> Partnership <input type="checkbox"/> Tax Exempt <input type="checkbox"/> Corporation <input type="checkbox"/> Non-Profit <input type="checkbox"/> Int'l Organization <input type="checkbox"/> LLC <input type="checkbox"/> Legal/Medical Corp. <input type="checkbox"/> Other <input type="checkbox"/> Government <input type="checkbox"/> Trusts/Estates/Assn.'s	Business Location:		Customer Refund Policy:
	Manually Keyed % _____		<input type="checkbox"/> Store Front	<input type="checkbox"/> Refund within 30 days	
	Internet % _____		<input type="checkbox"/> Home	<input type="checkbox"/> Exchange Only	
	Mail Order % _____		<input type="checkbox"/> Office	<input type="checkbox"/> Other (specify):	
TOTAL % <u>100</u>		<input type="checkbox"/> Other (specify):			
Number of days until Product/Service is delivered: _____					
Additional Comments:					
Specific Type of Business:			Specific Type of Product(s)/Service(s) sold:		

PROCESSING HISTORY	Has applicant ever processed before? <input type="checkbox"/> Yes <input type="checkbox"/> No	Has applicant ever been terminated? <input type="checkbox"/> Yes <input type="checkbox"/> No
	If Yes, with whom?	If Yes, by whom? <i>(Please provide an explanation regarding your termination below. Attach additional pages if necessary.)</i>
	Merchant Number:	

PRINCIPAL 1	Name:		Home Phone:	% Ownership:	Title:
	Residence Address: <input type="checkbox"/> Own <input type="checkbox"/> Rent		City:	State:	Zip:
	How long at this address?	Drivers License Number / State	Social Security Number:	Date of Birth:	
	Name of nearest relative not living with you:		Address:	Home Phone:	

PRINCIPAL 2	Name:		Home Phone:	% Ownership:	Title:
	Residence Address: <input type="checkbox"/> Own <input type="checkbox"/> Rent		City:	State:	Zip:
	How long at this address?	Drivers License Number / State	Social Security Number:	Date of Birth:	
	Name of nearest relative not living with you:		Address:	Home Phone:	

REFERENCES	Bank:	Account#:	Phone:	Contact:
	Trade:	Account#:	Phone:	Contact:
	Trade:	Account#:	Phone:	Contact:

TO BE COMPLETED BY SALES REPRESENTATIVE	Sales Rep Name:	Rep #:	Sales Rep Phone #	Voice Auth: \$2.00 each
	Monthly Processing Limit Requested: \$ _____	Average Ticket: \$ _____	Monthly Statement Fee: \$ _____ per month	FDR Help Desk Fee: \$3.50
	Monthly Minimum: \$25.00	Application Fee: \$ _____ Setup Fee: \$ _____	Trans Fee: \$0. _____ each	ACH Return Item Fee: \$20.00
	Card Present: Discount Fee Requested: _____ % Mid-Qualified Fee: Discount + 1.10% Non-Qualified Fee: Discount + 1.50%	Card Not Present: Discount Fee Requested: _____ % Mid-Qualified Fee: Discount + 1.00% Non-Qualified Fee: Discount + 1.50%	Debit: \$0. _____ + network fees Batch Headers: \$0.30 each	Retrieval Request: \$15.00 each Chargebacks: \$25.00 each Over Limit Fee: 5.00%
Funds Availability: <input type="checkbox"/> 1 Day (Must select one) <input type="checkbox"/> 3 Days	Reserve Rate: <input type="checkbox"/> None (Must select one) <input type="checkbox"/> 5.00% <input type="checkbox"/> Other _____	Watts Surcharge: \$0.05 each AVS: \$0.10 each	High Risk Fee: (if applicable) Registration: \$500.00 Annual Renewal: \$250.00	
			Payment Gateway Access Fee	
			Monthly Access Fee: \$ _____ per month	Transaction Fee: \$ 0. _____ each

EQUIPMENT	<input type="checkbox"/> Verifone: _____ Model: _____	<input type="checkbox"/> Hypercom: _____ Model: _____	<input type="checkbox"/> Other: _____	<input type="checkbox"/> Lipman Nurit: _____ Model: _____	<input type="checkbox"/> w/Wireless Agreement Attached	<input type="checkbox"/> Reprogram: _____ Origination: _____
	<input type="checkbox"/> Ka-Chingg™ <input type="checkbox"/> Software: _____	<input type="checkbox"/> TPG™ _____	<input type="checkbox"/> Other: _____	<input type="checkbox"/> Payment Gateway: _____		
	Equipment / software purchased from iPayment, Inc.? <input type="checkbox"/> Yes <input type="checkbox"/> No			(Office Use Only) <input type="checkbox"/> Check enclosed <input type="checkbox"/> Network: _____		

MERCHANT NUMBER	AMEX #:	Diners #:
	Discover #:	Job #:

****ATTACH AVOIDED BUSINESSCHECK FROMTHEACCOUNT****

Bank Name:	Street Address:	City:	State:	Zip:
Branch:	Officer Name:	Phone:		
Transit # (ABARouting)		Account # (DDA)		

Merchant Site Survey *Photograph of business location (interior & exterior) are required. (Completed by iPayment, Inc. sales representative)		
Date	Type of Building	Square Footage (approximate):
Inspectors Comments		
I have verified the identification of the above listed principal(s) sales representative signature _____		Inspectors Signature

MERCHANT UNDERSTANDS THAT THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY BANK AND A MERCHANT NUMBER IS ISSUED. ANY ALTERATION, STRIKE OVER OR MODIFICATIONS TO THE PREPRINTED TEXT OR LINE ENTRIES ON THIS MERCHANT PROCESSING AGREEMENT SHALL BE OF NO EFFECT WHATSOEVER AND AT BANK'S SOLE DISCRETION, MAY RENDER THIS AGREEMENT INVALID.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date(s) indicated below.

MERCHANT:

Merchant Legal Name _____ Merchant DBA Name _____
Authorized Signature _____ Print Name _____ Title _____
Address _____ City _____ State _____ Zip Code _____

ACCEPTED:
Humboldt Bank
2440 Sixth Street
Eureka, California 95501

By: _____
Date: _____

RELATIONSHIP AGREEMENT	
IMPORTANT: For your application to be processed, this RELATIONSHIP AGREEMENT <i>must</i> be signed and returned to iPayment Technologies, Inc.	
1. The discount rate quoted is % _____	6. The transactions will range between \$ _____
2. The per transaction charge is \$ _____ and \$ _____	
3. The monthly statement fee is \$ _____	7. The monthly processing volume should not exceed _____
4. The minimum monthly discount is \$ _____ \$ _____	
5. The average transaction will be \$ _____ <small>(Average transaction is defined as the transaction size that I will run most often)</small>	8. I have/do not have a 5% Rolling Reserve (Please circle one)
Signature: _____	Title: _____ Date: _____
Company Name: _____	

PERSONAL GUARANTORS:

In consideration of Bank's acceptance of this MERCHANT Application, the undersigned GUARANTOR (jointly and severally if more than one) unconditionally guarantees the performance of all obligations of MERCHANT to BANK under the MERCHANT PROCESSING AGREEMENT and payment of all sums due thereunder and, in the event of default, hereby waives Notice of Default and agrees to indemnify BANK for any and all funds due from MERCHANT pursuant to the terms of the MERCHANT PROCESSING AGREEMENT.

GUARANTOR waives any and all rights of subrogation, reimbursement or indemnity derived from MERCHANT and all other rights and defenses available to GUARANTOR(S) under California Civil Code Sections 2787 to 2856, inclusive (or any similar suretyship laws), and further waives any and all rights or defenses arising by reason of any modification or change in the terms of the MERCHANT PROCESSING AGREEMENT whatsoever, including, without limitation, the renewal, extension, acceleration, or other change in the time any payment or other performance. Thereunder is due, and/or any change in any interest rate or fee thereunder.

GUARANTOR unconditionally and specifically authorizes BANK, or its authorized agent, to debit any overdue fees, costs, chargebacks, fines penalties, expenses or obligations under the MERCHANT PROCESSING AGREEMENT and/or any contractual relationship with Bank from any personal checking account or other account owned or controlled by GUARANTOR, and further to report any Default hereof on GUARANTOR'S personal Credit Bureau Report. GUARANTOR agrees to pay all costs and expenses of whatever nature, including attorneys' fees and other legal expenses, incurred by or on behalf of BANK in connection with the enforcement of this Guaranty.

_____, An Individual Date _____
Signature

_____, An Individual Date _____
Signature

HUMBOLDT BANK MERCHANT PROCESSING AGREEMENT

THIS AGREEMENT, hereinafter referred to as the "Agreement" is made by and between, Humboldt Bank, located at 2440 Sixth Street, Eureka, California 95501, hereinafter referred to as "BANK", which is represented by iPayment, Inc. a California corporation, and the undersigned merchant, hereinafter referred to as MERCHANT.

The undersigned, GUARANTOR(S), is also a part as a continuing guarantor(s) pursuant to the Continuing Guaranty Provision Contained in the Agreement. The capitalized terms as used in the Agreement shall have the meanings as set forth in the accompanying MERCHANT APPLICATION ("MERCHANT APPLICATION") or as set forth herein.

WHEREAS, BANK is engaged in the processing of transactions which includes, but not limited to, the processing of and providing for the payment of charges created by holders of VISA and MasterCard credit cards (hereinafter "Cardholder"); and

WHEREAS, iPayment, Inc. is registered with VISA as an Independent Sales Organization and registered with MasterCard as a Member Service Provider, and

WHEREAS, MERCHANT and GUARANTOR(S) hereby affirm, represent and warrant to BANK and MERCHANT is lawfully engaged in the business shown on the MERCHANT APPLICATION and is duly licensed under the laws of the state, county and city in which it is located to conduct such business, and the MERCHANT currently accepts, or desires to accept, VISA and MasterCard credit cards (hereinafter Cards) for the purchase of goods and services through transactions with Cardholders and

WHEREAS, GUARANTOR(S) hereby confirm that they, individually and collectively, are a party to this Agreement and the continuing guaranties provided to BANK to the maximum extent permitted by law; and

WHEREAS, MERCHANT acknowledges that this Agreement is not and shall not be effective until MERCHANT'S MERCHANT APPLICATION has been approved by the BANK and that the signature of the iPayment, Inc. representative on the MERCHANT APPLICATION and/or this Agreement only constitutes acknowledgment of the offer made by the representative on behalf of and contingent upon the approval of BANK; and

WHEREAS, MERCHANT specifically acknowledges that this offer shall automatically expire sixty (60) days after the date of signing by MERCHANT, unless the offer is accepted, approved and countersigned by BANK, and

WHEREAS, MERCHANT warrants that it has not been terminated from settlement of Card transactions by any financial institution or determined to be in violation of any of the rules and regulations of VISA or MasterCard, except as specifically disclosed in the MERCHANT APPLICATION; and

WHEREAS, MERCHANT agrees to comply with, and be subject to, all of the rules and regulations of BANK, VISA, and MasterCard as they exist now, and may be modified or changed from time to time (hereinafter the "Rules and Regulations"); and

WHEREAS, MERCHANT acknowledges that any violation of the Rules and Regulations shall constitute a material breach of the Agreement and may, at the sole and absolute discretion of BANK, constitute grounds for terminating this Agreement and holding all funds on deposit or that can be garnered by BANK pursuant to any of the provisions of this Agreement,

NOW, THEREFORE, in consideration of the representations, covenants and/or promises made herein and in the accompanying MERCHANT APPLICATION and/or Schedule(s) signed and submitted by Merchant in connection herewith, the parties hereby agree as follows:

- 1. AGREEMENT:** This Agreement and all other documents executed or submitted by MERCHANT in connection herewith, or incorporated herein by references or referenced in the final disclosure regarding approval, shall constitute the entire agreement between BANK and MERCHANT.
- 2. MERCHANT'S AUTHORITY:** MERCHANT specifically warrants to BANK that MERCHANT has the authority to enter into this Agreement with BANK and that the person(s) signing for or on behalf of MERCHANT are specifically authorized and directed to do so by MERCHANT.
- 3. TERM:** The initial term of this Agreement shall be for two (2) calendar years, commencing from the date of approval of execution and notification by BANK and iPayment, Inc. hereinafter referred to as the Anniversary Date, and shall automatically renew annually thereafter on each subsequent Anniversary Date unless sooner terminated in accordance with provisions of this Agreement. MERCHANT specifically agrees to a minimum term of twelve (12) months and hereby agrees to pay BANK all fees and charges due BANK pursuant to the provisions of this Agreement for such minimum term of twelve (12) months.
- 4. ACCEPTANCE OF CARDS:** MERCHANT agrees to honor all valid Cards when properly presented as payment by a Cardholder, or other authorized user, for a bonafide, legal business transaction. MERCHANT shall use due diligence to verify that Cardholder is authorized to use the Card presented and that such Card is not counterfeit and MERCHANT shall obtain an authorization for each transaction in advance through the authorization system in accordance with the terms and conditions of this Agreement. When MERCHANT has information or reason to believe that a Cardholder has presented a lost, stolen, fraudulent or counterfeit Card, MERCHANT shall use its best efforts to retain the Card by peaceful means, and shall notify the appropriate authorities of the same. MERCHANT is not authorized to commit any breach of the peace or to cause any Cardholder any personal injury or to injure or destroy any property and MERCHANT agrees to examine the signature on every Card presented, compare the signature on the Card to the sales draft, check the date on which the Card becomes valid and the date on which the Card expires and not to accept any Card that is not yet valid or has expired. MERCHANT shall not establish minimum or maximum transaction amounts as a condition for honoring Cards or the card account number. If the actual card is not present MERCHANT agrees to abide by the above rules to the extent possible.
- 5. COMPLETION OF TRANSACTIONS:** MERCHANT agrees to complete all transactions with the Cardholder or other authorized user in accordance with the provisions of this Agreement and the Rules and Regulations as presently in effect and as the same may be amended from time to time. The Rules and Regulations are hereby incorporated by reference and made a part hereof as though fully set forth herein. MERCHANT shall not, as a regular practice, impose a requirement upon Cardholders to provide any personal information such as a home or business telephone number, a home or business address or driver's license as a condition of honoring Cards, unless deemed necessary because of suspicious circumstances or otherwise required by the Rules and Regulations or required because of the unique nature of a specific transaction. MERCHANT shall never utilize the credit available through individual Cards or through the use of the card number to provide cash advances to Cardholder. Such action will subject MERCHANT to immediate termination and all funds of MERCHANT, including those in MERCHANT'S Designated Deposit Account, Identified Account(s), or any other account, as identified in the MERCHANT APPLICATION, may be garnered by BANK and placed on hold pursuant to the provisions of Paragraph 24 herein below. MERCHANT may not deposit for entry into interchange, directly or indirectly any card transaction that it knows to be (i) fraudulent or (ii) not authorized by the cardholder. With respect to this requirement, the MERCHANT shall be responsible for the actions of its employees while acting in its' employ.
- 6. POINT OF SALES DEVICES:** MERCHANT agrees to use a POS device, computer or telephone and related equipment approved by BANK for transmission of all transaction data. MERCHANT should record each transaction by "swiping" the Card through the correct programmed POS device whenever Card is present. If Card is not present, or if Card can not be electronically read, the card number and expiration date must be manually entered into the POS device. MERCHANT acknowledges that each outlet, retail location or business entity is required by BANK to have its own POS device. MERCHANT understands that sales authorized at one location cannot be processed through a terminal at another location unless authorized by BANK. In the event of a breakdown of the POS device or other system failure, MERCHANT is to call customer service for assistance. BANK is not liable for any lost sales as the result of POS, printing, communications or authorization system failure. In such cases, MERCHANT shall imprint each sales draft with the embossed data on each Card and MERCHANT'S plate on an imprinter and call the authorization center for a voice authorization in accordance with Paragraph 8 and obtain Cardholder's or other authorized user's signatures. MERCHANT shall "key-in" the transaction data to the POS device as soon thereafter as the POS device and/or system becomes operational. If MERCHANT uses an electronic printer connected to the POS device, MERCHANT must also obtain the Cardholder's or other authorized user's signature on the printed sales receipt.
- 7. TAXES:** Tax required to be collected by MERCHANT (and other handling fees) must be included in the total transaction amount and should not be collected separately in cash nor processed as an additional transaction.
- 8. SALE DRAFTS/RECEIPTS:** When a card is present, MERCHANT agrees to prepare an electronically printed sales receipt or an imprinted sales draft for each transaction. All items, goods and services purchased in a single transaction shall be included in the total amount of a sales draft. MERCHANT shall legibly type or print the following information on each sales draft: (a) The Cardholder's name or name of other authorized user, if applicable; (b) The Cardholder's account number and expiration date; (c) MERCHANT'S name and address as shown on the face of this Agreement; (d) The date of the transaction; (e) The total cash price of the sale (including all applicable state, federal and local taxes); or (1) The amount to be charged if a partial payment is in cash or by check; or (2) The amount to be charged if a partial payment is made as a deposit; installment payment or the balance owing after a deposit has been made; (f) A brief description of the goods or services; (g) The words "deposit", "installment", or "balance" if full payment is to be made in this manner in various times on different sales drafts; (h) The authorization code number, and (i) For telephone order transactions, the letters "TO" shall be typed or legibly printed on the signature line; for mail order transactions, the letters "MO" shall be typed or legibly printed on the signature line; and for recurring transactions, the words "Recurring Transaction" shall be typed or legibly printed on the signature line. MERCHANT shall deliver to the Cardholder a true and completed copy of the sales draft. A transaction where the Card is not magnetically read or not present may be subject to increased discount fees if not approved by BANK or if not properly identified on the application or subsequent correspondence.
- 9. MAIL ORDER, TELEPHONE ORDER, CARD NOT PRESENT SALES:** When Card is not present MERCHANT understands that an authorized transaction does not constitute a guarantee of payment, only available credit, and may be subject to dispute or chargeback. MERCHANT understands and acknowledges the processing of transactions when a Card is not present may be subject to additional discount fees if unauthorized software, POS devices or direct data transmission information results in erroneously transmitted data, or if MERCHANT did not make the proper disclosure on the MERCHANT APPLICATION prior to BANK approval. In addition, these types of transactions where merchandise is to be shipped or services provided an authorization is considered to be valid if (i) the authorization is obtained on any day up to seven calendar days prior to the transaction date and (ii) the transaction amount does not exceed the authorized amount plus 15 percent, representing shipping costs. The transaction date is considered the shipping date. In any case, all transactions with a transaction date more than 30 days prior to processing date is subject to possible chargeback.
- 10. AUTHORIZATION:** MERCHANT understands and acknowledges that the floor limit is zero and that all transactions must be authorized. In the event that the POS device fails, an authorization must be obtained through voice back-up. MERCHANT acknowledges that authorization can not be "forced in" by reducing the transaction amount to find an approved authorized amount. Once a transaction is declined, MERCHANT must wait for next day availability. Failure to abide by these rules subjects MERCHANT to possible chargeback, increase in the discount and/or transaction fees.
- 11. APPROVED MONTHLY PROCESSING LIMIT:** MERCHANT understands and acknowledges that BANK will assign a monthly sales processing limit which is not to be exceeded without BANK authorization. If exceeded, it could, at BANK'S sole discretion, charge an over limit fee, suspend processing services, hold the excess processed transactions or charge an additional discount and/or reserve fee.
- 12. PAYMENT (ACH):** MERCHANT shall at all times maintain an accessible ACH account that the BANK will use to debit and/or credit funds on a daily or monthly basis. The settlement of funds is based on the schedule of terms governing the availability of funds agreed to by MERCHANT. The availability of funds begins on the first bank business day following the MERCHANT closing a batch before 5:00 p.m. Central Standard Time; or if MERCHANT is using a special processor, the second business day. BANK reserved the right to divert and hold all funds when BANK is investigating the breach of warranty by Merchant or has reasonable cause to believe that MERCHANT may have violated a provision of this Agreement and/or is engaged in illegal or suspicious activity. BANK cannot guarantee that timeliness with which any payment may be credited by MERCHANT'S bank. MERCHANT understands that, due to the nature of the ACH and the electronic networks utilized for the movement of funds and the fact that not all banks belong to the ACH Network, payment to MERCHANT can be delayed. In such cases, MERCHANT agrees to establish a depository account at a financial institution that does belong to the ACH Network and to work with BANK to help resolve any problems in crediting MERCHANT'S Designated Account. In the event that a payment is rejected by MERCHANT'S bank or fails to arrive within five (5) days from the end of the Funds Availability Cycle due to problems over which BANK has no control, BANK may periodically wire transfer any funds due MERCHANT until the problem is resolved, such wire transfers and resolution of all issues shall be solely at the MERCHANT'S expense. All payments to MERCHANT shall be made in full, after first deducting therefrom the discount fee, transaction fee, credits, chargebacks, reserves, lease payments, rental fees, statement fees, minimum discount fees or other charges or fees for which MERCHANT is responsible pursuant to this Agreement. Said charges and fees shall be deducted from transaction settlement or may be debited against MERCHANT'S Designated Account, MERCHANT'S Identified Account(s) or the Identified Account(s) of any GUARANTOR of this Agreement, at the BANK'S sole and absolute discretion. MERCHANT understands and hereby acknowledges that the discount fee is earned at the time of sale and is not subject to refund. Not all fees will be debited on a daily basis, but may be subject to a month end debit to the designated account, or other available funds.
- 13. CASH ADVANCES:** MERCHANT shall not use, at its location or through its electronic terminal MERCHANT'S own credit card or any credit card which MERCHANT is authorized to use. Such use is deemed as Cash Advance. Cash Advances are prohibited and can result in immediate termination and the MERCHANT added to the Combined Terminated MERCHANT File, and Match File.
- 14. DRAFT AND DATA STORAGE RETRIEVAL:** The Rules and Regulations require the presentation of printed or imprinted sales transactions to issuers upon request. MERCHANT shall establish a system to store and maintain copies of sales transactions in such a manner as to forward said information within twenty-four (24) hours of request. MERCHANT understands that failure to respond to such a retrieval request constitutes a violation of this agreement which may result in a chargeback, assessing a charge back fee and/or establishing a Reserve Account. MERCHANT agrees to preserve all records pertaining to sales drafts and credits for at least seven (7) years from the

date of the document and to properly comply with all requests by BANK for production of said records. MERCHANT further agrees that BANK/iPayment, Inc. or any authorized representative of BANK or iPayment, Inc. may, during normal business hours, without prior notice inspect, audit and make copies of MERCHANT's books, accounts, records and files pertaining to any transactions or refunds or adjustments thereon. Where a card user is not present, MERCHANT must be able to create all information as to the origination of the transaction.

15. RETURNS AND CREDITS: If, with respect to any transaction, any goods are accepted for return or any services are refunded, terminated or canceled, or any price adjustment is allowed by MERCHANT (other than involuntary refunds by airlines or other carriers when required by applicable tariffs and except where otherwise required by law or governmental regulations), MERCHANT shall not make any cash refund to the Cardholder during the term of this Agreement, but MERCHANT shall utilize a credit transaction evidencing such refund or adjustment. MERCHANT must process the credit transaction within 24 hours but no later than (5) five business days. MERCHANT shall date each credit item with the transaction date and include thereon a brief description of the goods returned, services canceled or adjustment made and the amount of the credit in sufficient detail to identify the transaction. One completed copy of the credit draft shall be delivered to the Cardholder at the time of each return or cancellation of a transaction. Every credit issued will be subject to a transaction fee and there shall be no refund of any fees or charges associated with the original transaction. MERCHANT shall not, under any circumstances, during the term of this Agreement, issue cash for return of goods or cancellations of services where goods or services were not originally purchased at MERCHANT. With proper disclosure at the time of the transaction, MERCHANT may: (a) refuse to accept goods in return or exchange and refuse to issue a refund to a Cardholder; and (b) accept returned goods in exchange for the MERCHANT's promise to deliver goods or services of equal or greater value available from MERCHANT at no additional cost to Cardholder. Proper disclosure shall be deemed to have been given only if, at the time of the transaction (which is evidenced with an acknowledged cardholder signature), the following notice appears on all copies of the sales draft (or disclosure if card is not present) in legible letters at least one-quarter (1/4) inch high and in close proximity to the space provided for the Cardholder's signature stating "NO REFUND" or "EXCHANGE ONLY" or "IN STORE CREDIT ONLY" as applicable, or equivalent language. Even with this provision being adhered to it does not guarantee avoidance of chargeback.

16. WARRANTIES BY MERCHANT: MERCHANT warrants and agrees to fully comply with all federal and local laws, rules and regulations as amended from time to time. MERCHANT also warrants not to change the nature of its business as indicated on the accompanying MERCHANT APPLICATION submitted herewith or to modify the ownership of the business without the prior written consent of BANK. As to each transaction presented to BANK for payment, MERCHANT specifically warrants that (a) the sales transaction is valid in form and has been completed in accordance with all applicable requirements; (b) MERCHANT has delivered goods to the Cardholder or completed the service described on the sales transaction in accordance with MERCHANT's agreement with the Cardholder, and that MERCHANT has, in inventory, the goods sold if not delivered at the time of sale; (c) each sales transaction represents the Cardholder's indebtedness for the total amount shown; (d) the Cardholder has no defense right of offset or counterclaim against MERCHANT in connection with the purchases of the goods or services; (e) MERCHANT has not charged Cardholder any separate or additional fee(s) in connection with the transaction other than as may be required by law. The foregoing shall not prohibit MERCHANT from extending discounts to customers paying by cash, check or any other means, other than by credit card; (f) MERCHANT warrants to BANK that each transaction was placed by a person who is the Cardholder or other authorized user of the Card; (g) all of MERCHANT's business locations engage in the same or substantially similar business activity as that listed on the accompanying MERCHANT APPLICATION; (h) the percentage of mail and/or telephone order sales does not exceed five percent (5%) of all sales made by MERCHANT, unless specifically disclosed in the MERCHANT APPLICATION; (i) MERCHANT offers no enticements or incentives to Cardholders in connection with the sale of MERCHANT's products; (j) MERCHANT will not use any personal credit card owned by MERCHANT or any GUARANTOR on the MERCHANT POS device; (k) MERCHANT uses both the name and address shown on the Agreement on all sales drafts and does not use any other name (unless a descriptor is used to further identify the transaction, and agreed to by BANK); (l) MERCHANT has included all items of goods and services purchased in a single transaction and the total amount on a single sales draft or transaction record and MERCHANT will not engage in the practice of "split-ticket" sales; (m) will not submit any sales transaction that was previously charged back; (n) shall not submit any sales transaction that was previously declined. MERCHANT further warrants and agrees that it shall not, without the Cardholder's prior written consent, sell, purchase, provide or exchange Card account information in the form of sales drafts, mailing lists, tapes or any other media obtained by reason of a transaction to any third party other than MERCHANT's agents for the purpose of assisting MERCHANT in its business to BANK, to iPayment, Inc. or pursuant to any lawful government demand. All media containing Card account numbers must be stored for three (3) years in an area limited to selected personnel until discarded and then must be destroyed in a manner that will render the data unreadable and unusable.

17. CHARGEBACKS: MERCHANT will pay to BANK, upon demand, the face amount of any chargebacks, BANK shall have the right to debit MERCHANT's incoming chargebacks, through a Designated Account, or any other funds of MERCHANT or of any GUARANTOR in BANK's direct or indirect control by reason of the security interest granted to BANK by MERCHANT pursuant to Paragraph 24 hereinbelow, and to charge back such sales to MERCHANT in any of the following situations: (a) Where goods have been returned or services canceled by a Cardholder and the Cardholder requested a credit card draft and such credit draft was not processed by MERCHANT within three (3) business days; (b) Where the purchases has not been authorized in advance by the authorization center as required hereunder and the transaction was charged back by the issuer; (c) Where the transaction is for a type of goods or service sold other than as disclosed in the MERCHANT APPLICATION and approved in advance by BANK and the sales transaction was charged back by the Cardholder or issuer; (d) Where a Cardholder contends or disputes in writing to BANK, iPayment, Inc. or the issuer that: (1) Goods or services were not received by the Cardholder or other authorized user; or (2) Goods or services received by a Cardholder or other authorized user do not conform to the description on the sales draft; or (3) Goods or services were sold in a misleading fashion or manner by MERCHANT; or (4) Goods or services were defective; or (5) The dispute reflects a claim or defense authorized against issuers or creditors by a governmental agency, a relevant statute or regulation; (e) Where a sales draft or credit draft was not received by BANK as required in accordance with Paragraphs 14 and 15 of this Agreement; (f) Where the sales transaction does not contain a transaction date or the face of the sales draft show that such date or dollar amount has been altered or incorrectly entered and the sales draft is charged back by the issuer; (g) Where the sales draft contains the imprint description of a Card other than the Card specified; (h) Where the transaction was generated through the use of an expired Card; (i) Where no signature appears on the sales draft (or the sales draft does not contain the embossed legend from the Card in the case of a permitted manual data capture transaction) or MERCHANT failed to obtain specific authorization in advance from the authorization center to complete the transaction and/or the Cardholder has certified in writing to BANK or the issuer that the Cardholder or other authorized user did not make or authorize such transaction; (j) Where the signature on the sales draft is obviously different from the signature appearing on the signature panel of the Card and the sales draft is charged back; (k) Where the issuer, BANK or iPayment, Inc. has information or belief that merchant fraud occurred at the time of the transaction(s), whether or not such transaction(s) was properly authorized by the issuer, and the Cardholder neither participated in nor authorized the transaction(s). In any other situation where the sales draft was executed or depository credit was given to MERCHANT in circumstances constituting a breach of any representation or warranty of MERCHANT or in violation of the Rules and Regulations, whether or not a transaction is charged back by the issuer. If, with respect to any one of MERCHANT's outlets, the amount of any Card counterfeit or fraud incidences becomes excessive, in the sole and absolute discretion of BANK, MERCHANT may be charged back for all transactions, terminated immediately without cause, and MERCHANT's funds, including but not limited to those incoming transactions and in MERCHANT's Designated Account(s), shall be held pursuant to the provisions of Paragraph 18 below. BANK will provide MERCHANT with any information possessed by it which may enable MERCHANT to recover from others the amount of any transaction charged back to MERCHANT. MERCHANT understands that BANK will assess up to twenty-five (\$25.00) per each chargeback plus the amount of any chargeback fines or penalties assessed by VISA or MasterCard against the Bank for transactions arising from the activities of MERCHANT, or any other charges as may be established by BANK from time to time. Furthermore, BANK may assess MERCHANT a fee for processing any fines or penalties that may be charged by VISA or MasterCard at the sole and absolute discretion of BANK.

18. RESERVE ACCOUNT: Notwithstanding any other provision of this Agreement or any language to the contrary contained in the Agreement, BANK reserves the right to establish, without prior notice to MERCHANT, a non-interest bearing Reserve Account and/or to raise the Discount Fee or Transaction Fee pursuant to Paragraph 26, upon BANK's reasonable determination of the occasion of any of the following: (a) MERCHANT engages in any processing of charges which represents an overcharge to the Cardholder by duplication of charges; (b) any activity designed by MERCHANT to circumvent a "Call Center" message when attempting to process a transaction for a Cardholder; (c) failure by MERCHANT to fully disclose the true nature of its business to BANK to permit a fully-informed decision as to the suitability of MERCHANT for processing through BANK; (d) failure by MERCHANT to fully disclose the true ownership of MERCHANT's business entity; (e) processing by MERCHANT of unauthorized charges; (f) processing by MERCHANT of charges for any other merchant or third party; (g) MERCHANT processes any credits through MERCHANT's POS device to any Visa or MasterCard account owned or controlled by MERCHANT or any of its GUARANTORS; (h) any misrepresentation made by MERCHANT in completion of the MERCHANT APPLICATION or breach of any other covenant, warranty or representation contained in the Agreement, including a change of type of business without prior approval by BANK; (i) MERCHANT has chargebacks which exceed one percent (1%) of the total number of transactions completed by MERCHANT in any thirty (30) day calendar period, such (30) day calendar period not limited to any specific monthly cycle; (j) excessive number of requests from consumers or issuing banks from retrieval of documentation; (k) excessive credits that exceed sale transactions by ten percent (10%); (l) any form of MERCHANT financial instability or diminishment of the financial condition of MERCHANT or any of its GUARANTORS. After payment or adequate provision for payment is made by BANK for all obligations on the part of MERCHANT to BANK under this Agreement, including any and all amounts due for any lease or rental of any equipment utilized by MERCHANT under this Agreement and the Rules and Regulations. MERCHANT may request BANK to disburse to MERCHANT any and all funds remaining in the Reserve Account. Unless otherwise agreed to by BANK, such funds will not be disbursed to MERCHANT until the end of one hundred and eighty (180) days from the date of the last chargeback or transaction. Whichever is later, unless BANK, in its sole and absolute discretion, has reason to believe the Cardholder chargeback rights may be longer than such period of time, in which event BANK will notify MERCHANT of such fact and BANK will set the date when funds shall be released. Such notice from Bank will be given to MERCHANT within one hundred and eighty (180) days after the termination of the Agreement. No funds held in the Reserve Account will accrue or bear interest.

19. FRAUDULENT SALES-FACTORIZING OR LAUNDERING: MERCHANT shall never accept or deposit, or enter into MERCHANT's POS device, a fraudulent sale or sale made by any other MERCHANT. Should MERCHANT do so, MERCHANT agrees to pay BANK a fee of five thousand dollars (\$5,000), and MERCHANT may immediately be terminated by BANK, have all funds placed into a Reserve Account pursuant to Paragraph 17 & 18 above and may be placed on the COMBINED TERMINATED MERCHANT FILE (CTMF) OR MATCH, MERCHANT and GUARANTOR(S) specifically acknowledge that placement on the CTMF/MATCH may result in MERCHANT and GUARANTOR(S) never being allowed to settle transactions again and MERCHANT and GUARANTOR(S) hereby expressly waive any claims or rights of claim against BANK and iPayment, Inc. arising from the placement of MERCHANT and/or GUARANTOR(S) on the CTMF/MATCH.

20. DUE CARE: The performance by BANK of all services called for in this Agreement shall be consistent with reasonable industry standards. BANK shall indemnify and hold MERCHANT harmless from any liability, loss or damage which directly results from; (a) BANK not complying with the terms and conditions of this Agreement; or (b) any loss suffered by MERCHANT as a result of BANK's negligence. BANK and/or iPayment, Inc. shall not be liable for any special consequential, exemplary or, punitive damages. In no event shall BANK's and/or iPayment, Inc.'s cumulative liability to MERCHANT hereunder exceed the amount of the net processing fees paid by MERCHANT to BANK in the immediately preceding calendar month. MERCHANT acknowledges and agrees that the indemnity hereunder shall not extend to any act or failure to act by any employee of MERCHANT. Our sole liability to you will be to correct, to the extent reasonable, any data in which errors have been caused by us, provided you notify us of such errors within 10 days after your receipt of a statement, notice or other information reflecting the error. Our expense to correct the data will constitute our only responsibility in connection with such errors.

Any action or proceeding by you to enforce an obligation, duty or right arising under this Agreement or by law with respect to the Services must be commenced within one year after the cause of action accrues. BANK and iPayment, Inc. are hereby authorized by MERCHANT to divulge MERCHANT's name, address and telephone number(s) to any third party who has the reasonable right to know such information.

21. FORCE MAJEURE: The parties to this Agreement shall be released from liability hereunder for failure to perform any of the obligations hereunder where such failure to perform occurs by reason of any act of God, fire, flood, storm, earthquake, tidal wave, communications failure, sabotage, war, military operation, national emergency, mechanical or electronic breakdown, civil commotion or the order, requisitions, request or recommendation of any governmental agencies or acting governmental authority or either party's compliance therewith, or governmental procreation, regulation or priority, or any other cause beyond either party's reasonable control, whether similar or dissimilar to such causes.

22. TERMINATION: This Agreement may be terminated by MERCHANT for any reason or cause whatsoever upon thirty (30) days prior written notice to BANK provided that MERCHANT has paid, or agrees to pay, the minimum discount fees and statement fees for a minimum period of twelve (12) months from the Anniversary Date. BANK, in addition to any rights of immediate termination without notice as may be contained elsewhere in the Agreement, may terminate this Agreement and at BANK's discretion, any other business that is commonly owned or controlled by MERCHANT for any reason or cause whatsoever upon thirty (30) days prior written notice to MERCHANT. Such termination shall become effective on the later of thirty (30) days from the date such notice is given in the manner prescribed for notices herein or the date specified in such notice; provided, however, that in the event of termination due to breach by MERCHANT of any of the terms and conditions of this Agreement, such termination shall become effective upon the giving of such notice by BANK. Notwithstanding Paragraph 3, notice of termination due to breach may be given orally or in writing at the discretion of BANK. This Agreement may also be terminated effective upon the giving of notice, orally, in writing or by closing the MERCHANT's POS device without prior warning at the discretion of BANK in the event BANK determines that MERCHANT's type of business as indicated on the MERCHANT APPLICATION differs from the actual type of business MERCHANT operates or the business as conducted by MERCHANT could endanger the safety and/or soundness of BANK, the owner, officer or corporate entity has a separate relationship with BANK and such relationship has been terminated by BANK, MERCHANT, and/or any of its GUARANTORS files for bankruptcy or is otherwise shown to be insolvent and, in the event MERCHANT has chargebacks which exceed one percent (1%) of the total number of transac-

tions completed by MERCHANT in any thirty (30) calendar day period, or in the event MERCHANT owes money to BANK and fails to make a timely payment thereof. BANK may allow MERCHANT to process while exceeding chargeback minimums or any violation while correcting action is being taken by MERCHANT. This allowance does not waive the provision for immediate termination.

23. **NOTICES:** Notices required or permitted under this Agreement shall be deemed to have been given on the date and at the time the same shall be deposited in the United States mail by first class mail, postage prepaid and addressed to BANK, iPayment, Inc. or MERCHANT at the addresses written on the MERCHANT APPLICATION or at such other addresses as any other party may give to the other parties from time to time by written notice. All obligations of any party to this Agreement to pay funds to another shall survive any termination of this Agreement. Nothing herein shall be construed as relieving MERCHANT of the obligation of the payment of all minimum discount and statement fees as provided in Paragraph 26 of this Agreement.

24. **SECURITY INTERESTS:** To secure all obligations of MERCHANT to BANK arising from this Agreement, MERCHANT hereby grants BANK a possessory security interest in, and hereby assigns, conveys, delivers, pledges and transfers to BANK all of MERCHANT's right, title and interest in and to, all deposits, regardless of source and whether or not finally collected or credited to, and all amounts contained in, MERCHANT's Designated Account(s) and all other accounts now or hereafter established in MERCHANT's name at BANK. Said security interest may be exercised by BANK without notice or demand of any kind. The exercise of this security interest shall be in addition to any other rights of BANK under this Agreement or law. BANK shall also have the right to require MERCHANT to furnish such other and different security as BANK shall deem appropriate, in BANK's sole and absolute discretion, in order to secure MERCHANT's obligation under this Agreement. MERCHANT agrees to execute any documents to take any actions required in order to comply with, perfect and maintain any security interest under this paragraph.

25. **INDEMNIFICATION:** MERCHANT shall indemnify and hold BANK and iPayment, Inc. and their officers, employees, agents and independent contractors harmless from any liability, loss, damage, claim or complaint, and reasonable attorney's fees and costs and any reasonable fee imposed by BANK and/or iPayment, Inc. to cover BANK's and/or iPayment, Inc.'s administrative costs incurred, arising out of MERCHANT's breach of this Agreement, including but not limited to, misrepresentation or breach of any covenants or warranties herein contained.

26. **DISCOUNT FEE AND TRANSACTION FEES:** Through ACH, BANK will debit MERCHANT's Designated Deposit Account daily or monthly as applicable for the discount fees and transaction fees as expressed on the "Schedule of Fees". BANK shall have the right to change or increase the Discount Fee and Transaction Fees from time to time in accordance with Paragraph 23 and 28. Transaction Fee shall mean a fee charged for each sales and/or credit inquiry or transaction processed, including but not limited to batch closing, voice authorizations. MERCHANT acknowledges that BANK has relied on this information contained in the MERCHANT APPLICATION (including but not limited to) the type of business in which MERCHANT is engaged, the product or services sold, the average sales or ticket size and projected monthly volume, the amount of telephone and mail order sales, and the ratio of keyed (non-swiped transactions) in determining whether to accept MERCHANT's application and in the setting of the Discount Fee and Transaction Fees charges to MERCHANT. MERCHANT acknowledges that the Discount Fee quoted in the MERCHANT APPLICATION is contingent upon MERCHANT using the correct POS/PC software application, closing batches at least once every business day, and further understands that in the event that batches are not closed at least daily, additional discount may be charged. MERCHANT further understands that if authorization is not obtained for every transaction, exactly matching the sales amount, an additional discount fee may be charged for each transaction. Additional fees may be assessed for processing of sales or credit transactions emanating from foreign cardholders. Hotels and car rental agencies may obtain authorizations within fifteen percent (15%) of the exact amount of the sales transactions, for bars, restaurants and nightclubs, within twenty percent (20%). A Schedule of Fees will be sent to MERCHANT upon BANK approval.

27. **MINIMUM DISCOUNT FEE/STATEMENT FEE:** MERCHANT agrees that a Minimum Discount Fee will be imposed for any month that the minimum fee is not met. MERCHANT acknowledges that BANK will assess a ten dollar (\$10) monthly statement fee on a monthly basis. MERCHANT agrees to pay BANK the Minimum Discount Fee and Monthly Statement Fee for no less than twelve (12) months and specifically authorized BANK to debit the full amount of all unearned Minimum Discount Fees and Monthly Statement Fees against the MERCHANT's Designated Account and/or any Identified Account(s) of the MERCHANT and/or its GUARANTOR(S) in the event that either the BANK or the MERCHANT terminate this Agreement prior to the end of the initial twelve months of this agreement. All fees will be stated on the Schedule of Fees, unless separately disclosed as conditions warrant.

28. **EXCEPTION TO QUOTED RATES/ANNUAL FEES:** MERCHANT acknowledges that BANK reserves the right, upon 30 days prior written notice, to charge MERCHANT an Annual Account Renewal Fee after initial term of Agreement of \$49.95. Pursuant to Paragraph 3. Merchant acknowledges that Bank will charge a higher discount fee and/or reserve fee whenever there is an exception to normal processing as stated on the Merchant Application.

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

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

31. **ASSIGNMENT AND DELEGATION:** This Agreement may be assigned by BANK but not by MERCHANT without prior written consent of BANK.

32. **GOVERNING LAW AND VENUE:** This Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties stipulate that the exclusive venue for any action between them shall be the county of Humboldt, California.

33. **COMPLIANCE AND DISCLOSURE OF INFORMATION:** MERCHANT shall provide such information and certifications as BANK and iPayment, Inc. may reasonably require from time to time to determine MERCHANT's compliance with the terms and conditions of this Agreement and the Rules and Regulations. MERCHANT further agrees to produce and make available for inspection by BANK or iPayment, Inc., or their officers, agents or representatives, such books and records of MERCHANT as BANK and iPayment, Inc. may deem reasonably necessary to be adequately informed of the business and financial condition of MERCHANT, or the ability of MERCHANT to observe or perform its obligations to BANK pursuant to this Agreement. MERCHANT further agrees to provide to BANK and iPayment, Inc. from time to time upon request such information as BANK and iPayment, Inc. may request including, but not limited to, credit reports, personal and/or business financial statement, income tax returns, or other such information as BANK and iPayment, Inc. may request. MERCHANT and each undersigned GUARANTOR grant to BANK and to iPayment, Inc. continuing authority to conduct credit card checks and background investigations and inquiries concerning MERCHANT, MERCHANT's owner(s) and GUARANTOR(S) including, but not limited to, character and business references and the financial condition of MERCHANT, MERCHANT's owner(s) and GUARANTOR(S). MERCHANT and each undersigned GUARANTOR expressly authorize BANK and iPayment, Inc. or their agents and representatives to gather and receive such information from any and all third parties directly, without further consent or authorization on the part of MERCHANT or GUARANTOR(S).

34. **AMENDMENTS:** No provision of this Agreement may be amended, modified or waived except by a writing signed by BANK. This Agreement may be amended by BANK from time to time upon written notice of change(s) in terms and conditions. Any amendment to this Agreement shall be effective on the later of the effective date specified in the notice mailed to MERCHANT in the manner prescribed for notices herein.

35. **SURVIVAL:** All representations, warranties and covenants shall survive the expiration or termination of this Agreement.

36. **CONSTRUCTION:** The captions contained in this Agreement are for the convenience of the parties and shall not be construed or interpreted to limit or otherwise define the scope of this Agreement shall not be deemed to have originated with either party.

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

38. **ENTIRE AGREEMENT:** This Agreement together with the accompanying MERCHANT APPLICATION signed and submitted by MERCHANT in connection herewith, constitute and express the entire understanding between MERCHANT, BANK and iPayment, Inc. with respect to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings, inducements, or conditions by BANK, iPayment, Inc., other sales representative, whether express or implied oral or written. Neither this Agreement nor any portion or provision hereof may be amended, modified, or waived except by a writing specifically indemnified as such and signed by the BANK and/or iPayment, Inc.