

## MARKET ENGINES MERCHANT AGREEMENT

### Terms and Conditions

**WHEREAS** (1) the Wholesaler is in the business of selling certain products and services (together with related access codes) the ("**Product**"); (2) the Wholesaler wishes to retain Market Engines to resell the Product pursuant to the terms hereof; and (3) Market Engines wishes to resell and/or cross-sell the Product pursuant to the terms hereof.

**NOW, THEREFORE** this Agreement witnesseth that in consideration of the mutual covenants by each of the parties hereto, the parties agree as follows:

#### 1. INTERPRETATION

**1.1 Definitions.** For the purposes of this Agreement, the following terms shall have the following meanings:

- a) "**Agreement**" means this Merchant Agreement;
- b) "**Application Form**" means that application form available at the Site, or as may be provided by Market Engines to the Wholesaler;
- c) "**Business Day**" means a day other than Saturday or Sunday on which banks are normally open for business in the Province of Quebec, Canada;
- d) "**Chargebacks**" means all approved and settled purchases of the Product by Customers from Market Engines for which the purchasing Customer used a Credit Card and for which Credit Card transactions are at any time refused, debited or charged back by the Issuers;
- e) "**Fees**" means the difference between the Purchase Price and Resale Price of the Products as well as all other fees agreed upon with Market Engines;
- f) "**Confidential Information**" means Market Engines's programs, procedures, proprietary or other software, (including the Software and Documents (as such terms are defined below) equipment and other intellectual property including, without limitation, all information concerning systems and operations, technical specifications, pricing, this Agreement, know how, technology (including encryption technology), business plans and projections and all other business information as well as all information concerning or originating from Market Engines, its clients, suppliers or licensors;
- g) "**Credit Card**" means a valid and unexpired card issued by an Issuing Institution, and bearing the symbols of Visa, MasterCard, American Express, Diner, Carte Blanche or Discover. The term also includes Debit Cards and online cheques. Market Engines shall have the right to add other credit cards and forms of payment to this definition from time to time without notice;
- h) "**Customer**" or "**Customers**" mean one or all of the Persons who have, or wish to purchase the Product from Market Engines;
- i) "**Debit Card**" means any device that primarily accesses a demand deposit account of the holder thereof;

- j) "**Fee Schedule**" means a schedule of fees, charges and prices related to the Services that is posted on the Site, such as it may be from time to time modified by Market Engines at its sole discretion without prior notification. The Fee Schedule is attached hereto as **Schedule "A"** hereto.
- k) "**Issuers**" means the financial institution issuing the Credit Cards;
- l) "**Parties**" or "**Party**" the parties hereto or any one of them;
- m) "**Product**" has the meaning ascribed thereto in the preamble hereof;
- n) "**Site**" means the web site of Market Engines;
- o) "**Services**" means the service of reselling the Product pursuant to the terms hereof and all other services provided by Market Engines hereunder;
- p) "**Software**" means all software used in connection with the supply of the Services hereunder;
- q) "**Transaction**" shall mean any transactions involving transfer of ownership of or entitlement to the Product between Market Engines and a Customer.

## 2. OBLIGATIONS OF MARKET ENGINES

**2.1 Resale Price of the Product.** Market Engines shall sell and/or cross-sell the Product at the prices set out in Application Form (the "**Resale Price**") provided that the Resale Price shall never be less than thirty percent (30%) more than the Purchase Price. Wholesaler may, at its discretion, sell the Product on CD and/or charge fees for extended download privileges; fees charged for each such feature relating to the Product shall be shared as per the terms agreed upon with Market Engines.

**2.2 Payments to Wholesaler.** Market Engines shall make payments (each a "**Payment**") of the Purchase Price amounts to the Wholesaler on regular intervals mutually agreed between the Parties. The method of payment of the Payments shall be ACH, EFT, wire transfer, cheque or as may be otherwise implemented by Market Engines. Upon a termination hereof where Wholesaler is in default, Market Engines may withhold any Payments not yet made in order to offset its actual or potential liabilities.

**2.3 Record of Product Resold.** Market Engines shall maintain a record of the number of Products resold by Market Engines to Customers. Such records shall be the definitive evidence of all sales of Products made to Customers and shall be the basis on which all Payments hereunder are made. Market Engines shall make such information available to the Wholesaler via the Site.

**2.4 Transactions.** Market Engines shall resell and/or cross-sell the Product to its Customers directly, or through agents, via the internet, telephone sales or any other means of its choosing.

**2.5 Chargebacks.** In the event of a Chargeback in relation to the purchase by a Customer of any Product, Market Engines shall, for each such Chargeback, deduct a fee agreed upon with

Market Engines. In the event that Wholesaler's level of chargeback reaches the threshold of 2% within a calendar month, Market Engines reserves their right to impose a penalty of one hundred dollars (100.00\$) per chargeback to Wholesaler.

**2.6 Refunds.** If a Customer returns a Product to Market Engines for a refund of the Purchase Price (the "**Refund**"), Market Engines shall, at its sole and absolute discretion, repurchase from a Customer any Product so returned and refund the Resale Price to such Customer. Either party may initiate a Refund of any Transaction. Wholesaler shall reimburse Market Engines for any amounts it has received in respect of any Transaction that has been Refunded together with any fees applicable thereto as agreed upon with Market Engines.

**2.7 Customer Service.** As part of the Services, Market Engines shall provide support in respect of payment for Transactions only. Any and all Customer queries concerning Product shall be referred to the Wholesaler who shall address such queries in a prompt and professional manner.

**2.8 Market Engines License.** As part of the Services, for the term hereof only, Market Engines grants to Wholesaler a limited, non-transferrable, license to use the Site and Software solely for the purpose of using the Services. Nothing in this agreement shall permit the Wholesaler to have any rights in the source code of the Software or to copy, decompile, alter or otherwise modify or transfer any rights in the Software or any other part of the Services. As part of such license Market Engines shall supply the Wholesaler with a login and password. Wholesaler shall assume any and all liability for any use of such login and password, whether or not such activity was authorized by the Wholesaler.

### **3. OBLIGATIONS OF THE WHOLESALER**

**3.1. Sale of Product.** The quantity of Products purchased by Market Engines hereunder shall be established by Market Engines, at its sole discretion. Market Engines is under no obligation to purchase any specific quantity of the Product. ("**Purchase Price**"). Wholesaler can adjust the Purchase Price at its discretion through the Site.

**3.2. Wholesaler License.** Wholesaler grants to Market Engines a limited, transferrable, license to use, resell and sublicense the Product pursuant to the terms hereof. Nothing in this agreement shall permit the Wholesaler to have any rights in the source code of the Product or to decompile, alter or otherwise modify the Product or any other thereof.

**3.3. Intellectual Property in Product.** Wholesaler represents and warrants that the Product shall perform as described in any documentation relating thereto and shall be free from defects. If a breach of the foregoing occurs, Wholesaler shall replace, repair, and/or modify such Product without charge to Market Engines and without delay. Wholesaler shall test programming materials for viruses, time bombs, back doors and other disabling or harmful devices ("**Unauthorized Code**") and remove any Unauthorized Code before use by

Wholesaler, Market Engines, or any Customer. Wholesaler represents and warrants to Market Engines that no portion of the Product is subject to the intellectual property rights of any third party, including but not limited to, copyrights, patent rights, trademark rights, trade secret rights, or rights as confidential information.

- 3.4. **Compliance.** Throughout the term hereof, Wholesaler and its affiliates shall themselves and shall ensure that: (a) the Product, and all related products or services, do not contain any content that is unlawful, threatening, defamatory, obscene or otherwise objectionable; (b) the Product does not consist of, promote or relate to (A) sexually explicit materials, violence, discrimination on the basis of race, sex, religion, nationality, disability, sexual orientation or age, (B) illegal activities or (C) infringement on intellectual property rights.
- 3.5. **SPAM Prohibited.** The Wholesaler may also promote the Product in any manner it deems fit provided that such promotion does not violate any applicable laws and does not consist of use of bulk e-mails, fax blasting or any illegal or distasteful business practices.
- 3.6. **Maintenance and Service.** Wholesaler shall be responsible for any and all support and maintenance related to the Product all of which it shall supply to Customers on reasonable terms. Wholesaler in addition to delivering the product shall maintain the end user's access throughout the duration of the membership that end user has subscribed to. In the event of a default by Wholesaler to maintain that access Market Engines has the right to deduct any payments and commissions paid pertaining to that transaction.
- 3.7. **Background Check.** Wholesaler authorises Market Engines and its representatives to obtain from third parties financial, credit information and personal background relating to Wholesaler, its shareholders, directors and officers to assist Market Engines's determination of whether to accept this Agreement and Market Engines's continuing evaluation of the financial and credit status of the Wholesaler. Upon request, Wholesaler shall provide to Market Engines or its representatives reasonable access to Wholesaler's facilities and records for the purpose of performing any inspection and/or copying of Wholesaler's books and/or records deemed appropriate by Market Engines in order to verify compliance with the terms hereof.
- 3.8. **Private Labelling.** All private labelling have to be suitable and accepted by Market Engines. Market Engines has the right to open a separate Merchant Account for any Wholesaler that Market Engines at its sole discretion deems necessary.

#### **4. AFFILIATE PROGRAM**

- 4.1 Affiliate Program- Wholesaler may elect to participate in our Affiliate Program. In the Affiliate Program, other members of the Market Engines community may elect to promote Wholesaler's Software by driving traffic to Wholesaler's web site, and Market Engines will track the sources of traffic to Wholesaler's site. When an End User makes a purchase upon

being driven to Wholesaler's site by an Affiliate, that Affiliate is eligible for an Affiliate Commission, which Wholesaler agrees Market Engines may deduct and pay from the sales price of the product. Any Affiliate commissions that result from a particular sale will also be deducted from Wholesaler's account and paid over to whichever Affiliate Market Engines's systems indicates referred the sale to Market Engines. Wholesaler may set the Affiliate commission on a per product, per account and on a per Affiliate basis. In the event Wholesaler chooses to establish a flat payout fee to the Affiliate, Wholesaler has to ensure that the average sale price is higher than the flat payout fee.

All affiliates within the Affiliate Network shall remain UpClik's sole property, and shall not belong to Wholesaler. In order to enter the network, each affiliate has entered into a contractual relationship with Market Engines. Throughout the duration of the present Agreement, Wholesaler has to ensure that all Affiliates selling his products are respecting the terms set by Market Engines for the Affiliates. Any affiliate recruited by Wholesaler into Market Engines's Affiliate Network through Wholesaler's own efforts or through the use of the affiliate recruiting tool Market Engines provides to Wholesaler, or through any other service or other resource Market Engines provides to Wholesaler shall remain Market Engines's sole property. Wholesaler shall not bypass or circumvent the network with respect to any engagement with a Network Affiliate. The Affiliate Network may make available to Wholesaler tools and resources for the explicit purpose of communicating with affiliates. Wholesaler agrees not to use these tools in a manner that may result in, among other things, avoiding Wholesaler's obligation to pay for services and/or fees associated with the Network, including avoiding paying any Affiliate Commissions, Discount or other cost of sale to Market Engines, or the recruitment of affiliates to another affiliate or affiliate-related network.

## 5. FEES AND RESERVE ACCOUNT

- 5.1 **Fees.** Fees payable to Market Engines, as agreed upon with Market Engines and any other amounts owing from Wholesaler to Market Engines, shall be deducted from Payments. In the event that the Payments are insufficient to pay amounts owing by the Wholesaler to Market Engines hereunder, Wholesaler shall pay the balance thereof within three (3) Business Days following demand by Market Engines.
- 5.2 **Reserve Account.** Market Engines shall hereby deduct from the Payments and establish a reserve account (the "**Reserve Account**") to ensure Market Engines's recovery of any liabilities owed to it or reasonably anticipated to be owed to it by the Wholesaler pursuant to this Agreement including, without limitation, all liabilities in respect of actual and/or potential post-termination Chargeback, post-termination fees, and charges, indemnifications and expenses due or anticipated to be due to Market Engines from the

Wholesaler. The Reserve Account shall be funded and maintained by Market Engines' withholding from the Payments. The amount of the Reserve Account shall be ten percent (10%) of the total monthly value of sales by Market Engines to Customers on a rolling period of six (6) months. Market Engines may also, at its sole discretion, and without notice to the Wholesaler, reasonably amend the amount required in the Reserve Account in order to mitigate against potential losses to Market Engines as a consequence of its performance hereunder. Market Engines shall retain possession of the amounts in the Reserve Account for the term hereof and six (6) months thereafter and such additional time as may be necessary in order to mitigate against potential liabilities of Market Engines hereunder.

5.3 **Security for the Wholesaler's Obligations.** As continuing and collateral security for the due and punctual payment of any and all amounts now owing or which may hereafter become owing to Market Engines by the Wholesaler under this Agreement (the "**Wholesaler Obligations**"), as same may be amended, renewed, extended or supplemented, the Wholesaler hereby charges, mortgages and hypothecates in favour of Market Engines, with effect as of and from this date, all right, title and interest of the Wholesaler in and to the Payments and Reserve Account and all funds therein. The Wholesaler further undertakes, upon notice by Market Engines at the Wholesaler's expense, to execute and register such documents as may be necessary or desirable to perfect Market Engines's security interest and hypothec therein.

5.4 **Liability for Taxes.** Market Engines maintains the right to withhold from any Payment the amount of sales, value added or other taxes that Market Engines is liable to remit as the reseller of Product to Customers. Wholesaler shall, without limitation, indemnify and hold Market Engines harmless for any and all sales taxes or other taxes or levies for which Market Engines may be liable as a consequence of performing the Services.

## 6. **INDEMNIFICATION AND LIMITATION OF LIABILITY**

6.1 **Indemnification.** Wholesaler shall defend, indemnify and hold harmless the Market Engines, its directors, officers, employees, agents, assigns, and successors-in-interest from and against any and all third-party liability, damages, losses, claims, demands, actions, causes of action and costs (including attorneys' fees and expenses) arising out of or resulting from (i) Wholesaler's performance under this Agreement including, without limitation, performance, non performance, or defect in performance, any statement, misstatement, representation or misrepresentation made by Wholesaler; (ii) the negligent or wilful acts or omissions of Wholesaler or Wholesaler's agents and/or employees; (iii) any statements, claims, representations or warranties made by Wholesaler or Wholesaler's agents and/or employees, relating to the Products and (iv) infringement or claim thereof of any patent, copyright, trademark, service mark, trade name, trade secret, proprietary

and/or confidential information right, and/or any other property right of a third party arising from the use of the Product by Wholesaler, Market Engines or Customers.

6.2 **No Warranties.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MARKET ENGINES EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES AND CONDITIONS, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AS WELL AS ANY WARRANTIES THAT THE SERVICES PROVIDED BY MARKET ENGINES OR ITS AFFILIATES HEREUNDER OR THAT THE OPERATION OF THE SERVICES WILL BE INTERRUPTION OR ERROR FREE.

6.3 **Limitations of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, MARKET ENGINES, ITS AFFILIATES, AGENTS AND LICENSORS, SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE WHOLESALER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES, EVEN IF MARKET ENGINES HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. EXCEPT AS REQUIRED BY LAW, IN NO EVENT SHALL MARKET ENGINES'S LIABILITY (WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, TORT OR OTHERWISE) TO THE WHOLESALER IN ANY WAY CONNECTED WITH OR ARISING OUT OF THIS AGREEMENT EXCEED THE FEES ACTUALLY RECEIVED BY THE WHOLESALER FOR THE PRODUCT ACTUALLY RESOLD DURING THE SIX (6) MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY. WITHOUT LIMITING THE FOREGOING, THE WHOLESALER AND MARKET ENGINES AGREE THAT IF ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN EFFECT.

6.4 **Force Majeure.** Market Engines shall use its commercially reasonable efforts to perform its obligations hereunder, however, Market Engines, its affiliates, agents or licensors shall not be liable for any loss resulting from the activities of the Wholesaler, nor from any erroneous statements or errors in transmission, nor for any loss resulting from any delay, interruption or failure to perform hereunder due to any circumstances beyond Market Engines's reasonable control including, without limitation, acts of god, fire, explosion, earthquake, riot, terrorism, war, sabotage, accident, embargo, storms, strikes, lockouts, any interruption, failure or defects in Internet, telephone, or other interconnect services or in electronic or mechanical equipment. Market Engines's obligations hereunder shall be suspended during any of the foregoing circumstances, which suspension shall not be a cause for termination of this agreement by the Wholesaler.

## 7. TERM AND TERMINATION

7.1 **Term.** This Agreement shall be effective commencing on the date that Wholesaler has accepted the terms of this Agreement via the Site or in writing (the "**Effective Date**") and ending one (1) year thereafter (the "**Initial Term**"). After the Initial Term, this Agreement

shall be renewed automatically for additional consecutive one (1) year periods, unless earlier terminated in accordance with the terms hereof.

**7.2 Termination At Will.** Either party may terminate this Agreement at any time on notice to the other party.

**7.3 Procedure upon Termination.** Upon any termination of this Agreement, Market Engines shall discontinue selling the Products and the licenses to Software, the Site and the Product granted hereunder shall immediately terminate. All provisions regarding indemnification, representations, warranties, liability and limits thereon and confidential information shall survive termination and termination of this Agreement shall not relieve the Wholesaler of its obligations to pay accrued Fees or other liabilities to Wholesaler hereunder.

## **8. CONFIDENTIALITY**

**8.1 Confidential Information.** The Wholesaler agrees that it will: (i) not use for purposes other than this Agreement; (ii) not disclose to any third party; and (iii) retain in strictest confidence; all Confidential Information except in the performance of its obligations under this Agreement. The Wholesaler will use reasonable safety precautions so that Confidential Information cannot be accessed from or through its systems. The Wholesaler will require its employees and all other persons who have access to the Confidential Information to be bound by similar obligations. Termination of this Agreement shall not release the Wholesaler from its obligations of confidentiality.

## **9. REPRESENTATIONS, WARRANTIES AND COVENANTS**

**9.1 Representations and Warranties.** It is agreed between the Parties that performance by Market Engines hereunder, whether the representations, warranties and covenants of the Wholesaler are fulfilled or not, shall in no manner whatsoever waive the benefit, to Market Engines, of any such representations, warranties and covenants of the Wholesaler. The Wholesaler hereby warrants and covenants to Market Engines that:

- a) **Duly Constituted.** If it is not an individual, that it is duly constituted under the laws of its constituting jurisdiction and that it has legal capacity to enter into this Agreement and perform its obligations hereunder;
- b) **Capacity.** If it is an individual, that he or she is of at least 18 years of age and of the legal age for the conclusion of verbal contractual obligations in his or her place of residence and his or her place of business and that he or she does not require the consent, approbation, or approval of any other person to conclude or contract a valid obligation of the type set forth herein;
- c) **Duly authorized.** It or he has the necessary corporate power and authority to execute this Agreement and to perform its or his obligations hereunder. Such execution and



performance by the Wholesaler does not require any action or consent of, any registration with, or notification to, any person, or any action or consent under any laws or regulations which the Wholesaler is subject.

- d) Opportunity to consult counsel. It has had the opportunity to consult legal counsel for the purpose of reviewing and obtaining advice as to the terms hereof.
- e) Business. It is entering into this Agreement in its capacity as a business and not as an individual consumer;
- f) Changes in Wholesaler Information. It shall submit to Market Engines in writing, for Market Engines's written consent, any changes or modifications to the Wholesaler Information;
- g) Market Engines's Reputation. It will uphold the good name and reputation of Market Engines;
- h) Notice of Defects. It will immediately advise Market Engines in writing of defects in the Product or any claim or threatened claim against it in relation to the Product;
- i) Compliance with Laws. The Product conforms to all applicable laws in the jurisdictions where Market Engines, Wholesaler and Customers are located. It will conduct its business affairs in an ethical manner and in accordance with the terms and intent of this Agreement, and in compliance with all applicable laws and regulations, including but not limited to all laws and regulations applicable in each jurisdiction where the Product is sold by Market Engines. Wholesaler shall not use the Services to sell or promote or otherwise facilitate pornography, gambling or casinos, whether online or otherwise;
- j) Fraud. It shall not promote or allow the use of the Services or the Product in connection with any money laundering, fraudulent or other illegal activities under any laws or regulations of any applicable jurisdiction;
- k) Prohibited Uses. It shall not use the Services to itself or permit any third party to operate any e-wallet, payment aggregation or payment services company, nor shall it use the Services in relation to the sale or promotion of any pornography, pharmacy, pharmaceuticals, drugs, prohibited substances, controlled substances, the collection and resale of personal information or any other product or service deemed unacceptable by Market Engines, acting at its sole discretion.
- l) Independent Contractor. The Wholesaler acknowledges to Market Engines that this Agreement is a contract for offer of resale of Product to Customers and that Market Engines is an independent contractor and that nothing herein shall be construed as creating a joint venture, partnership or for sale agency relationship between them.

Neither party has any right to create any obligations on the part of the other party, without the other's prior written consent.

## **10. GENERAL**

- 10.1 Notices.** Any notice, demand, request or other communication required or permitted to be given under this Agreement shall be in writing and delivered personally, or sent by prepaid registered mail, return receipt requested (i) to Market Engines at the postal address provided therefor on the cover-page hereof; to the Wholesaler at the address provided therefor on the cover-page hereof; or to such other address as either party may have previously indicated to the other in writing in accordance with the foregoing. Any such notice, request, demand or communication shall be deemed to have been received on the day it was delivered personally, on the fifth (5th) day following mailing, unless there is a disruption of any kind of postal service.
- 10.2 Currency.** Unless otherwise specified, all dollar amounts referred to herein shall be in United States Dollars.
- 10.3 Number and Gender.** The context requires otherwise, words employing the singular include the plural and vice versa and words employing the gender include all genders.
- 10.4 Amendments.** Market Engines may amend or change the Services they provide, at any time, and those changes will be effective for any transactions that take place after the date of the change.
- 10.5 Assignment and Successors.** Wholesaler or any of its respective successors may not assign this Agreement, or any rights hereunder, directly or by operation of law, without the prior written consent of Market Engines which consent may be withheld for any reason, at Market Engines's sole discretion. Market Engines or any of its respective successors may assign this Agreement, or any rights hereunder, directly or by operation of law, without the prior written consent of Wholesaler. This Agreement and the provisions hereof shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- 10.6 Enforcement.** The Wholesaler shall be liable for and shall indemnify and reimburse Market Engines for any and all reasonable attorneys' fees and other costs and expenses paid or incurred by Market Engines in the enforcement of this Agreement, or in collecting any amounts due from the Wholesaler hereunder, or resulting from any breach of any of the terms or conditions of this Agreement.
- 10.7 Remedies.** All remedies of either party hereunder are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed to be an election of such remedy and shall not preclude the exercise of any other remedy. No

failure on the part of either party to exercise and no delay in exercising any right or remedy hereunder shall operate as a waiver of such right or remedy.

**10.8 Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable and binding on the parties.

**10.9 Governing Law and Choice of Forum.** This Agreement shall be deemed to be governed and enforced in accordance with the laws of the Province of Quebec whose courts shall have exclusive jurisdiction over disputes arising hereunder.

**10.10 Whole Agreement.** References to "this Agreement" include any schedules, supplementary agreements, addendum, appendixes and amendments and any other agreements, schedules appendixes and amendments promulgated by Market Engines and furnished to the Wholesaler from time to time.

**10.11 Counterparts and On-Line Agreement.** By acceptance of the terms hereof on-line by the Wholesaler or by execution of a written acceptance of the terms hereof by the Wholesaler, in counterparts or otherwise, this Agreement together with its Schedules and any supplemental agreements and appendixes constitute the entire validly legally binding agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No waiver of any of the provisions in this Agreement shall be deemed or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**10.12 Survival.** The following provisions hereof shall survive any termination hereof: 1, 2.3, 2.5, 3.3, 3.4, 3.5, 3.6, 4, 5, 6,7, 8 and 9.

