

Merchant User Agreement

This Merchant User Agreement ("**Agreement**") is between you, the user of the software, and any company or business entity you represent, if any (collectively, "**You**"), and Advanced eCommerce Solutions, Inc. (Also referred to by the software application known as "**Business eStore**").

Advanced eCommerce Solutions, Inc. provides a hosted software program ("**Software**") that enables merchants to build online stores through which they can sell their products and services online. Business eStore also provides merchants services, including hosting of the online store, site design, email services, marketing services, domain name registration, and other related services as may be offered from time to time (collectively, "**Services**").

This Agreement is effective upon Your acceptance in registration. By accepting this Agreement and subject to the terms and conditions of this Agreement, including those terms and conditions that are set forth on the Business eStore website located at www.BusinesseStore.com ("**Business eStore Site**") that are incorporated herein by reference and may be accessed through links in this Agreement, Business eStore will provide You with a limited license to use the Software and receive the Services. Please note that underlined words and phrases in this Agreement are links to pages on the Business eStore Site.

By accepting this Agreement, You further agree to be bound by any amendments to the terms and conditions of this Agreement or to such terms and conditions as are incorporated herein by reference. Except as stated below, all revised terms shall automatically be effective fifteen (15) days after they are initially posted on the Business eStore Site.

You authorize Advanced eCommerce Solutions, Inc. to process any and all of Your Business eStore account transactions initiated through the use of the password that You establish through registration on the Business eStore Site and You are solely responsible for maintaining the confidentiality of such password.

Notwithstanding anything contained in the foregoing, this Agreement will not bind Business eStore unless You meet the eligibility criteria for entering into this Agreement as set forth in Section 1 of this Agreement.

1. ELIGIBILITY CRITERIA.

The Software license and Services are available only to, and may only be used by individuals who can form legally binding contracts under applicable law. Without limiting the foregoing, the Software and Services are not available to children (persons under

the age of 18). If You are registering as a business entity, You represent that You have the authority to bind the entity to this Agreement. Business eStore uses many techniques to verify the accuracy of the information You provide when You register on the Business eStore Site. If for any reason, Business eStore, in its sole discretion, believes such information to be incorrect, it reserves the right, without provision of any notice to You, to revoke any and all licenses under this Agreement or to refuse to provide the Software license and Services under this Agreement to You.

2. BUSINESS ESTORE SOFTWARE AND TRADEMARK OWNERSHIP

2.1 SOFTWARE OWNERSHIP.

Software provided by Business eStore, and all worldwide intellectual property rights therein, are the exclusive property of Business eStore. All rights in and to the Software not expressly granted to You in this Agreement are reserved by Business eStore.

2.2 SOFTWARE LICENSE.

Subject to the terms and conditions of this Agreement, Business eStore grants to You a non-exclusive, non-transferable, revocable, limited license to remotely access and use the Software on servers operated by or for Business eStore ("**Business eStore Servers**") through the Business eStore Site solely for the purpose of building and maintaining an interactive store hosted by the Business eStore Servers on which You offer Your or a third party's products or services ("**Your Store**").

2.3 SOFTWARE LICENSE RESTRICTIONS.

You acknowledge that the Software and its structure, organization, and source code constitute valuable trade secrets of Business eStore. Accordingly, except as expressly allowed under Section 2.2, You will not, either directly or through a third party, (a) modify, adapt, alter, translate, or create derivative works from the Software; (b) distribute, sublicense, lease, rent, loan, or otherwise transfer the Software to any third party; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software or (d) transfer your interest in and to Your Store to any third party.

2.4 BUSINESS ESTORE TRADEMARK OWNERSHIP, LICENSE AND RESTRICTIONS.

Subject to the terms and conditions of this Agreement, and upon Your election to use and pay applicable fees (if any) for certain features of the Software, Business eStore grants to You a non-exclusive, non-transferable, revocable, royalty-free license (without the right to grant sublicenses) to use and reproduce those trademarks provided to you by Business eStore under this Agreement solely for use in the display on those locations on Your Store's web pages as designated by Business eStore in its sole discretion, and

solely in accordance with Business eStore' [Trademarks Use Policy](#), (see separate document with details) that is incorporated herein by reference and that Business eStore may periodically change from time to time. Business eStore grants no rights in the Business eStore Marks other than those expressly granted in this Section 2.4. You acknowledge Business eStore' exclusive ownership of the Business eStore Marks. You agree not to take any action inconsistent with such ownership and You agree not to adopt, use, or attempt to register any trademarks or trade names that are confusingly similar to the Business eStore Marks or in such a way as to create combination marks with the Business eStore Marks. At Business eStore' request (in its sole discretion), You will immediately discontinue any use and display of the Business eStore Marks. You acknowledge and agree that, except with respect to the trademark license granted herein in and to the Business eStore Marks, no licenses are granted by Business eStore to any other trademarks, service marks, or trade names owned by Business eStore, its parent, or affiliates.

2.5 ADDITIONAL FEATURES.

Certain additional features that Business eStore may make available to You may require access to and/or installation of additional software (including third party software) that is subject to supplemental or independent terms and conditions ("**Additional Software**"). Similarly, Business eStore may make available additional services (including third party services) that are subject to supplemental or independent terms and conditions ("**Additional Services**"). You agree that You will not use such Additional Software or Additional Services unless You have agreed to the applicable terms and conditions, including but not limited to Your payment of additional fees as required.

Depending on the Services you elect to receive, You may be responsible for establishing and maintaining a commercial relationship with a financial institution or money transmitter such as a credit card processor, bank or PayPal. The terms of any such relationship shall be between You and that entity and such terms may be more restrictive or place limits on the operation of Your Store - you should contact those entities for more information regarding such terms.

3. SERVICES.

3.1 SERVICES.

Upon activation of Your account and subject to the payment of applicable fees, Business eStore will provide certain hosting, support and other miscellaneous Services for the Software licensed by You under this Agreement and Your Store during the term of this Agreement as published on the Business eStore Site. Your Store shall be hosted on a Business eStore Server on which several merchants may share the resources and network capacity of that Business eStore Server, unless otherwise specified. Dedicated Business eStore Server farms are available at applicable fees, and such services are only



authorized and valid if the Dedicated Business eStore Server Agreement is signed by You and Advanced eCommerce Solutions, Inc.

3.2 DOMAIN NAME REGISTRATION.

At Your request and subject to Your agreement to applicable terms and conditions and the payment of applicable fees, Business eStore Additional Services may include acquisition and registration of a second-level domain name ("**Domain Name**") for Your Store on Your behalf. You hereby appoint Business eStore and third parties who provide domain name registration services to Business eStore as Your agent in the acquisition, registration and ongoing administration of Domain Names on Your behalf and You authorize Business eStore and third parties who provide domain name registration services to Business eStore to select and issue binding instructions to domain name registrars and registries used to acquire, register and administer Domain Names on Your behalf. Business eStore provides this Service as a convenience to You only and You hereby waive any and all claims that You may have, or which may later arise, against Business eStore for any and all damages, losses, claims or expenses arising out of or related to the acquisition, registration and/or use of such Domain Name. In addition, Business eStore reserves the right, in Business eStore' sole discretion, to refuse to acquire or register any domain name requested by You, and to discontinue the use of any domain name requested by you.

3.3 STORE DESIGN AND CUSTOMIZATION.

At Your request, and subject to Business eStore' acceptance of your request and Your payment of applicable fees, Business eStore will provide design and customization Services for Your Store as provided in this Section 3.3 and in accordance with Business eStore' then current customization terms and conditions. You shall provide all text, music, sound, photographs, video, graphics, logo data, software, design, information and all other content for Your Store to Business eStore within a time period designated by Business eStore.

Business eStore shall transfer all Your content into electronic form and a user-accessible format. Additional Store Design services are available at additional charges and full site design can be created for You. If You select these additional design services, music, sound, photographs, video, graphics, logo data and other design elements may be purchased from Business eStore.

3.4 CHANGES IN SERVICES.



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Business eStore reserves the right to change, amend and/or otherwise alter the Services provided with equivalent or otherwise equal Services without prior notice to You. You agree to receive administrative communications from Business eStore in regards to the Software, Services, Your account, policy changes and system updates.



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4. YOUR STORE & CONTENT CONTROL

4.1 CONTROL OF YOUR STORE.

Business eStore will be responsible for the development, operation and development of Your Store. Once developed, You will be responsible for any ongoing maintenance including the day to day operation of Your Store, accepting, processing and filing customer orders generated through Your Store, and handling any customer inquiries, complaints, or disputes arising from orders or sales generated through Your Store. You agree that Business eStore has no obligation to back-up any data related to Your Store's operations and you should independently take appropriate steps to maintain such data in accordance with Your needs and requirements.

Upon your request and after signing "**Additional Technical Services Agreement**" and subject to Business eStore' acceptance of your request and Your payment of applicable fees, Business eStore will provide back up services and maintenance of Your Store as well as other technical support services specified in above referred contract.

4.2 CONTROL OF YOUR STORE'S CONTENT.

After Your store is created and unless you hire Business eStore for a monthly maintenance contract, You will be solely responsible for creating, managing, editing, reviewing, deleting and otherwise controlling the content on Your Store, regardless of whether Business eStore provides any design or customization Services to You under this Agreement, including all descriptions of the products and services You offer to customers of Your Store and user-generated content on and related to Your Store. As a conduit, Business eStore will give You complete discretion over Your content provided it is compatible and interoperable with the Software and Services provided by Business eStore under this Agreement. You retain all rights, title and interest in and to all intellectual property rights embodied in Your content, exclusive of any content provided by Business eStore. Notwithstanding anything contained in the foregoing, if You breach any of the covenants in Section 5.1 of this Agreement, Business eStore is entitled to suspend or terminate Your Store and/or any access to information or data related to Your account and the Software in accordance with Section 12 of this Agreement.

4.3 PASSIVE CONDUIT.

You acknowledge that, by only providing You with the ability to publish and distribute Your own or third party products, services or content, Business eStore and its Software are acting only as passive conduits for the distribution and/ or publishing of such products, services or content on the Store. Business eStore has no obligation to You or any third party, and undertakes no responsibility, to review Your Store, the products or

services listed therein or any other content, including but not limited to user-generated content, published and/or distributed on Your Store to determine whether any such product, service or content may incur liability to third parties. Notwithstanding anything to the contrary herein, if Business eStore believes in its sole discretion (as applicable) that Your Store or any products, services, content or other materials in the Store or on Business eStore Servers may create liability for Business eStore, You agree that Business eStore may take any actions with respect to the content or materials or Your Store that Business eStore believes are prudent or necessary to minimize or eliminate Business eStore' potential liability. Business eStore shall, as applicable, be the sole judge of what content or materials may create liability for Business eStore.

4.4 CONTENT LICENSE.

During the period that Business eStore provides Services to You pursuant to Section 3 of this Agreement, You hereby grant to Business eStore and its subcontractors a non-exclusive, irrevocable, royalty-free, worldwide license to reproduce, distribute, create derivative works of, transmit, publicly perform, publicly display and digitally perform Your content solely for the purposes provided in this Agreement.

5. COVENANTS

5.1 COVENANTS BY YOU.

You covenant that any products, services, or content published and distributed on Your Store and Your related activities shall not violate the Business eStore [Acceptable Use Policy](#) (separate agreement document) that is incorporated herein by reference and as it may be amended from time to time, nor shall they:

- (i) be false, inaccurate or misleading;
- (ii) be fraudulent or involve the sale of counterfeit or stolen items;
- (iii) infringe or misappropriates any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy;
- (iv) violate any law, statute, ordinance or regulation (including, but not limited to, those governing privacy, publicity, export control, consumer protection, unfair competition, antidiscrimination or false advertising);
- (v) be defamatory, trade libelous, unlawfully threatening or harassing, or advocating, promoting or providing assistance involving violence, significant risk of death or injury, or other unlawful activities;
- (vi) be obscene or contain child pornography;

- (vii) contain any viruses, Trojan horses, worms, time bombs, cancelbots, easter eggs or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information;
- (viii) involve the transmission of any unsolicited commercial or bulk email (known as "spamming") and You shall not use Your account or Your Store as a return address for unsolicited commercial mail originating elsewhere or participate in any activities related to so-called pyramid or ponzi schemes;
- (ix) involve the collection or attempt to collect personally identifiable information of any person or entity, except with the express written consent of that person or entity and of which consent You shall maintain a written record for a period of three (3) years after any termination of this Agreement;
- (x) be harmful or potentially harmful to the Business eStore Server structure as determined in Business eStore' sole discretion, including without limitation overloading the Business eStore technical infrastructure;
- (xi) involve subleasing Your account or offering "free space" on or other access to Your account or Your Store to third parties;
- (xii) create liability for Business eStore and its subcontractors or expose them to undue risk or otherwise engage in activities that Business eStore, in its sole discretion, determines to be harmful to Business eStore' affiliates, operations, reputation, or goodwill ; and
- (xiii) link directly or indirectly to or include descriptions of goods or services that violate any applicable law, statute, ordinance or regulation, or that violate Business eStore' [Prohibited and Restricted Items](#) (separate document) that is incorporated herein by reference and may be amended from time to time.

Furthermore, You agree to display and adhere to a terms of use or other user-type agreement, as well as a privacy policy, governing Your operation of Your Store and Your conduct with Your Store's customers.

5.2 BREACH OF COVENANT.

Your failure to comply with the covenants set forth in Section 5.1 of this Agreement will amount to a breach of this Agreement and is cause for immediate suspension and/or termination under Section 12 of this Agreement.

6. FEES; TAXES; & AUDIT RIGHTS

6.1 FEES.

You shall pay the fees set forth for the Software license and Services purchased by You in accordance with Business eStore' Fees Policy that is incorporated into this Agreement by reference. Business eStore may change its [Fees Policy](#) and the fees for its Services from time to time. Business eStore' changes to the policy are effective after Business eStore provides You with at least fourteen (14) days' notice of the changes by posting the changes on the Business eStore Site. Unless otherwise stated, all fees are quoted in U.S. Dollars.

6.2 PAYMENT TERMS.

Business eStore will invoice You and You agree to pay for (i) non-refundable monthly subscription and other annual or one-time fees, in advance, including fees for the license of Software and Services to be rendered to You by or on behalf of Business eStore in the following month, and (ii) transaction fees and all other fees designated in the Fees Policy to be paid in arrears based on the value of goods and services sold through Your Store during the previous calendar month, in accordance with the invoicing and payment requirements set forth in the Fees Policy. Business eStore will debit all fees payable by You to Business eStore directly from the credit card or PayPal account designated by You when You register for Your Business eStore account to receive a license to the Software and receipt of Services from Business eStore and thereafter in accordance with the Fees Policy. Without limiting Business eStore' other remedies, any amount that is not retrievable from Your designated account when due will accrue a late fee at one and one half percent (1½ %) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid. In addition, You agree to pay by Credit Card automatically for all monthly recurring charges (MRC). You agree to pay a surcharge if You elect to pay by check. Surcharge rate may change with at least fourteen (14) days' notice of the changes by posting the changes on the Business eStore Site.

6.3 TAXES.

All fees under this Agreement exclude all applicable sales, use, and other taxes and government charges, whether federal, state or foreign, and You will be responsible for payment of all such taxes (other than taxes based on Business eStore' income), fees, duties, and charges, and any related penalties and interest, arising from the payment of any and all fees under this Agreement including the access to or license of the Software and performance of the Services hereunder.

7. DISCLAIMER OF WARRANTIES.

BUSINESS ESTORE, ITS SUPPLIERS AND SERVICE PROVIDERS, PROVIDE THE SOFTWARE, ADDITIONAL SOFTWARE, AND SERVICES, ON AN "AS IS" BASIS AND EXPRESSLY DISCLAIM ANY AND ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES,

INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, TITLE, NON-INFRINGEMENT, AND WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE ARE EXCLUDED. BUSINESS ESTORE, ITS SUPPLIERS AND SERVICE PROVIDERS, DO NOT WARRANT THAT THE SOFTWARE, ADDITIONAL SOFTWARE, OR SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED AND MAKE NO REPRESENTATIONS REGARDING UPTIME, USE, DATA SECURITY, ACCURACY AND RELIABILITY OF THEIR SERVICES. YOU ACKNOWLEDGE AND AGREE THAT THIS SECTION 7 IS REASONABLE AND AN ESSENTIAL ELEMENT OF THIS AGREEMENT AND THAT IN ITS ABSENCE, THE ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.

8. LIMITATION OF LIABILITY

IN NO EVENT SHALL BUSINESS ESTORE, ITS SUPPLIERS, OR SERVICE PROVIDERS, OR THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS OR AGENTS BE LIABLE FOR LOST PROFITS OR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE, THE ADDITIONAL SOFTWARE, THE SERVICES OR THIS AGREEMENT (HOWEVER ARISING, INCLUDING NEGLIGENCE). BUSINESS ESTORE', ITS SUPPLIERS', AND SERVICE PROVIDERS', CUMULATIVE LIABILITY, AND THE LIABILITY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS AND AGENTS TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO [THE GREATER OF (A)] THE AMOUNT OF FEES YOU PAY TO BUSINESS ESTORE FOR (I) THE SOFTWARE LICENSE AND (II) THE SERVICES IN THE ONE (1) MONTH IMMEDIATELY PRECEDING THE MONTH IN WHICH THE ACTION GIVING RISE TO THE LIABILITY FIRST AROSE, AND (B) ONE HUNDRED U.S. DOLLARS (U.S. \$100). Some States do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to You.

9. INDEMNITY

You agree to indemnify and hold Business eStore, its suppliers, and service providers, and their officers, directors, agents, and employees, harmless from any and all losses, costs, liabilities or expenses (including without limitation reasonable attorneys' and expert witnesses' fees) incurred or arising from: (a) any breach of the covenants in Section 5.1 of this Agreement, (b) any content provided by You or generated by users of Your Store, (c) any claims arising from the sale or license of goods or services in Your Store, or (d) any breach of this Agreement or the documents it incorporates by reference. Business eStore', its suppliers' and service providers' indemnity rights shall not be limited or offset by any contributory negligence by Business eStore.

10. CUSTOMER DATA, YOUR DATA & PRIVACY POLICY

As between Business eStore and You, You shall own all data disclosed by or collected about (a) an individual or entity that accesses Your Store to browse or shop ("**Customer Data**"), and (b) You ("**Your Data**"). Business eStore does not sell or rent Your Data to

third parties for marketing purposes without Your explicit consent and Business eStore only uses and disclose Your Data as described in the Business eStore [Privacy Information](#), that is incorporated herein by reference and as it may be amended from time to time.

Business eStore shall collect, store and process Customer Data and Your Data on computers located in the United States that are protected by physical as well as technological security devices. If You object to Customer Data or Your Data being collected, stored or processed in this way, please do not use the Software or Services.

You shall maintain all Customer Data that is collected by or disclosed to You in trust and confidence and use and disclose such information solely in accordance with Your privacy policy. You must post, maintain and adhere to Your privacy policy that informs Your Store customers what Customer Data is collected, how it is used, the effective date of Your privacy policy and how customers of Your Stores can learn of changes to Your privacy policy. You shall include a hyperlink to Your privacy policy on the home page of Your Store and on all pages where You collect Customer Data. In addition, You must prominently include within Your posted privacy policy a statement notifying Your customers that Your Store is hosted by Business eStore and that Business eStore has access to aggregated information about customers of Your Store in order for Business eStore to analyze performance and make improvements to Business eStore products.

11. BREACH

Without limiting other remedies, Business eStore may limit Your activity, issue a warning, temporarily suspend, indefinitely suspend or terminate Your account or Your Store, in whole or in part, and refuse to provide some or all of the Software functionality or Services to You if: (a) You fail to pay any fees in accordance with Section 6 of this Agreement and the Price Policy; (b) You breach the covenants in Section 5.1 of this Agreement; (c) You breach this Agreement or the documents it incorporates by reference in any other manner; (d) Business eStore is unable to verify or authenticate any information You provide to Business eStore; or (e) Business eStore believes that Your actions may cause financial loss or legal liability for You, Your Store customers, or Business eStore.

12. SUSPENSION AND TERMINATION

12.1 SUSPENSION.

At the discretion of Business eStore and for any reason set forth in Section 12 of this Agreement, Business eStore may suspend Your account by deactivating any access by You or by Your customers to any information contained on the Business eStore Servers related to Your account while maintaining the information and data related to Your account upon the Business eStore Servers. Suspension shall specifically include the

disabling of Your Store and/or any access to information or data related to Your account. In the event of any such suspension You will be notified and given an opportunity to correct such breach. In the event that such breach is not corrected within ten (10) days of the receipt of such notice the account may be terminated under Section 12.2 of this Agreement. Fees under this Agreement will continue to accrue on suspended accounts as if they were not suspended. You will remain responsible for the payment of any such fees during any such period of suspension.

12.2 TERMINATION.

This Agreement and all of its terms shall remain in full force and effect until it is terminated in accordance with the terms of this Agreement. This Agreement may be terminated either by Business eStore (a) immediately as provided in this Agreement, (b) after a period of suspension as set forth in Section 12.1 of this Agreement, or (c) upon thirty (30) days written notice for any reason. YOU may terminate this Agreement upon twenty-four hours notice by telephoning Business eStore' designated customer support center. Your termination request may be recorded by Business eStore and will require Your user name and password and verification code.

12.3 RIGHTS UPON TERMINATION.

In the event of expiration or termination for any reason, the licenses granted under Section 2 of this Agreement shall automatically and immediately cease and You shall destroy all copies of the Software in Your possession, if any. Upon termination, there will be no refund provided to You except as set forth in the Price Policy and all outstanding fees owed by You shall become immediately due and payable. Termination shall not affect the rights of Business eStore to recover from You losses, damages, indemnity, defense costs, expert costs, collection costs and/or attorneys fees or expert witnesses' cost or other costs of any kind under this Agreement.

13. USE OF NAME

If you purchase a license to Software and receive Services for the Business eStore package, then You are required to allow Business eStore to use Your name and reference Your site in our marketing efforts. Business eStore is permitted the right to the use of Your site's likeness and Your logo and can use such in conjunction with selected third party companies for joint publicity. In addition, You also agree to allow Business eStore to hyperlink to Your site, upon our request.

14. GENERAL

14.1 GOVERNING LAW.

This Agreement shall be governed in all respects by the laws of the State of California without giving effect to any conflicts of law principles that would require the application of the laws of a different jurisdiction.

14.2 LEGAL COMPLIANCE.

You shall comply with all applicable domestic and international laws, statutes, ordinances and regulations regarding Your use of the Software, the Services, and Your listing and sale of products and services on Your Store.

14.3 NO AGENCY.

You and Business eStore are independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement.

14.4 FORCE MAJEURE.

Except for the payment of any fees due and payable under this Agreement, neither party's delay in the performance of any duties or obligations under this Agreement will be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, failures in electric power or telecommunications services, or any other event beyond the control of the party.

14.5 DISPUTES.

In the event a dispute arises between You and Business eStore, Business eStore goal is to provide You with a neutral and cost effective means of resolving the dispute quickly. Accordingly, You and Business eStore agree that any claim or controversy at law or equity that arises out of this Agreement, the Software, or Services ("Claims") shall be resolved in accordance with one of the subsections below or as otherwise mutually agreed upon in writing by the parties. Before resorting to these alternatives, Business eStore strongly encourages You to first contact Business eStore directly as provided in Section 14.6 to seek a resolution and Business eStore will consider reasonable requests to resolve the dispute through alternative dispute resolution procedures, such as mediation, as an alternative to litigation.

a) **Binding Arbitration.** For any Claim (excluding Claims for injunctive or other equitable relief) where the total amount of the award sought is less than \$10,000, You or Business eStore may elect to resolve the dispute through binding arbitration conducted by telephone, on-line and/or based solely upon written submissions where no in-person appearance is required. In such cases, the arbitration shall be administered by the American Arbitration Association ("AAA") or the Judicial Arbitration and Mediation Service ("JAMS") in accordance

with their applicable rules, or any other established Alternative Dispute Resolution provider mutually agreed upon by the parties. Any judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

b) **Court.** Alternatively, any Claim may be adjudicated by a court of competent jurisdiction located in San Diego County, California or where the defendant is located (in Business eStore' case San Diego, California, and in Your case Your home address or principal place of business). You and Business eStore agree to submit to the personal jurisdiction of the courts located within the county of San Diego, California.

c) **Alternative Dispute Resolution.** Alternatively, Business eStore will consider use of other alternative forms of dispute resolution, such as binding arbitration to be held in San Diego County, California or another location mutually agreed upon by the parties. All Claims (excluding requests for injunctive or equitable relief) between the parties must be resolved using the dispute resolution mechanism that is selected in accordance with this Section 14.5 by the first party to file a Claim. Should either party file an action contrary to this Section, the other party may recover attorneys' fees and costs up to \$1000, provided that the party seeking the award has notified the other party in writing of the improperly filed Claim, and the other party has failed to withdraw the Claim.

14.6 NOTICES.

Except as explicitly stated otherwise, any notices shall be given by postal mail to Business eStore Attn: Legal Department, 9725 Scranton Road, San Diego, CA 92121 (in the case of Business eStore) or to the email address You provide to Business eStore during the registration process (in Your case). Notice shall be deemed given twenty four (24) hours after email is sent, unless Business eStore is notified that the email address is invalid. Alternatively, Business eStore may give You notice by certified mail, postage prepaid and return receipt requested, to the address provided to Business eStore during the registration process. In such case, notice shall be deemed given three (3) days after the date of mailing.

14.7 ASSIGNMENT.

You shall not assign, transfer or delegate this Agreement or any rights or obligations hereunder. Any assignment, transfer or delegation in contravention of the foregoing provision shall be null and void. You agree that this Agreement may be assigned by Business eStore, in Business eStore' sole discretion.

14.8 NO THIRD PARTY BENEFICIARY.

You acknowledge and agree that nothing herein, express or implied, is intended to nor shall be construed to confer upon or give to any person, other than the parties, any interests, rights, remedies or other benefits with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

14.9 SEVERABILITY; WAIVER.

If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. Business eStore' failure to act with respect to a breach by You or others does not waive Business eStore' right to act with respect to subsequent or similar breaches.

14.10 CONSTRUCTION.

Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section. When used in this Agreement, the term "including" means "including without limitation," unless expressly stated to the contrary.

14.11 SURVIVAL.

Sections 2.4 (Ownership), 6.1 (Fees) with respect to any outstanding fees owed for the Services, 7 (Disclaimer of Warranties), 8 (Limitation of Liability), 9 (Indemnity), 10 (Customer Data, Your Data, & Privacy Policy), 12.3 (Rights Upon Termination), and 15 (General) shall survive any termination or expiration of this Agreement.

14.12 DISCLOSURES.

The services hereunder are offered by Advanced eCommerce Solutions, Inc., located at, 9725 Scranton Road, San Diego, CA 92121.

14.13 ADDITIONAL TERMS

The following policies are incorporated into this Agreement by reference and provide additional terms and conditions related to the Services offered by Business eStore:

- (a) Trademarks Use Policy & (b) Acceptable Use Policy
- (c) Prohibited and Restricted Items Policy
- (d) Fees Policy
- (E) Merchant user agreement

Each of these policies may be amended from time to time and the amended policies shall be automatically effective thirty (30) days after they are initially posted on the Business eStore Site. In addition, when using particular services on the Business eStore Site, You agree that You are subject to any posted policies or rules applicable to services You use through the Business eStore Site, which may be posted from time to time. All such posted policies or rules are hereby incorporated by reference into this Agreement.

14.14 ENTIRE AGREEMENT.

This Agreement sets forth the entire understanding and agreement between You and Business eStore with respect to the subject matter hereof.