

## CHARGEMELATER INC

**MAILING: Send your signed Merchant Agreement to:**

**ChargeMeLater INC  
Att: Business Development Group  
1 Harmon Plaza, Suite 200  
Secaucus, New Jersey 07094  
Fax: 201 223-2102**

**Questions on your Merchant Agreement? 201-223-2101, att: Laura Pelullo**

### MERCHANT AGREEMENT

#### 1. Agreement between You and ChargeMeLater

1.1 *Binding Agreement.* This merchant agreement (the "**Agreement**") is a legal and binding contract between you and ChargeMeLater INC which governs your use of the ChargeMeLater billing service (the "**Service(s)**") during the term of this Agreement. In this Agreement, "**you**", "**your**", and "**Merchant**" means any entity for which ChargeMeLater provides the Services pursuant to this Agreement. Unless otherwise stated "**we**", "**our**" or "**ChargeMeLater**" will refer to ChargeMeLater INC and "**customer**" means a customer of Merchant. By using the ChargeMeLater Services you agree to be bound by all of the terms and conditions of this Agreement. If you do not agree to be bound by the terms of this Agreement do not use the ChargeMeLater Services.

1.2 *Acceptance as a ChargeMeLater Merchant.* You agree to complete **the Merchant Survey** <http://www.ChargeMeLater.com/signup.php> and be accepted by ChargeMeLater as a ChargeMeLater Merchant. Upon ChargeMeLater's receipt of the Merchant Survey you will be contacted by a ChargeMeLater representative who will advise you whether or not you have been accepted by ChargeMeLater and, if you have been accepted, ChargeMeLater will send to you the Pricing Schedule. You agree to read and accept all of the terms and conditions contained in the Privacy Policy, this Agreement and the then current ChargeMeLater Pricing Schedule (which will be emailed to you based upon the information you have supplied upon the Merchant Survey). You agree to print out this Agreement and the Pricing Schedule, execute and send an original, executed copy of the same to ChargeMeLater at the address above. If your Agreement is accepted by ChargeMeLater, you will be given a date when the Services will be available after ChargeMeLater has received the initial Merchant Fee (as set forth in the Pricing Schedule) by check or other form of payment acceptable to ChargeMeLater. ChargeMeLater is under no obligation to you unless and until such procedures have been completed.

## 2. Terms upon which ChargeMeLater offers you access to our Services

2.1 *Amendments.* We may amend this Agreement at any time by posting the amended terms on our Internet site or by sending you an e-mail to the address in your Merchant Survey. Except as stated below, all amended terms shall be effective 30 days after they are initially posted on our site or after such e-mail is sent. You may review the then current Agreement prior to initiating a transaction at any time on the site mentioned above.

2.2 *ChargeMeLater is Your Payment Processing Service.* During the term of this Agreement, Merchant agrees to use the ChargeMeLater logo on the websites it owns that provide choices for customers to make electronic payments or other forms of payments, which are set forth below Merchant's signature below. Merchant agrees that ChargeMeLater is acting as its agent to collect funds remitted due to the sale of your goods or services to a third party. All funds collected must be in U.S. dollars and will be kept in a pooled account or accounts established by ChargeMeLater with one or more commercial banks. Disbursement to Merchant of funds collected shall occur according to the terms in section 6.2 of the agreement. You will be advised of our identity authentication procedures as may be in effect from time to time. In the event that any payment received from any of your customers pursuant to the ChargeMeLater procedures is (a) fraudulent, false, or otherwise voidable or (b) subject to a dispute between you and any of your customers, you agree to indemnify and hold ChargeMeLater and others harmless as provided in Section 8 Indemnification below.

2.3 *Reports.* Subject to the terms in this Agreement, ChargeMeLater agrees to provide Merchant with access to standardized reports that are updated on at least an hourly basis regarding Merchant's transactions processed by ChargeMeLater using the Services.

2.4 *Security.* ChargeMeLater utilizes encryption and "firewall" technologies that are understood in the industry to provide reasonable security for the transmission of information over the Internet. ChargeMeLater does not guarantee the absolute security of the Services or transaction data. The Internet is not a secure medium. Merchant agrees that ChargeMeLater does not guarantee and is not responsible for the security of transaction data or any other information provided by Merchant or its customers.

2.5 *Technical Support for Services.* ChargeMeLater shall provide Merchant with ChargeMeLater's then-current technical support for the Services, unless otherwise set forth in a separate writing manually executed and delivered in hardcopy by an officer of ChargeMeLater. A separate fee may be charged by ChargeMeLater for such additional support.

2.6 *ChargeMeLater Dialer Solution Software License.*

a. *Limited License.* The following is a limited license to the object code of ChargeMeLater's software ("**Dialer Software**") that ChargeMeLater may make available to you. The Dialer Software is owned or licensed by ChargeMeLater and is

provided to you pursuant to this limited non-exclusive license (“**License**”) to use for the limited purpose of obtaining Services from ChargeMeLater. This license does NOT permit you to sublicense, modify, create derivative works, reverse engineer, decompile, disassemble, copy or modify or transfer, rent, lease or otherwise dispose of the Dialer Software in whole or in part, on a temporary or permanent basis. This License is automatically cancelled upon the termination of this Agreement or upon any breach of the terms of this Section 2.4. ChargeMeLater and its licensors retain all rights and ownership interest in the Dialer Software and all subsequent reproductions, if any, regardless of the form or media in or on which the original and other copies may exist. This License is not a sale of the Dialer Software or any other intellectual property or software provided pursuant to this Agreement. In the event that ChargeMeLater no longer utilizes the Dialer Software this License will be cancelled. ChargeMeLater may replace the Dialer Software with an upgraded product or terminate the Services provided utilizing Dialer Software at anytime.

*b. Copyright Protection.* The Dialer Software and accompanying written materials are protected by United States copyright, may be subject to patent protection and such other applicable protections of international law or treaty as applicable. You may be held liable for any infringement or use that is not authorized by this Agreement.

*c. Term.* The License is effective until terminated pursuant to the terms of this Agreement. Upon such termination, you must destroy all of your copies of the Dialer Software.

*d. LIMITED WARRANTY.* THE DIALER SOFTWARE IS PROVIDED “AS IS”. CHARGEMELATER MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE REGARDING THE DIALER SOFTWARE OR THE SERVICES. CHARGEMELATER DOES NOT WARRANT, GUARANTEE OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF DIALER SOFTWARE IN TERMS OF ITS CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS OR OTHERWISE. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE SOFTWARE IS ASSUMED BY YOU. THE EXCLUSION OF IMPLIED WARRANTIES IS NOT PERMITTED BY SOME STATES. THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

*e. Guidelines for Dialer Software Usage: Under any circumstances is merchant allowed to impair the ability of the person to be billed to read the terms and conditions of the Videotext Service offer or software download, including but not limited to, by way of spam, pop-ups which cannot be permanently closed or disabled by clicking on a “close” button or the “x” in the upper right hand corner; The dialer cannot contain any type of software, virus or additional software, other than that necessary to connect the billed person to the billing gateway, unless such inclusions are clearly and conspicuously disclosed to the consumer; Merchant cannot impair the ability of the person to be billed to identify and remove a dialer program from shi or her PC, including, but not limited to, impairing the Add/Remove control within Windows or other computer operating systems; Merchant cannot impair the ability of the person to be billed to fully*

*disconnect from the Videotext Services and to avoid additional reconnection attempts without first obtaining EVA from the person to be billed for each connection; Merchant must refrain from downloading onto the computer of any consumer, or cause, enable, or facilitate the downloading onto the computer of any consumer, any modem dialer software without first having obtained authorization for such download from the person to be billed after clear and conspicuous disclosure of the material terms and conditions of the download.*

2.7 ChargeMeLater is required to inform "Merchant" that its conduct is governed by a Final [Judgment](#) and Agreed Order ("Order") entered into on "date". A copy of this full Order can be found on the ChargeMeLater website at [www.ChargeMeLater.com](http://www.ChargeMeLater.com). By signing this contract "Merchant" acknowledges that it has read the full Order on ChargeMeLater's website.

### **3. Merchant Represents that it is Eligible for ChargeMeLater Services.**

In order to utilize the ChargeMeLater Services you must: (a) complete all of the requirements of Section 1.2 above, (b) represent and warrant that the information provided upon the Merchant Survey is true and accurate in all respects and is not misleading, (c) represent and warrant that you are engaged in legal activities conducted in compliance with all applicable laws and the use of this Service does not violate any licensing or other law rule or regulations that governs your business (including but not limited to those governing financial services, consumer protection, unfair competition, anti-discrimination, or false advertising), (d) agree that the use of this Service is strictly for the payment for goods or services that you have or will provide in accordance with your agreement with your customer, that you are not engaged in any consumer fraud or deceptive trade practice and that you are not using the Services to provide cash advances or otherwise as a service to wire monies, (e) agree that the goods or services you provide are not related to gambling and/or gaming activities, online and offline casinos, sports wagering and office pools (with the exception of payments for gaming transactions that are expressly authorized by law in the jurisdiction of both the sender and the recipient of the payment); (f) agree that you do not infringe on any third party's copyright, patent, trademark, trade secret or other property rights or rights of publicity or privacy; (g) agree that your products or services are not defamatory, trade libelous, unlawfully threatening or unlawfully harassing; obscene or contain child pornography; (h) agree that your products or services do not contain any viruses, trojan horses, worms, time bombs cancelbots, easter eggs, spyware or any other software which is not necessary to connect billed parties to our billing gateway, unless such inclusions are clearly and conspicuously disclosed. (i) agree that no other computer programming routines will be utilized that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or other personal information redirect any domain name or URL; and (j) agree not to take any action or fail to take any action that would create liability for ChargeMeLater or cause ChargeMeLater to lose (in whole or in part) the services of its ISP's or other suppliers. If you use, or attempt to use the Service for purposes other than sending and receiving payments and managing your account, including but not limited to tampering, hacking, modifying or otherwise corrupting the

security or functionality of the Services, your account will be terminated and you will be subject to damages and other penalties, including criminal prosecution where available. Our Services are only available to individuals or businesses that can form legally binding contracts under applicable law. Without limiting the foregoing, our Service is not available to minors (under 18), or to persons who are suspended from our Service. **ChargeMeLater may transact business with entities that are debtors-in-possession. However, certain modifications to this Agreement and the acceptance procedures are required. If you are a debtor-in-possession please indicate this fact upon your Merchant Survey].**

#### 4. Other Merchant Obligations

Merchant shall be solely responsible for the following:

4.1 *Merchant Privacy Policies and Security Systems.* Merchant is responsible to establish and maintain privacy policies and program security that have been formatted to ChargeMeLater standards and, where required by law or otherwise advisable, encrypted. Merchant responsibility includes all liability concerning the transmission of Merchant's registration information and data to ChargeMeLater servers and ensuring that the data transmitted in conjunction with the Services and for enrollment for the Services is accurate, complete and in the form as requested by ChargeMeLater, and is not corrupted due to Merchant's systems.

4.2 *Informing Consumers.* Merchant is responsible for advising its customers that they are being sent to the ChargeMeLater website for non credit card payment information and that ChargeMeLater is not affiliated to the Merchant, does not have control over Merchant's content or services, does not store, publish or edit Merchant's content and does not store content on its servers but is a billing mechanism and service provider to Merchant. Merchant's website will provide the customer with an acknowledgement that a transaction has been completed and that ChargeMeLater has received payment in full from the customer (the "**Acknowledgment Page**").

4.3 *Link.* Merchant's website will contain a link to ChargeMeLater's website which may at the request of ChargeMeLater consist of a ChargeMeLater logo as a hypertext link to the URL: <http://www.ChargeMeLater.com> (the "**ChargeMeLater website**") or other website reasonably designated by ChargeMeLater. The placement of the ChargeMeLater logo will be at the top of the Acknowledgement Page (but below Merchant's branding) and customer will not be required to scroll left, right, up or down to view the ChargeMeLater Logo. Merchant will indicate by the logo or in a pop up window that ChargeMeLater is a separate billing entity and that customer is leaving Merchant's web site and is linking to the web site of another entity. The license to the ChargeMeLater logo is solely in connection with the processing services performed by ChargeMeLater for Merchant and terminates immediately upon the termination of this Agreement.

4.4 *Merchant's Website.* Merchant is responsible to establish, host and maintain its website and its connection to the Internet and to fulfill all orders for products and services sold by Merchant to its customers on the Merchant websites; to

maintain commercially reasonable business practices in conjunction with use of the Services; to comply with all applicable privacy, consumer and other laws and regulations with respect to its provision, use and disclosure of the data, dealings with the customers providing the data; and use of the Services. Merchant agrees that it will not distribute dialer programs that access the ChargeMeLater website by way of false or misleading advertising, pop-up boxes at game sites, or send unsolicited e-mail or spam that contains a ChargeMeLater link, logo, trademark, servicemark or tradename.

*4.5 Merchant Pricing.* Merchant is responsible to provide ChargeMeLater with accurate pricing information, Merchant's location and product classifications for tax purposes and such other information regarding Merchant or its products as may reasonably be requested by ChargeMeLater as necessary or desirable to the provision of the Services. It is Merchant's responsibility to up-date this information on an on-going basis. ChargeMeLater will implement any modifications to its billing procedures or otherwise as necessary within a commercially reasonable time, but in any event no later than five business days from written notification by Merchant. Merchant agrees to disclose the billing time increments used to calculate charges of any kind.

*4.6 Merchant's Goods and/or Services.* Merchant is responsible to provide the goods and/or services sold to consumers. The goods and/or services shall be provided as advertised. Merchant shall hold ChargeMeLater harmless and shall indemnify and defend ChargeMeLater against any claim that purchased goods and/or services were not delivered, were not of the type, quality, or number purchased, or were in any manner deficient.

*4.7 Merchant's Business Practice Guidelines.* Merchant agrees not to impair the ability of any billed customer to identify and remove a dialer program from their computer; Merchant agrees not to impair the ability of a person to be billed by ChargeMeLater from reading the terms and conditions of the offer or any software download via unsolicited email messages or via "pop-up" boxes which can not be closed or disabled; Merchant agrees not to impair the ability of a person to be billed by ChargeMeLater the option to fully disconnect from any Videotext Service and to avoid additional reconnection attempts without first obtaining EVA (Express Verifiable Authorization) from the person to be billed.

## **5. Use Of Customer Data**

You agree that ChargeMeLater is a data processor or service provider and that you will disclose to ChargeMeLater any information that it may need to maintain the information provided to it with the degree of confidentiality promised to the consumer in your policy and in compliance with applicable US privacy laws. It is further agreed that all transactions are to be with US customers and subject only to US laws. ChargeMeLater agrees not to use the Data except as permitted by law and to perform the Services contemplated in this Agreement.

## **6. Fees And Payment Terms**

- 6.1. *Fees:* Merchant agrees to pay to ChargeMeLater the fees set forth in the Pricing Schedule. There will not be any pro-ration of fees paid or invoiced. All fees are non-refundable unless otherwise explicitly stated in this Agreement. Merchant agrees to pay all value added, sales and other taxes (other than taxes based on ChargeMeLater's income) related to the Services, or payments, made by ChargeMeLater on behalf of the Merchant. ChargeMeLater may change the fees or payment methods by providing thirty (30) days prior written or electronic notice of the changes to Merchant. All payments of fees for the Services shall be made in U.S. dollars. ChargeMeLater will debit Merchant's account prior to payment for the fees due ChargeMeLater. Monthly fees, if applicable, will be invoiced or debited at the end of the calendar month in which the Services are performed. All sums due and payable that remain unpaid after any applicable cure period herein will accrue interest as a late charge of 1.5% per month or the maximum amount allowed by law, whichever is less.
- 6.2. *Payment Terms:* Merchant shall receive payment 60 days after the close of each calendar month. ChargeMeLater will keep a running account reconciliation for every month thereafter to account for additional payments received and to account for any unpaid balances and/or refunds.
- 6.3. *Reserve:* ChargeMeLater will take a reserve payment monthly from payments issued to the Merchant to cover any future unpaid balances and/or refunds. ChargeMeLater reserves the right at any time to adjust this amount to obtain an amount which correlates to the monthly average open balance and/or refund amount. This reserve will be held for six (6) months until the Merchant has an established cycle of billing and payments with ChargeMeLater. After the release of the initial reserve at any such time that unpaid balances and/or refunds should start to increase, ChargeMeLater reserves the right to retain an additional reserve. After the period of 1 (ONE) year, ChargeMeLater will review your fee and reserve terms and make adjustments accordingly. Should the Merchant reserve fee and terms be modified, the Merchant will be notified 30 days in advance. Will this still apply?

## **7. Warranty; Disclaimer**

ChargeMeLater agrees that the Services shall conform in all material respects to the applicable documentation provided by ChargeMeLater to Merchant. Merchant's sole remedy for ChargeMeLater's breach of this warranty shall be ChargeMeLater's reasonable efforts to repair or replace the Services. EXCEPT AS EXPRESSLY SET FORTH ABOVE AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, CHARGEMELATER MAKES NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES OR SOFTWARE. ALL SUCH WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE HEREBY EXPRESSLY DISCLAIMED BY CHARGEMELATER. MERCHANT ACKNOWLEDGES THAT CHARGEMELATER

HAS NOT REPRESENTED OR WARRANTED THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY OR WITHOUT COMPROMISE OF THE SECURITY SYSTEMS RELATED TO THE SERVICES.

## **8. Indemnification**

Merchant will indemnify, defend and hold harmless ChargeMeLater and its affiliates and its and their respective members, managers, officers, directors, agents, licensors and employees, from and against any and all claims, losses, demands, liabilities, damages, governmental inquiries or costs and expenses (including reasonable attorneys' fees and expenses), either arising out of or relating to: (i) any breach of this Agreement, including without limitation any representations and warranties, by Merchant, (ii) the sale or use of any product or services sold by Merchant, (iii) claims brought or damages suffered by any Financial Institution, customer or prospective customer of Merchant or other third party relating to Merchant's or its agents' nonuse or misuse of the Services, (iv) any use of the Dialer Software not expressly licensed by ChargeMeLater or any defects or dangers (whether obvious or hidden) in Merchant's good or services or the use thereof, (v) any claim from federal, state or local governments or any other proceeding or investigation concerning Merchant's sales, use, or any other tax obligations of Merchant based upon the sales of its products or the licensing of its content, or (vi) any losses resulting from any payment made by any of your customers being voided or where ChargeMeLater is required to disgorge the amount it received from any of your customers. ChargeMeLater will indemnify, defend and hold harmless Merchant, its officers, directors, agents and employees, from and against any damages (including reasonable attorney's fees and expenses) arising out of: (a) ChargeMeLater's breach of this Agreement, or (b) a third party claim that the Software or Services infringe a United States patent, copyright or trade secret right of a third party. Merchant's sole remedy for a claim of infringement shall be, at ChargeMeLater's option, ChargeMeLater's replacement of the infringing Software or Services, ChargeMeLater's obtaining a license for Merchant's continued use of the Software or Services, or ChargeMeLater's termination of the affected licenses granted hereunder. The indemnification obligation set forth in this Section are contingent upon: (x) the indemnified party giving prompt written notice to the indemnifying party of a claim for which the indemnified party is seeking indemnification, (y) the indemnified party allowing the indemnifying party to control the defense and related settlement negotiations for any such claim, and (z) the indemnified party fully assisting and cooperating in the defense so long as the indemnifying party pays the indemnified party's out-of-pocket expenses. The indemnifying party shall not settle a claim without the written consent of the indemnified party, such consent not to be unreasonably withheld.

## **9. Limitations On Liability**

Merchant acknowledges that ChargeMeLater is not a financial or credit reporting institution. ChargeMeLater is responsible only for providing data transmission and to effect certain payment transactions for Merchant. ChargeMeLater is not responsible

for the results of any credit inquiry, the operation of web sites of ISPs or financial institutions, the availability or performance of the Internet, or for any damages, liability or costs Merchant suffers or incurs as a result of any instructions given, actions taken or omissions made by any customer, Merchant, Merchant's financial processor(s), Merchant's Financial Institution or any ISP. MERCHANT AGREES THAT CHARGEMELATER'S EMPLOYEES, MANAGERS, MEMBERS, SUBSIDIARIES, LICENSORS, AGENTS, CONTRACTORS AND SUPPLIERS SHALL HAVE NO LIABILITY TO MERCHANT OR TO ANY OTHER PARTY AND CHARGEMELATER SHALL HAVE NO LIABILITY TO MERCHANT OR TO ANY OTHER PARTY EXCEPT WHERE DAMAGES ARISE FROM THE SOLE WILLFULL OR GROSS NEGLIGENCE OF CHARGEMELATER. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL AGGREGATE LIABILITY OF CHARGEMELATER AND ITS EMPLOYEES, MANAGERS, MEMBERS, LICENSORS, AGENTS, CONTRACTORS AND SUPPLIERS SUBCONTRACTORS, IF ANY, COLLECTIVELY, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, UNDER THIS AGREEMENT OR WITH RESPECT TO THE SERVICES SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY MERCHANT TO CHARGEMELATER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM FOR DAMAGES. IN NO EVENT WILL CHARGEMELATER OR ITS LICENSORS HAVE ANY LIABILITY TO MERCHANT OR ANY OTHER PARTY FOR ANY LOST OPPORTUNITY OR PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES ARISING OUT OF THIS AGREEMENT, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY (INCLUDING NEGLIGENCE), AND WHETHER OR NOT CHARGEMELATER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS WILL APPLY

## **10. Term and Termination**

10.1 *Term.* This Agreement will commence on the Effective Date and will continue for a period of one (1) year, unless terminated earlier or suspended according to the provisions of this Agreement. The Agreement will thereafter automatically renew for successive twelve (12) month terms, unless either party gives the other party written notice of its intention not to renew the Agreement at least thirty (30) days prior to the end of the then-current term or renewal term. After the initial one-year term, either party may terminate this Agreement upon at least sixty (60) days prior notice for any reason or no reason.

10.2 *Termination.* Notwithstanding provisions herein, Merchant may terminate this Agreement upon ten (10) days prior written notice to ChargeMeLater for any reason or no reason. ChargeMeLater may suspend the performance of the Services (i) following thirty (30) days prior written notice (including an overdue invoice) if Merchant breaches the terms of the Agreement (if such breach is not cured within such 30 day period); and (ii) may immediately suspend or terminate the Services and upon one day's prior written or electronic notice if it reasonably believes Merchant is sending data that corrupts ChargeMeLater's computer systems or Merchant's financial processor, or the Financial

Institution with which Merchant has a merchant account requires such termination, or otherwise to avoid or mitigate any legal obligation arising out of a change in law, rule or regulation or interpretation of application of the same.

10.3 *Effect of Termination.* Upon the expiration or termination of this Agreement for any reason, Merchant's rights to use the Services, and any other rights granted hereunder shall immediately cease; and each party will be released from all obligations and liabilities to the other occurring or arising after the date of such termination, except that any termination of this Agreement will not relieve ChargeMeLater or Merchant from any liability arising prior to the termination of this Agreement. Notwithstanding the foregoing, the provisions herein, warranty disclaimers, and Merchant's obligations to pay accrued fees through the effective date of termination will survive any termination of this Agreement.

## **11. Miscellaneous Terms**

11.1 *Force Majeure (Events Beyond the Parties' Control).* Except for a payment failure on the part of Merchant neither party will be liable for any failure or delay in performing any obligation under this Agreement that is due to causes beyond its reasonable control. Events that are deemed *force majeure* and beyond ChargeMeLater's control include, but are not limited to, power disturbances, acts of terrorism, embargoes, acts of state, hacking, spamming or other actions that cause system failure or overloads.

11.2 *Entire Agreement and Modification.* The terms in this Agreement including the schedule(s) hereto, constitute the entire agreement between ChargeMeLater and Merchant regarding its subject matter and its terms supersede any prior or simultaneous agreement or terms, whether written or oral. Notwithstanding the above, any terms under which Merchant licensed the Dialer Software shall remain in effect and shall not be superseded by this Agreement. Except as otherwise provided for herein, any waiver, modification, or amendment of any provision of this Agreement will be effective only if in writing and signed by the parties hereto.

11.3 *Severability.* In the event that any provision of this Agreement is unenforceable or invalid such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole, and in such event, such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

11.4 *No Assignment.* Merchant may not assign this Agreement without the prior written consent of ChargeMeLater.

11.5 *Governing Law and Jurisdiction.* This Agreement will be governed by and construed in accordance with the laws of the State of New Jersey without reference to its conflicts of laws principles.

11.6 *Export Restrictions.* Merchant acknowledges and agrees that it shall not import, export, or re-export directly or indirectly, any commodity, including Merchant's products

incorporating or using any ChargeMeLater products or intellectual property, in violation of the laws and regulations of any applicable jurisdiction.

*11.7 Intellectual Property/Trademarks.* ChargeMeLater.com, ChargeMeLater, and all related logos, products, copyrightable works, inventions, intellectual property and Services described in the ChargeMeLater website are either trademarks or registered trademarks of ChargeMeLater or its licensors. Except as specifically permitted by this Agreement they may not be copied, imitated or used, in whole or in part, without the prior written permission of ChargeMeLater. In addition, all page headers, custom graphics, button icons, and scripts are service marks, trademarks, and/or trade dress of ChargeMeLater and/or its licensor(s) and may not be copied, imitated, or used, in whole or in part, without the prior written permission of ChargeMeLater. Notwithstanding the above, HTML logos provided by ChargeMeLater may be used without prior written consent for the purpose of directing web traffic to the Service. These Logos may not be altered, modified, or changed in any way, or used in a manner that is disparaging to ChargeMeLater or the Service. Logos may not be displayed in any manner that implies sponsorship or endorsement by ChargeMeLater. ChargeMeLater is a billing service, and no partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement. Merchant hereby grants to ChargeMeLater a limited non-exclusive license to use any trademark or logo that Merchant may provide to ChargeMeLater for use on the ChargeMeLater website, which license will automatically terminate upon the termination of this Agreement. Merchant further agrees that upon the consummation of this Agreement ChargeMeLater may list Merchant's corporate name upon the ChargeMeLater website or in its marketing materials indicating Merchant's utilization of the Services of ChargeMeLater.

*11.8 Access and Interference.* You agree that you will not use any robot, spider, other automatic device, or manual process to monitor or copy our web pages or the content and that you will not use any device, software or routine to bypass our robot exclusion headers, or to interfere or attempt to interfere with the proper working of the ChargeMeLater site or any activities conducted on our site. You further agree not to take any action that imposes an unreasonable or disproportionately large load on our infrastructure. Much of the information on the ChargeMeLater website is proprietary or is licensed to ChargeMeLater by our users or third parties. You agree that you will not copy, reproduce, alter, modify, create derivative works, publicly display or frame any content (except for your information) from our ChargeMeLater website without the prior expressed written permission of ChargeMeLater or the appropriate third party. If you use, or attempt to use the Service for purposes other than sending transactions and managing your account, including but not limited to tampering, hacking, modifying or otherwise corrupting the security or functionality of Service, your account will be terminated and you will be subject to damages and other penalties, including criminal prosecution where available.

*11.9 Legal Compliance.* You shall comply with all applicable U.S. and international laws, statutes, ordinances, regulations, contracts and applicable licenses regarding your use of our Services.

*11.10 Notice.* Merchant hereby expressly agrees that ChargeMeLater may provide notices relating to the Agreement via electronic means. Except as otherwise provided for

in the Agreement, any notice, demand, or request with respect to this Agreement shall be in writing and shall be effective on the date received only if it is sent by a courier service that confirms delivery in writing, or if sent by certified or registered mail, postage prepaid, return receipt requested, addressed, if to ChargeMeLater, then to Attention: ChargeMeLater corporate headquarters, ChargeMeLater INC; 1 Harmon Plaza, Suite 200; Secaucus, New Jersey 07094 with a copy to McDermott, Will & Emory; c/o Matt Oster; 2049 Century Park East, 34<sup>th</sup> Floor; Los Angeles, California 90067 and if to Merchant, then to the address provided by Merchant during its enrollment for the applicable services.

11.11 *Confidentiality*. Neither party shall disclose Confidential Information (as hereinafter defined) of the other party. The receiving party shall use the same degree of care as it uses to protect its own confidential information of like nature, but no less than a reasonable degree of care, to maintain in confidence the confidential information of the disclosing party. The foregoing obligations shall not apply to any information that (i) is, at the time of disclosure, or thereafter becomes, part of the public domain through a source other than the receiving party, (ii) is subsequently learned from a third party that does not impose an obligation of confidentiality on the receiving party, (iii) was known to the receiving party at the time of disclosure, (iv) is generated independently by the receiving party, or (v) is required to be disclosed by law, subpoena, applicable professional standards or other process. This Section 11.11 does not supercede Section 5 above. Confidential Information for the purposes of this Section 11.11 means any information identified by either party as “Confidential” and/or “Proprietary”, or including the pricing terms of this Agreement, the trade secrets, business method, inventions, Dialer Software and any other software licensed or owned by ChargeMeLater, and such other information which, under all of the circumstances, ought reasonably to be treated as confidential and/or proprietary. The obligations of confidentiality hereunder shall continue for a period of the later of three (3) years from the date of the last disclosure of Confidential Information hereunder or for as long as a patent is pending or a information remains trade secret.

11.12 *ACKNOWLEDGEMENT*. YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, WHICH CONTAINS LIMITATIONS OF LIABILITY. YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS. YOU FURTHER AGREE THAT THIS IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN AND ANY OTHER COMMUNICATIONS BETWEEN US RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

11.13 *Disputes*. Any controversy or claim arising out of or relating to this Agreement or the Services (including any such matter involving any parent, subsidiary, affiliate, successor in interest, or agent of you or of ChargeMeLater) (a “dispute”) shall be submitted first to ChargeMeLater’s internal review process (“Internal Review”), and if ChargeMeLater’s Internal Review and resolution is not successful, then to binding arbitration, in accordance with the procedures set forth below. The foregoing notwithstanding, ChargeMeLater may seek equitable relief in any court for any actual or threatened violation or breach by you of this Agreement or other infringement or misappropriation of any right of ChargeMeLater or its suppliers in the Services or their Content.

*a. ChargeMeLater Internal Review.* A dispute shall be submitted to Internal Review by written notice to the other party. In the Internal Review, the parties will try to resolve their differences voluntarily. The parties agree to discuss their differences in good faith and to attempt to reach an amicable resolution of the dispute.

*b. Arbitration.* If a dispute has not been resolved within 60 days after the written notice beginning the Internal Review the mediation may at the request of either party terminate and the dispute will be settled by binding arbitration. The arbitration will be conducted in accordance with the procedures in this document and the Arbitration Rules for American Arbitration Association then in effect ("AAA Rules"). In the event of a conflict, the provisions of this document will control. The arbitration will be conducted before one Arbitrator regardless of the size of the dispute, to be selected as provided in the AAA Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the Federal Arbitration Act and resolved by the arbitrators. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures. The arbitrator may not award non-monetary damages or equitable relief of any sort. The arbitrator shall have no power to award punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or in any other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. No discovery will be permitted in connection with the arbitration unless it is expressly authorized by the arbitrator upon a showing of substantial need by the party seeking discovery. All aspects of the arbitration shall be treated as confidential. Neither the parties nor the arbitrator may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements or to enforce this arbitration award. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. The result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.

In witness whereof the parties have executed this Agreement as of the dates set forth next to their names below.

If you are a corporation, limited liability company or partnership please insert the entity name above the line below.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Dated

Insert here Merchant Websites that are subject to this Agreement:

Signed on behalf of:

ChargeMeLater INC

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Dated