

## AFFILIATE RESELLER PROGRAM AGREEMENT

This Affiliate Reseller Program Agreement, including the appendices attached hereto, (collectively the “Agreement”) is made and entered into by and between **Authorize.Net, LLC**, a Delaware limited liability company with its principal place of business at **808 East Utah Valley Drive, American Fork, Utah 84003** (“Authorize.Net”), and the company listed above in the Affiliate Reseller Program Application (“Affiliate”). Authorize.Net and Affiliate shall be referred to individually as a “Party” or collectively as the “Parties.”

**By clicking on the “I AGREE” button, or by acknowledging its acceptance of the Agreement by any other method allowed by Authorize.Net, Affiliate acknowledges and agrees that it has reviewed and understands the Agreement and agrees to be legally bound by all its terms and conditions. If Affiliate does not agree or is not willing to be bound by the terms and conditions of this Agreement, it must neither click on the “I AGREE” button nor acknowledge its acceptance of the Agreement by any other method and must not seek to market or sell the Authorize.Net Services.**

NOW THEREFORE, the Parties hereby agree as set forth on the following pages:

**1. Definitions.** Words and phrases with initial letters capitalized and not otherwise defined above or below shall have the meanings set forth in Appendix A attached hereto.

**2. Rights Granted.**

**2.1 Affiliate Appointment.** Subject to and in accordance with the terms and conditions of this Agreement, Authorize.Net hereby appoints Affiliate as a nonexclusive reseller of the Authorize.Net Services to Merchants within the United States. In connection with such appointment, Authorize.Net hereby grants to Affiliate a nonexclusive, nontransferable right to market and otherwise promote the Authorize.Net Services to Merchants within the United States, solicit orders from interested Merchants for Authorize.Net Services, and refer such Merchants to Authorize.Net for potential enrollment in one or more Authorize.Net Service.

**2.2 Limitations.** Section 2.1 sets forth the entirety of Affiliate’s right to market, promote, offer, sell, and distribute the Authorize.Net Services. Without limiting the generality of the foregoing, Affiliate will not, directly or indirectly (a) market, promote, offer, sell or otherwise distribute any of the Authorize.Net Services except as specifically set forth in this Agreement, or (b) remove, alter, distort, cover or otherwise modify any legal notices (including, without limitation, any notice of Proprietary Rights) appearing in or on, or that may be included with, any content, documentation, or other materials furnished or otherwise made available to Affiliate by Authorize.Net under this Agreement. Affiliate acknowledges that the rights granted to market, promote, offer, sell and otherwise distribute the Authorize.Net Services hereunder are subject to any and all applicable rights of third parties. Affiliate will comply with all third-party restrictions and limitations on use of the Authorize.Net Services that are made known to Affiliate. Authorize.Net may at any time modify its grant of rights to the extent necessary to ensure compliance. Affiliate acknowledges and agrees that as between Authorize.Net, Affiliate and Merchant, Authorize.Net maintains privity of contract for Authorize.Net Services between it and the Merchant.

**2.3 No Delegation.** Affiliate shall not delegate performance of any of its obligations under this Agreement (other than to its own employees) without Authorize.Net’s prior written authorization. Affiliate will ensure that all authorized persons performing such obligations are properly qualified and experienced to perform the same.

**3. Affiliate Obligations.**

**3.1 Password(s).** Authorize.Net will issue a password(s) to Affiliate to enable Affiliate and/or its employees and agents to access an account via the Authorize.Net Web Site. Affiliate will restrict access to such password(s) and account to those employees and agents of Affiliate as may be reasonably necessary consistent with the purposes of this Agreement and will ensure that each such employee and agent of Affiliate accessing and using the account is aware of and otherwise complies with all applicable provisions of this Agreement regarding such use and access.

**3.2 Sales and Referral Efforts.** Affiliate shall use its best efforts to refer to Authorize.Net, and solicit orders from, Merchants interested in purchasing any of the Authorize.Net Services. Authorize.Net reserves the right to refuse to provide the Authorize.Net Services to any Merchant referred to Authorize.Net by Affiliate.

**3.3 No Unauthorized Warranties.** Affiliate shall accurately describe Authorize.Net, its Affiliates, and the Authorize.Net Services to each Merchant. Without limiting the generality of the foregoing, Affiliate will make no representation, warranty or description regarding the performance, functional characteristics or other aspects of any Authorize.Net Service that is beyond those stated in Authorize.Net’s then-current and officially approved marketing and promotional materials for the applicable Authorize.Net Service. Affiliate is not authorized to, and will not, make any representation or warranty on behalf of Authorize.Net except as Authorize.Net may expressly consent to in writing.

**3.4 Merchant Fees.** Affiliate shall not surcharge, bill or collect any fees from Approved Merchants for their enrollment in or use of the Authorize.Net Services.

Authorize.Net shall quote the amount of each Authorize.Net fee to interested Merchants.

**3.5 Compliance with Law and Authorize.Net Guidelines.** Affiliate will comply, at its own expense, with all laws, policies, guidelines, regulations, ordinances, rules applicable to Affiliate, its business or the Transactions and/or orders of any governmental authority or regulatory body having jurisdiction over the subject matter hereof. Reseller acknowledges that Reseller, and not Authorize.Net, is responsible for the security of Cardholder Data while in Reseller's possession. At all times during the term of the Agreement, Reseller will comply with all applicable laws, regulations and Card Association rules, including, without limitation, the Payment Card Industry Data Security Standard (PCI DSS). In addition, Affiliate shall comply with all the current policies, procedures and guidelines of Authorize.Net governing the Authorize.Net Services, including, without limitation, Authorize.Net's Acceptable Use Guidelines, incorporated herein by reference and shall not sell the Authorize.Net Services to any Merchants that sell products or services that are prohibited by such guidelines. Affiliate shall not use the Authorize.Net Services in any manner, or in furtherance of any activity that may cause Authorize.Net to be subject to investigation, prosecution, or legal action. The Authorize.Net Acceptable Use Guidelines are available at <http://www.authorize.net/company/terms/>. Authorize.Net reserves the right to amend, modify or change such policies, procedures, and guidelines at any time.

#### **4. Authorize.Net's Obligations.**

**4.1 E-mail to Merchants.** Upon Authorize.Net's receipt of all information that is required to activate Authorize.Net Services, it shall send an e-mail message to Merchant at the e-mail address provided to Authorize.Net instructing Merchant on the steps it needs to take to activate the applicable services.

**4.2 Billing Obligations.** Authorize.Net shall bill Approved Merchants for all Authorize.Net Services, as applicable. Billing shall be accordance with the terms of the Payment Gateway Agreement or Merchant Account Services Agreement between it and an Approved Merchant.

**4.3 Customer Service.** During the respective term of the Payment Gateway Merchant Service Agreement or Merchant Account Services Agreement, if the Approved Merchant is current in payment of all fees owing to Authorize.Net and is otherwise not in default under such agreement, Authorize.Net and/or its Suppliers shall provide customer service to such Approved Merchant via telephone and e-mail.

**4.4 Technical Assistance.** Authorize.Net will provide reasonable technical assistance to Affiliate as may be necessary and appropriate to assist Affiliate in effectively carrying out its obligations under this Agreement.

**5. Authorize.Net Services.** Authorize.Net reserves the right to refuse to provide Authorize.Net Service to any Merchant. In accordance with the terms and conditions contained herein, Authorize.Net will host all of the Authorize.Net Services on servers maintained by or on behalf

of Authorize.Net or one or more of its Affiliates. Subject to the terms hereof, Authorize.Net will use commercially reasonable efforts to provide the Authorize.Net Services to Approved Merchants and maintain the same in an uninterrupted and error-free fashion consistent with its practices in effect as of the Effective Date, provided that the applicable Approved Merchant is not in default of its obligations to Authorize.Net pursuant to the Payment Gateway Merchant Service Agreement or Merchant Account Services Agreement.

#### **6. Commissions and Cost of Performance.**

**6.1 Commissions.** With respect to each Approved Merchant enrolling in the Authorize.Net Services, Authorize.Net will pay Commissions to Affiliate in the amounts set forth in Appendix C on the first business day of the month following the month in which Authorize.Net collects the applicable service fee from the Approved Merchant. Payments will be made in U.S. Dollars and deposited into Affiliate's bank account set forth in the Affiliate Reseller Application above. If Affiliate's bank account number and/or federal income tax ID number changes, Affiliate shall promptly provide Authorize.Net with written notice of the change and the new number(s). Authorize.Net will pay Commissions to Affiliate only if the applicable fees are collected from the Approved Merchant by the 15<sup>th</sup> day of the month in which Authorize.Net billed such Approved Merchant for such fees. Commissions generated by Approved Merchants will not be paid to Affiliate where payments owing from such Approved Merchants are overdue and require collection efforts by Authorize.Net. Authorize.Net reserves the right to terminate the accrual and payment of Commissions to Affiliate if Affiliate is in breach of this Agreement.

**6.2 Taxes.** All Fees and any other payments stated herein exclude, and Affiliate will pay, any taxes, levies, fees, charges or other assessments, including, without limitations, excise, property, sales, use, ad valorem, transfer, franchise, profits, license, withholding or other taxes imposed by the United States or any agency or instrumentality thereof, any state, county, local or foreign government, or any agency, subdivision or instrumentality thereof, and any interest, fines and any and all penalties or additions relating to such taxes, charges, fees, levies or other assessments related to the Parties' performance of their obligations or exercise of their rights under this agreement and any related duties, tariffs, imposts and similar charges, excluding only those taxes based upon Authorize.Net's net income or gross receipts.

**6.3 Cost of Performance.** Unless otherwise expressly provided herein, each Party shall be solely responsible for the costs of its own performance hereunder, and will not be entitled to any reimbursement from the other Party for such costs.

**6.4 Automated Clearing House Authorization.** Affiliate hereby authorizes Authorize.Net to initiate transaction entries to Affiliate's depositories account as set forth in the Affiliate Application above. This authority is to

remain in effect until Authorize.Net has received written notification from Affiliate of its request for termination in such time as to afford Authorize.Net and Affiliate's depository institution a commercially reasonable opportunity to acknowledge and respond to the request. Affiliate agrees to be bound by the Automated Clearing House Rules as promulgated by the National Automated Clearing House Association that are in effect from time to time during the Term of this Agreement.

## **7. Term and Termination.**

**7.1 Term.** The term of this Agreement (the "Term") shall commence on the Effective Date and, unless earlier terminated in accordance with this Agreement, continue thereafter unless and until either Party provides the other Party with at least thirty (30) days written notice of its intent to terminate this Agreement.

**7.2 Termination by Authorize.Net.** Authorize.Net may terminate this Agreement immediately and without advance notice if: (a) Affiliate is in breach or default of any other obligation set forth in of this Agreement; (b) Authorize.Net determines, in its sole discretion, that Affiliate's business practices are detrimental to the achievement of Authorize.Net business objectives; (c) Authorize.Net has reason to believe that there is an alleged or actual violation by Affiliate of any laws, policies, guidelines, regulations, ordinances, rules and/or orders of any governmental authority or regulatory body having jurisdiction over the subject matter hereof; (d) Affiliate violates Authorize.Net's Acceptable Use Policy; (e) Affiliate does not establish a new Merchant account for a period of twelve (12) months or greater; (f) any Person that Authorize.Net reasonably determines to be a competitor or prospective competitor of Authorize.Net or any of its Affiliates acquires the power or ability, directly or indirectly, to exercise any controlling influence over Affiliate or Affiliate's management, operations or policies (either alone or pursuant to an arrangement or understanding with one or more Persons); or (g) Affiliate (i) makes a general assignment for the benefit of creditors, (ii) files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, (iii) becomes subject to any proceedings under any bankruptcy or insolvency law where such proceeding has not been dismissed within sixty (60) days, or (iv) has wound up or liquidated, voluntarily or otherwise.

**7.3 Effect of Termination.** In the event of termination in accordance with this Section 7, Authorize.Net shall pay Affiliate, within sixty (60) days of the effective termination date, only the Commissions owing to Affiliate as of the effective termination date. Upon expiration or termination of this Agreement for any reason: (i) Affiliate shall promptly return to Authorize.Net all equipment, sales literature, documentation and materials supplied by Authorize.Net, (ii) Authorize.Net may continue to provide the Authorize.Net Services to any and all Approved Merchants and assume sole responsibility for such Approved Merchants for purposes of this Agreement; and (iii) Affiliate's right to earn Commissions shall terminate.

**7.4 Survival.** Upon expiration or termination of this Agreement for any reason, all rights and obligations of the Parties under this Agreement shall be extinguished, except that: (a) all accrued payment obligations hereunder shall survive such expiration or termination; and (b) the rights and obligations of the Parties under Sections 5, 7, 8, 9, 10, 11, 12, 13, 14, and 15 and any other provisions of this Agreement that should reasonably survive expiration or termination shall survive such expiration or termination.

## **8. Representations and Warranties.**

**8.1 Affiliate.** Affiliate represents and warrants to Authorize.Net that: (a) Affiliate will conduct its business at all times in a manner that reflects favorably on the goodwill and reputation of Authorize.Net and its Supplier(s) and will not engage in any illegal or unethical business practices; and (b) all representations and statements made by Affiliate in this Agreement, or in any other document relating hereto by Affiliate or on Affiliate's behalf, are true, accurate and complete in all material respects. Affiliate hereby authorizes Authorize.Net to investigate and confirm the information submitted by Affiliate herein. For this purpose, Authorize.Net may utilize credit bureau/reporting agencies and/or its own agents.

**8.2 Mutual.** Each Party represents and warrants to the other that (a) it has full power and legal right to execute and deliver this Agreement and to perform its obligations under this Agreement, (b) no authorization or approval from any third Party is required in connection with such Party's execution, delivery or performance of this Agreement, (c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, and (d) it has all right, title or interest, or valid license to use, its respective Trademarks, and that its grant of rights associated therewith do not violate any Proprietary Rights of any third Party.

**8.3 Third-Party Programs.** Affiliate acknowledges that the Authorize.Net Services are designed for use with certain third-party programs, including, without limitation, certain Internet browser software programs and software developed by a Supplier. Affiliate will look solely to the developers and manufacturers of such programs with regard to warranty, maintenance or other support regarding the same. Authorize.Net makes no warranty, express or implied, with regard to any such third-party software.

## **9. Indemnification.**

### **9.1 Indemnification by Authorize.Net.**

Authorize.Net shall defend, indemnify and hold Affiliate harmless from and against any claim or suit brought against Affiliate, including any and all losses, damages, costs, and expenses (including reasonable attorneys' fees) arising from such claim or suit arising out of any breach or alleged breach by Authorize.Net of any representation, warranty or obligation of Authorize.Net set forth in Section 8.

**9.2 Indemnification by Affiliate.** Affiliate shall defend, indemnify, and hold Authorize.Net, its Affiliates, and any of

their officers, directors, agents and employees harmless from and against any action, claim or suit brought against Authorize.Net or its affiliates, including any and all losses, damages, costs, and expenses (including reasonable attorneys' fees) arising from or out of: (a) any breach or alleged breach by Affiliate of any representation, warranty or other obligation of Affiliate under this Agreement; (b) any alleged or actual violation by Affiliate of any laws, policies, guidelines, regulations, ordinances, rules and/or orders of any governmental authority or regulatory body having jurisdiction over Affiliate and the subject matter hereof; (c) the negligence or willful misconduct of Affiliate, its employees or agents; (d) any violation of Authorize.Net's Acceptable Use Policy; (e) Affiliate's advertising, marketing, promotion, sale, or distribution of any of the Authorize.Net Services; or (f) the inaccuracy of information provided to Authorize.Net by Affiliate regarding a Merchant. In the event Affiliate causes fines and/or penalties to be charged to Authorize.Net for its violation of Card Association Rules, Affiliate agrees to immediately reimburse Authorize.Net for said fines or penalties.

#### **10. Warranty and Disclaimer.**

**10.1 WARRANTY.** AUTHORIZE.NET DOES NOT REPRESENT OR WARRANT THAT THE AUTHORIZE.NET SERVICES WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ENTIRELY ERROR-FREE. AFFILIATE ACKNOWLEDGES THAT THE AUTHORIZE.NET SERVICES ARE NETWORK-BASED SERVICES, WHICH MAY BE SUBJECT TO OUTAGES, INTERRUPTIONS, ATTACKS BY THIRD PARTIES AND DELAY OCCURRENCES. IN SUCH AN EVENT AND SUBJECT TO THE TERMS HEREOF, AUTHORIZE.NET SHALL USE COMMERCIALY REASONABLE EFFORTS TO REMEDY MATERIAL INTERRUPTIONS AND WILL PROVIDE ADJUSTMENT, REPAIRS AND REPLACEMENTS WITHIN ITS CAPACITY THAT ARE NECESSARY TO ENABLE THE AUTHORIZE.NET SERVICES TO PERFORM THEIR INTENDED FUNCTIONS IN A REASONABLE MANNER. YOU ACKNOWLEDGE THAT AUTHORIZE.NET DOES NOT WARRANT THAT SUCH EFFORTS WILL BE SUCCESSFUL. IF AUTHORIZE.NET'S EFFORTS ARE NOT SUCCESSFUL, YOU MAY TERMINATE THIS AGREEMENT IN ACCORDANCE WITH SECTION 7. THE FOREGOING SHALL CONSTITUTE AFFILIATE'S SOLE REMEDY AND AUTHORIZE.NET'S SOLE LIABILITY, IN THE EVENT OF INTERRUPTION, OUTAGE OR OTHER DELAY OCCURRENCES IN THE AUTHORIZE.NET SERVICES.

**10.2 DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, AUTHORIZE.NET SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WHETHER EXPRESS OR IMPLIED, ARISING BY STATUTE, OPERATION OF LAW, USAGE OF TRADE, COURSE OF DEALING, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO,

WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR TITLE WITH RESPECT TO THE AUTHORIZE.NET SERVICES, OR OTHER SERVICES OR GOODS PROVIDED UNDER THIS AGREEMENT.

#### **11. Limitation of Liability and Disclaimers.**

**11.1 DISCLAIMER.** AUTHORIZE.NET EXPRESSLY DISCLAIMS ANY LIABILITY OR LOSS ARISING FROM OR RELATED TO THE AUTHORIZE.NET SERVICES, THIRD-PARTY SERVICE PROVIDERS OR THIS AGREEMENT (HOWEVER ARISING, INCLUDING NEGLIGENCE), INCLUDING WITHOUT LIMITATION, LIABILITY OR LOSS ASSOCIATED WITH UNAUTHORIZED ACCESS TO A SERVER, AFFILIATE INTERFACE, WEB SITE, FACILITY, YOUR DATA OR YOUR CUSTOMER DATA (INCLUDING CREDIT CARD NUMBERS AND OTHER PERSONALLY IDENTIFIABLE INFORMATION) DUE TO ACCIDENT, ILLEGAL OR FRAUDULENT MEANS, INCLUDING HACKING, OR DEVICES USED BY ANY THIRD PARTY, OR OTHER CAUSES BEYOND AUTHORIZE.NET'S REASONABLE CONTROL. AFFILIATE EXPRESSLY AGREES THAT AUTHORIZE.NET SHALL NOT BE LIABLE FOR ANY LOSS ARISING FROM: (I) A THIRD PARTY'S INFILTRATION OF AUTHORIZE.NET SERVICES, SYSTEMS OR WEB SITE BY ANY MEANS, INCLUDING WITHOUT LIMITATION, DDoS ATTACKS, SOFTWARE VIRUSES, TROJAN HORSES, WORMS, TIME BOMBS, OR ANY OTHER SOFTWARE PROGRAMS, OR TECHNOLOGY; (II) DISRUPTION, DAMAGE, INTERCEPTION, UNAUTHORIZED ACCESS TO OR EXPROPRIATION OF THE AUTHORIZE.NET SERVICES, OR ANY SYSTEM, PROGRAM, DATA, TRANSACTION OR PERSONAL INFORMATION BELONGING TO AUTHORIZE.NET, YOU OR ANY THIRD PARTY; OR (III) THE LIMITATION OF THE FUNCTIONING OF ANY SOFTWARE, HARDWARE, EQUIPMENT OR THE SERVICE.

**11.2. No Consequential Damages.** EXCEPT FOR CLAIMS ARISING FROM CRIMINAL OR WILLFUL MISCONDUCT, THE PARTIES AND THEIR VENDORS (AND ANY OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS OF THE PARTIES AND THEIR VENDORS) SHALL BE LIABLE ONLY FOR DIRECT, OUT-OF-POCKET DAMAGES, AND SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS OR BUSINESS, UNDER ANY THEORY OF LIABILITY OR CAUSE OF ACTION WHETHER IN TORT, CONTRACT OR OTHERWISE, REGARDLESS OF WHETHER THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**11.3 THIRD PARTY PRODUCT AND SERVICES.** AUTHORIZE.NET MAKES NO REPRESENTATION,

WARRANTY OR GUARANTEE WHATSOEVER IN RELATION TO THIRD PARTY PRODUCTS AND SERVICES. AFFILIATE'S RESALE, OR USE OF THIRD PARTY PRODUCTS AND SERVICES IS AT ITS OWN RISK. AUTHORIZE.NET ASSUMES NO RESPONSIBILITY AND EXPRESSLY DISCLAIMS ANY LIABILITY FOR CLAIMS OF LOSS AND/OR FRAUD INCURRED RESULTING FROM THE RESALE, USE OF OR CONCLUSIONS DRAWN FROM ANY THIRD PARTY PRODUCT OR SERVICE, REGARDLESS OF WHETHER OR NOT AUTHORIZE.NET IS A RESELLER OF OR REFERRAL AGENT FOR SUCH PRODUCT OR SERVICE.

**11.4 Amount.** EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, AUTHORIZE.NET'S LIABILITY WITH RESPECT TO ANY CLAIM UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE COMPENSATION PAID TO AFFILIATE BY AUTHORIZE.NET DURING THE SIXTY (60) DAYS PRIOR TO ANY SUCH CLAIM OF LIABILITY.

**12. Ownership and Use of Data.** To the extent permissible and in compliance with Card Association Rules, applicable law, and as between the Parties, Authorize.Net shall retain full ownership of all data submitted by Affiliate and/or Merchant in connection with Merchant's enrollment for and use of the Authorize.Net Services and hosted or stored on Authorize.Net servers, including but not limited to: name, mailing and shipping address, e-mail address, phone number, dollar amount of purchase, type of purchase and description of purchase. Authorize.Net agrees to use such data only as necessary to perform hereunder and for no other purpose, and hereby grants Affiliate a royalty-free, fully paid up right, during the Term, to use such data only as necessary to perform its rights and obligations hereunder and for no other purpose. Nothing in this Agreement shall prevent or restrict Affiliate from using any information it collects or receives independent of its performance under this Agreement.

### **13. Intellectual Property.**

**13.1 Authorize.Net.** The Parties agree that Authorize.Net owns and retains all right, title and interest in and to the Authorize.Net Marks (as defined on Appendix B attached hereto), the Authorize.Net Web Site, the Authorize.Net Services, all content and documentation furnished to Affiliate by Authorize.Net hereunder, and the Authorize.Net technology. No title to or ownership of any of the foregoing is granted or otherwise transferred to Affiliate or any other entity or person under this Agreement. Affiliate shall not reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or trade secrets for any of the Authorize.Net Services or related technology.

**13.2 Affiliate.** The Parties agree that Affiliate owns and retains all right, title and interest in and to the Affiliate Marks (as defined on Appendix B attached hereto) and Affiliate reserves all rights in the foregoing.

**13.3 Use of Trademarks.** Each Party hereby grants to the other Party the right to use, reproduce, publish, perform and display the other Party's Trademarks in promotional and

marketing materials and electronic and printed advertising, publicity, press releases, newsletters and mailings about or related to the Authorize.Net Services. Each Party shall strictly comply with all standards with respect to the other Party's Trademarks contained herein or which may be furnished by such Party from time to time. All uses of the other Party's Trademarks shall inure to the benefit of the Party owning such Trademark. Neither Party shall create a combination mark consisting of one or more Trademarks of each Party. Either Party may update or change the list of Trademarks usable by the other Party hereunder at any time by written notice to the other Party.

**13.4 Use the Appropriate ® or ™ Symbol.** Affiliate must reproduce any Authorize.Net Marks exactly as shown on Appendix A, including the exact reproduction of any proprietary markings or legends and including the appropriate ® or ™ symbol at the first and most prominent reference, or as soon as practicable thereafter.

**13.5 Provide Appropriate Trademark Attribution.** Affiliate must include a statement of ownership when displaying or reproducing any Authorize.Net Marks. The statement should read: "AUTHORIZE.NET and the Authorize.Net logo [or any other applicable mark] are trademarks or registered trademarks of CyberSource Corporation." If it is not feasible to include the attribution statement, it is acceptable to use a general-purpose attribution statement in a form such the following: "All other trademarks are the property of their respective owners."

**13.6 Trademarks and Domain Registration.** Affiliate shall not use, register or attempt to register any: (a) Authorize.Net Marks; or (b) Trademarks; or (c) domain names that Authorize.Net reasonably deems to be confusingly similar to any of the Authorize.Net Marks or the Authorize.Net Web site.

**13.7 Further Assurances.** Each Party shall take, at the other Party's expense, such action (including, without limitation, execution of affidavits or other documents) as the other Party may reasonably request to effect, perfect or confirm such other Party's ownership interests and other rights as set forth in this Section 13.

### **14. Confidentiality and Nondisclosure.**

**14.1 Use of Confidential Information.** Each Party that receives information (the "Receiving Party") from the other Party (the "Disclosing Party") agrees to use reasonable best efforts to protect all non-public information and know-how of the Disclosing Party that is either designated as proprietary and/or confidential or that, by the nature of the circumstances surrounding disclosure, ought in good faith to be treated as proprietary and/or confidential ("Confidential Information"), and in any event, to take precautions at least as great as those taken to protect its own Confidential Information of a similar nature. Each Party agrees that the terms and conditions of this Agreement will be Confidential Information, provided that each Party may disclose the terms and conditions of this Agreement to its immediate legal and financial consultants in the ordinary course of its business.

**14.2 Exclusions.** The foregoing restrictions will not apply to any information that: (a) the Receiving Party can document it had in its possession prior to disclosure by the Disclosing Party, (b) was in or entered the public domain through no fault of the Receiving Party, (c) is disclosed to the Receiving Party by a third party legally entitled to make such disclosure without violation of any obligation of confidentiality, (d) is required to be disclosed by governmental or judicial order, requested in response to legal or governmental inquiries, or disclosed in connection with judicial and/or arbitral proceedings between the Parties, in which case the Party so requested shall give the other Party prompt written notice and use commercially reasonable efforts to ensure that such disclosure is accorded confidential treatment or (e) the Receiving Party can document was independently developed by the Receiving Party without reference to any Confidential Information of the Disclosing Party. Upon request of the Disclosing Party, the Receiving Party will return to the other all materials, in any medium, that contain, embody, reflect or reference all or any part of any Confidential Information of the other Party. Each Party acknowledges that breach of this provision by it may result in irreparable harm to the other Party, for which money damages may be an insufficient remedy, and therefore that the other Party will be entitled to seek injunctive relief to enforce the provisions of this Section 14.

**15. General Provisions.**

**15.1 Publicity.** The Parties may work together to issue publicity and general marketing communications concerning their relationship and other mutually agreed-upon matters, provided, however, that neither Party will have any obligation to do so. In addition, neither Party will issue such publicity and general marketing communications concerning this relationship without the prior written consent of the other Party.

**15.2 Non-exclusivity.** This Agreement does not confer on either Party any rights that are exclusive. Each Party is free to contract with others with respect to the subject matter of this Agreement.

**15.3 Relationship of the Parties.** The Parties are independent contractors and nothing in this Agreement shall make them joint venturers, partners, employees, agents or other representatives of the other Party. Neither Party shall make any representation that suggests otherwise.

**15.4 Non-solicitation.** Affiliate shall not directly or indirectly, whether or not for compensation, engage in any business activity (whether as an employee, proprietor, officer, director, agent, trustee, partner or creditor lending money for the purpose of establishing or operating any such business) that (a) induces or attempts to induce, directly or indirectly, any Merchant to modify or terminate such Merchant's business association with Authorize.Net or (b) interferes with, disrupts or attempts to disrupt any present business relationship, contractual or otherwise, between Authorize.Net and any Merchant, client, supplier, consultant, agent or employee of Authorize.Net. The Parties acknowledge that any breach of

these non-solicitation provisions will cause immediate, irreparable and continuing damage to Authorize.Net for which there is no adequate remedy at law and that in the event of any breach or violation or threatened breach or violation of these non-solicitation provisions, Authorize.Net be entitled to temporary, preliminary and permanent injunctive relief and such other legal and equitable remedies as may be provided by applicable law (without the necessity of posting any bond or other security), including damages, costs of suit and attorney's fees.

**15.5 Notices.** All legal notices to Affiliate shall be given electronically, sent to the electronic mail address provided in the Affiliate Reseller Application and/or posted in the Announcement section of Affiliate's Authorize.Net account. All notices to Authorize.Net shall be in writing and sent to Authorize.Net LLC, 808 East Vally Drive, American Fork, Utah 84003 or to (650) 625-4408 (fax), Attention: Legal Department. Such written notice will be deemed given upon personal delivery, upon confirmation of receipt if sent by fax, or three (3) days after the date of mailing if sent by certified or registered mail, postage prepaid.

**15.6 Amendment.** Authorize.Net may amend this Agreement at any time upon notice to Affiliate of not less than ten (10) days prior to the effective date of such amendment, provided that any amendment for any fee increase may become effective upon not less than thirty (30) days notice. No other amendment, modification or waiver of any of the provisions of this Agreement will be valid unless set forth in a written instrument signed by both Parties.

**15.7 Severability; Headings.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Parties agree to replace any invalid provision with a valid provision, which most closely approximates the intent and economic effect of the invalid provision. Headings are used for convenience of reference only and in no way define, limit, construe or describe the scope or extent of any section, or in any way affect this Agreement.

**15.8 Governing Law; Jurisdiction.** This Agreement and performance under it will be interpreted, construed and enforced in all respects in accordance with the laws of the State of California, excluding (i) that body of law known as conflicts of law and (ii) the United Nations Convention on Contracts for the International Sale of Goods. Affiliate hereby irrevocably consents to the personal jurisdiction of and venue in the state and federal courts located in Santa Clara County, California with respect to any action, claim or proceeding arising out of or related to this Agreement and agree not to commence or prosecute any such action, claim or proceeding other than in such courts.

**15.9 Waiver.** The failure of any Party to insist on or enforce strict performance of any provision of this Agreement or to exercise any right or remedy under this Agreement or applicable law will not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon

any such provision, right or remedy in that or any other instance; rather, the same will be and remain in full force and effect.

**15.10 Assignment.** Affiliate will not assign this Agreement or any rights hereunder without the prior written consent of Authorize.Net, except that Authorize.Net's prior written consent will not be required for an assignment as a result of any Affiliate merger, consolidation, reorganization or similar transaction involving all or substantially all of the assets of Affiliate. In any such event, the assignee must assume and agree in writing to perform all of the assigning Party's executory obligations and the assigning Party must guarantee performance by the assignee throughout the Term. Subject to the foregoing, this Agreement will be binding upon, enforceable by and inure to the benefit of the Parties and their respective successors and assigns.

**15.11 Force Majeure.** Neither Party will be liable for any losses arising out of the delay or interruption of its performance of obligations under the Agreement due to any acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labor disputes, fires, transportation contingencies, interruptions in telecommunications, utility, Internet services or network provider services, acts or omissions of a third party, infiltration or disruption of the Authorize.Net Services by a third party by any means, including without limitation, DDoS attacks, software viruses, Trojan horses, worms, time bombs or any other software program or technology designed to disrupt or delay the Authorize.Net Services, or other catastrophes or any other occurrences which are beyond such

Parties' reasonable control (each a "Force Majeure Event"), provided that the Party delayed will provide the other Party notice of any such delay or interruption as soon as reasonably practicable, will use commercially reasonable efforts to minimize any delays or interruptions resulting from the Force Majeure Event and in no event will any failure to pay any monetary sum due under this Agreement be excused for any Force Majeure Event.

**15.12 Counterparts; Electronic Signature.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be deemed to be one instrument. To expedite the process of entering into this Agreement, the Parties acknowledge that Transmitted Copies of the Agreement will be equivalent to original documents until such time as original documents are completely executed and delivered. "Transmitted Copies" will mean copies that are reproduced or transmitted via photocopy, facsimile or other process of complete and accurate reproduction and transmission.

**15.13 Interpretation.** The words and phrases used herein shall have the meaning generally understood in the payment processing industry. This Agreement shall be construed in accordance with its fair meaning and not for or against either Party on account of which Party drafted this Agreement.

**15.14 Entire Agreement.** This Agreement sets forth the entire understanding and agreement of the Parties, and supersedes any and all prior or contemporaneous oral or written agreements or understandings between the Parties, as to the subject matter of this Agreement

## Appendix A- Definitions

The following capitalized terms will have the meanings set forth below. Other terms may be defined elsewhere in this Agreement.

**“Approved Merchant”** means a Merchant referred to Authorize.Net by Affiliate subject to the following conditions: (1) the Merchant that was referred to Authorize.Net by Affiliate was not an existing customer of Authorize.Net as of the date Affiliate referred such Merchant to Authorize.Net; (2) the Merchant had not previously contacted or been contacted by Authorize.Net concerning any of the Authorize.Net Services; (3) for Payment Gateway services, the Merchant has executed a Payment Gateway Service Agreement; and (4) for Merchant Account services, the Merchant has executed a Merchant Account Services Agreement.

**“Authorize.Net Services”** mean the payment gateway and merchant account services, as well as a host of value-added services, as more fully described herein and on the Authorize.Net Web Site, as such descriptions may be changed from time to time.

**“Authorize.Net Web Site”** means the Web Site operated by or for Authorize.Net under the URL <http://www.authorize.net>.

**“Card”** shall mean any valid credit card or debit card issued by a member of Visa, MasterCard, or any other association or card issuing organization and bearing its respective trade names, trademarks, and/or trade symbols.

**“Cardholder”** shall mean the individual whose name is embossed on a valid Card and any authorized user of such Card and that uses a Card to purchase goods and services of Company.

**“Batch(es)”** means any batch settlement submitted to a processor by Authorize.Net consisting of any credit card or electronic check authorization, credit, ticket only, decline transaction or other related transaction completed or submitted by an Approved Merchant to Authorize.Net.

**“Cardholder Data”** shall mean non-public, personally identifying information submitted by a Cardholder, which information includes, without limitation, credit card number, name, address, phone number, and e-mail address.

**“Commission”** means the amount of commissions that Authorize.Net will pay to Affiliate for certain Service fees billed to and collected from an Approved Merchant by Authorize.Net, pursuant to Section 6.1 of the Agreement.

**“Card Association”** shall mean Visa, MasterCard, or any other card associations or the issuer of any other Card of any association or network.

**“Effective Date”** means the date this Agreement is signed by Affiliate.

**“MasterCard”** shall mean MasterCard Worldwide, Inc.

**“Merchant”** means any Person regularly engaged in the sale of goods or services to whom Affiliate sells, offers to sell, or has sold any of the Authorize.Net Services.

©2010 Authorize.Net, a CyberSource solution

Last revised 6/28/10; Internet version; no sig. block

CONFIDENTIAL

**“Merchant Account”** is a bank account that is used specifically for the purpose of collecting proceeds from bank account and credit card payment transactions.

**“Merchant Account Services Agreement”** is the agreement entered into with CyberSource for the provision of a Merchant Account.

**“Net Revenue”** means the total of all fees collected by Authorize.Net from Approved Merchants each month pursuant to Authorize.Net’s agreement with such Approved Merchants, less processing fees and losses.

**“Payment Gateway”** is the communication tool that enables Merchant to authorize, settle and manage credit card and electronic check payments.

**“Payment Gateway Agreement”** is the agreement executed by a Merchant governing the provision of Payment Gateway Account services.

**“Person”** means any natural person, corporation, partnership, Limited Liability Company, trust, association or other entity.

**“Proprietary Right”** means any patent, copyright, rights in Trademarks, trade secret rights, moral rights or other intellectual property or proprietary right arising under the laws of any jurisdiction.

**“Supplier(s)”** means those Persons who, under agreement with Authorize.Net, provide or assist with the provision of the Authorize.Net Services.

**“Trademarks”** means all common law or registered trademark, service mark, trade name and trade dress rights and similar or related rights arising under any of the laws of the United States or any other country or jurisdiction, whether now existing or hereafter adopted or acquired.

**“Transaction”** means any credit card or electronic check authorization, credit, debit, ticket only, capture or settlement request, or decline transaction, or any request for fraud risk evaluation completed or submitted by an Approved Merchant to Authorize.Net.

**“Visa”** shall mean Visa, Inc.

**“Web Site”** means any point of presence maintained on the Internet or any other public data network accessed electronically via wired or wireless connections. With respect to Web Sites maintained on the World Wide Web, such Web Site includes all HTML, HDML, WML or XML pages (or similar unit of information presented in any relevant data protocol) that either (a) are identified by the same second-level domain (such as authorize.net) or by the same equivalent level identifier in any relevant address scheme, or (b) contain branding, graphics, navigation or other characteristics such that a user reasonably would conclude that the pages are part of an integrated information or service offering.

## **Appendix B** **Trademarks**

### **Authorize.Net Marks**

For purposes of this Agreement, “Authorize.Net Marks” means those trademarks listed below and such other trademarks as Authorize.Net may from time to time notify You in writing to be “Authorize.Net Marks” within the meaning of this Agreement.

Advanced Fraud Detection Suite™

Authorize.Net®

Authorize.Net Verified Merchant Seal™

Authorize.Net Where the World Transacts®

Authorize.Net Your Gateway to IP Transactions™

Automated Recurring Billing™

CyberSource®

eCheck.Net®

FraudScreen.Net®



### **Affiliate Marks**

For purposes of this Agreement, “Affiliate Marks” means Affiliate’s customary name and logo, and such other trademarks as Affiliate may from time to time notify Authorize.Net in writing to be “Affiliate Marks” within the meaning of this Agreement.

**Appendix C**  
**Commission Tables**

The following sections detail the Payment Gateway Account and Merchant Account pricing. If you have any questions, please contact Sales Support at 866-437-0476.

**Payment Gateway Only Pricing**

Card Not Present (E-commerce)	Suggested Retail	Commission*	Commission Split (%)
Setup Fee	\$99	\$30	30%
Monthly Fee	\$17.95	\$7.95	44%
Transaction Fee	\$0.10	N/A	N/A
Batch Fee	\$0.25	N/A	N/A
Card Present (Retail)	Suggested Retail	Commission*	Commission Split (%)
Setup Fee	\$99	\$30	30%
Monthly Fee	\$15	\$7.50	50%
Transaction Fee	\$0.06	N/A	N/A
Batch Fee	\$0.25	N/A	N/A

**Payment Gateway + Merchant Account Pricing**

Card Not Present (E-commerce)	Suggested Retail	Commission*	Commission Split (%)
Setup Fee	\$99	\$30	30%
Monthly Fee	\$17.95	\$7.95	44%
Transaction Fee	\$0.10	\$0.05	50%
Batch Fee	\$0.25	\$0.10	40%
Card Present (Retail)	Suggested Retail	Commission*	Commission Split (%)
Setup Fee	\$99	\$30	30%
Monthly Fee	\$15	\$7.50	50%
Transaction Fee	\$0.06	\$0.03	50%
Batch Fee	\$0.25	\$0.10	40%

\* Based on suggested retail pricing.

\*\* Applies only to merchant leads that execute a CyberSource Merchant Account Agreement. In the event that the merchant lead does not enter into a CyberSource Merchant Account Agreement and such merchant acquires a Merchant Account from another service provider, Affiliate will not earn a commission for such Merchant Account.