

AUTHORIZE.NET PARTNER AGREEMENT

The Authorize.Net Partner Agreement (the "Agreement") is made and entered into as of the later of the two signature dates below (the "Effective Date"), by and between Authorize.Net LLC, a Delaware corporation whose principal place of business is 808 East Utah Valley Drive, American Fork, Utah 84003 ("Authorize.Net"), and _____, a _____ Corporation, whose principal place of business is _____ ("You" or "Your").

Recitals

WHEREAS, Authorize.Net offers to merchants credit card transaction processing and payment gateway services, as well as a host of value added services, as more fully described herein and at www.authorize.net (the "Site"), as such descriptions may be changed by Authorize.Net from time to time (collectively, the "Authorize.Net Services");

WHEREAS, Authorize.Net offers You the opportunity to certify and maintain Your services and solutions in accordance with certain Authorize.Net criteria designed for each of its certified partner programs (the "Partner Program");

WHEREAS, Authorize.Net is willing to certify You in a Partner Program, all in accordance with and subject to the terms and conditions of this Agreement.

NOW THEREFORE, You agree as follows:

1. Your Capacity and Related Matters. By accepting the terms and conditions of this Agreement, You represent and warrant that: (i) all information You have provided to Authorize.Net is true and correct in all respects; (ii) You will update Authorize.Net by e-mail with any changes to information You have previously supplied; and (iii) You have the legal authority to accept the terms and conditions of this Agreement on behalf of your company and that such acceptance will be binding on your company. You hereby authorize Authorize.Net to investigate and confirm the information submitted by You herein. For this purpose, Authorize.Net may utilize credit bureau reporting agencies and/or its own agents. Authorize.Net reserves its right, in its sole discretion, to refuse to provide You with any Authorize.Net Service.

2. Services.

2.1 Scope of Services. Subject to Your compliance with the terms and conditions of this Agreement, Authorize.Net will, in its sole discretion, certify You in the applicable Partner Program. Your initial and continued certification shall be governed by the terms of this Agreement and the applicable Partner Program requirements, which may be modified from time to time.

2.2 Certification Requirements. Upon certification, You agree to: (i) display the Authorize.Net "Certified Partner" logo ("Logo") without alteration, modification, or misrepresentation and in accordance with the [Partner Logo Usage Guidelines](#); (ii) upgrade Your solutions to comply with future versions of Authorize.Net's API; (iii) maintain accurate, up-to-date contact information with Authorize.Net; and (iv) abide by and maintain the applicable [Partner Program Certification Requirements](#).

2.3 Selection. Authorize.Net offers three Partner Programs, as more fully described in Appendix B. Select and initial the Partner Program for which You intend to enroll:

- | | |
|--|---------------------|
| <input type="checkbox"/> Certified Solution Program | Your Initials _____ |
| <input type="checkbox"/> Certified Developer Program | Your Initials _____ |
| <input type="checkbox"/> Certified Hosting Program | Your Initials _____ |

2.4 Authorize.Net Undertakings. Subsequent to certification, Authorize.Net shall: (i) deliver notice of Your certification via electronic mail; (ii) list You in its Site directory, subject to Appendix C; (iii) grant You rights to display the Logo; and (iv) provide advance notification of system upgrades, new or improved transaction processing tools, and new payment gateway features.

2.5 Promotion. Each Party will use commercially reasonable efforts to promote the other Party's products and services, as appropriate, and as mutually agreed upon by the parties.

3. Compliance with Law and Authorize.Net Guidelines. In connection with the exercise of Your rights and obligations under this Agreement (including, without limitation, any related to individual privacy), You will comply, at Your own expense, with all laws, policies, guidelines, regulations, ordinances, rules applicable to You, Your business or the Transactions and/or orders of any governmental authority or regulatory body having jurisdiction over the subject matter hereof, including, without limitation, the rules promulgated by the Credit Card Associations, the privacy requirements of the Gramm Leach Bliley Act and regulations thereof. In addition, You 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 and Privacy Policy, both incorporated herein by reference. Authorize.Net reserves the right to amend, modify or change such policies, procedures, and guidelines at any time. You 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.

4. Data Privacy and Security.

4.1 Your Obligations. You are solely responsible for the security of data residing on server(s) owned or operated by You, or a third party designated by You (e.g., a web hosting company, processor, or other service provider). You agree to provide notice to your customers on Your web site that discloses how and why personal and financial information is collected and used, including uses governed by this Agreement. Nothing in this Agreement shall prevent or restrict You from using any information You collect or receive independent of Your performance under this Agreement.

4.2 Data Security. While Authorize.Net uses commercially reasonable efforts to safeguard data transmitted while using the Authorize.Net Service, Authorize.Net does not warrant that data will be transported without unauthorized interception or modification or that Your account or data or Merchant account or data will not be accessed or compromised by unauthorized third parties. You agree that you will comply with all Authorize.Net security protocols and security advisories in effect during the term of this Agreement. You acknowledge that Authorize.Net shall not be liable for any improperly processed or unauthorized Transactions or illegal or fraudulent access to Your account or data or Merchant account or data. Authorize.Net's liability hereunder solely attributable to its negligence is limited pursuant to Section 9. You shall comply and require Merchants to comply with all applicable laws and regulations governing the security, collection, retention and use of financial information, including credit cards, and all other personally identifiable customer information, including the Payment Card Industry (PCI) Data Security Standards, Visa Cardholder Information Security Program (CISP) and the MasterCard Site Data Protection Program (SDP), as applicable.

4.3 Data Retention. You are solely responsible for compiling and retaining permanent records of all Transactions and data for Your reference. Except as otherwise provided herein, at no time shall Authorize.Net have an obligation to store, retain, report or otherwise provide any copies of or access to any records of Transactions or data collected or processed by Authorize.Net.

5. Term. This Agreement shall commence on the Effective Date and remain in full force and effect until terminated pursuant to Section 6 of this Agreement.

6. Termination and Suspension.

6.1 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.

6.2 Termination by Authorize.Net. Authorize.Net may terminate this Agreement immediately and without advance notice: (a) if You fail to pay any amount when due or are in breach or default of any other obligation set forth in of this Agreement; (b) if You fail to maintain applicable Partner Program certification requirements; (c) if Authorize.Net determines, in its sole discretion, that Your business practices or the business practices of your customers are detrimental to the achievement of Authorize.Net business objectives; (d) if Authorize.Net has reason to believe that there is an alleged or actual violation by You or any of your customers 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; (e) You or any of your customers violate Authorize.Net's Acceptable Use Policy or Privacy Policy; (f) if 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 You or Your management, operations or policies; or (g) if You (i) make a general assignment for the benefit of creditors, (ii) file a voluntary petition of bankruptcy, suffer or permit the appointment of a receiver for its business or assets, (iii) become 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.

6.3 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: (a) all accrued payment obligations hereunder shall survive such termination; and (b) the rights and obligations of the parties which, by their nature, would naturally survive such termination.

7. Intellectual Property and Confidentiality.

7.1 Authorize.Net. The parties agree that Authorize.Net owns and retains all right, title and interest in and to the Authorize.Net Marks, Authorize.Net Services 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 You or any other entity or person under this Agreement. You will 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.

7.2 Authorize.Net Marks License. Subject to the terms and conditions contained herein, Authorize.Net hereby grants to You the right to use, reproduce, publish, perform and display the Authorize.Net Marks (as defined on Appendix A attached hereto): (a) on Your web site; and (b) in promotional and marketing materials and electronic and printed advertising, publicity, press releases, newsletters and mailings about or related to any of the Authorize.Net Services.

7.3 Your Marks License. Subject to the terms and conditions contained herein, You hereby grant to Authorize.Net, its affiliates and Merchant Service Providers the right to use, reproduce, publish, perform and display Your Marks (as defined on Appendix A attached hereto): (a) in connection with the development, use, reproduction, modification, adaptation, publication, display and performance of the Authorize.Net Services; (b) in promotional and marketing materials and electronic and printed advertising, publicity, press releases, newsletters and mailings about or related to any of the Authorize.Net Services; and (c) in the Site Directory.

7.4 Use of Trademarks. 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. Further, neither party shall create a combination mark consisting of one or more Trademarks of each party. All uses of the other party's Trademarks shall inure to the benefit of the party owning such Trademark. Each party hereby acknowledges and agrees that, as between the parties, the other party is the owner of the Trademarks identified as its Trademarks in any written notice provided to the other party pursuant to this Agreement. 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.

7.5 Use the Appropriate ® or ™ Symbol. You 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.

7.6 Provide Appropriate Trademark Attribution. You 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 Authorize.Net LLC" 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."

7.7 Trademarks & Domain Registration. You shall not use, register or attempt to register any: (a) Authorize.Net Marks; or (b) trademarks or domain names that are confusingly similar to any of the Authorize.Net Marks or the Site.

7.8 Trademark Restrictions. You shall not (i) use the Authorize.Net Marks except as expressly authorized in this Agreement; (ii) take any actions

inconsistent with Authorize.Net's ownership of the Authorize.Net Marks and any associated registrations, or attack the validity of the Authorize.Net Marks, its ownership thereof, or any of the terms of this Agreement; (iii) use the Authorize.Net Marks in any manner that would indicate You are using such Authorize.Net Marks other than as a licensee of Authorize.net; nor (iv) assist any third party do any of the same.

7.9 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 7.

7.10 Confidential Information. You agree to hold all information communicated by Authorize.Net, whether written or oral or in any media whatsoever (the "Confidential Information"), in strict confidence, not to disclose, distribute or disseminate the Confidential Information or information derived therefrom in any way to any third party and not to use the Confidential Information for Your own benefit or the benefit of others, or for any purpose except in connection with the purposes of this Agreement. You agree to use Your best efforts to protect all Confidential Information and in any event, to take precautions at least as great as those taken to protect Your own information of a similar nature. You agree that the terms and conditions of this Agreement will be Confidential Information. Upon Authorize.Net's request, You will return all materials, in any medium, that contain, embody, reflect or reference all or any part of any Confidential Information. You acknowledge that breach of this provision may result in irreparable harm to Authorize.Net, for which money damages may be an insufficient remedy, and therefore Authorize.Net will be entitled to seek injunctive relief to enforce the provisions of this section.

8. Representations and Warranties.

8.1 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 a 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, and that its grant of rights associated therewith do not violate any intellectual property or other proprietary rights of any third party.

8.2 Authorize.Net Warranty.

8.2.1 WARRANTY. THE AUTHORIZE.NET SERVICES ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS. AUTHORIZE.NET DOES NOT REPRESENT OR WARRANT THAT THE AUTHORIZE.NET SERVICES, ITS WEB SITE, OR THE DIRECTORY WILL BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ENTIRELY ERROR-FREE. YOU EXPRESSLY ACKNOWLEDGE THAT THE AUTHORIZE.NET SERVICES ARE COMPUTER 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 ADJUSTMENTS, 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 6.1. THE FOREGOING SHALL CONSTITUTE YOUR SOLE REMEDY, AND AUTHORIZE.NET'S SOLE LIABILITY, IN THE EVENT OF INTERRUPTION, OUTAGE OR OTHER DELAY OCCURRENCES IN THE AUTHORIZE.NET SERVICES. AUTHORIZE.NET DOES NOT WARRANT THE SERVICES OF ANY THIRD PARTY, INCLUDING WITHOUT LIMITATION, A MERCHANT SERVICE PROVIDER, BANK OR ANY THIRD PARTY PROCESSOR. YOU MAY NOT RELY UPON ANY REPRESENTATION OR WARRANTY REGARDING THE AUTHORIZE.NET SERVICES BY ANY THIRD PARTY IN

CONTRAVENTION OF THE FOREGOING STATEMENTS, INCLUDING REPRESENTATIONS OR WARRANTIES OF ANY MERCHANT SERVICE PROVIDER.

8.2.2 DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8.2.1, 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. FOR THE AVOIDANCE OF DOUBT, YOU AGREE THAT AUTHORIZE.NET DOES NOT REPRESENT OR WARRANT THAT THE AUTHORIZE.NET SERVICES WILL BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ENTIRELY ERROR-FREE.

8.3 Your Warranties. You represent and warrant to Authorize.Net that: (a) all representations and statements made by You in this Agreement, or in any other document relating hereto by You or on Your behalf, are true, accurate and complete in all material respects; (b) You are engaged in a lawful business that includes the sale of products and/or services, and are duly licensed to conduct such business under the laws of all jurisdictions in which You conduct business; and (c) You will comply with all laws, policies, guidelines, regulations, ordinances or rules applicable to You, Your business or the Transactions, including, without limitation: (i) the Credit Card Association rules and regulations; (ii) the Gramm Leach Bliley Act; (iii) any regulatory body or agency having jurisdiction over the subject matter hereof; and (iv) the then current policies, procedures, and guidelines of Authorize.Net governing the Authorize.Net Services.

8.4 Third Party Programs. You acknowledge that the Authorize.Net Services are designed for use with certain third-party programs, including, without limitation, certain Internet browser and software programs developed and owned by third parties. You 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. LIMITATIONS OF LIABILITY AND DISCLAIMERS.

9.1 DISCLAIMER. YOU EXPRESSLY AGREE THAT AUTHORIZE.NET SHALL NOT BE LIABLE FOR ANY LOSS (HOWEVER ARISING, INCLUDING NEGLIGENCE), ARISING FROM OR RELATED TO: (I) A CONTRACTUAL RELATIONSHIP BETWEEN YOU AND ANY THIRD PARTY; (II) FRAUDULENT TRANSACTIONS PROCESSED THROUGH A MERCHANT'S PAYMENT GATEWAY ACCOUNT; (III) DISRUPTION OF AUTHORIZE.NET SERVICES, SYSTEMS, SERVER OR WEB SITE BY ANY MEANS, INCLUDING WITHOUT LIMITATION, DDOS ATTACKS, SOFTWARE VIRUSES, TROJAN HORSES, WORMS, TIME BOMBS, OR ANY OTHER TECHNOLOGY; (IV) ACTIONS OR INACTIONS BY ANY THIRD PARTY, INCLUDING WITHOUT LIMITATION, A MERCHANT, MERCHANT SERVICE PROVIDER, PAYMENT PROCESSOR OR BANK; (V) UNAUTHORIZED ACCESS TO (A) DATA, CUSTOMER DATA (INCLUDING CREDIT CARD NUMBERS AND OTHER PERSONALLY IDENTIFIABLE INFORMATION), TRANSACTION DATA OR PERSONAL INFORMATION BELONGING TO AUTHORIZE.NET, YOU OR ANY THIRD PARTY AND (B) THE AUTHORIZE.NET SERVICES, OR ANY SYSTEM OR PROGRAM ASSOCIATED THEREWITH; OR (VI) THE LIMITATION OF THE FUNCTIONING OF ANY SOFTWARE, HARDWARE, EQUIPMENT OR SERVICE.

9.2 LIMITATION. UNDER NO CIRCUMSTANCES: (I) WILL AUTHORIZE.NET OR ANY OF ITS PARENTS, AFFILIATES OR VENDORS (OR ANY OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS OF THE PARTIES, OR ITS PARENTS, AFFILIATES OR VENDORS) BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (HOWEVER ARISING), INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST REVENUE, LOST PROFITS, ANTICIPATED PROFITS, LOST BUSINESS OR INJURY TO BUSINESS REPUTATION, COST OF PROCUREMENT OF SUBSTITUTE SERVICES, UNDER ANY

THEORY OF LIABILITY OR CAUSE OF ACTION WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHERWISE, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (II) WILL AUTHORIZE.NET'S TOTAL LIABILITY TO YOU, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHERWISE, UNDER THIS AGREEMENT OR WITH REGARD TO ANY AUTHORIZE.NET PRODUCTS OR SERVICES, EXCEED \$1,000.

10. Indemnification.

10.1 Indemnification by Authorize.Net.

10.1.1 General. Authorize.Net shall defend, indemnify and hold You and any of Your 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 You, arising out of or relating to any alleged infringement of a U.S. patent or copyright of any other entity or person by the Authorize.Net Services.

10.1.2 Limitation; Prevention of Infringement. Authorize.Net's obligations in Section 10.1.1 do not apply if the Authorize.Net Services or portions or components thereof that (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 You (collectively, "Merchant Faults"). If the Authorize.Net Services or any component thereof becomes, or in Authorize.Net's opinion is likely to become, the subject of a claim of infringement, then You shall permit Authorize.Net, at Authorize.Net's sole option and expense, either to (i) procure for You the right to continue using the Authorize.Net Services as permitted in this Agreement, or (ii) replace or modify the affected Authorize.Net Services 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 6.1. THIS SECTION 10.1.2 STATES THE ENTIRE LIABILITY OF AUTHORIZE.NET TO YOU WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY THE AUTHORIZE.NET SERVICES.

10.2 Indemnification by You. You shall defend, indemnify, and hold harmless Authorize.Net and its affiliates, parents, 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 Authorize.Net, arising out of or relating to: (a) any breach or alleged breach by You of any representation, warranty, or obligation of You set forth in this Agreement; (b) any damage or loss caused by negligence, fraud, dishonesty or willful misconduct by You or any of your employees, agents or customers; (c) any contract or agreement between You and a third party; (d) the reliability, accuracy, or legitimacy of payment data or purchase orders submitted by You or Merchants to Authorize.Net; (e) the subject matter of Your certification hereunder; (f) payment card transactions submitted by You to Authorize.Net and rejected by Authorize.Net or an issuing bank; (g) any alleged infringement of a patent, copyright, trademark or other intellectual property right resulting from a Merchant Fault; (h) any violation of Authorize.Net's Acceptable Use Guidelines or Privacy Policy; (i) Your participation in the Site Directory; or (j) any alleged or actual violation by You or a Merchant of any applicable laws, regulations or rules of the Credit Card Associations, the Gramm Leach Bliley Act or any regulatory body or agency having jurisdiction over the subject matter hereof. In the event You or Your Merchants cause fines and/or penalties to be charged to Authorize.Net by the Credit Card Associations or any other entity, you agree to immediately reimburse Authorize.Net for said fines or penalties.

10.3 Indemnification Procedure. The obligations of each party ("**Indemnitor**") under this Section 10 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 this Section 10 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) above, 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.

10.4 Exceptions. If You are an agency or instrumentality of a state of the United States and are precluded by the law of Your state from entering into indemnification obligations, then the obligations under Sections 10.2 and 10.3 shall apply only to the extent permitted by such state law.

11. General Provisions.

11.1 Publicity. Neither party will issue any press release or general marketing communication concerning this relationship or the Authorize.Net Services without the prior written consent of the other party which shall not to be unreasonably withheld or delayed.

11.2 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.

11.3 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. You further recognize that if you contracted for the Authorize.Net Services with a Merchant Service Provider, such provider is an authorized reseller of the Authorize.Net Services only and is not a joint venture, partner, or agent of Authorize.Net.

11.4 Notices. All notices to You shall be given electronically, sent to the electronic mail address provided by or for You during registration for the Authorize.Net Services and/or posted in the Announcement section of your gateway account. Service termination notices to Authorize.Net shall be given electronically from within Your Authorize.Net merchant menu and sent to support@authorize.net. You must log into your Merchant Interface at <https://secure.authorize.net>, click on Support, type Your termination request, and click the Send button. All other notices to Authorize.Net must be in writing and sent to Authorize.Net LLC, 808 East Utah Valley Drive, American Fork, UT, 84003, 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. Electronic mail notices shall be deemed given the next business day following the date delivered.

11.5 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 at any time upon written or electronic notice to You 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 You do not agree to such amendments, your sole remedy is to immediately terminate this Agreement upon written notice to Authorize.Net.

11.6 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.

11.7 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 California, without reference or giving effect to its conflicts of law principles. Referrer hereby irrevocably

consents to the personal jurisdiction of and venue in the state and federal courts located in Santa Clara County, CA with respect to any action, claim or proceeding arising out of or related to this Agreement and agrees not to commence or prosecute any such action, claim or proceeding other than in such courts except as otherwise provided in Section 11.11 below.

11.8 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.

11.9 Assignment. You will not assign any of Your rights or delegate the performance of any of Your obligations under this Agreement without the prior written consent of Authorize.Net.

11.10 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.

11.11 Dispute Resolution. Any dispute or claim arising out of or relating to this Agreement, except claims involving intellectual property and claims for indemnification, may 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 Boston, Massachusetts, 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 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, claims to recover outstanding amounts due Authorize.Net and claims for indemnification, may be brought by either Party more than one (1) year after the cause of action arose.

11.12 Non-solicitation. You 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 shall 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.

11.13 Entire Agreement. This Agreement together with all of Authorize.Net's policies referenced herein, including the Partner Program certification requirements, 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. You acknowledge that this Agreement reflects an informed, voluntary allocation between Authorize.Net and You of all risks (both known and unknown) associated with the Authorize.Net Services. In the event of a conflict between the Acceptable Use Guidelines and this Agreement, the latter shall govern.

11.14 Definitions

"Acceptable Use Guidelines" – <http://www.authorize.net/company/terms/>

"API" – for the purposes of this Agreement means software, in object code form, that is licensed to You under this Agreement, that formats, encrypts, and decrypts messages transferred between Your systems and Authorize.Net's systems.

"Credit Card Association" – for purposes of this Agreement means Visa U.S.A., Inc., Visa International, Inc., MasterCard International, Inc., and any other credit or debit card issuing company.

"Merchant" – means the person or business entity that has a contractual relationship with Authorize.Net and sells goods or services to a customer.

"Merchant Interface" – means the user interface available to Merchants at <http://secure.authorize.net>.

"Merchant Service Provider" – for purposes of this Agreement, a Merchant Service Provider shall mean any third party through whom Authorize.Net may provide the Authorize.Net Services to You, including but not limited to a reseller, Independent Sales Office ("ISO"), application service provider, merchant aggregator, acquiring bank and financing agency.

"Partner Program Certification Requirements" – means those guidelines set forth at <http://www.authorize.net/solutions/partnersolutions/certificationrequirements>, as may be amended from time-to-time.

"Partner Logo Usage Guidelines" – means those guidelines set forth at <http://www.authorize.net/solutions/partnersolutions/certificationrequirements>, as may be amended from time-to-time.

"Privacy Policy" – <http://www.authorize.net/company/privacy/>

"Processor" – for purposes of this Agreement, a Processor shall mean a credit card processor that accepts Transactions from Authorize.Net and processes Transactions for You.

"Trademark(s)" – 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(s)" – for purposes of this Agreement, Transaction means any credit card authorization, credit, ticket only, batch settlement, decline transaction or other related transaction, completed or submitted under Your account to Authorize.Net.

IN WITNESS HEREOF, the parties have affixed their signatures hereto as of the dates set forth below.

AUTHORIZE.NET LLC:

By: _____

Print Name: _____

Title: _____

Date: _____

_____:

By: _____

Print Name: _____

Title: _____

Date: _____

Appendix A-Trademarks

1. 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.

Authorize.Net®
Authorize.Net Your Gateway to IP Transactions™
Authorize.Net Where the World Transacts®
Automated Recurring Billing™
eCheck.Net®
Fraud Detection Suite™
FraudScreen.Net®



2. Your Marks

For purposes of this Agreement, "Your Marks" means Your customary name and logo, and such other trademarks as You may from time to time notify Authorize.Net in writing to be "Your Marks" within the meaning of this Agreement.

Appendix B – Partner Program Descriptions

- i. Certified Solution Program is designed for partners that provide standard transaction processing solutions for Merchants, including without limitation, shopping carts, point-of-sale (POS) software, POS terminals, kiosks, WiFi hotspots and mobile solutions.
- ii. Certified Developer Program is designed for developers, integrators and value-added resellers that develop custom transaction processing solutions for Merchants.
- iii. Certified Hosting Program is designed for Web hosting companies that offer payment gateway services to Merchants.

Appendix C – Web Site Directory

1. **Grant.** Subject to the terms and conditions contained in this Agreement, Authorize.Net hereby grants You a non-exclusive right to be included in its Web site directory of certified solutions, developers and partners. You hereby grant Authorize.Net the right to include in the directory hypertext links (whether in graphical, text or other format) which enable "point and click" access to locations on Your Web site. Your listing position in the directory shall be in Authorize.Net's sole discretion. Authorize.Net has the right to change the category or placement under which Your listing is displayed or to make other changes as it may deem fit.
2. **Company Obligations.** During the term of this Agreement, You agree to exclusively promote Authorize.Net's logo on the Web page to which the user is directed from the directory listing.
3. **No Representations or Warranties.** The directory and the content, information, documents, graphics and images published within the directory may include inaccuracies, typographical errors or other errors. Authorize.Net makes no commitment, however, to update or correct the directory. Authorize.Net further reserves the right to temporarily, or permanently, modify, alter, discontinue or delete the directory without prior notice. TO THE EXTENT PERMITTED BY LAW, THE DIRECTORY AND ANY SERVICES RELATED TO THE DIRECTORY ARE PROVIDED "AS IS," AND WITHOUT WARRANTY OF ANY KIND.