

# Authorize.Net Integrated Payment Services Merchant Application (IPS)

A SERVICE OF 

**Instructions:** Please fax the completed agreement to 801-492-6546. If have any questions regarding this application please call the Authorize.Net Sales Department at 866-437-0476

**SECTION 1: OWNER INFORMATION** Please provide us with information about the owner of this business. If there are multiple owners, provide this information for the owner with the largest share of ownership.

First Name:  Middle Initial:  Last Name:   
Date of Birth:  SSN:  Driver's License:  DL State:   
Residence Address Line One:   
Residence Address Line Two:   
City:  State:  Zip:  Country:   
Home Phone Number:  Email Address:

## SECTION 2: BUSINESS INFORMATION

Business Legal Name:   
Doing Business As (DBA):   
Business Address Line One:   
Business Address Line Two:   
City:  State:  Zip:  Country:   
Business Phone Number:  Business Fax Number:   
Business Email Address:  Website URL:   
TAX ID:  Establishment Date (MM/DD/YY):  Ownership Type:   
Description of Product Sold:  Industry Type:

## SECTION 3: BUSINESS PRACTICES

Average Monthly Sales: \$  Typical Transaction Amount: \$   
Typical Days in Delivery:

**SECTION 4: DDA INFORMATION** Please provide us with information about the bank account to which the proceeds from your sales will be deposited and from which fees (described in Appendix A) will be debited.

Bank Name:   
Routing Number:  Account Number:  Account Type:   
Business Name:   
First Name:  Middle Initial:  Last Name:   
Billing Address Same As:  Residence  Business  Neither (See Below)  
Address Line One:   
Address Line Two:   
City:  State:  Zip:  Country:

## AGREEMENT ACCEPTANCE & PERSONAL GUARANTY – Owner's Signature Required

Your signature indicates that you have read, understand, and agree to be bound by the entire Agreement that begins on Page 2.

I agree that Authorize.Net and/or its Suppliers may obtain various consumer reports regarding Applicant from third parties, run a check on Applicant and/or obtain other personal or credit information about Applicant. I agree that, upon approval of this application, Applicant above will be bound by the terms and conditions found beginning on page 2 of this Application, all Merchant Services Pricing, and Other Fees as stated in Appendix A of the Integrated Payment Services Seller Agreement. I represent and warrant that I have the full power and authority to bind my company to the Agreement. Regardless if the agreement is accepted or rejected, your personal information will be retained in a fraud detection database.

Owner's Signature:  Print Name:  Date:

SSApp

Sales Rep Name: Wade Olcott

Reseller ID: 6181

## INTERNET MERCHANT AGREEMENT

Welcome to the integrated payment services offered by Authorize.Net Corp. and its suppliers. In order for you, on behalf of your company ("Company") to obtain credit card processing and e-commerce services as described at <http://www.authorizenet.com/launch/> ("Services") and as provided by Wells Fargo Bank, N.A. and Wells Fargo Merchant Services, LLC (collectively, "Wells Fargo") and other suppliers of the Services, including without limitation Authorize.Net Corp. ("Authorize.Net"), ("Suppliers"), you must agree to and accept the terms and conditions of this agreement and the (together with your application, the Pricing Schedule and the terms and conditions stated on Web pages incorporated by reference herein, the "Agreement"). This Agreement also may be referred to in your Application as your Merchant Card Services Agreements. The terms "Us" or "We" or "Our" as used in this Agreement refers collectively to Wells Fargo and Authorize.Net. This Agreement sets out the terms and conditions under which you may utilize the Services. Please read this Agreement carefully. It is important that you understand that upon your acceptance of this Agreement, it becomes a legally binding contract.

If you are enrolling for Services online, You will be presented with an "I ACCEPT" button. By clicking the "I ACCEPT" button, You represent that You reviewed and understand the Agreement and agree to be legally bound by all its terms and conditions. If you have begun enrollment for Services by executing a paper application ("Application"), your signature on that application is deemed to be your consent to this Agreement. If You do not agree or are not willing to be bound by the terms and conditions of this Agreement, please do not click on the "I ACCEPT" button if you are enrolling online, and do not seek to obtain or use the Services.

NOW THEREFORE, You, on behalf of Your company (except with respect to Section 1 or other references to agreements made by You personally), (collectively, "You" or "Your") agree as follows:

### **1. Your Capacity and Related Matters**

**1.1 Capacity and Accuracy of Information.** By accepting the terms and conditions of this Agreement, You represent and warrant that You are an individual at least 18 years of age, that all information You have provided to Wells Fargo and Authorize.Net is true and correct in all respects, and that You will update Wells Fargo and Authorize.Net with any changes to information You have previously supplied. You further represent and warrant that You have the legal authority to accept the terms and conditions of this Agreement on behalf of Your company and that such acceptance will be binding on Your company. You acknowledge that acceptance into the merchant program is subject to final evaluation and approval by Wells Fargo and Authorize.Net. Wells Fargo and Authorize.Net reserve the right to terminate this Agreement. We reserve Our right to refuse to provide You with any Services, with or without notice, if You have supplied any information which is misleading, untrue, inaccurate or incomplete.

**1.2 Access to Credit Reports and Information.** You authorize Wells Fargo and Authorize.Net and/or their agent(s) to investigate the individual business history of Company and each representative signing the Agreement, including Yourself, including investigative

credit reports, in order to evaluate acceptability in to the Merchant Program and if accepted, to conduct further investigations from time to time thereafter and to report credit information to others.

**1.3 Personal Guaranty.** You in Your individual capacity (even though You use a title or other designation with Your signature) unconditionally guarantee and promise to pay to Wells Fargo all indebtedness of the Company at any time arising under or relating to the Agreement, including the related application and any related agreements or instruments, as well as any extensions, modifications, or renewals thereof. The obligations hereunder are joint and several and independent of the obligations of the Company, and a separate action or actions may be brought and prosecuted against You whether action is brought against Company or any other person, or whether the Company or any other person is joined in any such action or actions. You acknowledge that this guaranty is absolute and unconditional, there are no conditions precedent to the effectiveness of this guaranty, and this guaranty is in full force and effect and is binding on You in Your individual capacity as of the date you accept this Agreement or sign the Application, regardless of whether Wells Fargo obtains collateral or any guaranties

from others or takes any other action contemplated by You.

As guarantor, You waive (i) presentment, demand, protest, notice of protest, and notice of nonpayment; (ii) any defense arising by reason of any defense of the Company or other guarantor; and (iii) the right to require Wells Fargo to proceed against Company or any other guarantor, to pursue any remedy in connection with the guaranteed indebtedness, or to notify You as guarantor of any additional indebtedness incurred by the Company, or of any changes in the Company's financial condition. You also authorize Wells Fargo, without notice or consent, to (a) extend, modify, compromise, accelerate, renew, or otherwise change the terms of the guaranteed indebtedness; (b) proceed against one or more guarantors without proceeding against the Company or another guarantor; and (c) release or substitute any part to the indebtedness or this guaranty.

You represent and warrant to Wells Fargo that: (a) Wells Fargo has made no representation to You as to the creditworthiness of the Company; and (b) You have established adequate means of obtaining from the Company on a continuing basis financial and other information pertaining to Company's financial condition. You agree to keep adequately informed from such means of any facts, events or circumstances which might in any way affect Your risks hereunder, and You further agree that Wells Fargo shall have no obligation to disclose to You any information or material about the Company which is acquired by Wells Fargo in any manner.

You acknowledge and agree that until all obligations subject to this guaranty shall have been paid in full, You shall have no right of subrogation, and You waive any right to enforce any remedy which Wells Fargo now has or may hereafter have against the Company or any other person, and waives any benefit of, or any right to participate in, any security now or hereafter held by Wells Fargo.

You agree that this guaranty will be governed by California law; and shall benefit Wells Fargo and its successors and assigns.

## **2. General Description of the Services and Reserved Rights**

**2.1 Beginning to Use the Services.** Information provided by You during the application process will be automatically routed to Wells Fargo and/or Authorize.Net which will evaluate Your eligibility to receive the Services. If, on the basis of this evaluation, it is determined that You are eligible to receive the

Services, You will be notified of Your acceptance and provided with information on activating Your account. Upon Your acceptance for Services, the Agreement will be deemed to be fully executed and will become effective starting on the date of Your acceptance ("Effective Date") except with respect to Your representations and obligations under Section 1 on which We may rely immediately.

**YOU AGREE AND ACKNOWLEDGE THAT WELLS FARGO AND/OR AUTHORIZE.NET RESERVE THE RIGHT IN THEIR SOLE DISCRETION TO REJECT YOUR ENROLLMENT FOR THE SERVICES WITHOUT ANY FURTHER OBLIGATION TO YOU.**

**2.2 Internet Services.** Pursuant to this Agreement You appoint Wells Fargo and Authorize.Net, and Wells Fargo and Authorize.Net agree to perform, in accordance with this Agreement, as Your exclusive providers of card transaction services with respect to Card Not Present transactions (as defined by card association rules).

**2.3 Options for Card Acceptance.** Under this Agreement, You may elect to submit transactions under (1) credit cards, (2) consumer debit cards or prepaid cards, or (3) both, at the pricing set forth at the Pricing Schedule (see section 5.1).

**2.4. Changes or Discontinuation of Services.** You further understand and agree that Wells Fargo and/or the Suppliers may, in their sole discretion, change, add to, remove, modify and/or discontinue any and all Services with thirty (30) days notice to You, and Wells Fargo and/or the Suppliers will have no liability to You or any third parties in connection with any of the above.

## **3. Personal Data Collection and Use**

You hereby consent, as a condition of Your enrollment in the Services, to the collection, use, processing and transfer of personal data as described in this paragraph and the Privacy Statements at <http://www.wellsfargosecure.com/> (for personal data collected by Wells Fargo) and <http://www.authorizenet.com/company/privacy.php> (for personal data collected by Authorize.Net). You understand that Wells Fargo, Authorize.Net and/or the Suppliers may collect and hold personal or non-public information about You (meaning the Company and You, personally), including but not limited to Your name, address, telephone number, e-mail address, date of birth, social security number and/or tax identification number, salary, job title and credit history for the purpose of considering eligibility for Services and/or processing

transactions ("Data"). You also understand and agree that Wells Fargo, Authorize.Net and/or the Suppliers may obtain various consumer reports regarding You from third parties, run a credit check or obtain other personal or credit information about You or Your business. You further understand and agree that Wells Fargo, Authorize.Net, Suppliers and/or their agents/contractors may transfer Data among themselves as necessary for the purpose of the provision and management of Services (including maintaining and operating internal fraud detection databases and systems, generally), and that Wells Fargo, Authorize.Net and/or the Suppliers may each further transfer Data to third parties assisting Us in evaluating Your eligibility for, provision of, administration and management of Services, as well as under circumstances described in the Privacy Statement(s). You also understand that Wells Fargo, Authorize.Net and/or the Suppliers may disclose Data as necessary to comply with the requirements of the law or the lawful order of a court or other governmental body.

#### **4. Password and Implementation Materials.**

Promptly on or following the Effective Date, You will be allowed to access and utilize the Services and You will be provided with some information and materials to utilize the Services. Such information and materials and all intellectual property rights associated therewith will remain the property of Wells Fargo, Authorize.Net and/or the Suppliers. You agree to restrict use and access to Your password and log-on ID to Your employees and agents as may be reasonably necessary, and will ensure that each such employee or agent complies with all applicable provisions of this Agreement. You will not give, transfer, assign, sell, resell or otherwise dispose of the information and materials provided to You to utilize the Services. You are solely responsible for maintaining adequate security and control of any and all IDs, passwords, or any other codes that are issued to You by Wells Fargo, Authorize.Net or the Suppliers.

#### **5. Payment of the Services Fees.**

In consideration of Your access to and utilization of the Services, You agree to pay Services fees ("Services Fees") to Us in accordance with the procedure stated in this Section 5.

**5.1 Pricing Schedule.** You agree to the pricing set forth on the pricing schedule made available or presented to You during the registration process or otherwise ("Pricing Schedule"). You may call customer service with any questions regarding Your pricing.

**5.2 Changes to Services Fees; Additional Fees.** You acknowledge that We may revise the Pricing Schedule upon at least thirty (30) days advance notice to reflect pricing changes mandated by Visa, MasterCard or other card associations ("Associations"). Customers for whom pricing is based on a pass-through of Association transaction fees acknowledge that any change to such fees by the Associations shall be effective immediately. We may increase Your Chargeback fee without notice in the event Your chargeback percentage exceeds the estimated industry chargeback percentage or if You are identified by one of the Association's Chargeback compliance programs. You are responsible for any fines, penalties, fees or assessments imposed by the Associations based on your improper use of the Services or noncompliance with rules of the Associations ("Association Rules"). In the event Your Visa and MasterCard transaction(s) fail to qualify for the interchange level contemplated in the rates set forth in the Application, You will be billed for the difference between the established rate and the higher rate and may be billed an additional fee for said nonqualified transactions, plus all fees, penalties, charges and assessments, if any, of Wells Fargo, Authorize.Net, Visa, and MasterCard. The fees set forth in the Pricing Schedule may be adjusted to reflect increases or decreases by MasterCard and/or Visa in Interchange, assessment or other MasterCard and/or Visa fees, or to pass through increases charged by third parties for on-line communications and similar items, if applicable. Additionally, all such adjustments shall be Your responsibility to pay and shall become effective upon the date any such charge is implemented by MasterCard and/or Visa or other third party. Additionally, each foreign Visa/MasterCard transaction submitted will be subject to an international transaction handling fee.

**5.3 Discount Rates.** We may charge You a Visa/MasterCard discount rate. Discount fees will be based on the gross deposited bank card sales drafts based on an estimated monthly volume and average credit card sale amount, as indicated on the Application. You agree that We may adjust the discount rate to the rate applicable to Your true monthly Visa/MasterCard volume and true average credit card sale amount, to be effective on the first day of the next succeeding month following failure to meet the requirements.

**5.4 Designated Account for Deduction of Fees.** As part of the enrollment process, You will be required to designate a checking account, also known as a Demand Deposit Account ("DDA") into which Wells Fargo and/or the Suppliers will deposit the net settlement

amounts as described below. You agree that Wells Fargo or Authorize.Net may initiate ACH credits and debits to that DDA and to any successor account that You may designate to Wells Fargo or Authorize.Net in writing in connection with such transactions, and in addition, that Wells Fargo and Authorize.Net may collect from that DDA the charges and fees due Wells Fargo or Authorize.Net under the Agreement, including penalties and chargebacks. You further authorize Wells Fargo and Authorize.Net to obtain from the institution at which the DDA is held (this may be a Wells Fargo Bank or another institution) information related to the DDA, including collected balance reports, and to obtain any information deemed by Wells Fargo or Authorize.Net to be reasonably necessary to process debit and/or credit entries to the DDA. Wells Fargo and/or the Suppliers will deposit into the DDA funds received by Wells Fargo and/or the Suppliers on Your behalf from Your customers purchasing the goods and/or services from You on a net settlement basis.

**5.5 Insufficient Funds.** Wells Fargo and/or the Suppliers will initiate an electronic ACH debit of Your DDA for any outstanding Services Fees and charges against Your DDA following the attempted net settlement. In the event there are insufficient funds in Your DDA following the ACH debit attempt, Wells Fargo and/or the Suppliers will issue a written invoice to You. The invoice must be paid by You within fifteen (15) days following the date of such invoice as instructed in the invoice. A late payment fee of \$15 will be charged by Wells Fargo and/or the Suppliers, and outstanding balances will accrue interest at the rate of 1.5% per month (18% per annum) or, if less, the maximum amount allowed by law. You will be liable to Wells Fargo and/or the Suppliers for any collection costs or attorney fees that are incurred in the event action is taken by Wells Fargo and/or the Suppliers to collect any past due balance of Services Fees.

**5.6 Withholding of Receivables as Reserve Fund; Recovery of Losses.** Upon any Event of Default as defined in Section 15.2, or in any event that We suffer a loss in connection with processing Your transactions or identify transactions or patterns of transactions which in Wells Fargo's reasonable opinion may be fraudulent or constitute a credit risk to Wells Fargo, We may withhold amounts otherwise payable to You in order to recover such loss or potential losses and while we investigate such transactions or otherwise control Our financial exposure (such withheld amounts may be referred to as a "Reserve Fund"). Wells Fargo may also take such actions as are necessary to collect amounts owed to Us

or needed to provide an adequate Reserve Fund wherever funds may be maintained. Wells Fargo is hereby authorized (and any related notice and demand are hereby expressly waived) by You, to set off, recoup and to appropriate and to apply any and all such amounts owing, funds held, account balances and other collateral (collectively, "Collateral") against and on account of Your obligations under this Agreement however arising ("Obligations"), whether such Obligations are liquidated, unliquidated, fixed, contingent matured or unmatured. In the case of any Collateral consisting of a deposit account with a Wells Fargo Bank or any other financial institution, You hereby agree that Wells Fargo shall have control thereof and the depository will (and is hereby authorized to) comply with instructions originated by Wells Fargo directing disposition of funds in the deposit account without further consent by You. You agree to duly execute and deliver to Wells Fargo such additional instruments, documents and agreements as may be reasonably requested to perfect and confirm the rights of set off, recoupment, subordination and control over deposit accounts and other Collateral set forth in this Agreement. In cases of fraud or similar cause, no prior notice shall be required for Wells Fargo's actions under this Section 5.6, but Wells Fargo shall notify You in writing within three business days after effectuating a suspension of credits or other payments or taking a Reserve Fund under this Section, which shall state Wells Fargo's reason for the belief that such fraud or similar cause exists.

**5.7 Reserve Account.** You expressly authorize Us to establish a reserve account ("Reserve Account") pursuant to the terms and conditions set forth in this Section. The initial amount of such Reserve Account shall be set by Wells Fargo, in Wells Fargo's sole discretion, based upon Your processing history and the potential risk of loss to Us. The Reserve Account shall be fully funded upon three (3) days' notice to You, or in instances of fraud or default, reserve account funding may be immediate. Such reserve account may be funded by all or any combination of the following: (i) one or more debits to Your settlement account or any other accounts held by Wells Fargo or any of its affiliates; (ii) one or more deductions or offsets to any payments otherwise due to You; (iii) Your delivery to Wells Fargo of a letter of credit; or (iv) if Wells Fargo so agrees, Your pledge to Wells Fargo of a freely transferable and negotiable certificate of deposit. Any certificate of deposit shall be issued by a financial institution acceptable to Wells Fargo and shall be in a form satisfactory to Wells Fargo. In the event of termination of this Agreement by any party, an immediate Reserve

Account may be established without notice in the manner provided above. Any Reserve Account will be held by Wells Fargo for the greater of ten (10) months after termination of this Agreement or for such longer period of time as is consistent with Our liability for credit card transactions or ACH electronic system transactions in accordance with Visa U.S.A., Inc. and MasterCard International Incorporated and any other credit card association (collectively "Association") rules and any National Automated Clearing House Association ("NACHA" rules). Your funds held in a Reserve Account may, at Wells Fargo's discretion, be held in a deposit account in Your name or in Wells Fargo's name, or in a commingled account for the reserve funds of Our clients, without involvement by an independent escrow agent. If Your funds in the Reserve Account are not sufficient to cover the chargebacks, adjustments, fees and other charges due from You, or if the funds in the Reserve Account have been released, You agree to promptly pay Wells Fargo such sums upon request.

**5.8 Security Interest.** To secure all of Your present and future Obligations to Us and Our affiliates (We and Our affiliates may be referred to collectively as "Secured Parties" and individually as a "Secured Party" for purposes of this Section 5.8) under this Agreement and under any other agreement for provision of related equipment or related services (collectively, "Obligations"), You hereby grant to Secured Parties liens and security interests in all of Your rights to and interests in the following, presently existing or hereafter acquired, and in any interest earned thereon and proceeds thereof (collectively, "Collateral"): (i) the Reserve Account, (ii) the DDA, (iii) any Reserve Fund maintained by Us under Section 5.6 above, (iv) any deposit account now or hereafter maintained by You with Wells Fargo Bank or any other Secured Party, (v) any of Your funds now or hereafter in the possession of Wells Fargo Bank or any other Secured Party, and (vi) all amounts now or hereafter owing to You under this Agreement, or under any other agreement for the provision of related equipment or services. In addition to any rights granted Secured Parties under applicable law, each Secured Party is hereby authorized (and any related notice and demand are hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such amounts owing, funds held, account balances and other Collateral against and on account of Your Obligations, whether such Obligations are liquidated, unliquidated, fixed, contingent matured or unmatured. In the case of any Collateral consisting of a deposit account with Bank, any other Secured Party or any other

financial institution, You hereby agree that Secured Parties shall have control thereof and the depository will (and is hereby authorized to) comply with instructions originated by any Secured Party directing disposition of funds in the deposit account without further consent by You. You agree to duly execute and deliver to Secured Parties such additional instruments, documents and agreements as may be reasonably requested to perfect and confirm the liens, security interests in deposit accounts and other Collateral set forth in this Agreement. You agree that Secured Parties may file such financing statements in Your name describing any or all of the Collateral and take such other action as they may require in order to perfect their liens and security interests therein.

**5.9 Audit.** You hereby grant to Wells Fargo, the Suppliers and/or auditors the right of access to Your books and records and agree to provide assistance at all times during the term of this Agreement for the purposes of allowing Wells Fargo, the Suppliers and/or auditors to conduct an audit and/or verify Your compliance with this Agreement. Wells Fargo, the Suppliers and/or its auditors will not conduct an audit more than three times in any twelve month period and will give You at least five (5) days prior written notice of such audit. The cost of the audit will be borne by Wells Fargo or the Suppliers.

**5.10 No Liability for Delays or Errors by Unrelated Third Parties.** We will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by third parties which are unrelated to Us including but not limited to any Association or NACHA or Your financial institution.

**5.11 Non-Visa or MasterCard Issuers.** For designated transactions from cards issued by American Express, Novus/Discover, Japanese Credit Bureau (JCB), Diner's Club/Carte Blanche, and other entities, these issuers may be responsible for settlement, chargebacks, and customer service and may charge a separate fee for these services.

## **6. Your Obligations, Representations and Warranties**

**6.1 Your Web Site and Access to Services.** You are responsible for all costs and management related to Your access to and utilization of the Services, including, but not limited to the operation and management of all software, hardware and equipment. You agree that You are responsible for obtaining any required authorizations or consents from your customers in connection with Transactions, including without limitation to

authorization for recurring billings. You also are solely responsible for Your Website including but not limited to Web operations, information security, product support, quality and availability of products and/or services made available at Your site, fulfillment of orders and returns. You will ensure that all customers of Your Website placing an order for product(s) and/or service(s) are timely advised of the status of such purchase(s) including the timely confirmation of all orders via electronic mail.

**6.2 Your Web Site and Online Activities.** You will provide Wells Fargo and Authorize.Net the Web address and a complete and accurate written description of Your online activity utilizing the Services which describes the products and/or services offered by You and a description of the advertising of Your products and services prior to the offering new products and/or services to customers, including any changes to Your Web address and written description of Your online activity as they occur. You acknowledge that You will be solely responsible for (i) Your product(s) and/or service(s); (ii) the Website content; (iii) all representations made in connection with product(s) and/or service(s); (iv) the content and nature of all promotions and advertising; (v) the quality of products and/or services offered by You or on Your Website; (vi) the conformity of Your products or services with any requirements of Association Rules or applicable law; and (vii) ensuring that Your products and services do not infringe or violate the copyright, trademark or other proprietary rights of any party.

**6.3 No Internet Abuse.** You will not engage in any form of Internet abuse, including but not limited to: (i) sending any kind of unsolicited or unwelcome email to a substantial number of network users, anywhere on the Internet; (ii) posting a single article or substantially similar articles to an excessive number of newsgroups or mailing lists; (iii) repeated or deliberate posting of articles that are off-topic according to the charter of the newsgroup or mail list where such articles are posted; and (iv) posting commercial advertising in a conference or newsgroup, unless it is specifically permitted to be posted within that group. You understand that Wells Fargo and the Suppliers may investigate any reported occurrence of potential Internet abuse and take appropriate action, which depending on the circumstances and severity of any such occurrence may include: (a) issuing a warning to You and taking necessary action to minimize any damage; (b) suspending Your right to access and use the Services; and/or (c) immediately terminating this Agreement.

**6.4 Compliance with Laws, Rules, and Guidelines.** You will comply with all applicable laws and regulations in connection with Your access and utilization of the Services, including expressly any and all Association Rules, any and all NACHA rules, or Wells Fargo or Authorize.Net procedures or guidelines as set forth in any Operating Guide, Program Guide, information available at wells Fargo secure.com or the Authorize.Net website, or other document provided to You or made available to You regarding proper use of the Service (any such document, a "Guideline"). In the event of any conflict between the terms of this Agreement and any such Guideline, the terms of this Agreement shall govern. It is an express condition to Our delivery of Services to You that You comply with all applicable laws, regulations, Association Rules and Guidelines. Failure to so comply may be deemed an Event or Default and grounds for termination of Your Agreement.

**6.5 Compliance with Data Security Requirements.** You will: (i) comply with all then-current legal obligations and Guidelines, including without limitation those issued by Associations and the Federal Trade Commission, associated with the collection, security and dissemination of data on Your Website, and expressly including the Visa Cardholder Information Security Program (CISP) (for details of this program log onto www.visabrc.com) and the MasterCard Site Data Protection Program (SDP); and (ii) conspicuously post on Your Website a privacy policy that meets all applicable legal and Association requirements and is consistent with good business practices with respect to the collection and use of customers' personally identifiable information. If You fail to comply with the requirements of this Section 6.5, Wells Fargo and/or the Suppliers may suspend the provision of Services hereunder immediately upon written notice to You. That notice will explain the basis for such suspension, including measures reasonably calculated to rectify the failure. The suspension will remain in effect and until such time as Wells Fargo and/or the Suppliers are satisfied that You have cured Your failure. You shall not store Cardholder Verification Value 2 (CVV2) information of any cardholder and will be liable for any fines for violation of such Association Rule.

**6.6 Use of Cardholder Information.** Unless You obtain consents from Wells Fargo, Authorize.Net, and each applicable Association, card issuing bank and cardholder, You must not use, disclose, sell or disseminate any cardholder information obtained in connection with a Card transaction (including the names, addresses and Card account numbers of Cardholders)

except for purposes of authorizing, completing and settling Card transactions and resolving any chargebacks, retrieval requests or similar issues involving Card transactions, other than pursuant to a court or governmental agency request, subpoena or order. You shall use proper controls for and limit access to, and render unreadable prior to discarding, all records containing Cardholder account numbers and Card imprints. You may not retain or store magnetic stripe data after a transaction has been authorized. If You store any electronically captured signature of a Cardholder, You may not reproduce such signature except upon Wells Fargo's specific request. Association rules prohibit the sale or disclosure of databases containing cardholder account numbers, personal information, or other Visa transaction information to third parties as an asset of a failed business. In such cases, transaction information is required to be returned to the acquiring bank (Wells Fargo Bank, N.A.) or acceptable proof of destruction of this data provided.

**6.7 Modification in Connection with Association Requirements.** Visa and MasterCard Association Rules give Visa and MasterCard certain rights to require termination or modification of this Agreement with respect to transactions involving Visa and MasterCard credit or debit cards ("Cards") and the Visa and MasterCard Card systems and to investigate You. You also acknowledge that issuers of other Cards, for which Wells Fargo and Authorize.Net perform services on Your behalf, may have similar rights under their applicable Association Rules with respect to this Agreement's applicability to transactions involving such other Cards.

**6.8 No Illegal Use of Services.** You will not access and/or utilize the Services for illegal purposes and will not interfere or disrupt networks connected with the Services.

**6.9 No Processing of Fraudulent Transactions.** You will not process a transaction that You know, or should have known, to be fraudulent.

**6.10 No Use of Services for Other Sellers.** You will not use the Services to accept payments on behalf of other sellers.

**6.11 No Age Verification.** You will not use a Credit Card to verify, or assume, the age of any cardholder.

**6.12 Delivery of Goods.** You will be solely responsible for the delivery of all goods and/or services

ordered by Your customers and Your customers' satisfaction therewith.

**6.13 Exchange or Return Policy.** You will establish and maintain a fair and uniform policy for the exchange and return of products or services sold. Such policy will include, but not be limited to, the following provisions:

**6.13.1** You will provide credit in the same form payment was originally received, upon customer request for return, and will not refund with cash.

**6.13.2** All disputes involving the goods or services purchased from You will be settled between You and Your customer. You will indemnify and hold Wells Fargo and/or the Suppliers harmless from any claim or liability relating to any such dispute.

**6.13.3** You will provide Wells Fargo and/or the Suppliers, upon demand, with any information, evidence, assignments or other assistance Wells Fargo and/or the Suppliers may need to help resolve any customer billing disputes regarding the nature, quality or performance of the goods or services, or in connection with any return or rejections of such goods and services.

**6.14 Taxes.** You will be solely responsible for properly calculating and remitting to the proper taxing authority all sales, use value-added and other similar taxes due with respect to goods and services purchased from You.

**6.15 Updates to Your Information.** You must update Authorize.Net by contacting Customer Service of any changes to information provided in Your Application.

**6.16 Record-keeping Obligations.** You will keep full and accurate records of Your utilization of the Services and all transactions with Your customers involving the utilization of the Services. You will retain such records for at least twelve months following the termination of this Agreement.

**6.17 Financial Statements.** Upon Wells Fargo's or Authorize.Net's request, You will provide the requesting party quarterly financial statements within 45 days after the end of each fiscal quarter and annual financial statements (audited if requested) within 90 days after the end of each fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles. You will also provide such other financial statements and other

information concerning Your business and Your compliance with the terms and provisions of this Agreement as Wells Fargo or Authorize.Net may reasonably request within five (5) business days. You authorize Wells Fargo and Authorize.Net to obtain from third parties financial and credit information relating to You in connection with the determination whether to accept this Agreement and the continuing evaluation of the financial and credit status of You. We may also access and use information which You have provided to Us or Our Suppliers for any other reason. You will provide Wells Fargo and Authorize.Net with written notice of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of Your total assets not later than three (3) days after You become aware of same. Upon request, You shall provide to Wells Fargo, Authorize.Net or Our representatives reasonable access to Your facilities and records for the purpose of performing any inspection and/or copying of Your books and/or records deemed appropriate. All information provided or made available to the requesting party pursuant to this Section shall be treated by the receiving party as confidential information and used only for the purposes described in this Section.

## 7. Chargebacks

**7.1 Responsibility for Chargebacks.** You will be solely responsible for all chargeback amounts relating to credit card transactions including, but not limited to where: (i) goods are returned and a proper credit for cardholder is not received by Wells Fargo and/or the Suppliers for processing; (ii) the transaction record is, or is alleged to have been, executed, accepted, endorsed, completed or assigned improperly without authority or not in accordance with the authorization requirements or provisions of this Agreement; (iii) the transaction record is incorrectly completed, incomplete or illegible; (iv) the cardholder disputes the sale, quality or delivery (or availability for pre-arranged pick-up) of goods or the performance or quality of service covered by the transaction record or agreement accepted by such cardholder; (v) multiple transaction records were executed to avoid authorization scrutiny; (vi) the extension of credit for goods sold or rented or services performed was in violation of law or the rules or regulations of any governmental agency, whether federal, state, local or otherwise; (vii) acceptable verification of the applicable transaction cannot be produced by You within ten days of Wells Fargo's and/or the Suppliers' request; (viii) the cardholder asserts any claim or defense which the cardholder has as a consumer of goods or services; (ix) the cardholder

disputes the validity of an internet, telephone or mail order card transaction; or (x) the card transaction is otherwise subject to chargeback by the card issuing bank or cardholder in accordance with the applicable law. You may not attempt to obtain multiple authorizations for a single transaction. If a sale is declined, do not take alternative measures with the same Card to obtain an approval of the sale from other authorization sources. Instead, request another form of payment. If You accept and process a transaction that was declined, or attempt multi-transactions and/or multi-authorizations, You are subject to a chargeback and cancellation of Your Agreement.

**7.2 Responsibility for Losses from Failure to Produce Transaction Records.** You shall reimburse Wells Fargo and/or the Suppliers for any chargebacks, return items, or other losses resulting from Your failure to produce a card transaction record requested by Wells Fargo and/or the Suppliers within the applicable time limits.

## 8. Prohibited Activities

You agree that You will not at any time conduct Your business in any manner that directly or indirectly offers, sells, leases, licenses, displays, delivers, advertises, recommends, or promotes any product(s), service(s), data, information, image(s), text and/or other Website content, which is: (i) unlawful or violates any applicable local, state, national or international law, ordinance or regulation having the force of law; (ii) pornography or sexually oriented, profane, obscene, vulgar, offensive, lewd; (iii) defamatory, libelous, slanderous, abusive, threatening or harassing towards others; (iv) a multi-level marketing program, chain letter or pyramid scheme; (v) an unfair, unlawful or deceptive business practice; (vi) racially or otherwise offensive, hateful, bigoted or intolerant; (vii) in violation of any privacy or data protection law or right; (viii) infringe or violate any patent, copyright, trademark, trade secret, right of publicity or privacy or other proprietary right under the laws of any jurisdiction; (ix) transmit or deliver in any material that contains viruses, worms, Trojan horses, time bombs and any other harmful or damaging software or other technology or the means for developing any of the above; (x) advocate, promote and/or provide assistance in carrying out violence or any other unlawful activity against any persons or any governments, businesses or other entities; (xi) the subject of any government investigation or proceedings; (xii) any form(s) of gambling; or (xiii) not consistent with prevailing Internet "Netiquette" standards, as determined

by Wells Fargo and/or Authorize.Net in their sole discretion.

## 9. Your Representations and Warranties

You represent and warrant that (i) all products and/or services offered, sold or otherwise provided on Your Website are made, offered, sold or otherwise provided in compliance with all applicable laws and regulations; (ii) all products and/or services offered, sold or otherwise provided on Your Website do not and will not infringe the copyrights of third parties; (iii) Your Website is in compliance with applicable laws and regulations; (iv) information provided as part of the enrollment process is accurate, complete and current; and (v) You have the power and authority to enter into and perform Your obligations under this Agreement.

## 10. Customer Service

Wells Fargo and Authorize.Net will provide You with written instructions regarding access to the customer service department ("Customer Service") for technical and operational questions. In addition, Customer Service contact information will be provided within the Services.

## 11. Proprietary Rights

**11.1 Rights in Intellectual Property.** Wells Fargo and/or the Suppliers will own and retain all of their respective rights, titles and interests in and to all intellectual property embodied in or associated with the design and delivery of the Services, including, but not limited to, content, such as software, graphics, start-up information and materials, designs, methods, architecture, materials, publications, business plans and other tangible intellectual property-based assets of any kind whether in machine readable, printed or other form and including, without limitation, all revisions, enhancements, technical know-how, patents, copyrights, trademarks, moral rights and trade secrets. You expressly acknowledge and agree that the Wells Fargo name and logos, including without limitation the Wells Fargo stage coach and the "red box" logo are the exclusive property of Wells Fargo Bank or its affiliates and may not be used or included in any publication, including customer list or press releases, without the express prior written permission of an authorized officer of Wells Fargo Bank.

**11.2 Confidential Information.** To protect certain valuable and confidential information ("Information"), which Wells Fargo, Authorize.Net, or Company may disclose to the other party in connection with performance and use of the Services, except as permitted by written consent of the party to which Information belongs (the "Disclosing Party"), the party

receiving such Information ("Receiving Party") agrees not to disclose the Information to any third party or to use such Information for any purpose other than in connection with providing and utilizing the Services. Receiving Party agrees to limit access to such Information to those of Receiving Party's employees who require access in connection with using the Services in accordance with this Agreement. At a minimum, Receiving Party will follow the same procedures to ensure its compliance with these requirements as Receiving Party follows to protect Receiving Party's own confidential and proprietary information of a similar nature. Information means all information in any form, such as product developments, software, specifications, protocols, processes, formulas, methods, techniques, concepts, plans, ideas, business, marketing and financial information, program documentation, and the like, which has been or may be disclosed to the other party in the course of their dealings, but does not include information and data which Receiving Party can show: (a) was publicly available prior to disclosure; (b) was validly in Receiving Party's possession prior to receipt thereof from Disclosing Party; (c) was rightfully received by Receiving Party from a third party having no fiduciary relationship to Receiving Party or Disclosing Party and having no obligation of confidentiality with respect to such information and data; or d) Receiving Party developed independently and without any reference to information and data received from Disclosing Party.

## 12. Infringement

**12.1 Infringement Claims.** If the Services or any part thereof becomes, or in Wells Fargo's, Authorize.Net's and/or the Suppliers' reasonable opinion may become, the subject of any claim, suit, or proceeding arising from or alleging infringement of, or in the event of any adjudication that the Services or part thereof infringes on, any patent, copyright or any other intellectual property rights of any third party, Wells Fargo Authorize.Net's and/or the Suppliers, at their option and own expense, may take one or more of the following actions:

- i. secure for You the right to continue using the Services or part thereof;
- ii. replace or modify the Services or part thereof to make them non-infringing; or
- iii. terminate this Agreement, and all rights granted hereunder to You with respect to the Services.

**12.2 Exclusive Remedy for Infringement.** THE ABOVE REMEDIES ARE THE SOLE AND EXCLUSIVE LIABILITY OF WELLS FARGO, AUTHORIZE.NET AND/OR THE SUPPLIERS AND ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO YOU AGAINST WELLS FARGO,

AUTHORIZE.NET AND/OR THE SUPPLIERS IN THE EVENT OF SUCH ACTION OR THREATENED INFRINGEMENT.

**13. Indemnity**

You agree to indemnify and hold harmless Wells Fargo, Authorize.Net and/or the Suppliers, their directors, officers, employees, agents, subsidiaries, members, parents and affiliates, against any and all liability, loss, claims, demands, damages or costs of any kind, including reasonable attorneys' fees and costs of litigation, resulting from Your gross negligence or willful misconduct or that of Your directors, officers or employees, or Your breach of any representation, warranty or obligation under this Agreement.

**14. Disclaimer of Warranties and Limitation of Liabilities**

THIS AGREEMENT IS A SERVICE AGREEMENT. THE SERVICES AND OTHER INDIVIDUAL COMPONENTS ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. WELLS FARGO, AUTHORIZE.NET AND/OR EACH OF THE SUPPLIERS DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO YOU OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING NON-INFRINGEMENT, QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT.

IN NO EVENT WILL ANY PARTY BE LIABLE FOR LOST PROFITS, LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTION, COST OF PROCUREMENT OF SUBSTITUTE SERVICES, OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, HOWSOEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE. THESE LIMITATIONS WILL APPLY WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE PARTIES ACKNOWLEDGE THAT THE CONSIDERATION BARGAINED FOR

IN THIS AGREEMENT WAS BASED UPON THE FOREGOING LIMITATION OF LIABILITY. SUBJECT TO THE FOREGOING, WELLS FARGO'S, AUTHORIZE.NET'S AND/OR EACH OF THE SUPPLIER'S JOINT AND SEVERAL LIABILITY FOR DAMAGES OF ANY KIND OR NATURE IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED (A) THE AMOUNT OF SERVICES FEES PAID BY YOU DURING THE THEN MOST RECENT TWELVE-MONTH PERIOD OR (B) \$50,000, WHICHEVER IS LESS.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL WELLS FARGO OR AUTHORIZE.NET BE LIABLE OR RESPONSIBLE FOR ANY DELAYS OR ERRORS IN OUR PERFORMANCE OF THE SERVICES. IF AND TO THE EXTENT SUCH DEFAULT OR DELAY IS CAUSED, DIRECTLY OR INDIRECTLY, BY (I) FIRE, FLOOD, ELEMENTS OF NATURE OR OTHER ACTS OF GOD; (II) ANY OUTBREAK OR ESCALATION OF HOSTILITIES, WAR, RIOTS OR CIVIL DISORDERS IN ANY COUNTRY; (III) ANY ACT OR OMISSION BY YOU OR ANY GOVERNMENT AUTHORITY; (IV) ANY LABOR DISPUTES (WHETHER OR NOT EMPLOYEES' DEMANDS ARE REASONABLE OR WITHIN THE PARTY'S POWER TO SATISFY); OR (V) THE NONPERFORMANCE BY A THIRD PARTY (INCLUDING A GATEWAY PROVIDER) FOR ANY SIMILAR CAUSE BEYOND WELLS FARGO'S OR AUTHORIZE.NET'S REASONABLE CONTROL, INCLUDING WITHOUT LIMITATION, FAILURES OR FLUCTUATIONS IN TELECOMMUNICATIONS OR OTHER EQUIPMENT. IN ANY SUCH EVENT, WELLS FARGO AND AUTHORIZE.NET SHALL BE EXCUSED FROM ANY FURTHER PERFORMANCE AND OBSERVANCE OF THE OBLIGATIONS SO AFFECTED ONLY FOR AS LONG AS SUCH CIRCUMSTANCES PREVAIL AND WELLS FARGO AND AUTHORIZE.NET CONTINUE TO USE COMMERCIALY REASONABLE EFFORTS TO RECOMMENCE PERFORMANCE OR OBSERVANCE AS SOON AS PRACTICABLE.

**15. Term**

**15.1 Term of Agreement.** This Agreement will be effective as of the Effective Date and will remain in

effect until the second anniversary of the Effective Date unless earlier terminated in accordance with the terms of this Section 15. Unless written notice is provided to the contrary by either party two (2) months prior to expiration of the initial term of this Agreement or any extension term, or the expiration of any previous (legacy) merchant agreement, this Agreement shall automatically renew for successive one (1) year terms. Provided, however, that if You are being provided this Agreement after Your execution or Acceptance of a Previous Merchant Agreement still in effect, then this Agreement will expire as of the termination date for your previous Agreement.

**15.2 Events of Default.** In addition to any other remedies set out in this Agreement, including Wells Fargo's rights to take a Reserve Fund under Section 5.6, Wells Fargo and/or Authorize.Net may terminate this Agreement and Wells Fargo and/or the Suppliers may discontinue provision of the Services immediately under the following circumstances (each an "Event of Default"): (i) You violate any applicable law or regulation or Association rule or Wells Fargo and/or Authorize.Net guidelines with respect to the Services; (ii) You fail to pay Service Fees when due; (iii) You assign or attempt to assign the Agreement or any of Your duties under this Agreement to another party; (iv) You make misrepresentations to actual or prospective customers regarding the Services; (v) Wells Fargo and/or Authorize.Net receive complaints regarding Your messages, representations, promotions, advertising, products or services or if claims are made arising from them; (vi) You materially modify the product/service line that is offered by You without prior written notice to Wells Fargo and/or Authorize.Net or your business or information about You or Your business changes from the description or information provided in Your application process (including a change from anticipated transaction volumes); (vii) You have irregular Card sales, excessive chargebacks or any other circumstances which, in Our sole discretion, may increase Our exposure for Your chargebacks or otherwise present a financial or security risk to Us; (viii) You file a petition or have a petition filed by another party under the Bankruptcy Code or any other laws relating to bankruptcy, insolvency or similar arrangement for the adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under such laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of a substantial part of its property; or make a general

assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; (ix) a material adverse change occurs in Your business, financial condition, business procedures, prospects, products or services; (x) You sell all or a substantial portion of Your assets, or transfer of voting control of You or Your parent; (xi) Any of Your representations or warranties in this Agreement are breached in any material respect or are incorrect in any material respect when made or deemed to be made; (xii) You default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Agreement, including, without limitation, the establishment or maintenance of funds in a Reserve Account; (xiii) You default in any material respect in the performance or observance of any term, covenant or condition contained in any agreement with any of Our affiliates; or (xiv) Your independent certified accountants shall refuse to deliver an unqualified opinion with respect to Your annual financial statements and Your consolidated subsidiaries; (xv) You are found to be on the Terminated Merchant File maintained by the Association; or (xvi) Your chargeback losses increase by more than twenty percent (20%) from previous levels or exceed applicable Association thresholds; then, upon the occurrence of any such Event of Default we may consider this Agreement to be terminated immediately, without notice, and all amounts payable hereunder shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by You; provided, that at Our discretion such termination may be delayed or conditioned upon satisfactory correction of the Event of Default.

**15.3 Termination for Convenience.** Either party may terminate this Agreement without cause with thirty (30) days prior written notice to another party specifying the exact date and time of such termination. In order to terminate this Agreement, You must provide Wells Fargo and Authorize.Net notice, as provided in Section 17 (Notices).

**15.4 Effect of Termination.** Upon the termination or expiration of this Agreement:

- i. You will immediately account for and pay all Services Fees due and owing pursuant to this Agreement without demand or other notice of any kind, all of which are expressly waived by You;
- ii. You will destroy or return to Us all materials and information containing a reference to the Services;

iii. Wells Fargo, Authorize.Net and/or the Suppliers will cease providing Services and may, in their sole discretion, delete any content of Your Website or any other data or information You have furnished to Wells Fargo and Authorize.Net;

iv. Sections 1.3 (Personal Guaranty), 3 (Personal Data Collection and Use), 5.6 (Withholding of Receivables as Reserve Fund; Recovery of Losses), 5.8 (Security Interest), 5.9 (Audit) (for one year), 6.14 (Taxes), 6.16 (Record-keeping Obligations) (for one year), 7 (Chargebacks), 11 (Proprietary Rights), 12 (Infringements), 13 (Indemnity), 14 (Disclaimer of Warranties and Limitation of Liabilities), 15.4 (Effect of Termination), 15.5 (Combined Terminated Merchant Reporting), 15.6 (Continuation of Liability for Chargebacks), 17 (Notices), 18 (Severability), 19 (Governing Law and Dispute Resolution), and 20 (Entire Agreement, Amendments and Waivers) will survive the termination of this Agreement.

**15.5 Combined Terminated Merchants Reporting.** If this Agreement is terminated for cause, You acknowledge that We may be required to report Your business name and the names and other information regarding its principals to the Combined Terminated Merchant File maintained by Visa and MasterCard. You expressly agree and consent to such reporting if You are terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by Visa or MasterCard. Furthermore, You agree to waive and hold Us harmless from and against any and all claims which You may have as a result of such reporting.

**15.6 Continuation of Liability for Chargebacks.** After termination of this Agreement for any reason whatsoever, You shall continue to bear total responsibility for all chargebacks, fees, credits and adjustments resulting from Transactions processed pursuant to this Agreement and all other amounts then due or which thereafter may become due under this Agreement.

## **16. Assignment**

You will not have the right or the power to assign any of Your rights or delegate the performance of any of Your obligations under this Agreement without the prior written consent of Wells Fargo and Authorize.Net, including in the case of a merger. Wells Fargo and Authorize.Net will have the right to assign this Agreement to any of their subsidiaries or affiliates and/or the Suppliers.

## **17. Notices**

**17.1 Notification to You.** You may be notified by Wells Fargo or Authorize.Net, including notice of changes in Association Rules or new requirements applicable to You by any means reasonably available to Us, including email to Your last known email address, a separate written notice delivered by facsimile or U.S. mail or other courier, or by a "statement stuffer" included with Your regular account statement, including any online presentment of Your statement. Any such notice will be binding upon delivery by either Wells Fargo or Authorize.Net unless otherwise stated in such notice.

**17.2 Notification of Legal Matters.** You must notify both Wells Fargo and Authorize.Net regarding any legal disputes or legal matters. To notify Wells Fargo, You may (i) write to Wells Fargo Merchant Services, L.L.C.: 265 Broad Hollow Road Melville, NY 11747; or (ii) write to Wells Fargo Bank, N.A.: 1200 Montego Way Walnut Creek, CA 94598, Attention Online Merchant Services. To notify Authorize.Net, contact Customer Service department as provided in Section 17.3.

**17.3 Notification of Account Updates and Other Issues.** Wells Fargo or Authorize.Net will provide You with written instructions regarding access to the customer service department ("Customer Service") for technical and operational questions, as well as any other issue not included in section 17.2.

## **18. Severability**

Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof will be prohibited by or determined to be invalid by a court of competent jurisdiction, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

## **19. Governing Law and Dispute Resolutions**

**19.1 Governing Law.** We have substantial facilities in the State of California and many of the services provided under this Agreement are provided from these facilities. Our Agreement shall be governed by and construed in accordance with the laws of the State of California (without regard to its choice of law provisions). The exclusive venues for any actions or claims arising under this Agreement shall be the appropriate state and federal court located in Northern California or the State of Washington, and you hereby consent to the jurisdiction of such courts.

**19.2 Disputes.** Any Dispute between the parties arising out of, or relating to, the validity, construction, interpretation or performance of this Agreement that cannot be amicably resolved will be submitted to binding arbitration in accordance with the terms of this Section 19 (except as set forth in subsection 19.5 below). A "Dispute" shall mean any action, dispute, claim or controversy of any kind, whether in contract or tort, statutory or common law, legal or equitable, now existing or hereafter arising under or in connection with, or in any way pertaining to this Agreement. Any party may by summary proceedings, bring an action in court to compel arbitration of a Dispute. Any party who fails or refuses to submit to arbitration following a lawful demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any Dispute.

**19.3 Governing Rules.** Arbitration proceedings shall be administered by the American Arbitration Association ("AAA") or such other administrator as the parties shall mutually agree upon. Arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules. If there is any inconsistency between the terms hereof and any such rules, the terms and procedures set forth herein shall control. All Disputes submitted to arbitration shall be resolved in accordance with the Federal Arbitration Act (Title 9 of the United States Code). The arbitration shall be conducted at a location in California selected by the AAA or other administrator. All statutes of limitation applicable to any Dispute shall apply to any arbitration proceeding. All discovery activities shall be expressly limited to matters directly relevant to the Dispute being arbitrated. Judgment upon any award rendered in an arbitration may be entered in any court having jurisdiction; provided however, that nothing contained herein shall be deemed to be a waiver, by any party that is a bank, of the protections afforded to it under 12 U.S.C. §91 or any similar applicable state law.

**19.4 No Waiver; Provisional Remedies.** No provision hereof shall limit the right of any party to obtain provisional or ancillary remedies, including, without limitation injunctive relief, attachment or the appointment of a receiver, from a court of competent jurisdiction before, after or during the pendency of any arbitration or other proceeding. The exercise of any such remedy shall not waive the right of any party to compel arbitration or reference hereunder.

**19.5 Arbitrator Qualifications and Powers; Awards.** Arbitrators must be active members of the California State Bar or retired judges of the state or federal

judiciary of California, with expertise in the substantive laws applicable to the subject matter of the Dispute. Arbitrators are empowered to resolve Disputes by summary rulings in response to motions filed prior to the final arbitration hearing. Arbitrators (i) shall resolve all Disputes in accordance with the substantive law of the state of California, (ii) may grant any remedy or relief that a court of the state of California could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award, and (iii) shall have the power to award recovery of all costs and fees, to impose sanctions and to take such other actions as they deem necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the California Rules of Civil Procedure or other applicable law. Any Dispute in which the amount in controversy is \$5,000,000 or less shall be decided by a single arbitrator who shall not render an award of greater than \$5,000,000 (including damages, costs, fees and expenses). By submission to a single arbitrator, each party expressly waives any right or claim to recover more than \$5,000,000. Any Dispute in which the amount in controversy exceeds \$5,000,000 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations.

**19.6 Judicial Review.** Notwithstanding anything herein to the contrary, We may bring an appropriate action in small claims courts for any Dispute in which amounts in controversy are within applicable thresholds for such courts. Notwithstanding anything herein to the contrary, in any arbitration in which the amount in controversy exceeds \$5,000,000, the arbitrators shall be required to make specific, written findings of fact and conclusions of law. In such arbitrations, the parties shall have in addition to the grounds referred to in the Federal Arbitration Act for vacating, modifying or correcting an award, the right to judicial review of (A) whether the findings of fact rendered by the arbitrators are supported by substantial evidence, and (B) whether the conclusions of law are erroneous under the substantive law of the state of California. Judgment confirming an award in such a proceeding may be entered only if a court determines the award is supported by substantial evidence and not based on legal error under the substantive law of the state of California.

**19.7 Damages.** The arbitrator(s) will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute. The arbitrator(s) shall not award consequential damages in any arbitration

initiated under this Section. Any award in an arbitration under this Section shall be limited to monetary damages and shall include no injunction or direction to any party other than the direction to pay a monetary amount.

**19.8 Miscellaneous.** To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within 180 days of the filing of the Dispute with the AAA. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business, by applicable law or regulation, or to the extent necessary to exercise any judicial review rights set forth herein. This arbitration provision shall survive termination, amendment or expiration of the Agreement or any relationship between the parties.

**20. Entire Agreement, Amendments and Waivers**

**20.1 Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements, understandings and communications between the parties with respect to the subject matter hereof.

**20.2 Amendments.** This Agreement may be amended by Wells Fargo and Authorize.Net at any time upon thirty (30) days notice from Wells Fargo and Authorize.Net to You.

**20.3 Waivers.** The failure of a party to assert any of its rights under this Agreement, including, but not limited to, the right to terminate this Agreement in the event of breach or default by the other party, will not be deemed to constitute a waiver by that party of its right to enforce each and every provision of this Agreement in accordance with its terms.

**21. No Partnership or Agency; Independent Contractors**

No agency, partnership, joint venture or employment relationship is created between You and either Wells Fargo or Authorize.Net by way of this Agreement. In the performance of their respective obligations hereunder, the parties are, and will be, independent contractors. Nothing in this Agreement will be construed to constitute any party as the agent for any other party for any purpose whatsoever. No party will bind, or attempt to bind, any other party to any contract or the performance of any obligation, and no party will represent to any third party that it has any right to enter into any binding obligation on any party's behalf.

**MERCHANT:**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# Appendix A: Integrated Payment Service (IPS) Pricing

The following pricing reflects fees and terms applicable to businesses processing \$240,000.00 or less per year. If your total annual processing is over \$240,000.00 per year please contact your sales person for further details.

## Pricing for the Integrated Payment Service\*

*Combines both Authorize.Net and SecureSource account fees*

### Monthly and One-Time Setup Fees<sup>1</sup>

Setup/Enrollment Fee	\$149.00
Monthly Fee	\$29.95

### Credit Card Transaction Fees and Conditions

Credit Card Discount Rate <sup>2,5</sup>	2.39% (Visa, MasterCard, Discover) 3.25% (American Express) <sup>6</sup>
Transaction Fee	\$0.35 Per credit card transaction
FraudScreen Fee for International Credit Card Transactions	1.00%
Minimum Hold Period for Credit Card <sup>3</sup>	2 business days

### Electronic Checks and Conditions

Electronic Check Per Transaction Fee	\$0.95 Per eCheck authorization attempt
Electronic Check Discount Rate	0.00%
Electronic Check Guarantee Period <sup>3,4</sup>	4 business days

### Other Fees

Chargeback Fee	\$15.00
Non Sufficient Funds (NSF) Fee	\$15.00 Per electronic check returned as NSF
Daily Batch Settlement Fee	\$0.35

### Approved Transaction Limits

#### Maximum Monthly Sales Limit

Credit Card Sales	\$20,000.00 Per month limit
eCheck Sales	\$5,000.00 Per month limit

#### Maximum Transaction Limit

Credit Card Sales	\$2,000.00 Per order maximum
eCheck Sales	\$200.00 Per order maximum

\*Pricing subject to change without notice

1. Monthly and one-time setup fees will be deducted from your checking account on the first business day of the month following your acceptance of the Service. This will include the first month's fees, which will be prorated from the date of your acceptance, the one-time fees, and the second month's fees in advance. Thereafter monthly and transaction fees will be billed on or before the first business day.

2. The discount rates disclosed are based on the following criteria:

- VISA CPS Card Not Present and MasterCard Merit 1 Interchange (04/01/01)
- Internet authorization and AVS performed on each transaction
- Settlement date (shipping date) must be within 7 calendar days of the auth date
- Settled amount must match authorized amount.
- Non-qualifying transactions will be charged a higher rate based on the Visa and MasterCard rates charged for those transactions.

3. Availability of funds will depend upon your financial institution.

4. Electronic checks are guaranteed on the 4th business day and funded on the 5th business day.

5. Price includes Wells Fargo's fraud screening fee.

6. American Express may not be available on some accounts.