

# ECheck.NET™ STANDARD TERMS

## 1. Definitions.

**1.1 "Chargeback"** means an ACH reversal initiated by a Purchaser's financial institution for reasons such as cancellation of order, non-receipt of goods or services purchased, or fraud.

**1.2 "eCheck.Net Service"** means Authorize.Net's branded, proprietary electronic check processing and payment gateway service as further described by this Agreement, including the Operating Procedures.

**1.3 "eCheck.Net Transaction"** means any electronic check debit or credit or batch settlement completed or submitted by Merchant to Authorize.Net using the eCheck.Net Service.

**1.4 "Operating Procedures"** means the methods, process and procedures that govern eCheck.Net Transactions (including Chargebacks). A current version of the Operating Procedures is available in the Messages section of the Authorize.Net merchant account interface, which can be accessed by going to <www.authorize.net> and using the required login ID and password, or such other location specified by Authorize.Net.

**1.5 "Purchaser"** means a person or entity that submits a form of payment to Merchant for the purchase of goods or services from Merchant.

**1.6 "Reserve Account"** means the money held as collateral by Authorize.Net as security against amounts owed by Merchant to Authorize.Net as further described in Section 4.3.

**2. Merchant's Capacity and Related Matters.** By submitting an eCheck.Net Application, Merchant represents and warrants that (a) Merchant (or the person executing this Agreement on behalf of Merchant) is 18 years of age or older, (b) all information Merchant has provided to Authorize.Net is true and correct in all respects, and (c) Merchant will update Authorize.Net by sending an e-mail message to Support@authorize.net with any changes to information Merchant had previously supplied. Merchant hereby authorizes Authorize.Net to investigate and confirm the information submitted by Merchant herein. For this purpose, Authorize.Net may utilize credit bureau / reporting agencies and / or its own agents. Upon Merchant's request, Authorize.Net will provide Merchant with a copy of the results of such investigation. Authorize.Net reserves its right to refuse to provide Merchant with the eCheck.Net Service, with or without notice, if Merchant has supplied any information which is misleading, untrue, inaccurate or incomplete.

## 3. Undertakings of Authorize.Net.

**3.1 Grant of Rights.** Authorize.Net hereby grants Merchant a non-exclusive and non-transferable right, during the effective term of this Agreement, to use the eCheck.Net Service subject to the restrictions herein and any other restrictions communicated by Authorize.Net to Merchant. Merchant is provided no other right to use the eCheck.Net Service except as is expressly provided by this Agreement. Without limiting the generality of the foregoing, Merchant will not directly or indirectly access or use the eCheck.Net Service in violation of the Operating Procedures or the terms of this Agreement.

**3.2 eCheck.Net Service -- ACH Debit Requests and Funding.** Subject to any and all applicable laws and regulations, Authorize.Net shall provide the eCheck.Net Service to Merchant in all material respects in accordance with the terms of this Agreement and all generally applicable guidelines or procedures, including, but not limited to, the Operating Procedures. Upon Authorize.Net's receipt of a request from Merchant to process an eCheck.Net Transaction to debit a Purchaser's account, Authorize.Net will credit Merchant's virtual ACH processing account with Authorize.Net for the amount of the ACH debit request. Subject to the terms of this Agreement (including, but not limited to, the chargeback rights described in Section 4.2), Authorize.Net shall remit payment for the eCheck.Net Transaction to Merchant's depository account in accordance with the Operating Procedures.

**3.3 Customer Service.** If Merchant is current in payment of all fees owing to Authorize.Net and is otherwise not in default under this Agreement, Authorize.Net shall provide customer service to Merchant, as set forth in the "Support Services" section of the Authorize.Net web site at <www.authorizenet.com>.

## 4. Undertakings of Merchant.

**4.1 ID and Password.** In connection with the rights described in Section 6.1, Authorize.Net will issue to Merchant or permit Merchant to continue using the ID and password given to Merchant by Authorize.Net or a "Merchant Service Provider", to enable Merchant and/or Merchant's employees and agents to access and use the eCheck.Net Service. For purposes of this Agreement, a "Merchant Service Provider" shall mean any third party through whom Authorize.Net may provide the eCheck.Net Service to Merchant, including but not limited to a reseller, independent service organization, application service provider, merchant aggregator, and acquiring bank. Merchant will restrict access to such ID, password, and account to Merchant's employees and agents as may be reasonably necessary consistent with the purposes of this Agreement and will ensure that each such employee and agent accessing and using the account is aware of and otherwise complies with all applicable provisions of this Agreement regarding such use and access. Merchant is solely responsible for maintaining adequate security and control of any and all IDs, passwords, or any other codes that are issued to Merchant by Authorize.Net or a Merchant Service Provider for purposes of giving Merchant access to the eCheck.Net Service. Authorize.Net shall be entitled to rely on information it receives from Merchant and may assume that all such information was transmitted by or on behalf of Merchant.

### 4.2 Purchaser Reversals; Chargebacks.

**4.2.1 Chargeback Rights; Erroneous Entries.** Merchant hereby authorizes Authorize.Net to either initiate transaction entries to Merchant's depository account number or to charge Merchant's credit card, both of which are listed in Merchant's eCheck.Net Application (and as those numbers may be changed, any new account numbers provided to Authorize.Net) without additional authorization or consent for the balance owed to Authorize.Net because of Chargeback(s). In the event that Authorize.Net is unable to collect monies owed from Merchant by these methods, Merchant authorizes Authorize.Net to instruct the Merchant's bank to return any monies originally transferred by Authorize.Net to Merchant, until the balance of Merchant's ACH account with Authorize.Net is brought current with a zero balance. If Authorize.Net reasonably believes that a Chargeback or credit is likely with respect to any eCheck.Net Transaction submitted by Merchant to Authorize.Net, Authorize.Net may withhold from payments otherwise due to Merchant under this Agreement until such time that: (a) Authorize.Net is charged back by Purchaser's bank, in which case Authorize.Net shall retain the funds; (b) the period of time under applicable law or regulation by which the Purchaser may dispute the ACH debit and the Purchaser's bank may exercise its chargeback rights has expired (generally 60 days from the date the financial institution first made available to the Purchaser its bank statement with the applicable debit transaction listed on it); and/or (c) Authorize.Net determines that a Chargeback on the ACH debit requested by Merchant will not occur. Merchant further grants Authorize.Net permission to initiate adjustment entries to Merchant's checking account or to charge Merchant's credit card in the event of erroneous transactions being posted to said account.

**4.2.2 Expenses.** Merchant agrees to pay all costs and expenses of whatever nature, including attorneys' fees and other legal expenses, incurred by or on behalf of Authorize.Net in connection with the collection of all eCheck.Net ACH processing account deficit balances unpaid by Merchant.

### 4.3 Reserve Account.

**4.3.1 Creation Right.** Merchant hereby grants Authorize.Net the right to retain as collateral money payable to Merchant in a reserve account (the “**Reserve Account**”) to ensure Authorize.Net’s recovery of any liabilities owed it or reasonably anticipated to be owed it by Merchant pursuant to this Agreement. The Reserve Account may be established, with or without prior notice to Merchant, at any time prior to, at, or after termination of this Agreement whenever Authorize.Net, in its sole discretion, believes recovery of such liabilities may be in jeopardy. Once established, Authorize.Net shall promptly send Merchant notice of the amount held in the Reserve Account.

**4.3.2 Security Interest; Collection.** Merchant hereby grants to Authorize.Net a possessory security interest in any money held as a Reserve Account established under this Agreement. Merchant agrees that Authorize.Net may enforce its security interest in the Reserve Account by deducting, without prior notice or demand, amounts owed to Authorize.Net under this Agreement. In addition to assessing Merchant an over limit fee for exceeding the approved monthly processing limit, Merchant further agrees that Authorize.Net may enforce its security interest in the Reserve Account to collect the over limit fee. Authorize.Net’s right to sums owed it by Merchant pursuant to this Agreement shall in no way be limited by the balance or existence of the Reserve Account. Any deducted amounts from the Reserve Account will be replaced by equal amounts either from amounts derived from eCheck.Net Transactions or by direct payment by Merchant upon demand by Authorize.Net. Authorize.Net’s rights with respect to the Reserve Account, including its security interest therein, shall survive the termination of this Agreement. The Reserve Account may be held by Authorize.Net for up to six (6) months after the later of the last transaction, Chargeback or other liability pursuant to this Agreement and applicable law. Authorize.Net may charge Merchant a monthly fee for maintenance of said Reserve Account, if established.

**4.4 Compliance with Laws; Operating Procedures.** In connection with the exercise of Merchant’s rights and obligations under this Agreement (including, without limitation, any related to individual privacy), Merchant will comply, at Merchant’s own expense, with all applicable laws, regulations, rules, ordinances and orders of governmental and governing authorities having jurisdiction, including rules promulgated by the National Automated Clearing House Association (“NACHA”). In addition, Merchant shall comply with all then current policies, procedures, and guidelines of Authorize.Net governing the eCheck.Net Service, including, but not limited to, the Operating Procedures. Authorize.Net reserves the right to amend, modify or change such policies, procedures, and guidelines, including the Operating Procedures, pursuant to Section 14.5.

**4.5 Record Retention; Inspection Rights.** Merchant shall preserve all records pertaining to an ACH transaction as may be required by law and in no event less than two (2) years from the date thereof. Merchant shall permit Authorize.Net to examine, verify and copy such records at any reasonable time upon Authorize.Net’s request. Merchant shall provide Authorize.Net with a copy of any requested ACH authorization or other transaction memorandum no later than three (3) calendar days from date of Authorize.Net’s request. Merchant also agrees to execute, file and record any statements, notices and certificates as Authorize.Net may reasonably request to preserve and protect its interest.

**4.6 Additional Financial Documents.** Authorize.Net reserves the right to require additional financial documents (e.g. personal & business tax returns and financial statements) from Merchant if Merchant’s eCheck.Net transaction processing exceeds its normal processing volume, as determined by Authorize.Net in its sole discretion.

## **5. Data Privacy and Security.**

**5.1 Merchant Obligations.** Merchant is solely responsible for the security of data residing on the server of Merchant, or a third party designated by Merchant (e.g., a web hosting company, processor, or other service provider), including checking account

numbers. Merchant shall comply with all applicable laws and regulations governing the collection, retention and use by Merchant of all data associated with eCheck.Net Transactions. Merchant agrees to provide notice to consumers on Merchant’s Internet web site transaction page(s) disclosing how and why personal information is collected and used.

**5.2 Authorize.Net Obligations.** Authorize.Net agrees to collect, retain and disclose information and data collected from Merchant and Merchant’s customers (including data associated with eCheck.Net Transactions) in accordance with Authorize.Net’s then current privacy policy available at <[www.authorize.net/company/privacy.php](http://www.authorize.net/company/privacy.php)> or such other location as specified by Authorize.Net. Consistent with the privacy policy, Authorize.Net agrees to use commercially reasonable security measures for the transport of eCheck.Net Transaction data using the Internet. Notwithstanding the foregoing, Authorize.Net does not, and cannot, warrant that all eCheck.Net Transaction data will be transported without interception or modification. Merchant acknowledges and agrees that Authorize.Net, its suppliers and/or their agents/contractors may transfer Data among themselves as necessary for the purpose of the provision and management of the eCheck.Net Service, and that Authorize.Net may further transfer Data to third parties assisting Authorize.Net in evaluating Merchant’s eligibility for, provision of, administration and management of the eCheck.Net Service.

**6. Fees.** Merchant shall pay the “eCheck.Net Fees” set forth in the eCheck.Net Fee Schedule attached as Exhibit B. Authorize.Net reserves the right to impose additional fees upon Merchant if its ACH transaction processing in connection with the eCheck.Net Service: (a) exceeds Merchant’s Account Restrictions, such as normal ACH processing volume and/or per transaction parameters, as determined by Authorize.Net; or (b) for any other substantial increase in risk assumed by Authorize.Net. Such additional and/or increases in fees may be established at any time, upon written notice to Merchant and will become effective retroactive to the date Merchant’s use of the eCheck.Net Service falls under one of the above categories. Further, Authorize.Net reserves the right to change any eCheck.Net Fee upon at least thirty (30) days notice.

## **7. Payment Terms.**

**7.1 Billing Terms.** Merchant shall remit any and all amounts which are payable to Authorize.Net under this Agreement on a daily basis, except for the eCheck.Net Monthly Minimum Fee. The eCheck.Net Monthly Minimum Fee is due and payable on a monthly basis. The first such monthly payment will be due on the first day of the month immediately following the Effective Date, and all subsequent monthly payments shall be due on the first day of the month thereafter. Merchant hereby authorizes Authorize.Net to initiate transaction entries to Merchant’s depositories account or, if Authorize.Net is unable to collect owing amounts from Merchant’s depositories account, to charge Merchant’s credit card for any and all amounts owing to Authorize.Net under this Agreement. If Merchant’s depositories account number or credit card number changes, Merchant shall promptly provide Authorize.Net with written notice of the change and the new number(s). If Merchant fails to provide Authorize.Net with accurate current depositories account or credit card numbers, Authorize.Net may suspend the eCheck.Net Service for Merchant until such information is provided to Authorize.Net. Merchant acknowledges that any change in account information may not be effective until the billing month following the second month in which Authorize.Net receives such notice. Any amounts due to Authorize.Net under this Agreement and not paid when due will be subject to a finance charge equal to one and one-half percent (1.5%) or the highest rate allowable by law, whichever is less, determined and compounded daily from the date due until the date paid. Payment of such finance charges will not excuse or cure any breach or default for late payment. Authorize.Net may accept any check or payment from Merchant without prejudice to its rights to recover the balance due or to pursue any other right or remedy. No endorsement or statement on any check or payment or any

correspondence accompanying any check or payment or elsewhere will be construed as an accord or satisfaction. Merchant agrees to pay all costs and expenses of whatever nature, including attorneys' fees, incurred by or on behalf of Authorize.Net in connection with the collection of any unpaid charges and fees.

**7.2 Non-Sufficient Fund Fee, Late Payment Fee, and Service Reactivation Fee.** Merchant shall pay to Authorize.Net a Non-Sufficient Fund Fee, in the amount set forth in the eCheck.Net Fee Schedule, each time Authorize.Net attempts to debit Merchant's depositories account for any amounts owing under this Agreement and receives a non-sufficient fund message from Merchant's bank. If Merchant does not pay owing amounts on or before the first business day following the tenth (10<sup>th</sup>) day of the month, Merchant will be subject to a Late Payment Fee, in the amount set forth in the eCheck.Net Fee Schedule. In the event Authorize.Net has suspended the eCheck.Net Service to Merchant for failure to pay pursuant to Section 9.2, Authorize.Net agrees to restore Merchant's access to the eCheck.Net Service if Merchant subsequently pays in full all owing fees and charges, including a Service Reactivation Fee in the amount set forth in the eCheck.Net Fee Schedule.

**7.3 Personal Guarantee.** In consideration of Authorize.Net's acceptance of the Merchant's eCheck.Net Application and the terms of this Agreement, each Personal Guarantor indicated on the Application (jointly and severally if more than one) unconditionally guarantees the performance of all obligations of Merchant to Authorize.Net under this Agreement and payment of all sums due hereunder. In the event of default, each Personal Guarantor hereby waives notice of default and agrees to indemnify Authorize.Net for all funds due and owing from Merchant arising out of or related to this Agreement, including, but not limited to, attorney's fees and other legal expenses, and all costs and expenses incurred by or on behalf of Authorize.Net in connection with the enforcement of this Section 7.3. Further, each Personal Guarantor: (a) waives any and all rights of subrogation, reimbursement or indemnity derived from Merchant and all other rights and defenses available to the Personal Guarantor, including any surety ship laws, and further waives any and all rights or defenses arising by reason of any modification or amendment to the terms of the Agreement whatsoever (including, without limitation, the renewal, extension, acceleration, or other change in the time any payment or other performance hereunder is due, and / or any change in any interest or discount rate or fee hereunder); (b) confirms that he or she is a party to this Agreement; and (c) unconditionally and specifically authorizes Authorize.Net (or its authorized agent) to (i) debit any overdue fees, costs, fines, penalties, expenses or obligations under this Agreement and/or any contractual relationship with Authorize.Net from any personal checking account or other account owned or controlled by such Personal Guarantor (including credit card accounts), and (ii) report any default hereof on the Personal Guarantor's personal Credit Bureau Report.

**8. Term.** This Agreement shall commence on the date Authorize.Net accepts Merchant's Application (e.g., the Effective Date) and remain in full force and effect until terminated by either party pursuant to Section 9.

**9. Termination.**

**9.1 Termination At Will.** Either party may terminate this Agreement at any time and for any reason by providing thirty (30) days prior written notice to the other party. Merchant acknowledges that Authorize.Net may immediately terminate this Agreement as a result of a Force Majeure Event as described in Section 14.10.

**9.2 Termination for Cause; Suspension of Service.** In addition to any other termination rights granted by this Agreement, either party may terminate this Agreement on ten (10) days written notice for material breach by the other party of its obligations hereunder unless such breach is cured within such ten (10) day period. Authorize.Net may immediately terminate this Agreement and/or suspend Merchant's ACH transaction processing capability via the eCheck.Net Service, upon written notice, for (a) excessive Chargebacks, (b) returned items in Authorize.Net's sole discretion, or

(c) failure of Merchant to pay all owing amounts on or before the last business day of the month in which such amounts were due. If Authorize.Net suspends the eCheck.Net Service, Authorize.Net (a) shall have no obligation to resume the service until the causes of such suspension are remedied to Authorize.Net's satisfaction and (b) reserves the right to terminate this Agreement at any time.

**9.3 Effect of Termination.** Upon termination of the Term 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 termination; and (b) the rights and obligations of the parties under Sections 1, 4.3, 4.5, 7.3, 9.3, 10.1, and 11 through 14 shall survive such termination. Upon termination of the effective term of this Agreement for any reason, Authorize.Net may withhold payment to Merchant for such period of time necessary to establish a Reserve Account to cover any potential Chargebacks, credits and/or uncollected discounts or fees.

**10. Intellectual Property.**

**10.1 Authorize.Net.** Authorize.Net retains all right, title and interest in and to the eCheck.Net Service and any related technology utilized under or in connection with this Agreement, including, but not limited to, all intellectual property rights associated therewith. No title to or ownership of any of the foregoing is granted or otherwise transferred to Merchant or any other entity or person under this Agreement. Merchant shall not (a) reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or trade secrets for the eCheck.Net Service or related technology, (b) sell, assign, rent, act as a service bureau, transfer, distribute or grant rights in the eCheck.Net Service to any other person or entity without the prior written consent of Authorize.Net.

**10.2 Authorize.Net's Marks License.** Subject to Sections 10.4 and 14.1, Authorize.Net hereby grants to Merchant the right to use, reproduce, publish, perform and display the trade name, trademarks, service mark or other indicia or origin (the "Marks") of Authorize.Net listed on Exhibit B attached hereto : (a) on Merchant's web site in connection with Merchant's offering of payment options to Merchant's customers; and (b) in promotional and marketing materials and electronic and printed advertising, publicity, press releases, newsletters and mailings about or related to the eCheck.Net Service.

**10.3 Merchant's Marks License.** Subject to Section 10.4 and 14.1, Merchant hereby grants to Authorize.Net and its affiliates the right to use, reproduce, publish, perform and display Merchant's Marks listed on Exhibit B attached hereto: (a) in connection with the development, use, reproduction, modification, adaptation, publication, display and performance of the eCheck.Net Service offered and/or accessible through Merchant's web site; and (b) in promotional and marketing materials and electronic and printed advertising, publicity, press releases, newsletters and mailings about or related to the eCheck.Net Service.

**10.4 Use of Trademarks.** Each party shall strictly comply with all standards with respect to the other party's Marks which may be furnished by such party from time to time, and all uses of the other party's Marks in proximity to the trade name, trademark, service name or service mark of any other person or entity shall be consistent with the standards furnished by the other party from time to time. Further, neither party shall create a combination mark consisting of one or more Marks of each party. All uses of the other party's Marks shall inure to the benefit of the party owning such Marks. Each party hereby acknowledges and agrees that, as between the parties, the other party is the owner of the Marks identified as its Marks in any written notice provided to the other party pursuant to this Agreement. Either party may update or change the list of Marks usable by the other party hereunder at any time by written notice to the other party.

**10.5 Other Trademarks.** Authorize.Net shall not register or attempt to register any of Merchant's Marks or any Marks that Merchant reasonably deem to be confusingly similar to any of Merchant's Marks. Merchant shall not register or attempt to register any of Authorize.Net's Marks or any Marks that Authorize.Net

reasonably deems to be confusingly similar to any of Authorize.Net's Marks.

**10.6 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 10.

**11. Representations and Warranties.**

**11.1 Mutual Warranties.** Each party represents and warrants to the other that (a) it has all necessary right, power and ability to execute this Agreement and to perform its obligations therein; (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, (d) the party's obligations under this Agreement do not violate any law or breach any other agreement to which such party is bound; and (e) it has all right, title or interest, or valid license to use, its respective Marks (as defined on Exhibit B), and that its grant of rights associated therewith do not violate any intellectual property or other proprietary rights of any third party.

**11.2 Authorize.Net.**

**11.2.1 Warranty.** During the effective term of this Agreement, Authorize.Net represents and warrants that the eCheck.Net Service will conform in all material respects to the Operating Procedures. Merchant may not rely upon any representation or warranty regarding the eCheck.Net Service by any third party in contravention of the foregoing statements. In the event of a breach of the foregoing warranty, Authorize.Net shall use commercially reasonable efforts to promptly repair, or at its option replace, the eCheck.Net Service or any component thereof. In the event that Authorize.Net is not able to remedy the breach, Merchant may terminate this Agreement pursuant to Section 10.1. The foregoing shall constitute Merchant's sole remedy, and Authorize.Net's sole liability, for Authorize.Net's breach of the warranty described in this Section 11.2.1.

**11.2.2 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 ECHECK.NET SERVICE, OR OTHER SERVICES OR GOODS PROVIDED UNDER THIS AGREEMENT. AUTHORIZE.NET FURTHER DOES NOT REPRESENT OR WARRANT THAT THE ECHECK.NET SERVICE WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ENTIRELY ERROR-FREE.

**11.3 Merchant.** Merchant represents and warrants to Authorize.Net that:

(a) All representations and statements made by Merchant in the Application and this Agreement (or in any other document relating hereto by Merchant or on Merchant's behalf) are true, accurate and complete in all material respects;

(b) Merchant is engaged in a lawful business that includes the sale of products and/or services to Purchasers, and is duly licensed to conduct such business under the laws of all jurisdictions in which Merchant conducts business;

(c) Merchant shall comply with all material terms of the then current Operating Procedures and will not engage in any of the prohibited activities listed therein;

(d) Merchant's right to process ACH transactions has not been terminated by any financial institution; and

(e) Merchant has not violated any of the NACHA rules and/or regulations except as specifically disclosed in writing to

Authorize.Net.

**11.4 Third-Party Software.** Merchant acknowledges that the eCheck.Net Service is designed for use with certain third-party software, including, but not limited to, certain Internet browser software programs. Merchant 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.

**12. Indemnification.**

**12.1 Indemnification by Authorize.Net.**

**12.1.1 General.** Authorize.Net shall defend, indemnify and hold Merchant, Merchant's affiliates, and any of their officers, directors, agents and employees harmless from and against any and all third-party claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses) incurred by Merchant, arising out of or relating to: (a) any alleged breach by Authorize.Net of any representation, warranty or obligation of Authorize.Net set forth in Section 11; or (b) any alleged infringement of a U.S. patent or copyright of any other entity or person by the eCheck.Net Service.

**12.1.2 Limitation; Prevention of Infringement.**

Authorize.Net's obligations in Section 12.1.1(b) do not apply if the eCheck.Net Service or portions or components thereof (a) are modified by persons or entities other than Authorize.Net if the alleged infringement relates to such modification; (b) are combined with other products, processes or materials not supplied or recommended by Authorize.Net where the alleged infringement relates to such combination, or (c) continue to be used after Authorize.Net has made a non-infringing version available to Merchant (collectively, "**Merchant Faults**"). If the eCheck.Net Service or any component thereof becomes, or in Authorize.Net's opinion is likely to become, the subject of a claim of infringement, then Merchant shall permit Authorize.Net, at Authorize.Net's sole option and expense, either to (i) procure for Merchant the right to continue using the eCheck.Net Service as permitted in this Agreement, or (ii) replace or modify the affected eCheck.Net Service or infringing component so that it becomes non-infringing. If, after using commercially reasonable efforts, Authorize.Net is unable to cure the infringement, either party may terminate this Agreement upon notice to the other, as provided in Section 9.1. This Section 12.1 states the entire liability of Authorize.Net to Merchant with respect to infringement of any intellectual property rights by the eCheck.Net Service.

**12.2 Indemnification by Merchant.** Merchant shall defend, indemnify, and hold harmless Authorize.Net and its affiliates (including InfoSpace, Inc.) and/or subsidiaries, and any of their officers, directors, agents and employees, from and against any and all third-party claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses) incurred by Merchant, arising out of or relating to: (a) any alleged breach by Merchant of any representation, warranty, or obligation of Merchant set forth in this Agreement; (b) any damage or loss caused by negligence, fraud, dishonesty or willful misconduct by Merchant or any of Merchant's employees, agents or Purchasers; (c) the reliability, accuracy, or legitimacy of payment data or purchase orders submitted by Merchant to Authorize.Net; (d) eCheck.Net Transactions submitted by Merchant to Authorize.Net and rejected by Authorize.Net or Purchaser's bank; or (e) any alleged infringement of a patent, copyright, trademark or other intellectual property right resulting from a Merchant Fault.

**12.3 Indemnification Procedure.** The obligations of each party ("**Indemnitor**") under this Section 12 to defend, indemnify and hold harmless the other party ("**Indemnitee**") shall be subject to the following: (a) Indemnitee shall provide Indemnitor with prompt notice of the claim giving rise to such obligation; provided, however, that any failure or delay in giving such notice shall only relieve

Indemnitor of its obligations under Sections 12.1 and 12.2 to the extent it reasonably demonstrates that its defense or settlement of the claim or suit was adversely affected thereby; (b) Indemnitor shall have control of the defense and of all negotiations for settlement of such claim or suit; and (c) Indemnitee shall cooperate with Indemnitor in the defense or settlement of any such claim or suit, provided that Indemnitee shall be reimbursed for all reasonable out-of-pocket expenses incurred in providing any cooperation requested by Indemnitor. Subject to clause (b) herein, Indemnitee may participate in the defense of any such claim or suit at its own expense. Indemnitor shall not, without the consent of the Indemnitee, enter into any settlement that reasonably can be expected to require a material affirmative obligation of, result in any ongoing material liability to or materially prejudice Indemnitee in any way.

**12.4 Exceptions.** If Merchant is an agency or instrumentality of a state of the United States and is precluded by the law of Merchant's state from entering into indemnification obligations, then the obligations under Sections 12.2 and 12.3 shall apply only to the extent permitted by such state law.

### **13. Limitations of Liability and Disclaimers.**

**13.1 Disclaimer.** AUTHORIZE.NET EXPRESSLY DISCLAIMS ANY LIABILITY FOR UNAUTHORIZED ACCESS OF FACILITIES OR TO MERCHANT'S DATA OR PROGRAMS DUE TO ACCIDENT, ILLEGAL OR FRAUDULENT MEANS OR DEVICES USED BY ANY THIRD PARTY, OR OTHER CAUSES BEYOND AUTHORIZE.NET'S REASONABLE CONTROL. AUTHORIZE.NET ALSO EXPRESSLY DISCLAIMS ANY LIABILITY FOR THE INDIVIDUAL MERIT AND LEGITIMACY OF ORDERS FORWARDED FROM MERCHANT, AS WELL AS ANY LIABILITY FOR ECHECK.NET TRANSACTIONS THAT WERE REJECTED BY AUTHORIZE.NET OR A PURCHASER'S BANK.

**13.2 Exclusion.** EXCEPT FOR ANY CLAIMS ARISING OUT OF SECTION 12 ("INDEMNIFICATION") OR FROM CRIMINAL OR WILLFUL MISCONDUCT, IN NO EVENT WILL EITHER PARTY OR ANY OF THEIR AFFILIATES OR VENDORS (OR ANY OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS OF THE PARTIES, OR THEIR AFFILIATES OR VENDORS) BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (WHETHER ARISING IN TORT, CONTRACT OR OTHERWISE AND NOTWITHSTANDING ANY FAULT, NEGLIGENCE (WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY OR STRICT LIABILITY OF EITHER PARTY), INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE, ANTICIPATED PROFITS, LOST BUSINESS OR INJURY TO BUSINESS REPUTATION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING FROM OR RELATED TO ANY PROVISION OF THIS AGREEMENT.

**13.3 Limitation.** EXCEPT FOR LIABILITY UNDER SECTION 12 ("INDEMNIFICATION"), IN NO EVENT SHALL THE TOTAL LIABILITY OF AUTHORIZE.NET TO MERCHANT (WHETHER ARISING IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE ECHECK.NET SERVICE, EXCEED THE AGGREGATE COMPENSATION AUTHORIZE.NET RECEIVED FROM MERCHANT FOR PROVIDING THE ECHECK.NET SERVICE DURING THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

### **14. General Provisions.**

**14.1 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 (not to be unreasonably withheld or delayed).

**14.2 Non-exclusivity.** Each party acknowledges and agrees that the rights granted to the other party in this Agreement are non-exclusive, and that, without limiting the generality of the foregoing, nothing in this Agreement shall be deemed or construed to prohibit either party from participating in similar business arrangements as those described herein.

**14.3 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.

**14.4 Notices.** All notices to Merchant shall be given electronically, sent to the electronic mail address provided by or for Merchant during registration for the eCheck.Net Service and/or posted in the Announcement section of Merchant's gateway account. All notices to Authorize.Net shall be given electronically to [legal@authorize.net](mailto:legal@authorize.net) with a written copy to InfoSpace, Inc., 601 – 108<sup>th</sup> Avenue N.E., Suite 1200, Bellevue, Washington 98004 or to (425) 201-6167 (fax), Attention: General Counsel. 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.

**14.5 Amendment; Modifications.** No amendment, modification, or change to any provision of this Agreement, nor consent to any departure by either party therefrom, will in any event be effective unless the same will be in writing and signed by the other party, and then such consent will be effective only in the specific instance and for the specific purpose for which given. Notwithstanding the foregoing, Authorize.Net may amend this Agreement and any policy, guideline or procedure governing eCheck.Net Transactions (including, but not limited to, the Operating Procedures) at any time upon written or electronic notice to Merchant of not less than ten (10) days prior to the effective date of such amendment; provided that the addition or change of service fees, will become effective upon at least thirty (30) days' notice. If Merchant does not agree to such amendments, Merchant's sole remedy is to immediately terminate this Agreement upon written notice to Authorize.Net.

**14.6 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.

**14.7 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 Washington, without reference or giving effect to its conflicts of law principles. Merchant hereby irrevocably consents to the personal jurisdiction of and venue in the state and federal courts located in King County, Washington 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, except as otherwise provided in Section 14.11 below.

**14.8 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. Waiver by either party of a breach of any provision contained herein must be in writing, and no such waiver will be construed as a waiver of any other and/or succeeding breach of such provision or a waiver of the provision itself.

**14.9 Assignment.** Merchant may not assign any of Merchant's rights or delegate the performance of any of Merchant's

obligations under this Agreement without the prior written consent of Authorize.Net.

**14.10 Force Majeure.** Authorize.Net will not 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 or

**14.11** practicable and will use commercially reasonable efforts to minimize any delays or interruptions resulting from the Force Majeure Event. In no event will any failure to pay any monetary sum then due under this Agreement be excused for any Force Majeure Event.

**14.12 Dispute Resolution.** Any dispute or claim arising out of or relating to this Agreement, except claims involving intellectual property and claims for indemnification, will be resolved by binding arbitration. The arbitration of any dispute or claim shall be conducted in accordance with the American Arbitration Association (“AAA”) rules, as modified by this Agreement, and will take place in Seattle, Washington, unless the parties mutually agree to hold the proceedings elsewhere. This Agreement evidences a transaction in interstate commerce and this arbitration provision will be interpreted and enforced in accordance with the Federal Arbitration Act and federal arbitration law. An arbitrator may not award relief in excess of or contrary to what this Agreement provides or order consolidation or arbitration on a class wide or representative basis, except that the arbitrator may award on an individual basis damages required by statute and may order injunctive or declaratory relief pursuant to an applicable consumer protection statute. Any arbitration shall be confidential, and neither party may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award. Judgment on any

termination of financial or ACH services to Authorize.Net by Authorize.Net’s financial institutions, interruptions in telecommunications, utility, Internet, or network provider services, or other catastrophes or any other occurrences which are beyond Authorize.Net’s reasonable control (each a “**Force Majeure Event**”). If a Force Majeure Event arises, Authorize.Net will provide Merchant notice of any such delay or interruption as soon as reasonably arbitration award may be entered in any court having proper jurisdiction. All administrative fees and expenses will be divided equally between the parties, but each party will bear the expense of its own counsel, experts, witnesses and preparation and presentation of evidence at the arbitration. IF FOR ANY REASON THIS ARBITRATION CLAUSE IS DEEMED INAPPLICABLE OR INVALID, THE PARTIES WAIVE, TO THE FULLEST EXTENT ALLOWED BY LAW, ANY RIGHT TO PURSUE ANY CLAIMS ON A CLASS OR CONSOLIDATED BASIS OR IN A REPRESENTATIVE CAPACITY. No action, regardless of form, arising out of or in conjunction with the subject matter of this Agreement, except for claims involving intellectual property and claims for indemnification, may be brought by either party more than one (1) year after the cause of action arose.

**14.13 Entire Agreement.** This Agreement, including the Exhibits and Operating Procedures, 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. Merchant acknowledges that this Agreement reflects an informed, voluntary allocation between Authorize.Net and Merchant of all risks (both known and unknown) associated with the eCheck.Net Service.

**EXHIBIT A**  
**FEE SCHEDULE**

| <b>eCheck.Net Fee Amounts</b>   |                        |                           |         |
|---|------------------------|---------------------------|---------|
| eCheck.Net Application Fee:   | \$49.00*               | Chargeback Fee:           | \$25.00 |
| eCheck.Net Setup Fee:   | \$100.00*              | Returned Item Fee:        | \$3.00  |
| eCheck.Net Monthly Minimum Fee:   | TBD by Authorize.Net** | Non-Sufficient Fund Fee:  | \$25.00 |
| eCheck.Net Discount Rate Fee:   | TBD by Authorize.Net** | Late Payment Fee:         | \$15.00 |
| eCheck.Net Transaction Fee:   | TBD by Authorize.Net** | Service Reactivation Fee: | \$25.00 |
| *Waived during our current promotion.   |                        |                           |         |
| **If Authorize.Net accepts Merchant's eCheck.Net Application, Authorize.Net will send Merchant an email message notifying it of the amount of the eCheck.Net Monthly Minimum Fee, eCheck.Net Discount Rate Fee, eCheck.Net Transaction Fee.   |                        |                           |         |
| <b>eCheck.Net Fee Descriptions</b>  |                        |                           |         |
| <p><b>“eCheck.Net Application Fee”</b> means a one-time non-refundable fee that Merchant must pay Authorize.Net for the handling and processing of Merchant’s application for its participation in the eCheck.Net Service.</p> <p><b>“eCheck.Net Setup Fee”</b> means a one-time non-refundable fee that Merchant must pay Authorize.Net for the setup of Merchant’s eCheck.Net account, upon approval of Merchant’s application for the eCheck.Net Service by Authorize.Net and the applicable financial institution(s).</p> <p><b>“eCheck.Net Monthly Minimum Fee”</b> means a monthly fee that Merchant must pay Authorize.Net for access to and use of the eCheck.Net Service.</p> <p><b>“eCheck.Net Discount Rate Fee”</b> means a fee that Merchant must pay Authorize.Net for the handling and processing of each debit transaction submitted by Merchant to Authorize.Net via the eCheck.Net Service. The amount of the eCheck.Net Discount Rate Fee shall be a percentage of the total dollar amount of all debit transactions submitted by Merchant to Authorize.Net via the eCheck.Net Service in a given day. Authorize.Net withholds the amount of owing eCheck.Net Discount Rate Fee(s) on a daily basis from funds otherwise owing to Merchant’s account, retains such fee amounts in a virtual billing reserve account, and moves the amount of owing eCheck.Net Discount Rate Fee(s) to Authorize.Net’s account at the end of each month.</p> <p><b>“eCheck.Net Transaction Fee”</b> means a fee that Merchant must pay to Authorize.Net for the handling and processing of each eCheck.Net Transaction submitted by Merchant to Authorize.Net. Authorize.Net shall debit Merchant’s account for any owing eCheck.Net Transaction Fee(s) on a daily basis during the settlement process.</p> <p><b>“eCheck.Net Chargeback Fee”</b> means a fee that Merchant must pay to Authorize.Net each time a Purchaser initiates a Chargeback of the amount of an eCheck.Net Transaction submitted by Merchant to Authorize.Net. Authorize.Net shall debit Merchant’s account for any owing eCheck.Net Chargeback Fee(s) on a daily basis during the settlement process.</p> <p><b>“eCheck.Net Returned Item Fee”</b> means a fee that Merchant must pay to Authorize.Net each time Authorize.Net attempts to initiate a debit to a Purchaser’s bank account on behalf of Merchant and such an attempt is unsuccessful for a reason outside of Authorize.Net’s control, such as the Merchant and/or Purchaser provided Authorize.Net with incorrect bank account information. Authorize.Net shall debit Merchant’s account for any owing eCheck.Net Returned Item Fee(s) on a daily basis during the settlement process.</p> <p><b>“Non-Sufficient Fund Fee”</b> means a fee that Merchant must pay each time Authorize.Net attempts to debit Merchant’s depositories account for any amounts owing under this Agreement and receives a non-sufficient fund message from Merchant’s bank.</p> <p><b>“Late Payment Fee”</b> means a fee that Merchant must pay if Merchant does not pay owing amounts on or before the first business day following the tenth (10<sup>th</sup>) day of the month.</p> <p><b>“Service Reactivation Fee”</b> means a fee that Merchant must pay to restore the eCheck.Net Service if the service has been suspended due to Merchant's failure to pay.</p> |                        |                           |         |

**EXHIBIT 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 Merchant in writing to be “Authorize.Net Marks” within the meaning of this Agreement.

**AirPay™**

**Authorize.Net®**

**Authorize.Net EMerchant Development Center™**

**Authorize.Net® Where the World Transacts**

**Authorize.Net®**  
Where the World Transacts

**eCheck.Net®**

**FraudScreen.Net®**

**Pocket Authorize.Net™**

**Merchant Marks**

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

