

# PAYMENT GATEWAY MERCHANT SERVICE AGREEMENT

The Payment Gateway Merchant Service Agreement (the "Agreement") is a legally binding contract between you and/or your company ("Customer") and CyberSource Payment Solutions Pty Ltd ("CyberSource"). The Agreement sets out the terms and conditions under which Customer may utilise the Transaction Services. Customer should read this Agreement carefully.

**By clicking on the "I AGREE" button or a similar affirmation, or by acknowledging acceptance of the Agreement by any other method allowed by CyberSource, or by using or accessing the Transaction Services through any means permissible including, without limitation via a computer or a mobile application, Customer acknowledges and agrees that: (i) it has reviewed and understands the Agreement; (ii) it agrees to be legally bound by the terms and conditions of the Agreement; and (iii) its use of the Transaction Services and any related products or services will be governed by this Agreement. If Customer does not agree or is not willing to be bound by the terms and conditions of this Agreement, Customer should not click on the "I AGREE" button and should not seek to obtain or use the Transaction Services.**

**1. Customer's Capacity and Related Matters.** By accepting the terms and conditions of this Agreement, Customer represents and warrants that (a) the person executing this agreement on behalf of Customer is 18 years of age or older, (b) all information Customer has provided to CyberSource is true and correct in all respects, and (c) Customer will update CyberSource by email with any changes to information Customer has previously supplied. Customer further represents and warrants that Customer has the legal authority to accept the terms and conditions of this Agreement and that such acceptance will be binding on Customer. CyberSource reserves its right, in its sole discretion, to refuse to provide Customer with any CyberSource Service. Words and phrases with initial letters capitalised and not otherwise defined herein shall have the meaning set forth in Section 15.

**2. CyberSource Undertakings.**

**2.1 Transaction Services.** CyberSource shall provide to Customer the Transaction Services at the rates set forth in the Fee Schedule and in all material respects in accordance with the terms and conditions of this Agreement and consistent with all applicable laws and regulations.

**2.2 Customer Service.** During the term of this Agreement, if Customer is current in payment of all fees owing to CyberSource and is otherwise not in default under this Agreement, CyberSource shall provide customer service to Customer, as set forth in the Contact Us section of the CyberSource website at the URL <<http://www.authorize.net/support>>.

**3. Customer Undertakings.**

**3.1 ID and Password.** Customer must select an ID and password to enable Customer to access Customer's payment gateway account and use the Transaction Services. Customer will restrict access to such ID, password, and account to Customer'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. Customer is solely responsible for maintaining adequate security and control of any and all IDs, passwords, or any other codes for purposes of giving Customer access to the Transaction Services. CyberSource shall be entitled to rely on information it receives from Customer and may assume that all such information was transmitted by or on behalf of Customer. Customer shall comply with all CyberSource recommendations and notices regarding the security of Customer's ID, password and payment gateway account(s).

**3.2 Relationship to Merchant Service Providers.** Customer may have enrolled in the Transaction Services via a Merchant Service Provider. In addition to any other agreement Customer may have with the Merchant Service Provider, the terms and conditions of this Agreement govern Customer's use and CyberSource's provision of the Transaction Services. Customer expressly acknowledges and agrees that CyberSource may share information about Customer and Customer's account with its Merchant Service Providers.

**3.3 Compliance.** In connection with the exercise of Customer's rights and obligations under this Agreement (including, without limitation, any related to individual privacy), Customer will comply, at Customer's own expense, with all laws, policies, guidelines, regulations, ordinances, rules applicable to Customer, this Agreement, End User data or the Transactions and/or orders of any governmental authority or regulatory body having jurisdiction over the subject matter hereof, including, without limitation, the Payment Network Rules and the Services Documentation. CyberSource reserves the right to amend, modify or change the Services Documentation at any time. Customer shall not use the Transaction Services in any manner, or in furtherance of any activity that may cause CyberSource to be subject to investigation, prosecution, or legal action.

**3.4 Additional Solutions and Services.** In the event that Customer enrolls in and/or utilises any of CyberSource's Additional Services, Customer hereby acknowledges and agrees to the terms and conditions contained in Appendix B, Additional Services Terms and Conditions.

**3.5 Third Party Products and Services.** Customer's use of third party products and services shall be governed by and subject to separate third party product, service, software, and/or license agreements. CyberSource will not be

a party to such third party agreements and does not warrant or guarantee any third party product or service.

**4. Data Collection, Privacy and Security; Data Protection**

**4.1 Customer.**

a. Customer shall comply with all Applicable Data Protection Laws and applicable laws, policies and regulations governing the security, privacy, collection, retention and use by Customer of End User data, including, without limitation, financial information, card account numbers, and all other personally identifiable End User information. Customer agrees to provide notice to End Users on Customer's website that discloses how and why personal and financial information is collected and used, including uses governed by this Agreement.

b. Customer will comply with all then-current legal obligations and security measures, as applicable, including without limitation those issued by Payment Networks, associated with the collection, security, dissemination and destruction of End-User and Transaction data, and expressly including the Payment Card Industry Data Security Standard (PCI DSS). Customer acknowledges that Customer is responsible for the security of End User cardholder data while in Customer's possession. Customer warrants that Customer has taken such precautions as are necessary to ensure that Customer's server and electronic systems are secure from breach or intrusion by unauthorized third parties. In the event that Customer's system is breached and an unauthorized third party has access to or has accessed End-User data or Transaction data, Customer shall notify CyberSource promptly of such breach and shall take such precautions as may be necessary to prevent such breaches from occurring in the future.

c. Customer is solely responsible for the security of data residing on servers owned or operated by Customer, or a third party designated by Customer (e.g., a Web hosting company, processor or other service provider). Customer agrees that Customer will comply with all CyberSource security protocols and security advisories in effect during the term of this Agreement. Customer is solely responsible for verifying the accuracy and completeness of all Transactions submitted and processed by CyberSource associated with Customer's account and verifying that all corresponding funds are accurately processed. Customer acknowledges that CyberSource shall not be liable for any improperly processed or unauthorized Transactions or illegal or fraudulent access to Customer's account, End-User or Transaction data. CyberSource's liability for improperly processed or unauthorized Transactions solely attributable to the negligence of CyberSource is limited pursuant to Section 12.

**4.2 CyberSource.**

a. CyberSource will collect, retain, and disclose information and data collected from Customer and End Users in accordance with the Services Documentation and Privacy Policy.

In addition, CyberSource, its parents, subsidiaries, Merchant Service Providers, partners, suppliers and/or their agents/contractors may transfer data amongst themselves as necessary for the purpose of the provision and management of the Transaction Services. CyberSource may further transfer data: (i) to third parties assisting CyberSource in evaluating Customer's eligibility for, provision of, administration and management of the Transaction Services; (ii) with non-affiliated entities that assist CyberSource in providing products and services that Customer has requested; (iii) with companies that provide support services to CyberSource or with which CyberSource has agreements to provide marketing services on its behalf; or (iv) as otherwise permitted by law. While CyberSource uses commercially reasonable efforts to safeguard data, CyberSource does not warrant that End-User data and Transaction data will be transported without unauthorized interception or modification or that data will not be accessed or compromised by unauthorized third parties.

b. With respect to the Transaction Services, at all times while this Agreement is in effect, CyberSource will maintain compliance with the Payment Card Industry Data Security Standard (PCI DSS). CyberSource acknowledges that CyberSource is responsible for the security of End User cardholder data while in CyberSource's possession.

**4.3 Data Retention.** Customer is solely responsible for compiling and retaining permanent records of all Transactions and End-User data for Customer's reference. Except as otherwise provided herein, at no time shall CyberSource have an obligation to store, retain, report or otherwise provide any copies of or access to any records of Transactions or End-User data collected or processed by CyberSource.

#### **4.4 Data Protection**

**4.4.1** CyberSource shall only process personally identifiable End-User information ("Personal Data") in accordance with the instructions from Customer as part of the Transaction Services; provided, however, that Customer's transmission of a transaction request to the CyberSource API shall constitute instructions to process the Personal Data contained within such transmission. Customer shall only disclose such Personal Information to CyberSource as is strictly necessary for CyberSource to provide the Transaction Services.

**4.4.2** CyberSource shall take appropriate technical and organizational measures in order to secure the confidentiality of the Personal Data and to prevent its unauthorized disclosure.

**4.4.3** Customer acknowledges and understands that Personal Data will be transferred overseas in order for CyberSource to provide the Transaction Services, and Customer warrants to CyberSource that Customer will provide all reasonably necessary disclosures and/or obtain all reasonably necessary consents to lawfully permit such transfer of Personal Data.

#### **5. Fees; Taxes**

**5.1 CyberSource Service Fees.** Customer shall pay to CyberSource the fees set forth in the Fee Schedule located in the Merchant Interface, which is hereby incorporated into the terms of this Agreement by reference. Unless otherwise noted in the Fee Schedule, all fees are in Australian Dollar (AUD). Notwithstanding anything to the contrary and if agreed upon by the parties, a Merchant Service Provider may charge, bill, and collect such fees from Customer, in the amounts stated in and in accordance with the terms and conditions of the agreement between Customer and such Merchant Service Provider. If Customer's relationship with a Merchant Service Provider expires or terminates and such Merchant Service Provider was billing Customer for certain fees, Customer agrees to pay CyberSource for any further use of the Transaction Services effective immediately upon any such expiration or termination in accordance with the terms herein.

#### **5.2 Account Fees**

**5.2.1 Late Payment Fee.** If Customer does not pay owing amounts on or before the fifteenth (15th) day of the month, Customer will be subject to a late payment fee, in the amount set forth in the Fee Schedule. If Customer has not paid all amounts due before the last day of the month in which they were due, Customer's ability to use the Transaction Services shall automatically be suspended at the end of the month.

**5.2.2 Abandoned Account Fee.** If Customer's account becomes an Abandoned Account with a balance due to Customer, Customer shall be assessed a monthly Abandoned Account Fee in the amount set forth in the Fee Schedule. In addition, all costs incurred by CyberSource in managing Customer's Abandoned Account, including costs associated with attempting to locate Customer to deliver Customer's account balance or incurred with respect to escheating Customer's funds to the appropriate governmental agency will be deducted from Customer's account, as applicable.

#### **5.3 Taxes**

**5.3.1 Preliminary:** Words or expressions used in this clause that are defined in A New Tax System (Goods and Services Tax) Act 1999 ("GST Act") have the same meaning as given to them in that GST Act.

**5.3.2 GST exclusive:** Any amount specified in this Agreement as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.

**5.3.3 Liability to pay GST:** If a party makes a taxable supply under this Agreement ("Supplier"), then the recipient of the taxable supply ("Recipient") must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.

**5.3.4 Tax Invoice:** Notwithstanding the foregoing, the Recipient is not obliged under this Agreement to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply.

**5.3.5 Adjustment Event:** If an adjustment event arises in relation to a taxable supply made by a Supplier under this Agreement, the amount paid or payable by the Recipient pursuant to Section 5.3.3. will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.

**5.3.6 Reimbursement of Expenses:** If a third party makes a taxable supply and this Agreement requires a party to this Agreement ("the payer") to pay for, reimburse or contribute to ("pay") any expense or liability

incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.

**5.3.7 Non Merger:** This clause does not merge on completion and will continue to apply after expiration or termination of this Agreement.

**5.3.8 Other Taxes.** All payments made to CyberSource shall (to the extent permitted by law) be made free and clear of any conditions or restriction and without deduction or withholding therefrom whether for or on account of tax or by way of set off, counterclaim or otherwise. If any such deduction or withholding for or on account of taxes is required by law to be made from any payments to CyberSource so that CyberSource would not receive for its own benefit on the due date the full amount of the payment then: (i) Customer will make the required deduction or withholding; (ii) Customer will pay to the appropriate government agency in accordance with the relevant law the full amount of that deduction or withholding before the date on which liabilities attach thereto; and (iii) within 30 days after making such deduction or withholding (or as soon as possible thereafter) Customer will deliver to CyberSource the receipt for such payment; and (iv) Customer will increase the amount of the payment to CyberSource so that, after making that deduction or withholding CyberSource receives the full amount which it would have received had no deduction or withholding been made.

**5.4 Opening/Closing Accounts.** Should a Customer fail to pay fees due under an Authorize.Net branded account ("Original Account") and subsequently opens another Authorize.Net branded account ("Subsequent Account") CyberSource reserves the right to bill the Subsequent Account for amounts due under the Original Account whether or not the Original Account was closed.

#### **6. Billing and Payment Terms.**

##### **6.1 CyberSource Bills Customer.**

**6.1.1 Billing Terms.** Billing shall begin on the Effective Date. CyberSource service fees are due and payable to CyberSource on a monthly basis, and the first payment shall be due on the first day of the month immediately following the billing effective date. Unless otherwise specified herein, fees and payments for any subsequent time periods shall be due on the first day of the month. Payments to CyberSource shall be settled in AUD. Customer hereby authorises CyberSource to charge Customer's bank account, debit or credit card provided in its Customer application for all amounts due to CyberSource by Customer under this Agreement. Where CyberSource is authorised to debit Customer's bank account, Customer will provide CyberSource with a signed authority to direct debit that account. This authority is to remain in full force and effect until CyberSource has received written notification from Customer of its request for termination in such time as to afford CyberSource a commercially reasonable opportunity to acknowledge and respond to the request. If Customer's bank account, debit or credit card number changes (e.g. card expires), Customer shall promptly update its account information in the Customer Interface. Entries initiated to or from Customer's depository account will be in accordance with Payment Network Rules (as relevant), the Bulk Electronic Clearing System (CS2) Regulations and Procedures (as relevant) and/or any other regulatory body or agency having jurisdiction over the subject matter hereof.

**6.1.2 Disputes.** The parties shall promptly investigate any disputed fees under this Agreement. A dispute will not relieve Customer of its payment obligations herein. If an event of dispute is resolved in Customer's favour CyberSource will credit back to Customer any applicable overpayments made by Customer. All disputes must be made in good faith and in writing within thirty (30) days of the billing statement date. Fees billed shall be deemed accepted where written objections are not lodged within such thirty (30) day period.

**6.2 Merchant Service Provider Bills Customer.** Notwithstanding Section 6.1, if Customer is to be billed by a Merchant Service Provider for some or all of the fees associated with Transaction Services, Customer shall pay the Merchant Service Provider in accordance with the terms mutually agreed upon between Customer and such Merchant Service Provider.

**7. Term.** This Agreement shall commence on the Effective Date and remain in full force and effect until terminated pursuant to Section 8.

#### **8. Termination and Suspension.**

**8.1 Termination by Customer.** Customer may terminate this Agreement at any time and for any reason, with or without cause, upon written notice to CyberSource. In the event Customer is billed by a Merchant Service Provider in accordance with Section 6.2, Customer hereby authorizes the Merchant Service Provider to terminate this Agreement on Customer's behalf.

**8.2 Termination by CyberSource.** CyberSource may terminate this Agreement and/or Customer's access to the Transaction Services, at any time and for any reason, with or without cause, upon thirty (30) days' written notice.

**8.3 Termination or Suspension of Customer by a Merchant Service Provider.** If CyberSource is to be paid for Customer's access to and use of the Transaction Services by a Merchant Service Provider, and if CyberSource receives notice from such Merchant Service Provider that it has terminated or suspended its relationship with Customer, CyberSource may suspend and/or terminate Customer's right to access and use the Transaction Services and/or this Agreement without notice and without liability. In addition, CyberSource may suspend and/or terminate the Transaction Services and/or this Agreement without notice and without liability upon receipt of notice from Customer's Processor or acquiring bank that Customer is no longer entitled to send an authorization message, settlement message, or other message or payment data related to a card transaction to Customer's Processor.

**8.4 Threatening Condition.**

In the event that CyberSource reasonably believes that Customer is in violation of its obligations hereunder, including, without limitation, selling products or services that violate law or regulation, or that Customer's conduct poses a threat to CyberSource's systems, equipment, processes, or Intellectual Property (the "Threatening Condition"), CyberSource may immediately suspend Customer's Account(s). In any event, CyberSource may terminate this Agreement if the Threatening Condition remains uncured more than thirty (30) calendar days after Customer is notified of the Threatening Condition.

**8.5 Effect of Termination.** Upon termination of the Agreement for any reason, all rights and obligations of the parties under this Agreement shall be extinguished, except that (a) all payment obligations hereunder shall survive such termination; and (b) the rights and obligations of the parties under Sections 9.1, 10, 11, 12, 13 and 14 shall survive such termination.

**9. Intellectual Property.**

**9.1 CyberSource.** The parties agree that CyberSource owns and/or has authority to extend the licenses provided hereunder and retains all right, title and interest in and to the CyberSource Trademarks, Transaction Services, copyrights and any related technology utilised 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 Customer or any other entity or person under this Agreement. Customer will not reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or trade secrets for any of the Transaction Services or related technology.

**9.2 API and Services Documentation License.** Subject to the terms of this Agreement, CyberSource hereby grants to Customer and Customer hereby accepts from CyberSource a personal, limited, non-exclusive, non-transferable license and right to the CyberSource API and accompanying Services Documentation for the following purposes:

- i. install and use the CyberSource API on as many machines as reasonably necessary (which machines are and shall be maintained in facilities owned, occupied, or leased by Customer) to use the CyberSource Services for the purpose of selling products and services to End-Users;
- ii. use the accompanying Services Documentation solely for the purpose of using the CyberSource APIs and CyberSource Services; and,
- iii. create a reasonable number of copies of the CyberSource API and Services Documentation, with all copyright notices intact, for archival purposes only.

**9.3 CyberSource Trademarks License.** Subject to the terms and conditions contained herein, CyberSource hereby grants to Customer a non-exclusive, royalty-free, fully-paid up right to use, reproduce, publish, perform and display the CyberSource Trademarks (as defined in Appendix A) on Customer's website in connection with Customer's offering of payment options to End Users.

**9.4 Customer's Marks License.** Subject to the terms and conditions contained herein, Customer hereby grants to CyberSource a non-exclusive, royalty-free, fully-paid up right to use, reproduce, publish, perform and display Customer's Marks as necessary in connection with the performance of the Transaction Services.

**9.5 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 the other party. All uses of the other party's Trademarks shall inure to the benefit of the party owning such Trademark. 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.

**9.6 Use the Appropriate ® or ™ Symbol.** Customer must reproduce any CyberSource Trademarks exactly as shown in 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.

**9.7 Trademarks and Domain Registration.** Except as otherwise provided herein, Customer shall not use, register or attempt to register any (a) CyberSource Trademarks or (b) marks or domain names that are confusingly similar to any of the CyberSource Trademarks or the Domain(s).

**9.8 Trademark Restrictions.** Customer shall not (a) use the CyberSource Trademarks except as expressly authorized in this Agreement; (b) take any actions inconsistent with CyberSource's ownership of the CyberSource Trademarks and any associated registrations, or attack the validity of the CyberSource Trademarks, its ownership thereof, or any of the terms of this Agreement; (c) use the CyberSource Trademarks in any manner that would indicate Customer is using such CyberSource Trademarks other than as a licensee of CyberSource; nor (d) assist any third party do any of the same.

**10. Confidential Information.**

**10.1** Each Party (the "Receiving Party") hereby agrees (i) to hold the other party's (the "Disclosing Party") Confidential Information in strict confidence and to take reasonable precautions to protect such Confidential Information (including, without limitation, all precautions the Receiving Party employs with respect to its own confidential materials), (ii) not to divulge any such Confidential Information or any information derived therefrom to any third person; (iii) not to make any use whatsoever at any time of such Confidential Information except as contemplated hereunder, (iv) not to remove or export any such Confidential Information or any direct product thereof, except in compliance with, and with all licenses and approvals required under, applicable export laws and regulations, (v) not to copy or reverse engineer any such Confidential Information, and (vi) that any employee, subcontractor, or agent given access to any such Confidential Information must have a legitimate "need to know" and shall be bound in writing to comply with the Receiving Party's confidentiality obligations, whether generally or specific to this Agreement. Nothing in this Agreement shall be construed to prohibit or restrict CyberSource's use or disclosure of Transaction Data, to third parties, including financial institutions, participants in a payment system and CyberSource affiliates, in connection with CyberSource's performance of the Transaction Services or to generally review and optimize the Transaction Services, or for purposes related to fraud and risk management, or customer support.

**10.2** Except as otherwise provided in this Agreement, within thirty (30) calendar days of termination of this Agreement, the Receiving Party shall, destroy all materials that constitute Confidential Information and/or Intellectual Property of the Disclosing Party and upon request provide to the Disclosing Party written certification signed by an authorized officer of the Receiving Party that all such information was so destroyed. Notwithstanding the foregoing, each party may retain Confidential Information that is (i) stored on archival or back-up files or (ii) required for compliance with applicable law, Payment Network Rules or its obligations pursuant to this Agreement, provided that such party continues to maintain confidentiality of such Confidential Information pursuant to the terms of this Agreement.

**10.3** Notwithstanding any provision in this Agreement to the contrary, each party may disclose Confidential Information of the other party to the extent it is required to be disclosed pursuant to a valid order or requirement of a governmental agency or court of competent jurisdiction.

**11. Representations and Warranties; Disclaimers**

**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 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, policy or regulation 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.

**11.2 CyberSource Warranty.**

**11.2.1** With respect to the Transaction Services, CyberSource represents and warrants that the Transaction Services provided to Customer hereunder will conform substantially to specifications set forth in the applicable Services Documentation, as may be amended from time to time at CyberSource's sole discretion. The preceding warranty will not apply if (a) any Transaction Services or products provided hereunder are used in material variation with this Agreement or Services Documentation; (b) any Transaction Services or products have been modified without the prior written consent of CyberSource; or (c) a defect in any Transaction Services or products has been caused by any of Customer's malfunctioning equipment or software. Customer expressly acknowledges that the Transaction Services are computer network-based services, which may be subject to outages, interruptions, attacks by third parties and delay occurrences.

**11.2.2** In the event Customer discovers that any Transaction Services or products are not in conformance with the representations and warranties made in Section 11.2.1 and report such non-conformity to CyberSource or if the Transaction Services are subject to outages, interruptions, attacks by third parties and delay occurrences, CyberSource shall use commercially reasonable efforts to remedy material interruptions and will provide adjustments, repairs and replacements, within its capacity, that are necessary to enable the Transaction Services to perform their intended functions in a reasonable manner. Customer acknowledges that CyberSource does not warrant that such efforts will be successful. If CyberSource's efforts are not successful, Customer may immediately terminate this Agreement. The foregoing shall constitute Customer's sole remedy, and CyberSource's sole liability, in the event of interruption, outage or other delay occurrences in the Transaction Services. CyberSource does not warrant the services of any third party, including without limitation, the Merchant Service Provider, bank or any third party processor.

**11.2.3 DISCLAIMER.** THE TRANSACTION SERVICES ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS WITHOUT ANY REPRESENTATIONS OR WARRANTIES. CYBERSOURCE DOES NOT REPRESENT OR WARRANT THAT THE TRANSACTION SERVICES WILL BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ENTIRELY ERROR-FREE. CUSTOMER MAY NOT RELY UPON ANY REPRESENTATION OR WARRANTY REGARDING THE TRANSACTION SERVICES BY ANY THIRD PARTY IN CONTRAVENTION OF THE FOREGOING STATEMENTS, INCLUDING REPRESENTATIONS OR WARRANTIES OF ANY MERCHANT SERVICE PROVIDER. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 11.2.1, CYBERSOURCE 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 TRANSACTION SERVICES, OR OTHER SERVICES OR GOODS PROVIDED UNDER THIS AGREEMENT. CUSTOMER UNDERSTANDS AND AGREES THAT CYBERSOURCE SHALL BEAR NO RISK WITH RESPECT TO CUSTOMER'S SALE OF PRODUCTS OR SERVICES, INCLUDING, WITHOUT LIMITATION, ANY RISK ASSOCIATED WITH CARD FRAUD OR CHARGEBACKS.

**11.3 Customer's Warranties.** Customer represents and warrants that at all times during the term of this Agreement and any renewal thereof: (i) all representations and statements made by Customer in this Agreement, or in any other document relating hereto by Customer or on Customer's behalf, are true, accurate and complete in all material respects; (ii) it is engaged in a lawful business and has all necessary rights and authorizations to sell and distribute its products and/or services; (iii) Customer will comply, at Customer's own expense, with all laws, policies, guidelines, regulations, ordinances or rules applicable to Customer, this Agreement, End User data or the Transactions, including, without limitation: (a) the Payment Network Rules; (b) the Payment Card Industry Data Security Standard (PCI DSS); (c) any regulatory body or agency having jurisdiction over the subject matter hereof; and (d) Applicable Data Protection Laws; and (d) the Services Documentation.

**11.4 Third Party Programs.** Customer acknowledges that the Transaction 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. Customer will look solely to the developers and manufacturers of such programs with regard to warranty, maintenance or other support regarding the same. CyberSource does not warrant and shall not be responsible for services or software provided by unaffiliated third party vendors. Customer authorises CyberSource to disclose to any third party vendor information concerning Customer to the extent required to deliver the requested service.

## **12. LIMITATIONS OF LIABILITY AND DISCLAIMERS.**

### **12.1 LIMITATIONS.**

UNDER NO CIRCUMSTANCES (I) WILL CYBERSOURCE 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 DAMAGE OR LOSS SUFFERED OR INCURRED BY CUSTOMER, REGARDLESS OF THE FORM OF ACTION, OR ANY LOSS OF REVENUE, PROFITS OR BUSINESS, ANTICIPATED SAVINGS, LOSS OF GOODWILL OR REPUTATION, COSTS OF DELAY, LOST OR DAMAGED DATA, OR THE INCURRING OF LIABILITY FOR LOSS OR DAMAGE OF ANY NATURE WHATSOEVER SUFFERED BY THIRD

PARTIES, ALL WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE), REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (II) WILL CYBERSOURCE'S TOTAL AGGREGATE LIABILITY TO CUSTOMER UNDER THIS AGREEMENT EXCEED THE GREATER OF THE AGGREGATE COMPENSATION CYBERSOURCE RECEIVED FOR PROVIDING THE CYBERSOURCE SERVICES TO CUSTOMER DURING THE SIX (6) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE OR \$1,000. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO EXCLUDE OR LIMIT LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW.

**12.2 DISCLAIMER.** EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, CUSTOMER EXPRESSLY AGREES THAT CYBERSOURCE SHALL NOT BE LIABLE FOR ANY LOSS (HOWEVER OCCURRING, INCLUDING NEGLIGENCE), ARISING FROM OR RELATED TO: (A) CUSTOMER'S FAILURE TO PROPERLY ACTIVATE, INTEGRATE OR SECURE CUSTOMER'S MERCHANT ACCOUNT; (B) FRAUDULENT TRANSACTIONS PROCESSED THROUGH CUSTOMER'S PAYMENT GATEWAY ACCOUNT(S); (C) DISRUPTION OF TRANSACTION SERVICES, SYSTEMS, SERVER OR WEBSITE BY ANY MEANS, INCLUDING WITHOUT LIMITATION, DDOS ATTACKS, SOFTWARE VIRUSES, TROJAN HORSES, WORMS, TIME BOMBS, OR ANY OTHER TECHNOLOGY; (D) ACTIONS OR INACTIONS BY ANY THIRD PARTY, INCLUDING WITHOUT LIMITATION, A MERCHANT SERVICE PROVIDER, PAYMENT PROCESSOR OR BANK; OR (E) THE LIMITATION OF THE FUNCTIONING OF ANY TRANSACTION SERVICES OR SOFTWARE, HARDWARE, OR EQUIPMENT ASSOCIATED THEREWITH.

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

## **13. Indemnification.**

### **13.1 Indemnification by CyberSource.**

**13.1.1 General.** CyberSource shall defend, indemnify and hold Customer and any of Customer's 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 Customer, to the extent that such cause of action is based upon a claim that any services or products of the Indemnifying Party infringe a copyright, patent, trade secret, or other intellectual property rights of a third party under the laws of the United States or Australia.

**13.1.2 Limitation; Prevention of Infringement.** CyberSource's obligations in Section 13.1.1 do not apply if: (i) the Transaction Services have been modified by parties other than CyberSource; (ii) the Transaction Services are used in conjunction with data where use with such data gave rise to the infringement claim; (iii) Customer's failure to install upgrades or patches provided by CyberSource where such upgrade or patch would have removed the infringing condition; (iv) Customer's use of the Transaction Services in a manner inconsistent with Services Documentation; or (v) Customer's use of the Transaction Services with software or hardware not authorized by CyberSource, where use with such other software or hardware gave rise to the infringement claim. If the Transaction Services or any component thereof becomes, or in CyberSource's opinion is likely to become, the subject of a claim of infringement, then Customer shall permit CyberSource, at CyberSource's sole option and expense, either to (i) procure for Customer the right to continue using the Transaction Services as permitted in this Agreement, or (ii) replace or modify the affected Transaction Services or infringing component so that it becomes non-infringing. If, after using commercially reasonable efforts, CyberSource is unable to cure the infringement, either party may immediately terminate this Agreement. THIS SECTION 13.1.2 STATES THE ENTIRE LIABILITY OF CYBERSOURCE TO CUSTOMER WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY THE TRANSACTION SERVICES.

**13.2 Indemnification by Customer.** Customer shall defend, indemnify, and hold harmless CyberSource and its affiliates, parents, and/or subsidiaries, and any of their officers, directors, agents and employees, from and against any and all 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 CyberSource, arising out of or relating to (a) any breach or alleged breach by Customer of any representation, warranty, or obligation of Customer set forth in this Agreement; (b) any damage or loss caused by negligence, fraud, dishonesty or willful misconduct by Customer or any of Customer's employees, agents or customers; (c) the reliability, accuracy, or legitimacy of payment data or purchase orders submitted by Customer to CyberSource; (d) payment card transactions submitted by Customer to CyberSource and rejected by CyberSource or an issuing bank; (e) any alleged infringement of a patent, copyright, trademark or other intellectual property right resulting from Customer's actions; (f) claims by End Users, including, without limitation, claims relating to the disclosure of End User or consumer data; (g) any alleged or actual violation by Customer of any applicable laws, regulations, the Payment Network Rules or any regulatory body or agency having jurisdiction over the subject matter hereof; or (h) any violation of the Prohibited Activity List. In the event Customer causes fines and/or penalties to be charged to CyberSource by the Payment Networks or any other entity, Customer agrees to immediately reimburse CyberSource for said fines or penalties.

**13.3 Indemnification Procedure.** The obligations of each party ("Indemnitor") under this Section 13 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 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.

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

**14.1 Marketing.** Except for any announcement intended solely for internal distribution or any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of either party, all media releases, public announcements or public disclosures (including, but not limited to, promotional or marketing material) by either party or its employees or agents relating to this Agreement or its subject matter, or including the name, trade name, trademark, or symbol of the other party, are prohibited without the prior written consent of both parties. Notwithstanding the foregoing, either party shall be entitled to disclose the existence of the relationship formed hereunder between CyberSource and Customer without the prior written consent of the other party and CyberSource shall be entitled to include Customer's name and/or logo in customer lists within CyberSource corporate presentations without prior written consent.

**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. Customer further recognizes that if Customer contracted for the Transaction Services with a Merchant Service Provider, such provider is an independent contractor and is not a joint venturer, partner, or agent of CyberSource.

**14.4 Notices.** All notices to Customer shall be given electronically, sent to the electronic mail address provided by or for Customer during registration for the Transaction Services and/or posted in the Announcement section of Customer's payment gateway account(s). Service termination notices to CyberSource shall be given electronically from within Customer's CyberSource Merchant Interface and sent to support@authorize.net. Customer must log into Customer's Merchant Interface at <<https://secure.authorize.net/>>, click on Contact Us, click on Customer Support Inquiry Form, type Customer's termination request, and click the Submit button. All other notices to CyberSource must be in writing and sent to:

#### **If to CyberSource:**

CyberSource Payment Solutions Pty Ltd  
Post Office Box 25  
50 Bridge Street

Sydney NSW 2000 Australia  
ATTN: Managing Director

With a copy to:

CyberSource Corporation  
Post Office Box 8999  
San Francisco, CA 94128-8999 USA  
ATTN: CyberSource Legal, M1-12SE

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.

**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, CyberSource may amend this Agreement at any time upon written or electronic notice to Customer 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 Customer does not agree to such amendments, Customer's sole remedy is to immediately terminate this Agreement upon written notice to CyberSource.

**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 Consent to Jurisdiction.** This Agreement shall be governed by the laws of State of New South Wales and shall be subject to the exclusive jurisdiction of the courts in the State of New South Wales, to which both parties hereby submit.

**14.8 Arbitration.** Any dispute arising out of or relating to this Agreement including the breach, termination or validity thereof, must be brought to, and shall be finally resolved by, arbitration in accordance with the International Institute for Conflict Prevention and Resolution ("CPR") Rules for Administered Arbitration of International Disputes by three arbitrators, of whom each party shall designate one, with the third arbitrator to be appointed by CPR. Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof as set forth in Section 14.7. The seat of the arbitration shall be New South Wales, Australia. The language of the arbitration shall be English.

**14.9 Waiver.** The failure of any party to insist on or enforce strict performance of any provision of this Agreement or to exercise any right or remedy under this Agreement or applicable law will not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will be and remain in full force and effect. 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.

**14.10 Assignment.** Customer will not have the right or the power to assign any of Customer's rights or delegate the performance of any of Customer's obligations under this Agreement without the prior written consent of CyberSource, including in the case of a merger.

**14.11 Force Majeure.** Neither party will be liable for any losses arising out of the delay or interruption of its performance of obligations under the Agreement due to any acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labor disputes, fires, transportation contingencies, interruptions in telecommunications, utility, Internet services or network provider services, acts or omissions of a third party, infiltration or disruption of the Transaction 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 Transaction 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.

**14.12 Telephone Recording.** Customer acknowledges, agrees and consents to CyberSource monitoring and recording any customer service telephone conversations with Customer at any time, without additional further notice to the parties to such conversations.

**14.13 Entire Agreement.** This Agreement together with all of CyberSource's policies referenced herein 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. Customer acknowledges that this Agreement reflects an informed, voluntary allocation between CyberSource and Customer of all risks (both known and unknown) associated with the Transaction Services.

**14.14 Survival.** The provisions of this Agreement relating to any fees or other amounts owed, payment of interest on unpaid fees, confidentiality, warranties, limitation of liability, indemnification, governing law, severability, headings and this paragraph shall survive termination or expiration of this Agreement.

**14.15 Mobile Device Application.** If Customer chooses to download and use the mobile device application, Customer's use of the application shall be subject to the additional usage terms governing such application located within the application service provider's user interface.

**14.16 Affiliates.** The rights, duties and/or obligations of CyberSource under this Agreement may be exercised and/or performed by CyberSource and/or any of CyberSource's Affiliates, or any of their subcontractors and/or agents. All liabilities arising under or as a consequence of this Agreement, whether arising from the acts or omissions of CyberSource or any of CyberSource's Affiliates, or any of their subcontractors and/or agents, shall be solely CyberSource's and not those of any of CyberSource's Affiliates, or any of their subcontractors and/or agents. Customer agrees to bring any claim and or action relating to the foregoing against CyberSource only and not against any of CyberSource's Affiliates, or any of their subcontractors and/or agents.

**14.17 Government Entity Obligations.** If Customer is a governmental or quasi-governmental entity, Customer agrees that it has informed CyberSource, and will inform CyberSource of any changes or updates, in writing, of any law, regulation, ordinance, policy, or ethical requirement that would restrict or require disclosure of any political contributions made by CyberSource or its directors, officers, or employees because of the existence of a contract between Customer and CyberSource.

**14.18 Export Control.** Customer understands and acknowledges that CyberSource is subject to regulation by agencies of the U.S. government which prohibits export or diversion of certain products and technology to certain countries, persons, or other entities. Any and all obligations of CyberSource to provide the CyberSource Services shall be subject to all applicable export laws and restrictions and regulations. Customer agrees to comply with all applicable export laws and restrictions and regulations and not to export or re-export any CyberSource Intellectual Property (i) into (or to a national or resident of) any country to which the U.S. has embargoed goods including, without limitation, Iran, Cuba, Syria, Sudan, the Crimea region of the Ukraine and North Korea; or (ii) to any person on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Denied Person's List.

## 15. Definitions

**"Abandoned Account"** means any inactive account through which no Transactions have been processed for a minimum of six (6) months AND for which all contact information (address, phone numbers, fax numbers, email address) and billing information is no longer valid.

**"Account"** means a top-level gateway identifier that is issued by CyberSource to Customer to enable Customer's use of CyberSource Services hereunder. For each business unit within Customer's organization that requires invoices to be sent to an address different than the primary Account, a new Account is required.

**"Additional Service(s)"** means the following services, Advanced Fraud Detection Suite, Automated Recurring Billing, Customer Information Manager, Sync for QuickBooks, Visa Checkout and/or any other service or product that may be offered by CyberSource in the future.

**"Affiliates"** means any entity that controls, is controlled by, or is under common control with a party, including its parents and subsidiaries.

**"API"** means application programming interface.

**"Applicable Data Protection Laws"** means any law, rule or regulation pertaining to data protection and the protection of an individual's personal data to the extent applicable in respect of a party's obligations under this Agreement.

**"Batch(es)"** means any batch settlement submitted to a Processor by CyberSource consisting of any card authorization, credit, ticket only, decline transaction or other related transaction.

**"Confidential Information"** shall mean any data or information, oral or written, treated as confidential that relates to either party's (or, if either party is

bound to protect the confidentiality of any third party's information, such third party's) past, present, or future research, development or business activities, including any unannounced products and services, any information relating to services, developments, Services Documentation (in whatever form or media provided), inventions, processes, plans, financial information, End-User data, revenue, transaction volume, forecasts, projections, and the financial terms of this Agreement. Notwithstanding the foregoing, Confidential Information shall not be deemed to include information if: (i) it was already known to the receiving party prior to the Effective Date of this Agreement, as established by documentary evidence; (ii) it is in or has entered the public domain through no breach of this Agreement or other wrongful act of the receiving party; (iii) it has been rightfully received by the receiving party from a third party and without breach of any obligation of confidentiality of such third party to the owner of the Confidential Information; (iv) it has been approved for release by written authorization of the owner of the Confidential Information; or, (v) it has been independently developed by a party without access to or use of the Confidential Information of the other party.

**"Domain(s)"** means any website or sites operated by or for CyberSource, including without limitation the URL <<http://www.authorize.net/>>.

**"Effective Date"** means the earlier of the date Customer acknowledges and agrees to the Agreement terms and conditions by (a) clicking the "I AGREE" button associated with the Agreement; (b) acknowledging Customer's acceptance of the Agreement by any other method allowed by CyberSource, including without limitation execution of a Merchant Service Provider application that incorporates the Agreement by reference; or (c) by using the Transaction Services.

**"End User"** shall mean any person that purchases any of Customer's goods or services, whose information Customer will submit to CyberSource during the course of Customer's use of the Transaction Services.

**"Fee Schedule"** means a list of fees and charges to be paid by Customer to CyberSource. The Fee Schedule is located in the Merchant Interface.

**"Intellectual Property"** shall mean all (i) copyrights (including, without limitation, the right to reproduce, distribute copies of, display and perform the copyrighted work and to prepare derivative works), copyright registrations and applications, trademark rights (including, without limitation, registrations and applications), patent rights, trade names, mask-work rights, trade secrets, moral rights, author's rights, privacy rights, publicity rights, algorithms, rights in packaging, goodwill and other proprietary rights, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of any state, country or jurisdiction; (ii) intangible legal rights or interests evidenced by or embodied in any idea, design, concept, technique, invention, discovery, enhancement or improvement, regardless of patentability, but including patents, patent applications, trade secrets, and know-how; and (iii) all derivatives of any of the foregoing.

**"Merchant Interface"** means the user interface available to Merchants at <<https://account.authorize.net/>>.

**"Merchant Service Provider"** for purposes of this Agreement, a Merchant Service Provider shall mean any third party through whom CyberSource may offer the Transaction Services to Customer, including but not limited to a reseller, Independent Sales Organization ("ISO"), application service provider, merchant aggregator, acquiring bank and financing agency.

**"Payment Networks"** means Visa, MasterCard, American Express, Discover Financial Services, and any affiliates thereof or any other payment network applicable to this Agreement.

**"Payment Network Rules"** means the operating rules, bylaws, schedules, supplements and addenda, manuals, instructions, releases, specifications and other requirements, as may be amended from time to time, of any of the Payment Networks.

**"Privacy Policy"** see <<http://www.authorize.net/company/privacy.php/>>.

**"Processor"** means a card processor that accepts Transactions from CyberSource and processes Transactions for Customer.

**"Services Documentation"** means collectively, the operating instructions, user manuals, and help files, in written or electronic form, made available to Customer and that are intended for use in connection with the Transaction Services.

**"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 Australia or any other country or jurisdiction, whether now existing or hereafter adopted or acquired.

**"Transaction(s)"** means any card authorization, credit, ticket only, capture or settlement request, decline transaction, or other related transaction, completed or submitted under Customer's account to CyberSource.

**"Transaction Services"** means CyberSource's Authorize.Net branded payment management solutions made available to Customer under this Agreement.

## Appendix A- Trademarks

### I. CyberSource Marks

For purposes of this Agreement, "CyberSource Trademarks" means those trademarks listed below and such other trademarks as CyberSource may from time to time notify Customer in writing to be "CyberSource Trademarks" within the meaning of this Agreement.

**Authorize.Net®**

**Authorize.Net Advanced Fraud Detection Suite™**

**Authorize.Net Automated Recurring Billing™**

**eCheck.Net®**

**Authorize.Net®**  
a CyberSource solution

### II. Customer's Marks

For purposes of this Agreement, "Customer's Marks" means Customer's customary name and logo, and such other trademarks as Customer may from time to time notify CyberSource in writing to be "Customer's Marks" within the meaning of this Agreement.

## Appendix B - Additional Service(s) Terms and Conditions

In the event Customer enrolls in and/or utilizes any of CyberSource's Additional Service(s), the following terms will apply and form part of the Agreement:

**1. Expansion of Services.** The terms "Services" and "Transaction Services," as each is defined in the Agreement, shall include each of the Additional Services. All terms of the Agreement applicable to the CyberSource Services shall be applicable to each Additional Service(s).

**2. Payment Terms.** If fees are applicable to the Additional Service(s), Customer agrees to the Additional Service Fees, in accordance with Section 6 of this Agreement, in the amounts provided in the Fee Schedule located in the Merchant Interface and/or in the Additional Service documentation page accessed during enrolment in the applicable Additional Service. By checking the "I ACCEPT" button next to a Additional Service Fee schedule, Customer acknowledges Customer's acceptance of such fees, Customer's obligation to pay same and the terms and conditions applicable to the Additional Service.

**3. Customer's Warranty.** Customer represents, warrants, and covenants to CyberSource that Customer's use of the Additional Services and any information gathered by Customer in connection with use of an Additional Service: (a) will be fully compliant with all applicable laws, rules and regulations; (b) will be in accordance with all applicable Services Documentation; and (c) will not be used for any purpose other than in connection with the Additional Service.

**4. Acknowledgement.** Customer understands, acknowledges, and agrees that (a) Customer will be solely responsible for ALL transactions processed through Customer's payment gateway account(s), regardless of whether such transactions are monitored by an Additional Service; (b) Customer will be solely responsible for Customer's use of the Additional Service including, without limitation (i) configuring, maintaining and updating, as Customer deems necessary, the applicable settings for Customer's Additional Service account; and (ii) with respect to each Transaction processed via Customer's payment gateway account(s), and regardless of any data, analysis, or information generated or not generated by the Additional Service, as applicable, determining the appropriate action for each such Transaction (i.e., approve, void, decline, reject); (c) under certain circumstances, it may be necessary for CyberSource to adjust Customer's Additional Service security settings, with or without notice to Customer, to guard against fraudulent activity and that such actions may inadvertently cause legitimate transactions to expire, be rejected or delayed; and (d) CyberSource shall not be liable under any theory of law, including negligence, for any loss associated with any of the foregoing.

**5. DISCLAIMER. IN ADDITION TO ANY LIMITATIONS OR DISCLAIMERS SET FORTH IN THE AGREEMENT, CUSTOMER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT THE ADDITIONAL SERVICES ARE PROVIDED TO CUSTOMER BY CYBERSOURCE "AS IS" AND THAT CYBERSOURCE DOES NOT REPRESENT OR WARRANT THAT THE ADDITIONAL SERVICES OR ANY OTHER TECHNOLOGY, CONTENT, INTELLECTUAL PROPERTY, OR ANY OTHER INFORMATION, DATA, PRODUCTS, OR SERVICES, WILL BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ERROR-FREE, AND THAT CUSTOMER'S SOLE REMEDY FOR ANY ISSUE RELATED TO OR ARISING FROM THE ADDITIONAL**

**SERVICES, AND CYBERSOURCE'S SOLE LIABILITY FOR SAME, WILL BE TO TERMINATE THIS AGREEMENT AND DISCONTINUE CUSTOMER'S USE OF THE ADDITIONAL SERVICES.**

**6. Risk, Security and Disclosure.** The risk and security suggestions provided to Customer in the Services Documentation for any of the Additional Services are solely for illustrative purposes to show best industry practices, and Customer shall be solely responsible for choosing the appropriate settings and parameters for Customer's account.

**7. Integration.** If Customer elects to use any of the Additional Services subsequent to the Effective Date and is presented with updated Additional Service(s) Terms and Conditions, the latter version of the Terms and Conditions will apply to Customer's use of the Additional Service(s).

**8. Termination.** Termination or expiration of the Agreement shall likewise terminate access to the Additional Services.

### **Visa Checkout**

**9. Terms and Conditions Specific to Visa Checkout.** If Customer enrolls in and/or uses Visa Checkout Services the following additional terms and conditions apply:

#### **a. Visa Checkout Definitions**

(i) "Branding Requirements" means the Visa Checkout Branding Requirements and brand guidelines as included in the Services Documentation

(ii) "Customer Site" means any websites owned or operated by the Customer, or at the direction of the Customer or under license from the Customer, for which Visa Checkout Services will be provided under this Agreement.

(iii) "Visa Checkout End User" means any subscriber, purchaser, or person or entity that uses the Visa Checkout Services to pay for, use, view, consume, or otherwise obtain Customer services.

(iv) "Visa Checkout End User Data" means information of a Visa Checkout End User (including, without limitation, full or partial card account numbers, email addresses, physical addresses or phone numbers), provided through the Visa Checkout Services to Customer pursuant to a Visa Checkout Transaction. Visa Checkout End User Data does not include data collected by Customer directly from a Visa Checkout End User and not through the Visa Checkout Services.

(v) "Visa Checkout Services" means the services provided under this Agreement as more fully described in the Visa Checkout Services Documentation.

(vi) "Visa Checkout Services Documentation" means, collectively, the operational, technical, integration documentation, user manuals, Brand Requirements and help files, including but not limited to checkout implementation overviews, integration guidelines, and sandbox guidelines, in written or electronic form, and as modified from time to time, that are intended for use in connection with the Visa Checkout Services.

(vii) "Visa Checkout Transaction" means the purchase by an End User of a Merchant product or service via the Visa Checkout Services.

#### **b. Visa Checkout License.**

(i) **License to Visa Checkout Trademarks.** Subject to the terms and conditions of this Agreement and the Visa Checkout Services Documentation, CyberSource grants to Customer a limited, non-exclusive, non-sublicensable, non-transferable, royalty-free, revocable, license to use, display, and reproduce the Visa Checkout Trademarks referred to in the Visa Checkout Services Documentation strictly for purposes of promoting the authority of Customer to provide Visa Checkout End Users with the ability to use the Visa Checkout Services to pay for Customer products or services.

(ii) **License to Customer Trademarks.** Subject to the terms and conditions of this Agreement, Customer grants to CyberSource and its Affiliates a limited, non-exclusive, non-sublicensable, non-transferable, royalty-free, revocable, worldwide license to use, display, store, modify (solely for purposes of customization) and reproduce the Customer trademarks strictly as necessary to provide the Visa Checkout Services and to identify Customer as a user of the Visa Checkout Services.

(iii) **Use of Trademarks; Brands.** Each party shall strictly comply with all Trademark standards and brand guidelines with respect to the use of the other party's Trademarks. Further, neither party shall create a combination mark consisting of one or more trademarks of the other party. All uses of the other party's trademarks shall inure to the benefit of the party owning such trademark. Each party further agrees to cooperate with each respective trademark owner in maintaining control of the nature and quality of the services rendered and the publicity materials put forward bearing the respective trademarks. The trademark owner will have the sole right to engage in legal proceedings of any kind involving their respective trademarks.

**c. Visa Checkout Intellectual Property.** Customer acknowledges and agrees that except for the rights and licenses expressly granted to Customer in this Agreement, as between Customer and CyberSource, CyberSource and its Affiliates shall retain all right, title and interest in and to the Visa Checkout

Services, APIs, Visa Checkout Services Documentation, Visa Checkout Trademarks and any derivatives of the foregoing (“Visa Checkout IP”); and, nothing contained in this Addendum shall be construed as conferring upon Customer by implication, operation of law, estoppel, or otherwise, any other license or right. Customer SHALL NOT: (a) use, reproduce, distribute, or permit others to use, reproduce, or distribute any Visa Checkout IP for any purpose other than as specified in this Addendum; (b) make Visa Checkout IP available to unauthorized third parties; (c) rent, electronically distribute, timeshare, or market Visa Checkout IP by interactive cable, remote processing services, service bureau or otherwise; or, (d) directly or indirectly modify, reverse engineer, decompile, disassemble, or derive source code from any Visa Checkout IP.

d. **Customer Obligations.** In addition to Customer’s obligations set forth in this Agreement, Customer agrees to the following:

(i) Customer may not use, disclose, sell or disseminate any Visa Checkout End User Data, except to the extent necessary to complete a Transaction or provide customer support, resolve disputes, or prevent fraud related to a Transaction. Customer may not use Visa End User Data for marketing purposes unless Customer has received the End User’s consent for this use, and the use is consistent with Laws, including without limitation the Gramm-Leach Bliley Act, and any such use is in compliance with Customer’s privacy policy, and the Payment Network Rules. Customer’s privacy policy shall be readily accessible to End Users and shall disclose how personal information is collected, used, shared and secured, including any uses governed by this Agreement, and Customer agrees to comply with the terms of such privacy policy.

(ii) Customer agrees to take all reasonable precautions to prevent the unauthorized use, disclosure or transmission of Visa Checkout End User Data. In the event that Customer’s system is breached and an unauthorized third party has access to, use of or transmitted Visa Checkout End User Data or any data related to the provision of the Visa Checkout Services or any Visa Checkout Transaction, or Customer has reason to believe that such breach has occurred, Customer shall immediately notify CyberSource of such breach and shall take such precautions as may be necessary to prevent such breaches from occurring in the future.

(iii) Except for the express obligations of CyberSource set forth in this Addendum, Customer is solely responsible for all activities required by or otherwise related to the development, production, delivery, and promotion of Customer’s products and services and for all fees, costs, taxes or other expenses related to such activities, including the taking and fulfillment of orders for/from Visa Checkout End Users. Customer is solely responsible for all service issues relating to Customer’s products and services, including pricing, order fulfillment, order cancellation, returns, refunds and adjustments, chargebacks, rebates, functionality and warranty, and technical and Visa Checkout End User consumer support. Customer acknowledges and agrees that it will not act as a payment intermediary, aggregator, or service bureau or otherwise resell the Visa Checkout Services to any third parties.

e. **Visa Checkout General Terms**

(i) **Confidential Information.** For the avoidance of doubt, Visa Checkout End User Data shall not constitute End-User data under the Agreement, and Visa Checkout End User Data shall not constitute Customer’s Confidential Information. CyberSource shall be entitled to include Customer in customer lists without prior written consent, and either party shall be entitled to disclose the existence of the relationship formed hereunder between CyberSource and Customer without the prior written consent of the other party.

(ii) **Marketing, Promotion and Education.** Throughout the Term: (i) Customer will display the Visa Checkout marks in accordance with the Branding Requirements and with equal prominence to Trademarks of any other payment methods offered on a Customer Site and with equal treatment in terms of website flow, terms, conditions, restrictions or fees; (ii) Customer will make available on each of its Customer Sites information pertaining to the Visa Checkout Services, including, registration guidelines and frequently asked questions, as may be provided from time to time; (iii) as mutually agreed upon by the parties, Customer will participate in communications activities as appropriate, including joint press releases, press tours, media and industry analyst interviews, appearance in promotional videos, social media integrations, and panel discussions; and (iv) Customer agrees that when an End User selects payment through the Visa Checkout Services, Customer shall not attempt to inhibit this decision, dissuade the End User from using the Visa Checkout Services, or encourage the End User to use an alternative digital wallet in lieu of the Visa Checkout Services.