

MERCHANDISE VENDOR TERMS AND CONDITIONS
ORDERED INVENTORY

These Terms and Conditions are incorporated by reference into and constitute a part of the Merchandise Vendor Agreement between Radial, Inc. (“**Radial**”), the Client named therein (“**Client**”), and the Vendor named therein (“**Vendor**”). The term “**Agreement**” means the Merchandise Vendor Agreement including without limitation these Terms and Conditions.

1. Vendor Setup. Prior to the payment of any Vendor invoice, Vendor must deliver to Radial the following: (i) an executed Merchandise Vendor Agreement, which incorporates these Terms and Conditions, and (ii) a certificate of insurance evidencing such insurance required by this Agreement and designating Radial as an Additional Insured and Certificate Holder.

2. Orders. Radial may from time to time on behalf of Client issue order forms in written, electronic or facsimile form (each, an “**Order**”) to Vendor for the delivery of certain merchandise being sold by Client (the “**Merchandise**”). Unless otherwise agreed in writing by the parties, all Orders shall be governed by and subject to the Agreement including these Terms and Conditions.

(a) Acceptance of Order. Each Order shall be deemed satisfactory to and accepted by Vendor according to this Agreement if any shipment of Merchandise is made or if signed by Vendor. The stating of additional or different terms or the furnishing by Vendor of additional documents shall modify the Order only if specifically agreed to in writing by Radial and shall not affect acceptance of the Order by Vendor. Vendor hereby agrees that its acceptance of an Order will form an enforceable agreement notwithstanding that the Order and its acceptance may not be in a signed writing.

(b) Changes. Until the related Merchandise is shipped by Vendor, Radial may make changes in written, electronic or facsimile form to any Order, including changes in the specifications, methods of shipment, packing or time or place of delivery. If such changes result in an increase or decrease in cost, or time required for Vendor’s performance of the Order, an equitable and reasonable adjustment shall be made in the price, delivery schedule or both. If such changes result in an increase in cost or time, which is unacceptable to Radial, then Radial at its sole option may cancel its request for such changes. There shall be no changes or modifications to any Order by Vendor unless expressly consented to in writing by Radial.

(c) Price Changes. If there is any reduction in Vendor’s regular selling price for the Merchandise before shipment, Vendor agrees the price specified on the Order will be reduced to Vendor’s regular selling price prevailing at the time of shipment of such Merchandise. However, nothing herein contained shall permit an increase in the price specified on the Order unless approved in writing and signed by Radial.

(d) Additional Terms. By signing and returning the Merchandise Vendor Agreement or accepting any Order, Vendor hereby agrees that any additional or different terms contained in Vendor’s acceptance of any Order or its invoices, billing statements, acknowledgment forms or other related documents shall be of no force or

effect and shall not become part of this Agreement unless they are specifically accepted in writing by Radial. None of the terms of any Order, including but not limited to Vendor model number, price, delivery date, shipping instructions or packaging, may be changed without the written consent of Radial.

(e) Cancellation. Radial reserves the right to cancel any Order or any portion thereof, without any liability therefor, at any time prior to Vendor’s preparation for shipment of applicable Merchandise.

(f) Drop-Ship Orders. The Drop-Ship Addendum to these Terms and Conditions shall apply to all Orders for Merchandise that are shipped directly to consumers or other recipients specified by Radial. The Drop-Ship Addendum can be found at www.radial.com/legal/merchandise-procurement.

3. Shipping. Except for Drop-Ship Orders, the Ship To location shall be the Radial Distribution Center specified in the Order. The Merchandise Vendor Compliance Guidelines contains Radial’s requirements and all details concerning packaging, freight preparation, tender and routing, as updated from time to time. The Merchandise Vendor Compliance Guidelines can be found at www.radial.com/legal/merchandise-procurement. Vendor shall enclose packing slips which shall include all information required to be on invoices.

(a) Costs. Vendor shall pay all charges for packing and crating unless Radial expressly agrees to pay such charges. Vendor should have these services performed in a manner that protects the items from loss or damage. Any additional expense resulting from any delay, partial shipment, early shipment, change of routing, variation of cubic density, change of pack or other failure to comply with the terms of this Agreement, the applicable Order or the Vendor Guidelines shall be paid by Vendor.

(b) Title and Risk of Loss. Notwithstanding any incoterm or other shipping terminology used and unless agreed otherwise by the parties, all Orders will be designated F.O.B. point of origin, and title and risk of loss shall remain with Vendor until the Merchandise is received by the carrier contracted by . As between Radial and Vendor, Radial shall at no time have any title or risk of loss for any Merchandise contemplated hereby. Upon Vendor’s compliance with Section 5, title to all Products returned to Vendor shall revert to Vendor.

4. Time is of the Essence. Time is of the essence of any Order. Vendor shall promptly notify Radial if it is unable to ship timely. Radial shall have the right to refuse any goods untimely delivered and to cancel the balance of the Order for any part of the goods due after untimely delivered of any installments. For goods to be delivered to Radial’s distribution center, goods delivered

within one (1) week of the scheduled delivery date shall be considered timely delivered.

5. Returns.

(a) Radial, on behalf of client at its discretion at any time on behalf of client, may return to Vendor for full credit or replacement, at Radial's option and at Vendor's risk and expense, including transportation charges both ways, all or part of any Merchandise or shipment that is below sample or standard, defective or in breach of any warranties, expressed or implied, received late, containing excess quantities or which is in any other manner not in compliance with this Agreement or the related Order. If agreed by Radial and Vendor, or if Vendor does not respond to a Radial return request within forty-five (45) days, Radial may destroy such Merchandise for credit, or dispose of such Merchandise by any other means. The acceptance of any prior similar shipments shall not be considered a waiver of Radial's right to return all or any part of any subsequent shipment so made. Radial may impose a service charge of 5% for returns of Merchandise pursuant to this Section. Cure of nonconforming tender may be made only with the consent of Radial.

(b) Notice of defects in the Merchandise or of any other breach by Vendor under the terms of the Order will be considered made within a reasonable time, if promptly made after being discovered by Radial or after notification is given to Radial by its customers or the users of the Merchandise. The return of such Merchandise shall not relieve Vendor from liability for failure to ship conforming Merchandise under the Order or for liability with respect to warranties or conditions, express or implied.

(c) Resale, repackaging or repacking for the purpose of resale shall not be considered as acceptance of the Merchandise so as to bar Radial's right to reject such Merchandise or to revoke acceptance.

(d) In addition to any other remedies available to Radial under this Agreement or applicable law, upon Vendor's material breach of this Agreement, Radial at its option and without liability to Vendor, may cancel any unshipped portion of any Orders and return prior deliveries to Vendor for payment or credit, at Radial's option.

6. Recalls. In the event the Consumer Product Safety Commission or other federal, state or local agency (the "**Commission**") issues an order pursuant to any consumer protection law (hereinafter referred to as the "**Act**") requiring either Radial or Vendor to recall, replace, repair or make refunds with respect to all or part of any Merchandise (a "**Recall**") or where Vendor determines that a Recall is warranted prior to or without regard to any proceeding or determination by the Commission, Vendor shall do so at its expense and assume all costs (including without limitation, reimbursements to Radial for its out-of-pocket expenses) and such Recall shall be effectuated in a manner determined by Vendor with Radial's consent (which shall not be unreasonably withheld). For purposes of this Section, out-of-pocket expenses shall include any expense incurred by Radial relating to the Recall. In any event, Vendor shall accept return of all of client's inventory stored at Radial which

is the subject of a Recall and Vendor shall refund to Radial on behalf of client all monies paid for said inventory. In no event shall Vendor treat Radial less favorably than any other customer in the event of a Recall or potential Recall. Nothing contained in this Section shall prevent Radial from taking any actions as may be required of it under the Act and Vendor shall pay Radial all costs and expenses incurred by Radial in so doing.

7. Invoicing. Vendor shall invoice Radial, acting on behalf of Client, for all Merchandise delivered by Vendor and accepted by Radial (or by the recipient in the case of a Drop-Ship Order). For the avoidance of doubt, Client (and not Radial) shall be the "buyer" of all such Merchandise covered by an Radial invoice and client (not Radial) shall be solely liable to vendor for payment of such invoice. Each Order shall be invoiced separately, and Vendor shall not duplicate its invoice numbers at any time. Each invoice shall set forth: (a) the Ship To location; (b) the valid Order number, (c) payment terms; (d) line item costs; (e) the Vendor number assigned by Radial; (f) the carrier; (g) the number of cartons; and (h) weight of the shipment. All invoices shall comply with this Agreement and the related Order. If Vendor fails to comply with any requirement of this Section, Vendor shall be liable for and reimburse Radial for any increased direct and indirect expense thereby incurred by Radial. Radial may modify these invoices or shipping requirements from time to time upon written notice to Vendor.

8. Electronic Orders and Invoices. In order to facilitate timely payment on behalf of Client, Radial prefers to transmit Orders and receive invoices electronically. Upon testing and certification of Vendor's electronic capability, Radial's accounts payable department will no longer accept or process paper invoices. If paper invoices are received, Vendors will be contacted to resubmit the invoices electronically, and payment will be suspended until an electronic invoice is received and processed. For invoices not delivered electronically, invoices shall be mailed to:

(Client Name)

c/o Radial, Inc.
935 First Avenue
King of Prussia, PA 19406
Attention: Accounts Payable – Merchandise

9. Payment.

(a) Payment by Radial. Radial shall pay Vendor, on behalf of Client (and so long client has provided Radial with sufficient funds for such payment), within the payment period specified in the Merchandise Vendor Agreement from the date Radial receives a proper invoice. In the event of a dispute regarding the amounts payable to Vendor hereunder, then (i) disputing party will notify the other party of the dispute, (ii) each party will give the other party all relevant documentation supporting its calculation of amounts due, and (iii) each party agrees to work in good faith to resolve the dispute within fifteen (15) days from the date the dispute arose. Radial may withhold payment of the disputed amount without penalty or interest until the resolution of such dispute. Any

amounts payable to Vendor shall be subject to all claims and defenses of Radial and Client and Radial may deduct and set off against any such amounts any indebtedness of Vendor to Radial or Client.

(b) Payment by Vendor. All amounts due Radial under this Agreement shall be due and payable thirty (30) days after such obligation arises. If no Vendor invoice(s) exist to allow deduction within said thirty (30) days, Vendor agrees to remit payment to Radial, unless Radial agrees otherwise in writing.

10. Advertising and Customer Support.

(a) If Vendor has represented that it will publicly advertise or otherwise promote Merchandise ordered hereunder in accordance with a schedule appended to the Order and if Vendor shall without the prior written approval of Radial fail to advertise or otherwise promote such Merchandise strictly in accordance with said schedule, then Radial may assess handling charges and return (freight collect) such Merchandise and receive full credit therefor.

(b) Vendor shall provide customer support to Radial as reasonably requested by Radial in accordance with the industry practices.

(c) Under no circumstances (unless required by law) may Vendor use the name of any of Radial's retail partners in any advertising or press release without a written agreement and signed approval of the actual advertisement or press release by Radial.

11. Intellectual Property.

(a) Vendor hereby grants to Radial and its affiliates during the term of this Agreement, and for so long as Radial is offering Vendor's Merchandise for sale, the following license, rights and privileges: (i) the non-exclusive, royalty-free, worldwide and sub-licensable right to market, promote the sale of and sell the Merchandise, by means of any Internet stores operated by Radial and its affiliates ("**Radial Store**") or through any other means and media, (ii) the right to use, perform, play, display, synchronize and/or demonstrate, as applicable, the Merchandise, its contents, and/or any promotional material provided by Vendor ("**Promotional Material**") with any Radial Store or through any other means and media, (iii) the right to use, in print, graphic, electronic or other form, any and all trademarks registered, owned or used by or licensed to Vendor in connection with the Merchandise or developed by Radial or Vendor in connection with the Merchandise, and (iv) the right to use, in promoting the sale of the Merchandise, the names, images, likenesses, voices and/or biographies of any individuals referred to or depicted in the Promotional Material. Vendor acknowledges that Radial is reliant upon Vendor to ensure that all Promotional Material is accurate and complete. Vendor agrees to revise, update, and resubmit Promotional Material promptly upon discovering it is inaccurate or incomplete. Except for the limited licenses granted to Radial, Vendor retains all right, title and interest in and to the Promotional Material.

(b) Any tool, die, pattern or equipment furnished or paid for by Radial and used by Vendor to make any

article or part supplied under any Order shall be used solely to produce such article or part for Radial. Vendor shall hold any data, drawing, specification, tool, die, pattern, equipment or information concerning Radial's business in strict confidence. Upon termination or completion of all Orders relating to such items, for any reason, all such items, including copies thereof, shall be immediately delivered to Radial.

12. Regulated Merchandise.

(a) Product Testing. Vendor, at its sole cost and expense, shall perform, or cause to be performed, all tests on the Merchandise required by the Consumer Product Safety Commission and any other federal, state and local laws, or the laws of any United States Commonwealth or territory where Radial does business, including the Commonwealth of Puerto Rico, and shall maintain for a period of not less than three (3) years certificates indicating that all applicable tests have been administered and passed. Such tests shall be conducted by laboratories acceptable to the agency or authority requiring same. Vendor shall make available, and at Radial's reasonable request shall furnish, to Radial copies of certificates indicating that applicable tests have been administered and passed and shall permit Radial or any person or persons authorized by Radial to inspect and make copies of all records maintained by Vendor in connection with such tests.

(b) Safety Data Sheet. Vendor shall provide Radial, upon Radial's reasonable request, a Material Safety Data Sheet if required pursuant to the Occupational Safety and Health Act and any other federal, state, or local law, regulation or order prior to the delivery of Merchandise. A Material Safety Data Sheet, if required, shall also be included with the first delivery of any Merchandise to each of Radial's facilities.

(c) Licenses. Upon the reasonable request of Radial, Vendor shall obtain and provide to Radial any and all registration numbers, license numbers, or the like, required by any federal, state, local, foreign, provincial or territorial governmental agency or authority having jurisdiction over the Merchandise type in question, the sale of such Merchandise, and/or any claims made regarding the Merchandise or any of its qualities.

13. Limitation on Claims. Notwithstanding any provision to the contrary, Vendor agrees to bring all claims or disputes against Client regarding payment for Merchandise within one year after such payment became due.

14. No Minimum Order Quantity. Notwithstanding anything in this Agreement, each party specifically disclaims any representation or warranty regarding the amount of sales that may occur and any economic or other benefit that it might obtain through its participation in this Agreement. The execution of the Merchandise Vendor Agreement places no obligations on Radial to place any Orders or on Vendor to Accept any Orders. Further, the parties acknowledge that Radial is not an exclusive dealer of Vendor's Products and Radial is under no obligation to use its best efforts to promote the sale of Vendor's Products.

15. Vendor Warranties.

(a) Vendor agrees that Radial shall not be liable for the inspection or packaging of Merchandise before resale and that all warranties, representations and conditions, statutory, legal or otherwise and whether express or implied, shall survive inspection, installation, acceptance, and payment by Radial and Client's customers.

(b) Vendor represents and warrants to Radial for itself and on behalf of client, in addition to all warranties implied by law, that the Merchandise and its design, construction, assembly, production, shipment, sale, packaging, labeling, packing, advertising, instructions and warnings or lack thereof, shall, as applicable, (i) be of good quality, material, and workmanship and be merchantable, fit for its intended purpose, and free from any and all defects, including, without limitation, such defects that could create a hazard to life or property, (ii) are not and have not been subject to product liability claims, except as disclosed to Radial in writing; (iii) meet all applicable requirements of all applicable U. S. federal, state and local laws and regulations and of all applicable laws and regulations of jurisdictions outside the United States ("**Laws**"), (iv) not infringe or encroach upon Radial's or any third party's personal, contractual or proprietary rights, including, without limitation, patents, trademarks, copyrights, rights of privacy or publicity, or trade secrets; (v) conform to all of Radial's specifications and to all articles shown to Radial as Merchandise samples; (vi) be well within any expiration date indicated on the packaging of the Merchandise; (vii) have been stored under proper conditions to preserve the quality of the Merchandise; and (viii) possess all performance qualities and characteristics claimed in advertisements issued or authorized by Vendor. Approval by Radial of Vendor's designs, materials or packaging shall not relieve Vendor from any obligations under any warranties, representations, conditions or guarantees.

(c) Vendor further represents and warrants that (i) the Merchandise is new and merchantable; (ii) the title of Vendor in the Merchandise is good and free and clear of all encumbrances and liens, and its transfer hereunder rightful; (iii) all manufacturer's warranties are effective and enforceable by both Radial and Radial's customers; and (iv) if required by Law or legal precedent, the labels, packaging, instructions and warnings accompanying the Merchandise are multilingual and/or contain universally accepted pictographs or symbols and that Vendor, if necessary, will supply Radial with any and all instructions, warnings or safety sheets for said Merchandise as required by Law.

16. Indemnity.

(a) Vendor agrees to indemnify, defend and hold harmless Radial and Client, their officers, directors, employees, agents, subsidiaries, successors and assigns (the "**Indemnified Parties**") from any and all liabilities, costs and expenses (including reasonable attorney's fees) associated with any claim, complaint, charge, penalty, demand, injury, loss, or damage resulting from or in connection with (i) the breach of any of representations

or warranties by Vendor or the Merchandise; (ii) the failure of Vendor to comply with applicable Law; or (iii) the design, construction, assembly, production, shipment, sale, packaging, labeling, packing, advertising, instructions and warnings or lack thereof, of the Merchandise.

(b) In the event of any claim, suit or proceeding against any Indemnified Party in connection with any of the foregoing, Radial agrees to timely notify Vendor of any such claim, suit or proceeding (but the lack of timeliness of such notice shall not affect Vendor's obligations hereunder except to the extent Vendor is prejudiced by such lack of timeliness). Vendor shall promptly, upon receiving notice of such claim, suit or proceeding, assume the defense of the Indemnified Parties at its sole cost, and (whether Vendor assumes such defense or for any reason fails or refuses to assume such defense) Vendor shall pay any and all sums which any Indemnified Party becomes legally obligated to pay as a result of such claim, suit or proceeding. Vendor further agrees to pay the reasonable costs and attorney's fees of any Indemnified Party to the extent necessary to enforce such Indemnified Party's rights under this Agreement. Radial agrees to cooperate with Vendor in the defense or settlement of such claim, suit or proceeding, provided that Vendor shall obtain Radial's prior written consent to any compromise, settlement or consent judgment which affects Radial's rights or interests.

(c) Notwithstanding the above, Radial shall have the right, but not the obligation, to participate as it deems necessary in the handling, adjustment, or defense of any claim. If Radial reasonably determines that a defense or defenses are available to Radial that are not available to Vendor and raising such defense or defenses would create a conflict of interest for the counsel defending the claim, Radial will be entitled to retain separate counsel for the purpose of raising these defenses at Vendor's expense.

(d) Notwithstanding the above, Vendor shall not enter into any settlement or compromise of the claim that would result in the admission of any liability by Radial, any financial liability on the part of Radial, or would subject Radial to injunctive relief without first obtaining Radial's prior written consent.

(e) Should Vendor fail to assume its obligations hereunder within thirty (30) days (or sooner if required to maintain a defense), including its obligation to diligently pursue and pay for the defense of Radial within a reasonable time, Vendor hereby agrees that Radial shall have the right, but not the obligation, to proceed on Radial's own behalf to so defend itself and to thereafter require from Vendor reimbursement and indemnification for any and all costs and expenses (including attorneys' fees).

17. Insurance.

(a) Vendor shall purchase and maintain, at its sole cost and expense, comprehensive general liability insurance including products liability, infringement and advertising injury coverage with the limits specified in the Merchandise Vendor Agreement. Coverage shall include

broad form property damage, contractual liability including defense costs, cross liability exclusion deleted, personal/advertising liability, and shall provide for waivers of subrogation in favor of Radial. The insurance company issuing such policy shall be licensed to transact business in the Commonwealth of Pennsylvania, shall maintain a minimum rating of A Financial Category X by Best's Insurance Key Rating Guide published by A.M. Best Company. The policy shall state that it is primary and non-contributory with any other insurance policy that Radial may procure.

(b) Vendor agrees to continuously maintain such insurance for the period during which any party may, as a matter of law, be entitled to assert a claim against any Indemnified Party.

(c) Radial and Client shall be designated as an Additional Insured and Certificate Holder thereon and the Policy shall bear endorsements to the effect that Radial shall be notified not less than thirty (30) days in advance of modification or cancellation thereof (except that such notice shall be 10 days in advance for nonpayment of premium) by certified mail to Radial's Vice President of Merchandising, 935 First Ave., King of Prussia, PA 19406. A renewal certificate evidencing the insurance coverage required pursuant to this Agreement shall be provided to Radial at least thirty (30) days prior to the expiration of the policy.

(d) Vendor specifically agrees that the indemnities referenced in this Agreement are not limited to the insurance coverage set forth in this paragraph. Vendor, Vendor's representatives', insurers', or agents' failure to comply with the insurance requirements of this Agreement shall be considered a breach of this Agreement.

(e) Within thirty (30) days following commencement of this Agreement and prior to the payment of any Vendor invoice, Vendor shall furnish to Radial a certificate of insurance evidencing such insurance and designating Radial as an Additional Insured and Certificate Holder.

18. Bankruptcy. In the event that either a voluntary or involuntary bankruptcy petition is commenced by or against Vendor or any of the Related Entities under Title 11 of the United States Code ("**Bankruptcy Code**"), or under any other federal or state law governing the reorganization, liquidation, assignment for the benefit of creditors, or other similar disposition of Vendor or the Related Entities, Vendor and the Related Entities unconditionally and irrevocably agree that Radial shall be entitled, and Vendor and the Related Entities hereby unconditionally and irrevocably consent, to relief from the automatic stay under Section 362 of the Bankruptcy Code to the extent required or any other bar to Radial's exercising its rights under this Agreement so as to allow Radial to exercise its rights and remedies under this Agreement, including but not limited to exercising its right of setoff recoupment as set forth herein and/or under applicable non-bankruptcy law. In such event, Vendor and the Related Entities hereby agree that they shall not, in any manner, oppose or otherwise delay any motion filed by Radial for relief from the automatic stay or other bar. The

provisions of this Section constitute a material inducement for Vendor and Radial to enter into this Agreement.

19. Confidential Information.

(a) Neither party shall disclose any Confidential Information to any person or entity except employees of such party and the applicable carrier for delivery purposes as required in the performance of their employment-related duties in connection with this Agreement, nor will either party use or permit any other person or entity to use the Confidential Information for any purpose other than those purposes expressly contemplated herein. Each party shall inform those persons or entities having access or exposure to Confidential Information hereunder, of its obligations under this Section. Each party may disclose Confidential Information that is lawfully required to be disclosed by it to any governmental agency or is otherwise required to be disclosed by law, provided that, before making such disclosure, and shall give the other party adequate opportunity to interpose an objection or take action to assure confidential handling of such information.

(b) "**Confidential Information**" means this Agreement and any other agreement between Radial and Vendor, all information in whatever form transmitted relating to the past, present or future business affairs, including without limitation, the sale of Merchandise and/or services, actual and prospective purchaser lists and other purchaser information, and research, development, operations, security, broadcasting, merchandising, marketing, distribution, financial, programming and data processing information of either party or another party whose information such party has in its possession under obligations of confidentiality, which is disclosed by the other party, its subsidiaries, affiliates, employees, agents, officers or directors to such party or which is produced or developed during the working relationship between the parties.

(c) Vendor shall not use any information obtained from Radial's customers (e.g., through warranty cards or otherwise) to offer for sale to such customers any goods or services. Vendor shall not, without first obtaining Radial's written consent, include with any Merchandise any information that promotes, or would enable Radial's customers to acquire, either directly or indirectly, any additional merchandise from persons other than Radial.

(d) Each party agrees that the Confidential Information referred to in this Section is valuable and unique and that disclosure or use thereof in breach of this Section will result in immediate irreparable injury to the other party. In the event of a breach or threatened breach of this Section, the damaged party shall be entitled to obtain from any court of competent jurisdiction, preliminary and permanent injunctive relief, including, but not limited to, temporary restraining orders, which remedy shall be cumulative and in addition to any other rights and remedies to which it may be entitled.

20. Non-Solicitation. During the term of this Agreement, and for one year thereafter, Vendor will not, except with Radial's express prior written consent, directly

or indirectly, solicit any employee, consultant, agent or representative of Radial in an effort to obtain such person as an employee, consultant, agent or representative of Vendor.

21. Assignment. Vendor may not assign this Agreement or any Order without the written consent of Radial. However, Vendor may factor all (but not less than all) of its receivables under this Agreement to no more than one person, provided that such factoring shall not be effective as to Radial and Client until satisfactory written notice thereof is received by Radial. Radial may assign this Order to a present or future affiliated entity.

22. Choice of Law and Jurisdiction. This agreement and any order shall be interpreted and enforced under and in accordance with the internal laws of the Commonwealth of Pennsylvania, and vendor shall exercise any right or remedy thereunder exclusively in, and hereby consents to the exclusive jurisdiction of, the courts of the Commonwealth of Pennsylvania and the United States District Court in Philadelphia, Pennsylvania. Vendor and Radial expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods, if and to the extent applicable.

22. Survival. Notwithstanding any legal presumption to the contrary, the covenants, conditions, representations, indemnities, and warranties contained in this Agreement, including, but not limited to Sections 5, 6, 13, 15, 16, 17, 18, 19, 22, and 23 hereof, shall survive inspection, delivery, acceptance, payment and termination of this Agreement, shall be binding upon Vendor and its successors and permitted assigns, and shall run in favor of Radial and its successors and assigns.

23. Miscellaneous.

(a) All work performed by Vendor and all materials used in connection with any Order shall be at the risk and expense of Vendor until delivered and accepted by Radial. Whenever Vendor has in its possession any of Radial's property, Vendor shall be deemed an insurer thereof and shall be responsible for its safe return to Radial.

(b) All costs and expenses, including but not limited to, attorneys' fees, incurred by Radial due to Vendor's violations of or failure to follow any or all of The terms of the Order will be charged to Vendor, and Vendor expressly agrees to reimburse Radial for all such costs and expenses.

(c) Any and all taxes, fees, imposts, or stamps, required by state, federal, local governments, or any such governmental authority incurred by the selling, transferring, or transmitting of Merchandise from Vendor to Radial shall be paid and assumed by Vendor, except that sales and use taxes charged directly on the amounts paid by Radial to Vendor shall be paid by Radial, unless client provides vendor with the appropriate exemption/reseller certificates.

(e) These Terms and Conditions, together with the Merchandise Vendor Agreement, and any applicable schedules and exhibits represent the entire and integrated Agreement between the parties hereto and supercede all

prior negotiations, representations or agreements, written or oral. No changes or modifications to these Terms and Conditions are permitted unless made in writing as an addendum hereto and signed by both parties.

(f) Each party acknowledges that this Agreement has materially induced Radial/Client to purchase Merchandise from Vendor and Vendor to sell Merchandise to Radial/Client. If any provision(s) of this Agreement or a Order shall be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any remaining provisions(s) thereof. Either party's waiver of any term or condition of this Agreement or any Order shall not be deemed a continuing waiver, and the waiving party's failure to demand cure of or cancel or rescind a Order as a result of a prior breach by the other party shall not be deemed a waiver of the right to demand cure of or cancel or rescind a Order as a result of any subsequent breach. The rights set forth in this Agreement are cumulative and in addition to those otherwise provided by law and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

--- END ---