authorize.net
A Visa Solution

ECHECK® SERVICE APPLICATION FAX COVER AND CHECKLIST		
To: eCheck Underwriting Department	**From:**	
Company: Authorize.net, LLC	**Date:**	
Fax Number: (650) 286-6612	**Total No. of Pages (including cover):**	

Instructions for Submitting an eCheck® Service Application

PLEASE FOLLOW THESE INSTRUCTIONS CAREFULLY TO AVOID DELAYS IN PROCESSING.
Incomplete applications cannot be processed.

Step 1: Find the business type below that best describes your business and processing needs and provide all the required information:

Business Type 1

Applicants who will personally guarantee their account and will process <u>less than $50,000.00 a month</u> and <u>less than $2,000.00 per single item transaction</u>.

❑ Complete sections #1, #2, #3, #5 and #6 of the attached eCheck Service Application.

❑ Provide name, signature and additional information of Personal Guarantor (see section 5 of application).

Business Type 2

Applicants who will personally guarantee their account and will process <u>more than $50,000.00 a month</u> OR <u>more than $2,000.00 per single item transaction</u>,

-OR-

Corporations and other business types in operation for <u>less than</u> TWENTY-FOUR (24) MONTHS.

❑ Complete ALL sections of the attached eCheck Service Application.
❑ Provide Articles of Incorporation/Organization, if applicable (for non-profits, provide IRS proof of non-profit status).
❑ Provide name, signature and additional information of Personal Guarantor(s) (see section 5 of application).

AND provide <u>one</u> of the following:
❑ A valid corporate stock ticker (see section 1 of the eCheck Service Application).
❑ All available financial statements, including profit/loss AND balance sheet (must be signed by an officer), OR all available signed corporate tax returns.

Business Type 3

Corporations who have been in business for TWENTY-FOUR (24) MONTHS OR LONGER:

❑ Complete sections #1, #2, #3, #4, and #6 of the attached eCheck Service Application.
❑ Provide Articles of Incorporation/Organization (for non-profits, provide IRS proof of non-profit status).

Additionally, provide <u>one</u> of the following:
❑ A valid corporate stock ticker (see section 1 of the eCheck Service Application).
❑ Two most recent, <u>complete</u> years (calendar or fiscal) of your historical financial statements. This includes year-end profit/loss and year-end balance sheets, <u>AND</u> current, year-to-date profit/loss and balance sheet. All financials must be signed by a corporate officer.
❑ Signed corporate tax returns representing the two most recent full years AND current, year-to-date profit/loss and balance sheet. All financials must be signed by a corporate officer.

eCheck® Service Application

This eCheck Service Application is provided by AUTHORIZE.NET LLC, a limited liability company whose principal place of business is 2901 N. Ashton Boulevard Suite 500, Lehi, UT 84043. Authorize.net is a wholly owned subsidiary of Cybersource Corporation.

SECTION 1: Applicant Information

Company Name: _____

Doing Business As: _____ Years in Business: _____

Authorize.net Payment Gateway ID: _____ (REQUIRED)

Business Type (e.g., Sole Proprietor, Partnership, Corporation, LLC): _____ Federal Tax ID #(if Corporation): _____

Location Address: _____ City/State/ZIP Code: _____

Business Phone #: _____

Description of Products: _____

Website URL: _____

Note: If URL is not available please provide a detailed product and pricing list or product brochure.

Contact Name: _____ Contact Title: _____

Contact Email: _____ Contact Phone: _____

Does Applicant have or had any previous accounts with Authorize.net?
Yes ❑ *No* ❑ **If Yes, list all Authorize.net Payment Gateway ID(s):** _____

SECTION 2: Answer the Following Questions About Electronic Check Processing

1. Provide up to a **10-Character Descriptor** for your business name. ____ ____ ____ ____ ____ ____ ____ ____ ____ ___
   This will appear on your customers' bank statements to assist them in identifying transactions.

2. **Please indicate how you, the Merchant, will receive authorization for ACH transactions (check only those that apply).**
   If you accept payments from Consumers, select from the following options:
   - ❑ **WEB:** Consumer gives Merchant authorization to debit their bank account via the Internet.
   - ❑ **PPD:** Consumer gives Merchant advanced authorization to debit or credit their bank account in writing.
   - ❑ **TEL:** Consumer calls Merchant to place an order, or Merchant calls an existing customer, and customer provides payment authorization for a single debit to their bank account.

   If you accept payments from corporations, select the following option:
   - ❑ **CCD:** Corporate entity has an agreement with the Merchant which authorizes the Merchant to debit or credit the corporate business account.

   If you convert paper checks into ACH payments, select from the following options:
   - ❑ **ARC:** Customers send checks to the Merchant via U.S. mail or drop box, and the merchant converts the check to an electronic payment using a MICR reading device.
   - ❑ **BOC:** Customer hands a check to the Merchant in a retail environment, and the merchant later converts the check to an electronic payment using a MICR reading device.

   ** *PLEASE NOTE As defined in the Automated Clearing House (ACH) rules, each transaction type must comply with specific ACH Rules. Prior to submitting transactions, please become familiar with the rules and authorization requirements for the transaction types you will be processing. For details on ACH compliance, read the* eCheck Services Documentation *found at* http://www.Authorize.net/files/echecknetuserguide.pdf.*

3. **Has Applicant ever been terminated or cited for violating an Automated Clearing House (ACH) rule?**
   Yes ❑ *No* ❑ **If Yes, please attach a detailed explanatory letter.**

(ECHECK® SERVICE APPLICATION CONTINUED ON NEXT PAGE)

SECTION 3: Enter Requested Transaction Processing Limits

1. The **average amount** you expect to process per eCheck transaction: _____

2. The **maximum per item amount** you expect to process per eCheck transaction: _____

   Note: If your maximum per-item needs are greater than $2,000.00, financial documents are required (see coversheet-business type 2 and type 3 for details).

3. The **maximum monthly amount** you expect to process using eCheck: _____

   Note: If your maximum monthly processing needs exceed $50,000.00, financial documents are required (see coversheet-business type 2 and type 3 for details).

If your eCheck processing needs change you may request a limit increase by sending an email to risk@cybersource.com

SECTION 4: Signatory and Beneficial Owners – Signatory must have significant responsibility to control, manage, or direct the company/

- *All 25% or greater equity owners in the company (Beneficial Owners) must be listed below per US Treasury Customer Due Diligence Requirements*

Signatory Name: _____ **Title:** _____

Social Security #: _____ **Date of Birth:** _____

Street Address: _____

City/State/ZIP Code: _____ **Years at This Address:** _____

Home Phone #: _____ **Email Address:** _____

Beneficial Owner #1 (*if applicable*)**:** _____ **Ownership Percentage:** _____

Social Security #: _____ **Date of Birth:** _____

Street Address/City/State/ZIP Code _____

_____

Beneficial Owner #2 (*if applicable*)**:** _____ **Ownership Percentage:** _____

Social Security #: _____ **Date of Birth:** _____

Street Address/ City/State/ZIP Code _____

_____

Beneficial Owner #3 (*if applicable*)**:** _____ **Ownership Percentage:** _____

Social Security #: _____ **Date of Birth:** _____

Street Address/ City/State/ZIP Code _____

_____

Beneficial Owner #4 (*if applicable*)**:** _____ **Ownership Percentage:** _____

Social Security #: _____ **Date of Birth:** _____

Street Address/ City/State/ZIP Code _____

_____

SECTION 5: Personal Guarantor – *THIS SECTION IS REQUIRED ONLY for Corporations or businesses in operation for less than twenty-four (24) months; and Sole Proprietors.* *

Print Name: _____ **Title:** _____

Social Security #: _____ **Date of Birth:** _____

Street Address: _____

City/State/ZIP Code: _____ **Years at This Address:** _____

Home Phone #: _____ **Email Address:** _____

For Sole Proprietors, the Personal Guarantor is the same person as the Sole Proprietor. This section must also be completed.

SECTION 6: Application Signature*

Application and Acceptance. Authorize.net shall notify Merchant if it approves its Application. Authorize.net reserves the right to accept or reject any Application for any reason in its sole discretion. Upon Authorize.net's approval of Merchant's eCheck Application and prior to Merchant's use of the eCheck Service, Merchant must accept and agree to the terms and conditions of the eCheck Service Agreement located online in the Merchant Interface. (A copy of the eCheck Service Agreement is attached to the eCheck Application for Merchant's reference.)

Additional Restrictions. Authorize.net reserves the right to accept Merchant's eCheck Application subject to additional restrictions, including, but not limited to: (a) eCheck per-transaction and monthly ACH processing restrictions, and (b) the amount, if any, required to be deposited in a reserve account prior to activation of Merchant's eCheck ACH processing account (collectively, the "**Account Restrictions**").

Merchant: _____
Print Company Name

Name: _____   **Title:** _____
Print name of Signer

By:

_____
Signature of Principal, Corporate Officer, Sole Proprietor or Personal Guarantor   **Date:** _____

*If you are a Sole Proprietor or Partnership, or are providing a Personal Guarantor in place of corporate financial statements, your signature also authorizes Authorize.net to obtain your current personal credit history.

FAILURE TO PROVIDE ALL OF THE REQUIRED INFORMATION
WILL DELAY THE PROCESSING OF YOUR APPLICATION

eCheck® Service Agreement

In order to use the eCheck Service, you must agree to and accept the terms and conditions of this Agreement. The Agreement sets out the terms and conditions under which you may utilize the eCheck Services. Please read this Agreement carefully.

By clicking on the "I AGREE" button, or by acknowledging your acceptance of the Agreement terms and conditions by any other method allowed by Authorize.net, or by using the eCheck Services, Merchant acknowledges and agrees that it has reviewed and understands the Agreement and agrees to be legally bound by all its terms and conditions. If Merchant does not agree or is not willing to be bound by the terms and conditions of this Agreement, please do not click on the "I AGREE" button and do not seek to obtain or continue using the eCheck Service.

1. Definitions.

1.1 "Agreement" means the eCheck Service Application, the eCheck Service Agreement, Fee Schedule, exhibits attached hereto, and all incorporated policies and procedures.

1.2 "Application" or "eCheck Application" means the online Merchant service application.

1.3 "ACH" means the Automated Clearing House financial network for processing electronic funds transfers.

1.4 "Authorize.net API" means the application programming interface, in object code form, made available to Merchant by Authorize.net or created by Merchant from Authorize.net materials (including, but not limited to, software development kits ("SDKs") provided by Authorize.net, and licensed to Merchant under this Agreement, that formats, encrypts, and decrypts messages transferred between Merchant's systems and Authorize.net's systems during the course of Merchant using the eCheck Service and which may include configurations for use with certain commercial operating platforms.

1.5 "Bank" means a participating originating depository financial institution that processes and submits eCheck Transactions to the ACH and the Federal Reserve System. Participating Banks are listed in Exhibit A, which may be modified from time to time.

1.6 "Bank Terms" means the specific additional terms and conditions required by a participating Bank processing Merchant's eCheck Transactions which are attached as Exhibit A.

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

1.8 "**Confidential Information**" means any information, oral or written, treated as confidential that relates to Authorize.net or its Affiliate'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, revenue, transaction volume, forecasts, projections, and the financial terms of this Agreement.

1.9 "eCheck Service" means Authorize.net's branded, proprietary electronic check processing service, as further described by this Agreement and the Services Documentation, which is incorporated herein by reference and which may be updated from time to time. The eCheck Service is independent of and contingent upon Merchant enrolling in an Authorize.net payment gateway account.

1.10 "eCheck Transaction" means any electronic check charge or refund or batch settlement completed or submitted by Merchant to Authorize.net using the eCheck Service.

1.11 "Fee Schedule" indicates the list of fees and charges to be paid by Merchant to Authorize.net The Fee Schedule is located in the Merchant Interface.

1.12 "Feedback" means any and all ideas, requests, feedback, software, technology, information, reports, suggestions, comments, or recommendations, whether in writing, orally, by demonstration, or otherwise, made by Merchant or its affiliates to Authorize.net.

1.13 "Marks" means those trademarks listed below and such other trademarks as Authorize.net may from time to time notify Merchant in writing to be "Authorize.net Marks" within the meaning of this Agreement.

1.14 "Merchant" means the person or business entity, including its parents, agents and employees, that has a contractual relationship with Authorize.net and sells goods or services to another party.

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

1.16 "Merchant Service Provider" means any third party through whom Authorize.net may provide the eCheck Service to Merchant, including, but not limited to, a reseller, independent service organization, application service provider, merchant aggregator, and acquiring bank.

1.17 "NACHA" means the National Automated Clearing House Association.

1.18 "NACHA Rules" means rules and operating guidelines promulgated by NACHA.

1.19 "Operating Procedures" means the methods, processes and procedures that govern eCheck Transactions (including Chargebacks). A current version of the Operating Procedures is contained in the Services Documentation.

1.20 "Payment Networks" means for the purposes of this Agreement Visa U.S.A., Inc., Visa International, Inc., MasterCard International, Inc., and any other credit or debit card issuing company.

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

1.22 "Reserve Account" means the money held as collateral by Authorize.net as security against amounts owed by Merchant to Authorize.net as further described in Section 5.4.

1.23 Services Documentation" means collectively, the Operating Procedures, instructions, user manuals, help files, support and technical documents, and other documentation, including implementation overviews, integration guidelines, and sandbox guidelines, marketing materials in written or electronic form, as modified by Authorize.net from time to time, made available to Customer, including by download at <https://www.authorize.net/content/dam/anet-redesign/documents/echecknetuserguide.pdf>, and intended for use in connection with the eCheck Services and incorporated into this Agreement by reference.

2. Merchant's Capacity and Related Matters.

By submitting an eCheck Application, Merchant represents and warrants that (a) Merchant (or the person executing this Agreement on behalf of Merchant) is 18 years of age or older, (b) all information Merchant has provided to Authorize.net is true and correct in all respects, and (c) Merchant will update Authorize.net by calling Customer Support at 1-877-447-3938 with any changes to information Merchant has previously supplied. Merchant hereby authorizes Authorize.net to investigate and confirm the information submitted by Merchant herein. For this purpose, Authorize.net may utilize credit bureau / reporting agencies and /or its own agents. Upon Merchant's request, Authorize.net will provide Merchant with a copy of the results of such investigation. Authorize.net reserves its right to refuse to provide Merchant with the eCheck Service, with or without notice, for any or no reason, including, without limitation, if Merchant has supplied any information which is misleading, untrue, inaccurate or incomplete. Merchant expressly acknowledges and agrees that Authorize.net may share information about it and its account with Merchant Service Providers.

3. Undertakings of Authorize.net.

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

3.2 eCheck Service -- ACH Charge Requests and Funding. Subject to any and all applicable laws and regulations and applicable Bank Terms, Authorize.net shall provide the eCheck Service to Merchant in all material respects in accordance with the terms of this Agreement and all generally applicable guidelines or procedures, including, but not limited to, the Operating Procedures. Upon Authorize.net's receipt of a request from Merchant to process an eCheck Transaction to charge a Purchaser's account, Authorize.net will fund Merchant's virtual ACH processing account with Authorize.net for the amount of the ACH charge request. Subject to the terms of this Agreement (including, but not limited to, the chargeback rights described in Section 5.3), Authorize.net shall remit payment for the eCheck

eCheck® Service Agreement

Transaction to Merchant's depository account in accordance with the Services Documentation.

3.3 Relationship to Bank. Merchant acknowledges and agrees that Authorize.net acts as Merchant's processor and prepares and submits eCheck Transactions to a Bank selected by Authorize.net on behalf of Merchant in accordance with Merchant's payment instructions. Authorize.net is only a processor and not a bank or financial institution. Authorize.net shall be considered Merchant's agent with full power and authority to act on behalf of Merchant solely to process and submit eCheck Transactions to Bank(s) in accordance with the terms and during the Term of this Agreement.

3.4 Customer Service. If Merchant is current in payment of all fees owing to Authorize.net and is otherwise not in default under this Agreement, Authorize.net shall provide customer service to Merchant, as set forth in the "Support Services" section of the Authorize.net website at https://www.authorize.net/en-us/support.html.

4. Undertakings of Bank. ACH Services. Bank provides ACH services to Merchant, which will consist of sending and/or receiving ACH transactions based on information and instructions provided to Bank by Authorize.net. Bank will charge and/or refund transactions to an account designated by Authorize.net and held in the name of Authorize.net (the "Account"). All bank statements, notices and other communications in respect of the Account or the transactions hereunder shall be directed by Bank to Authorize.net.

5. Undertakings of Merchant.

5.1 ID and Password. In connection with the rights described in Section 3.1, Authorize.net will issue to Merchant or permit Merchant to continue using the ID and password given to Merchant by Authorize.net or a Merchant Service Provider, to enable Merchant and/or Merchant's employees and agents to access and use the eCheck Service. Merchant will restrict access to such ID, password, and account to Merchant's employees and agents as may be reasonably necessary consistent with the purposes of this Agreement and will ensure that each such employee and agent accessing and using the account is aware of and otherwise complies with all applicable provisions of this Agreement regarding such use and access. Merchant is solely responsible for maintaining adequate security and control of any and all IDs, passwords, or any other codes that are issued to Merchant by Authorize.net or a Merchant Service Provider for purposes of giving Merchant access to the eCheck Service. Merchant is responsible for the results of using the eCheck Service and related ACH services and for the accuracy and adequacy of the data Merchant provides to Bank via Authorize.net. Authorize.net shall be entitled to rely on information it receives from Merchant and may assume that all such information was transmitted by or on behalf of Merchant.

5.2 Risk Management. Merchant is solely responsible for all acts and omissions of its officers, directors, partners, employees, agents, representatives, contractors, and third party service providers (such as third party payroll administrators), including persons granted signature authority on Customer's accounts and personnel who are permitted to initiate and/or give Authorize.net instructions in respect of Customer's entries (collectively, "**Merchant Personnel**"). Authorize.net is entitled, without further inquiry or investigation, to assume that the actions of Merchant Personnel are appropriate and authorized by Merchant. This authorization will remain in effect unless Authorize.net receives written notice to the contrary from Merchant and has a reasonable opportunity to react thereto (including, but not limited to, providing any required notice to Bank).

5.3 Purchaser Reversals; Chargebacks.

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

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

5.4 Reserve Account.

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

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

5.5 Compliance with Laws and Operating Procedures.

5.5.1 Compliance. In connection with the exercise of Merchant's rights and obligations under this Agreement (including, without limitation, any related to individual privacy), Merchant warrants that it will comply, at Merchant's own expense, with all applicable laws, regulations, rules, ordinances and orders of governmental and governing authorities having jurisdiction, including, but not limited to, data protection laws, the Gramm Leach Bliley Act, the Services Documentation, Electronic Fund Transfer Act, Federal Reserve Regulation E, the Fair Credit Reporting Act, all NACHA Rules and similar state laws and regulations. Merchant shall comply with sanctions enforced by the U.S. Department of Treasury, Office of Foreign Assets Control (OFAC), including trade embargoes, anti-money laundering, and terrorism controls. Information regarding such sanctions may be found at <http:www.treas.gov/ofac> or the OFAC Compliance Hotline at (800) 540-OFAC.

5.5.2 Bona Fide Transactions. Merchant agrees that all eCheck Transactions that Authorize.net requests Bank to originate are the result of bona fide business transactions between Merchant and its customers and no such entries are, directly or indirectly, for the benefit of any third party whether in a service bureau or other context. Merchant will be considered the Originator of eCheck Transactions submitted by Authorize.net on behalf of Merchant.

5.5.3 Other Compliance. Merchant is prohibited from using the eCheck Service in any manner or in furtherance of any activity that constitutes a violation of any law or regulation or that may reasonably be expected to subject Authorize.net or its suppliers or vendors to investigation, prosecution or legal action.

5.5.4   Authorize.net Policies. Merchant shall comply with all then current policies, procedures, and guidelines of Authorize.net governing the eCheck Service, including, but not limited to, the Services Documentation. Authorize.net reserves the right to amend, modify or change such policies, procedures, and guidelines, at any time and without notice.

5.5.5   Bank Terms. Merchant agrees to and shall comply with all then current Bank Terms.

5.5.6   Error Resolution. Merchant further agrees to receive, resolve and respond to Customer-alleged errors at its expense under this Agreement and all applicable laws, regulations and the NACHA Rules.

5.6   Record Retention; Inspection Rights. Merchant shall preserve all records pertaining to an ACH transaction as may be required by law and in no event less than two (2) years from the date thereof. Merchant shall permit Authorize.net to examine, verify and copy such records at any reasonable time upon Authorize.net's request. Merchant shall provide Authorize.net with a copy of any requested ACH authorization or other transaction memorandum no later than twenty-four (24) hours from date of Authorize.net's request. Merchant also agrees to execute, file and record any statements, notices and certificates as Authorize.net may reasonably request to preserve and protect its interest.

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

6.   Data Collection, Privacy and Security.

6.1 Merchant is solely responsible for the security of data residing on the server of Merchant, or a third party designated by Merchant (e.g., a Web hosting company, processor, or other service provider), including checking account numbers. Merchant shall comply with all applicable laws and regulations governing the collection, retention and use by Merchant of all data associated with eCheck Transactions. Merchant agrees to provide notice to consumers disclosing how and why personal information is collected and used. Merchant is solely responsible for obtaining and maintaining any and all necessary rights, power and authority to provide data associated with eCheck Transactions to Authorize.net.

6.2 Merchant agrees that, except as may be reasonably necessary in the ordinary course of business to carry out the activities to be performed by it hereunder or required by law, Merchant will not disclose any consumer or customer information to any third party. Merchant shall use proper controls for and limit access to, and render unreadable prior to discarding, all customer records.

6.3 Merchant agrees to comply with all Authorize.net security protocols and security advisories in effect during the term of this Agreement. Merchant is solely responsible for verifying the accuracy and completeness of all transactions submitted and processed by Authorize.net associated with its account and for verifying that all corresponding funds are accurately processed. Merchant acknowledges that Authorize.net shall not be liable for any improperly processed or unauthorized eCheck Transactions or illegal or fraudulent access to its account or data. Authorize.net's liability for improperly processed or unauthorized Transactions solely attributable to the negligence of Authorize.net is limited pursuant to Section 14.

6.4 Merchant will comply with all then-current legal obligations and guidelines, including, without limitation, those issued by NACHA, the Payment Networks and the Federal Trade Commission, associated with the collection, security, dissemination and destruction of personal data. Merchant warrants that it has taken such precautions as are necessary to ensure that its server and electronic systems are secure from breach or intrusion by unauthorized third parties. In the event that Merchant's system is breached and an unauthorized third party has access to or has accessed any data, Merchant shall notify Authorize.net promptly of such breach and shall take such precautions as may be necessary to prevent such breaches from occurring in the future.

6.5 Merchant understands and agrees that Authorize.net reserves the right to audit Merchant's compliance with this Agreement and NACHA Rules at any time.

6.6 Authorize.net agrees to use commercially reasonable security measures for the transport of eCheck Transaction data using the Internet. Notwithstanding the foregoing, Authorize.net does not, and cannot, warrant that all eCheck Transaction data will be transported without unauthorized interception or modification. Merchant understands that Authorize.net will collect and hold personal or non-public information about Merchant and its customers, including, but not limited to: Merchant name, address, telephone number, email address, social security number and/or tax identification number, (and if a sole proprietorship or partnership, date of birth, salary, job title and credit history) for the purpose of considering eligibility for the eCheck Service as well as its customers' names, mailing and shipping addresses, email addresses, phone numbers, dollar amounts of purchases, types of purchases and descriptions of purchases for the purpose of providing Merchant with the Authorize.net Services. Merchant also understands and agrees that Authorize.net may obtain various consumer reports regarding Merchant from third parties, run a credit check, report unpaid collection issues to credit bureaus, and/or obtain other personal or credit information about Merchant.

6.7 Merchant further understands and agrees that Authorize.net, its 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 Authorize.net Services, and that Authorize.net may further transfer data: (i) to third parties assisting Authorize.net in evaluating Merchants' eligibility for, provision of, administration and management of the Authorize.net Services, as well as under circumstances described in Authorize.net's privacy policy, as may be modified from time to time; (ii) with non-affiliated entities that assist Authorize.net in providing financial products and services that Merchant has requested; (iii) with companies that provide support services to Authorize.net or with which Authorize.net has agreements to provide marketing services on its behalf; or (iv) as otherwise permitted by law. 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 Data or Transaction data will not be accessed or compromised by unauthorized third parties.

7.   Fees. Merchant shall pay Authorize.net the service fees set forth in the Fee Schedule located in the Merchant Interface, which is incorporated herein by reference. Authorize.net reserves the right to impose additional fees upon Merchant if its ACH transaction processing in connection with the eCheck Service: (a) exceeds Merchant's Account Restrictions, such as normal ACH processing volume and/or per-transaction parameters, as determined by Authorize.net; or (b) for any other substantial increase in risk assumed by Authorize.net. Such additional and/or increases in fees may be established at any time, upon written notice to Merchant and will become effective retroactive to the date Merchant's use of the eCheck Service falls under one of the above categories. Further, Authorize.net reserves the right to change any eCheck Fee upon at least thirty (30) days notice. Merchant shall not be required to pay any fees to Bank for the eCheck Service.

8.   Payment Terms.

8.1   Billing Terms. Merchant shall remit any and all amounts which are payable to Authorize.net under this Agreement on a daily basis, except for the eCheck Minimum Monthly Fee. The eCheck Minimum Monthly Fee is due and payable on a monthly basis. The first such monthly payment will be due on the first day of the month immediately following the Effective Date, and all subsequent monthly payments shall be due on the first day of the month thereafter. Merchant hereby authorizes Authorize.net to initiate transaction entries to Merchant's depositories account or, if Authorize.net is unable to collect owing amounts from Merchant's depositories account, to charge Merchant's credit card for any and all amounts owing to Authorize.net under this Agreement. The authorizations provided here and in sections 3.2 and 5.3.1 to initiate transactions to Merchant's depositories account are to remain in full force and effect until Authorize.net has received written notification from Merchant of its request for termination in such time as to afford Authorize.net and Merchant's depository institution a commercially reasonable opportunity to acknowledge and respond to the request. If Merchant's depositories account number or credit card number changes, Merchant shall promptly provide Authorize.net with written notice of the change and the new number(s). If Merchant fails to provide Authorize.net with accurate current depositories account or credit card numbers, Authorize.net may suspend the eCheck Service for Merchant until such information is provided to Authorize.net. Merchant acknowledges that any change in account information may not be effective until the billing month following the second month in which Authorize.net receives such notice. Any amounts due to Authorize.net under this Agreement and not paid when due will be subject to a finance charge equal to one and one-half percent (1.5%) or the highest rate allowable by law, whichever is less, determined and compounded daily from the date due until the date paid. Payment of such

finance charges will not excuse or cure any breach or default for late payment. Authorize.net may accept any check or payment from Merchant without prejudice to its rights to recover the balance due or to pursue any other right or remedy. No endorsement or statement on any check or payment or any correspondence accompanying any check or payment or elsewhere will be construed as an accord or satisfaction. Merchant agrees to pay all costs and expenses of whatever nature, including attorneys' fees, incurred by or on behalf of Authorize.net in connection with the collection of any unpaid charges and fees.

8.2 Non-Sufficient Fund Fee, Late Payment Fee, and Service Reactivation Fee. Merchant shall pay to Authorize.net a Non-Sufficient Fund Fee, in the amount set forth in the eCheck Fee Schedule, each time Authorize.net attempts to charge Merchant's depositories account for any amounts owing under this Agreement and receives a non-sufficient fund message from Merchant's bank. If Merchant does not pay owing amounts on or before the first business day following the tenth (10th) day of the month, Merchant will be subject to a Late Payment Fee, in the amount set forth in the eCheck Fee Schedule. In the event Authorize.net has suspended the eCheck Service to Merchant for failure to pay pursuant to Section 10.2, Authorize.net agrees to restore Merchant's access to the eCheck Service if Merchant subsequently pays in full all owing fees and charges, including a Service Reactivation Fee in the amount set forth in the eCheck Fee Schedule**.**

8.3 Personal Guarantee. In consideration of Authorize.net's acceptance of the Merchant's eCheck Application and the terms of this Agreement, each Personal Guarantor indicated on the Application (jointly and severally if more than one) unconditionally guarantees the performance of all obligations of Merchant to Authorize.net under this Agreement and payment of all sums due hereunder. In the event of default, each Personal Guarantor hereby waives notice of default and agrees to indemnify Authorize.net for all funds due and owing from Merchant arising out of or related to this Agreement, including, but not limited to, attorney's fees and other legal expenses, and all costs and expenses incurred by or on behalf of Authorize.net in connection with the enforcement of this Section 8.3. Further, each Personal Guarantor: (a) waives any and all rights of subrogation, reimbursement or indemnity derived from Merchant and all other rights and defenses available to the Personal Guarantor, including any surety ship laws, and further waives any and all rights or defenses arising by reason of any modification or amendment to the terms of the Agreement whatsoever (including, without limitation, the renewal, extension, acceleration, or other change in the time any payment or other performance hereunder is due, and/or any change in any interest or discount rate or fee hereunder); (b) confirms that he or she is a party to this Agreement; and (c) unconditionally and specifically authorizes Authorize.net (or its authorized agent) to (i) charge any overdue fees, costs, fines, penalties, expenses or obligations under this Agreement and/or any contractual relationship with Authorize.net from any personal checking account or other account owned or controlled by such Personal Guarantor (including credit card accounts), and (ii) report any default hereof on the Personal Guarantor's personal Credit Bureau Report.

9. Term. This Agreement shall commence on the date Merchant executes this Agreement, whether in writing or via online acceptance, (the "**Effective Date**") and remain in full force and effect until terminated by either party pursuant to Section 10.

10. Termination.

10.1 Termination At Will. Either party may terminate this Agreement at any time and for any reason by providing thirty (30) days prior written notice to the other party. Merchant acknowledges that Authorize.net may immediately terminate this Agreement: (i) if it has reasonable evidence of Merchant's fraudulent or illegal use of the Services; (ii) as required by legal or regulatory authority; (iii) as a result of Merchant's breach of any representations or warranties contained herein; (iv) if, in its sole opinion, any information contained in the Application is found or believed to be inaccurate or false; or (v) as a result of a Force Majeure Event.

10.2 Termination for Cause; Suspension of Service. In addition to any other termination rights granted by this Agreement, either party may terminate this Agreement on ten (10) days written notice for material breach by the other party of its obligations hereunder unless such breach is cured within such ten (10) day period. Authorize.net may immediately terminate this Agreement and/or suspend Merchant's ACH transaction processing capability via the eCheck Service, upon written notice, for (a) excessive Chargebacks, (b) returned items in Authorize.net's sole discretion, or (c) failure of Merchant to pay all owing amounts on or before the last business day of the month in which such amounts were due. If Authorize.net suspends

the eCheck Service, Authorize.net (i) shall have no obligation to resume the service until the causes of such suspension are remedied to Authorize.net's satisfaction and (ii) reserves the right to terminate this Agreement at any time.

10.3 Effect of Termination. Upon termination of the Term for any reason, all rights and obligations of the parties under this Agreement shall be extinguished, except that: (a) all accrued payment obligations hereunder shall survive such termination; and (b) the rights and obligations of the parties under Sections 1, 5.4, 5.6, 8.3, 10.3, 11.1, and 12 through 15 shall survive such termination. Upon termination of the effective term of this Agreement for any reason, Authorize.net may withhold payment to Merchant for such period of time necessary to establish a Reserve Account to cover any potential Chargebacks, refunds and/or uncollected discounts or fees.

11. Intellectual Property.

11.1 Subject to the terms of this Agreement, Authorize.net hereby grants to Merchant and Merchant hereby accepts from Authorize.net a personal, limited, non-exclusive, non-transferable license and right to use: (i) the eCheck Services to which Authorize.net provides access to Merchant under this Agreement solely for the purpose of selling products and services to end-users; and (ii) the Services Documentation solely for the purposes of (i) supporting the ability to use the interface between Merchant's servers and the Authorize.net API; and (ii) using the eCheck Services to which Authorize.net provides access to Merchant under this Agreement. To the extent any component or portion of the Services Documentation distributed to or made available for download by Merchant by Authorize.net under this Agreement is governed by an open source license, the terms of such open source license shall control with respect to such component or portion.

11.2 Merchant acknowledges and agrees that Cybersource and its affiliates are in the business of making the eCheck Services and other products and services widely available to others. Merchant may from time to time provide Feedback or related information to Cybersource for use in connection with, or otherwise regarding, Cybersource products, programs, systems or services, or other information provided by Merchant to Cybersource for the purpose of enabling or improving Cybersource products, programs, or services. Unless otherwise expressly agreed, all Feedback is and shall be given entirely voluntarily and neither Party nor their respective Affiliates shall have any obligation to do so. If Merchant does provide Feedback, Merchant grants Cybersource and its Affiliates a worldwide, perpetual, non-revocable, sublicensable, royalty-free right and license to Merchant's Intellectual Property in the Feedback in any format and in any manner without any obligation, payment, or restriction based on Merchant's Intellectual Property or otherwise and for any and all purposes necessary for Cybersource and its Affiliates to enjoy such license. To be clear, this license includes the rights to use and disclose the Feedback in any manner Cybersource or its Affiliates choose, and to display, perform, copy, have copied, make, have made, incorporate, have incorporated, use, sell, offer to sell, import, distribute, and otherwise dispose of Cybersource or its Affiliates' programs, products, or services embodying such Feedback in any manner, but without reference to Merchant being the source of such Feedback. Nothing in this Agreement limits Cybersource and its Affiliates' rights to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise.

12. Confidentiality. Merchant agrees to hold all Confidential information communicated by Authorize.net 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 Merchant's own benefit or the benefit of others, or for any purpose except in connection with the purposes of this Agreement. Merchant agrees to use its best efforts to protect all Confidential Information and in any event, to take precautions at least as great as those taken to protect Merchant's own information of a similar nature. Merchant agrees that this Agreement is Confidential Information. Upon Authorize.net's request, Merchant will return all materials, in any medium, that contain, embody, reflect or reference all or any part of any Confidential Information. Merchant acknowledges 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.

13. Representations and Warranties.

13.1 Mutual Warranties. Each party represents and warrants to the other that (a) it has all necessary right, power and ability to execute this Agreement and to perform its obligations therein; (b) no authorization or approval from any third party is required in connection with such party's

execution, delivery or performance of this Agreement, (c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, and (d) the party's obligations under this Agreement do not violate any law or breach any other agreement to which such party is bound.

13.2 DISCLAIMER. THE ECHECK.NET SERVICES ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS WITHOUT ANY REPRESENTATIONS OR WARRANTIES. AUTHORIZE.NET DOES NOT REPRESENT OR WARRANT THAT THE ECHECK.NET SERVICES WILL BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ENTIRELY ERROR-FREE. MERCHANT MAY NOT RELY UPON ANY REPRESENTATION OR WARRANTY REGARDING THE ECHECK.NET 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 12.2.1, 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 MERCHANT ABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR TITLE WITH RESPECT TO THE ECHECK.NET SERVICES, OR OTHER SERVICES OR GOODS PROVIDED UNDER THIS AGREEMENT. MERCHANT UNDERSTANDS AND AGREES THAT AUTHORIZE.NET SHALL BEAR NO RISK WITH RESPECT TO MERCHANT'S SALE OF PRODUCTS OR SERVICES, INCLUDING, WITHOUT LIMITATION, ANY RISK ASSOCIATED WITH CREDIT CARD FRAUD OR CHARGEBACKS.

13.3 BANK. MERCHANT UNDERSTANDS AND AGREES THAT ALL MERCHANT COMPLAINTS AND CLAIMS CONCERNING THE ECHECK.NET SERVICES PROVIDED HEREUNDER ARE TO BE MADE SOLELY AND EXCLUSIVELY THROUGH AUTHORIZE.NET, UNLESS SUCH COMPLAINT OR CLAIM IS DUE TO ACH TRANSFERS THAT ARE IMPROPERLY SUBMITTED, DELAYED, OR OTHERWISE NOT COMPLETED AS A RESULT OF ANY THIRD PARTY'S ACTS OR OMMISIONS.

13.4 Merchant. Merchant represents and warrants that:

13.4.1 At all times during the term of this Agreement, its use of the eCheck Services will conform to specifications set forth in the Services Documentation and that all representations and statements made by it in this Agreement, or in any other document relating hereto by Merchant or on its behalf, are true, accurate and complete in all material respects;

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

13.4.3 Merchant will comply with all laws, policies, guidelines, regulations, ordinances or rules applicable to Merchant, this Agreement, its business or the eCheck Transactions, including, without limitation: (i) the NACHA Rules; (ii) the Payment Networks rules and regulations; (iii) the Gramm Leach Bliley Act; (iv) the Payment Card Industry (PCI) Data Security Standard, and the MasterCard Site Data Protection Program (SDP); and (v) Merchant's right to process ACH transaction has not been terminated by any financial institution; and

13.4.4 Merchant has not violated any of the NACHA Rules and/or regulations except as specifically disclosed in writing to Authorize.net.

13.5 Third-Party Software. Merchant acknowledges that the eCheck Service is designed for use with certain third-party software, including, but not limited to, certain Internet browser software programs. Merchant will look solely to the developers and manufacturers of such programs with regard to warranty, maintenance or other support regarding the same. Authorize.net makes no warranty, express or implied, with regard to any such third-party software.

14. Indemnification.

14.1 Indemnification by Authorize.net.

14.1.1 General. Authorize.net shall defend and indemnify Merchant, Merchant's affiliates, and any of their officers, directors, agents and employees from and against any and all third-party claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and

other litigation expenses) incurred by Merchant, arising out of or relating to any alleged breach by Authorize.net of any representation, warranty or obligation of Authorize.net set forth in Section 13.

14.2 Indemnification by Merchant. Merchant shall defend, and indemnify 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 Merchant of any representation, warranty, or obligation set forth in this Agreement; (b) any damage or loss caused by negligence, fraud, dishonesty or willful misconduct by Merchant or any of its employees, agents or customers; (c) the reliability, accuracy, or legitimacy of payment data or purchase orders submitted by Merchant to Authorize.net; (d) payment card transactions submitted by Merchant to Authorize.net and rejected by Authorize.net or an issuing bank; (e) any alleged infringement of a patent, copyright, trademark or other intellectual property right resulting from a Merchant's actions; (f) any alleged or actual violation of any applicable laws, regulations or rules of (i) NACHA; (ii) Payment Networks; (iii) the Gramm Leach Bliley Act; (iv) or any state or federal regulatory body or agency having jurisdiction over the subject matter hereof; (g) any violation of the Services Documentation, or (h) any alleged infringement of a patent, copyright, trademark or other intellectual property right resulting from a Merchant's actions. In the event Merchant causes fines and/or penalties to be charged to Authorize.net by a regulatory body, Merchant agrees to immediately reimburse Authorize.net for said fines or penalties.

14.3 Indemnification Procedure. The obligations of each party ("**Indemnitor**") under this Section 14 to defend, indemnify and hold harmless the other party ("**Indemnitee**") shall be subject to the following: (a) Indemnitee shall provide Indemnitor with prompt notice of the claim giving rise to such obligation; provided, however, that any failure or delay in giving such notice shall only relieve Indemnitor of its obligations under Sections 14.1 and 14.2 to the extent it reasonably demonstrates that its defense or settlement of the claim or suit was adversely affected thereby; (b) Indemnitor shall have control of the defense and of all negotiations for settlement of such claim or suit; and (c) Indemnitee shall cooperate with Indemnitor in the defense or settlement of any such claim or suit, provided that Indemnitee shall be reimbursed for all reasonable out-of-pocket expenses incurred in providing any cooperation requested by Indemnitor. Subject to clause (b) herein, Indemnitee may participate in the defense of any such claim or suit at its own expense. Indemnitor shall not, without the consent of the Indemnitee, enter into any settlement that reasonably can be expected to require a material affirmative obligation of, result in any ongoing material liability to or materially prejudice Indemnitee in any way.

14.4 Exceptions. If Merchant is an agency or instrumentality of a state of the United States and is precluded by the law of Merchant's state from entering into indemnification obligations, then the obligations under Sections 14.2 and 14.3 shall apply only to the extent permitted by such state law.

15. LIMITATIONS OF LIABILITY AND DISCLAIMERS.

15.1 LIMITATIONS. 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 MERCHANT, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHERWISE, UNDER THIS AGREEMENT OR WITH REGARD TO ANY AUTHORIZE.NET PRODUCTS OR SERVICES, EXCEED THE AGGREGATE COMPENSATION AUTHORIZE.NET RECEIVED FOR PROVIDING THE ECHECK.NET SERVICES TO MERCHANT DURING THE THIRTY DAYS PRECEDING THE DATE ON WHICH THE CLAIM AROSE OR $1,000, WHICHEVER IS LESS.

15.2 DISCLAIMER. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, MERCHANT EXPRESSLY AGREES THAT AUTHORIZE.NET SHALL NOT BE LIABLE FOR ANY LOSS (HOWEVER ARISING, INCLUDING NEGLIGENCE), ARISING FROM OR RELATED TO: (I) MERCHANT'S FAILURE TO PROPERLY ACTIVATE, INTEGRATE OR SECURE ITS MERCHANT ACCOUNT; (II) FRAUDULENT TRANSACTIONS PROCESSED THROUGH ITS PAYMENT GATEWAY ACCOUNT; (III) DISRUPTION OF AUTHORIZE.NET SERVICES, SYSTEMS, SERVER OR WEBSITE 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 SERVICE PROVIDER, PAYMENT PROCESSOR OR BANK; OR (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, MERCHANT OR ANY THIRD PARTY AND/OR (B) THE ECHECK.NET SERVICES, OR ANY SYSTEM OR PROGRAM ASSOCIATED THEREWITH; OR (VI) THE LIMITATION OF THE FUNCTIONING OF ANY SOFTWARE, HARDWARE, EQUIPMENT OR SERVICE.

15.3 THIRD-PARTY SERVICES. AUTHORIZE.NET EXPRESSLY DISCLAIMS ANY LIABILITY FOR ANY AND ALL 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 AUTHORIZE.NET IS A RESELLER OF SUCH PRODUCT OR SERVICE.

16. General Provisions.

16.1 Mutual Marketing Activity. Merchant agrees to participate in creating a case story and/or testimonial quote about their experience with Authorize.net for the purposes of public advocacy and/or grant Authorize.net permission to display the Merchant's trademarks, logos, service marks or trade names and any other content provided to Authorize.net by Merchant (collectively, the "Merchant Content"), alone or in combination with other works, in marketing materials to be developed and distributed by Authorize.net. The marketing materials shall be owned by Authorize.net, excluding the Merchant Content, which shall be owned by the Merchant. Authorize.net may use Merchant Content in any disclosure required by legal, accounting or regulatory requirements and internal Merchant lists, without prior approval from Merchant. Merchant represents and warrants: (i) it has all necessary licenses, rights, consents, authorization, and permissions to grant the rights set forth in this paragraph; (ii) the Merchant Content does not violate or infringe upon the Intellectual Property rights or other rights of any third party; and (iii) all statements and information provided by or on behalf of Merchant in any Merchant Content or otherwise pursuant to its participation in any marketing activities are true and accurate and can be substantiated upon request from Authorize.net. Merchant shall indemnify and hold harmless Authorize.net and its Affiliates for any third-party claim brought against Authorize.net or its Affiliates and related losses (including reasonable legal fees) suffered or incurred by Authorize.net or its Affiliates, to the extent such claim arises from Merchant's breach of the foregoing warranties.

16.2 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.

16.3 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.

16.4 Authorize.net Affiliates. The rights, duties and/or obligations of Authorize.net under this Agreement may be exercised and/or performed by Authorize.net and/or any of Authorize.net'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 Authorize.net or any of Authorize.net's Affiliates, or any of their subcontractors and/or agents, shall be solely Authorize.net's and not those of any of Authorize.net's Affiliates, or any of their subcontractors and/or agents. Merchant agrees to bring any claim and or action relating to the foregoing against Authorize.net only and not against any of Authorize.net's Affiliates, or any of their subcontractors and/or agents.

16.5 Merchant Affiliates. To the extent Merchant authorizes an Affiliate to access and use eCheck Services under this Agreement, Merchant agrees that (i) it enters into this Agreement, including the Data Processing Agreement, on behalf of itself and on behalf of its Authorized Affiliates; (ii) each Authorized Affiliate shall comply with and be bound by the terms of this Agreement; (iii) it is responsible for coordinating all communication with Authorize.net on its Authorized Affiliates' behalf; (iv) if an Authorized Affiliate seeks to exercise a right or remedy against Authorize.net, Merchant shall exercise such right or remedy on behalf of its Authorized Affiliate; (v) Authorize.net's total liability for all claims from Merchant and all of its Authorized Affiliates shall apply in the aggregate and shall NOT apply individually and severally to Merchant and/or to any Authorized Affiliate.

16.6 Notices. All notices to Merchant shall be given electronically, sent to the electronic mail address provided by or for Merchant during registration for the eCheck Service and/or posted in the Announcement section of Merchant's gateway account, or in writing sent to the address or fax number provided by or for Merchant during registration for the eCheck Service. All notices to Authorize.net shall be in writing and sent to Authorize.net LLC, 2901 N. Ashton Boulevard, Suite 500, Lehi, Utah, 84043, Attention: Legal Department. To cancel the eCheck Service, Merchant must either contact its Merchant Service Provider or send an email to risk@cybersource.com with all information necessary to facilitate cancellation of its account, including, without limitation, name, account number, and phone number. 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.

16.7 Data Processing. Authorize.net transfers and stores personal data in the United States to perform its obligations and exercise its rights under the Agreement. Authorize.net's Data Processing Agreement describes how Authorize.net processes such data to provide the eCheck Services. The Data Processing Agreement is linked hereto and incorporated herein by reference. Merchant acknowledges and agrees that Authorize.net may modify the Data Processing Agreement to the extent required by Applicable Data Protection Laws by posting an updated version at https://www.Authorize.net.com/en-us/about/dpa.html. Merchant agrees that Authorize.net and its Affiliates may access and use Personal Information for improving/enhancing underlying products used by Merchant, detecting data security incidents, or improving and enhancing security and fraud prevention tools for use by Merchant and/or any other Merchants and clients of Authorize.net or its Affiliates.

16.8 Beta Products. Authorize.net may allow Merchant to access, use, and/or test a Authorize.net product or service that may still be in development or has not been market-tested ("Beta Product") solely for the purpose of evaluating the functionality or marketability of the Beta Product (a "Beta Evaluation"). Notwithstanding any language to the contrary, the following terms shall apply with respect to Merchant's participation in any Beta Evaluation (and the Beta Product(s)) accessed thereunder): The Parties will enter into a separate form agreement detailing the scope of the Beta Evaluation, requirements, pricing, the length of the beta evaluation period ("Beta Product Form"). Beta Products are not, and may not become, eCheck Services and have not yet been publicly released and are offered for the sole purpose of internal testing and non-commercial evaluation. Merchant's use of the Beta Product shall be solely for the purpose of conducting the Beta Evaluation. Merchant accepts all risks arising out of the access and use of the Beta Products. Authorize.net may, in its sole discretion, at any time, terminate or discontinue the Beta Evaluation. Merchant acknowledges and agrees that any Beta Product may still be in development and that Beta Product is provided "AS IS" and may not perform at the level of a commercially available service, may not operate as expected and may be modified prior to release. AUTHORIZE.NET SHALL NOT BE RESPONSIBLE OR LIABLE UNDER ANY CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE RELATING TO A BETA PRODUCT OR THE BETA EVALUATION (A) FOR LOSS OR INACCURACY OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, (B) ANY CLAIM, LOSSES, DAMAGES, OR CAUSE OF ACTION ARISING IN CONNECTION WITH THE BETA PRODUCT; OR (C) FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUES AND LOSS OF PROFITS.

16.9   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 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 Authorize.net.

16.10   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.

16.11   Governing Law; Consent to Jurisdiction. This Agreement will be deemed entered into in the State of California, USA and will be governed by and interpreted in accordance with the laws of the State of California, USA excluding (i) that body of law known as conflicts of law and (ii) the United Nations Convention on Contracts for the International Sale of Goods. The parties agree that any dispute arising under this Agreement will be resolved in the state or federal courts in San Mateo County, California, USA and the parties hereby expressly consent to jurisdiction therein.

16.12   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 16.11. The seat of the arbitration shall be San Francisco, California. The language of the arbitration shall be English.

16.13   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.

16.14   Assignment. Merchant may not assign any of Merchant's rights or delegate the performance of any of Merchant's obligations under this Agreement without the prior written consent of Authorize.net.

16.15   Force Majeure. Authorize.net will not be liable for any losses arising out of the delay or interruption of its performance of obligations under the Agreement due to any acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labor disputes, fires, transportation contingencies, interruptions or termination of financial or ACH services to Authorize.net by the Bank or any of Authorize.net's financial institutions, interruptions in telecommunications, utility, Internet, or network provider services, or other catastrophes or any other occurrences which are beyond Authorize.net's reasonable control (each a "**Force Majeure Event**"). If a Force Majeure Event arises, Authorize.net will provide Merchant notice of any such delay or interruption as soon as reasonably practicable and will use commercially reasonable efforts to minimize any delays or interruptions resulting from the Force Majeure Event. In no event will any failure to pay any monetary sum then due under this Agreement be excused for any Force Majeure Event.

16.16   Telephone Recording. Merchant acknowledges, agrees and consents on behalf of itself, and its Agents, that Authorize.net may monitor and record any customer service telephone conversations at any time, without additional further notice to the parties of such conversations. The decision to record any conversation shall be solely in Authorize.net's discretion, and Authorize.net shall have no liability for failing to do so.

16.17   Order of Precedence. The following order of precedence shall apply to the interpretation and application of this Agreement: (1) eCheck Service Agreement, (2) Bank Terms, (3) Services Documentation, and (4) other exhibits.

16.18   Entire Agreement. This Agreement, including the Exhibits and Services Documentation, sets forth the entire understanding and agreement of the parties, and supersedes any and all prior or contemporaneous oral or written agreements or understandings between the parties, as to the subject matter of this Agreement. Merchant acknowledges that this Agreement reflects an informed, voluntary allocation between Authorize.net and Merchant of all risks (both known and unknown) associated with the eCheck Service.

eCheck® Service Agreement

EXHIBIT A
BANKS AND BANK TERMS

PARTICIPATING BANKS. First National Bank of Omaha, One First National Center, Omaha, Nebraska 68102-1596. Applicable Bank Terms attached below

---

ATTACHMENT A-1
FIRST NATIONAL BANK OF OMAHA BANK TERMS
ACH Terms

eCheck Transactions are completed via automated clearinghouse (ACH) transactions processed by First National Bank of Omaha (FNBO), subject to these FNBO ACH Terms. By requesting any eCheck Service, Merchant is agreeing to these FNBO ACH Terms.

THIRD-PARTY SENDER CUSTOMER/ORIGINATOR ACKNOWLEDGMENT

Company confirms and agrees that it has authorized Authorized.Net, LLC ("TPS") to act as Company's agent in processing ACH Entries for Company, and that TPS will establish one or more clearing accounts with, and submit ACH Entries on behalf of the Company to an originating depository financial institution designated by TPS ("ODFI").

Company: (i) assumes the responsibilities of and makes the warranties of an Originator under the Operating Rules of the National Automated Clearing House Association (the "Rules") and agrees to reimburse ODFI for returns, reversals, adjustments, reclamations, and warranty claims and responsibilities related to Company's ACH Entries; (ii) agrees to comply with the Rules, including but not limited to the requirements of Article Two (Rights and Responsibilities of ODFIs and Their Originators and Third Party Senders), Rule 2.15 (Obligations of Third-Party Senders, and of ODFIs and Originators that Use Third Party Senders), and if international ACH Entries are initiated by Company, the Rules applicable to IAT ACH Entries, (iii) agrees to comply with all applicable state and federal laws, rules and regulations, including but not limited to sanction laws administered by the Office of Foreign Assets Control ("OFAC"), the Electronic Funds Transfer Act, the Unlawful Internet Gambling Enforcement Act and Federal Reserve Board Regulation E (the foregoing and the ACH Rules are, collectively, the "Applicable Rules"); and (iv) acknowledges that ACH Entries may not be initiated that violate the laws of the United States, including but not limited to the sanctions laws, regulations, and orders administered by OFAC, laws, regulations, rules, and orders administered by the Financial Crimes Enforcement Network ("FinCEN") (as such terms are defined below), and any state laws, regulations, or orders applicable to the providers of ACH payment services.

Company represents and warrants as to each ACH Entry that it has obtained the necessary authorizations under the Rules and Applicable Rules and that it shall not initiate any funds transfer after the authorization for the same has been revoked (or the agreement between Company and TPS has been terminated). With respect to each IAT Entry TPS sends to ODFI on behalf of Company, Company represents and warrants to ODFI that such IAT Entry is in compliance with United States law, including, but not limited to, rules promulgated and programs administered by OFAC and FinCEN, that no such IAT Entry violates United States law, including, but not limited to, rules promulgated and programs administered by OFAC and FinCEN, that neither TPS nor the Company are acting on behalf of or transmitting funds to any party subject to OFAC sanctions and that such IAT Entry complies with the laws and payment system rules of the receiving country. Company acknowledges that ODFI and other parties must comply with the Rules and United States law for IAT Entries. The performance by each of these parties, including ODFI, of obligations with respect to IAT Entries may cause delays in processing, settlement, and/or availability of IAT Entries. Company waives and releases ODFI from any liability or obligation, including, but not limited to, funds availability obligations, caused by or arising out of any such delay associated with IAT Entries.

Company understands that ODFI has the right to: (i) review, monitor, and audit Company's ACH transactions, processes, and procedures for compliance with this Agreement and the Rules; (ii) restrict or limit the amount or type of ACH Entries processed for Company; and (iii) suspend, discontinue, or terminate ACH processing based on its assessment of the risk posed to the ODFI and/or the breach or termination of its agreement with TPS. TPS, and not Bank, shall communicate with all Customers regarding disapproval or any other matter under this Agreement.

Company is responsible for the results of using a TPS, the services, and for the accuracy and adequacy of the data Company or TPS provides. Company authorizes ODFI to act on any instruction which has been or reasonably appears to have been sent by TPS or Company, including but not limited to funds transfer instructions. ODFI is not obliged to take any further steps to confirm or authenticate such instructions and will act on them without getting further confirmation. Company understands that if it or the TPS provides ODFI with incorrect information or if there is any error in the instruction it accepts full responsibility for losses resulting from any of the errors, duplication, ambiguities, or fraud in the information that was provided to ODFI. ODFI is not responsible to third parties (such as, but not limited to, third party service providers and the third parties to whom wire or ACH debit or credits are transmitted hereunder) and Company shall defend, indemnify, and hold ODFI harmless from, the actions or omissions of TPS, or any claim made against ODFI arising out of Company's use of the services, breach of this Agreement, or breach of any warranty under the Rules. **IN NO EVENT WILL ODFI BE LIABLE OR RESPONSIBLE FOR, AND TPS AND COMPANY BEAR ALL RISK ASSOCIATED WITH, FOREIGN EXCHANGE CONVERSION AND ANY GAINS AND LOSSES RESULTING FROM THE CONVERSION OF CURRENCIES IN CONNECTION WITH ANY ENTRY.**

This Attachment shall survive the termination of the agreement between TPS and ODFI. Notwithstanding anything to the contrary elsewhere in the Agreement between TPS and Company, ODFI shall be considered an intended third party beneficiary of this Acknowledgment and is entitled to enforce its terms. This Acknowledgment is agreed to in consideration of ODFI's agreement to serve as ODFI. Company waives notice of the ODFI's acceptance of this Acknowledgment.

Notice with Respect to Non-Consumer ACH Wholesale Credit Transactions and UCC Article 4A

Company Entries may be transmitted through the Automated Clearing House; (2) The rights and obligations of the Originator with respect to such payments shall be construed in accordance with and governed by the laws of the State of Nebraska, unless it has been otherwise agreed that the law of some other state shall govern; (3) Credit given by a Receiving Depository Financial Institution (RDFI) with respect to an Automated Clearing House (ACH) credit entry is provisional until the RDFI receives final settlement for such entry through a Federal Reserve Bank or as otherwise provided for under Article 4A; and (4) If a RDFI does not receive such final settlement or payment, you are hereby notified and agree that the RDFI is entitled to a refund from the Receiver the amount of the credit to the Receiver's account, and the party making payment via such entry (i.e. the originator of the entry) shall not be deemed to have paid the amount of such entry.