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## ***Merchant Service and Licensing Agreement***

### **AGREEMENT**

The EtechGlobal Online Store service ("EtechGlobal Online Store" or the "Service"), owned and operated by EtechGlobal, LLC. (EtechGlobal), is provided to you ("you" or "Merchant") under the terms and conditions of this EtechGlobal Online Store Merchant Service Agreement and any amendments thereto and any operating rules or policies (collectively, the "EMSA" or "Agreement"). EtechGlobal reserves the right, in its sole discretion, to change, modify, add or remove all or part of the EMSA at any time. Merchant will receive notice of such changes and/or modifications pursuant to Section 14 regarding notices.

1.1 By accepting the terms and conditions of the EMSA, Merchant (a) represents and warrants that he or she is 18 years old or older; (b) agrees to provide true, accurate, current and complete information about Merchant as prompted by the Account Registration Form; and (c) agrees to maintain and update this information to keep it true, accurate, current and complete. If any information provided by Merchant is untrue, inaccurate, not current or incomplete, EtechGlobal has the right to terminate Merchant's account and refuse any and all current or future use of the Service.

1.2 Nothing in this agreement obligates EtechGlobal or the Service to list, link to, accept or otherwise host any online store anywhere within the EtechGlobal.com domain or corporate site. If these terms and conditions or any future changes are unacceptable to you, you may cancel your account pursuant to Section 6.2 regarding non-renewal of service.

**2.0 DESCRIPTION OF ETECHGLOBAL ONLINE STORE SERVICE.** EtechGlobal hosts interactive online stores ("Store") on the World Wide Web and may provide Merchants with, among other things, access to its EtechGlobal Online Store Software ("Software") to facilitate the creation and maintenance of Stores for the sale of goods and services.

### 3.0 MERCHANT'S OBLIGATIONS

3.1 Merchant acknowledges and agrees that it shall be responsible for all goods and services offered at Merchant's Store, all materials used or displayed at the Store, and all acts or omissions that occur at the Store or in connection with Merchant's account or password. Certain Stores may be subject to additional requirements.

3.1.1 Merchant agrees to display in the Store Merchant's contact information, including but not limited to Merchant's company name, address, telephone number, fax number and e-mail address. Merchant also agrees to update such information to keep it true, accurate, current and complete.

3.1.2 Merchant agrees that any and all press releases and other public announcements related to this Agreement and subsequent transactions between EtechGlobal and Merchant, including the method and timing of such announcements, must be approved in advance by EtechGlobal in writing. EtechGlobal reserves the right to withhold approval of any public announcement in its sole discretion. Without limitation, any breach of Merchant's obligation regarding public announcements shall be a material breach of the EMSA.

3.1.3 Merchant represents and warrants that it has full power and authority under all relevant laws and regulations:

- \* to offer and sell the goods and services offered at the Store, including but not limited to holding all necessary licenses from all necessary jurisdictions to engage in the advertising and sale of the goods or services offered at the Store;

- \* to copy and display the materials used or displayed at the Store; and,

- \* to provide for credit card payment and delivery of goods or services as specified at the Store.

3.1.4 Merchant represents and warrants that it will not engage in any activities:

- \* that constitute or encourage a violation of any applicable law or regulation, including but not limited to the sale of illegal goods or the violation of export control or obscenity laws;

- \* that defame, impersonate or invade the privacy of any third party or entity;

- \* that infringe the rights of any third party, including but not limited to the intellectual property, business, contractual, or fiduciary rights of others; and,

- \* that are in any way connected with the transmission of "junk mail" "spam" or the unsolicited mass distribution of e-mail, or with any unethical marketing practices.

3.2 EtechGlobal reserves the right to refuse to host or continue to host any Store which it believes, in its sole discretion: (1) offers for sale goods or services, or uses or displays materials, that are illegal, obscene, vulgar, offensive, dangerous, or are otherwise inappropriate; (2) has substantially changed its Store from the time it was accepted; (3) has received a significant number of complaints for failing to be reasonably accessible to customers or timely fulfill customer orders; (4) has become the subject of a government complaint or investigation; or (5) has violated or threatens to violate the letter or spirit of the EMSA.

#### **4.0 PROPRIETARY RIGHTS**

4.1 Software License. EtechGlobal Online hereby grants Merchant a non-exclusive, non-transferable license to use the Software in object code form only on a server controlled by EtechGlobal Online for the sole purpose of creating and maintaining Stores on such server. Merchant is not being granted any right to copy the Software or to use it on computers other than a server controlled by EtechGlobal. Merchant may not use web pages or parts of web pages generated by means of the Software, other than content that originates from and is proprietary to Merchant, on any server other than the servers controlled by EtechGlobal Online without EtechGlobal's express written agreement. Merchant also acknowledges and agrees that the Software is intended for access and use by means of web browsing software, and that EtechGlobal does not commit to support any particular browsing platform. EtechGlobal Online reserves the right at any time to revise and modify the Software, release subsequent versions thereof and to alter features, specifications, capabilities, functions, and other characteristics of the Software, without notice to Merchant. If any revision or modification to the Software materially changes Merchant's ability to conduct business, Merchant's sole remedy is to terminate the EMSA pursuant to Section 6.2 regarding non-renewal of service.

4.2 EtechGlobal Intellectual Property. Merchant acknowledges and agrees that content available from EtechGlobal or the Service, including but not limited to text, software, music, sound, logos, trademarks, service marks, photographs, graphics, or video, is protected by copyright, trademark, patent, or other proprietary rights and laws, and may not be used in any manner other than as specified in Section 4.1 above.

4.3 Merchant's Property. Merchant agrees that by using the Service, Merchant grants EtechGlobal, and its successors and assigns, a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license under Merchant's copyrights and other intellectual property rights, if any, in all material and content displayed in Merchant's Store to use, distribute, display, reproduce, and create derivative works from such material in any and all media and display in any manner and on any EtechGlobal property. Merchant also grants EtechGlobal the right to maintain such content on EtechGlobal's servers during the term of the EMSA and to authorize the downloading and printing of such material, or any portion thereof, by end-users for their personal use.

4.4 Unauthorized Access. Merchant shall not attempt to gain unauthorized access to any servers controlled by EtechGlobal.

## 5.0 FEES

5.1 Application and Use Fee. As consideration for the services you purchased from EtechGlobal, Customer shall pay any application fees, user fees, including but not limited to monthly fees and any taxes according to the EtechGlobal's then-applicable fee schedule, which can be accessed at the following link: [www.etechglobal.com/index.cfm?link\\_cd=Hosting](http://www.etechglobal.com/index.cfm?link_cd=Hosting). Fee amounts are subject to change at any time, at EtechGlobal's sole discretion. Customer shall pay all amounts due under any invoice to EtechGlobal within thirty (30) calendar days of due date. All payment of fees for EtechGlobal Services shall be in U.S. dollars. You are solely responsible for the credit card information you provide to EtechGlobal and must promptly inform EtechGlobal of any changes thereto (e.g., change of expiration date or account number). In addition, you are solely responsible for ensuring your EtechGlobal Services are renewed.

5.2 Graphic Design Fee. Merchant shall pay to EtechGlobal a fee of \$199.95 for initial setup and custom graphics, with the payment due on the Start Date (as defined in Section 6.1). EtechGlobal reserves the right to establish limitations on the number of revisions. The initial setup involves the implementation of custom graphics into the structure of the EtechGlobal Store for a new Merchant. Graphic art or design updates requested by the Merchant after the Start Date are not considered part of the initial setup fee.

5.3 No Refunds or Credits. Upon cancellation or termination of the Service, Merchant will not receive a refund for any charges or fees associated with the Service.

## 6.0 TERMS

6.1 Term. The term of the EMSA shall be 30 days commencing on the date that Merchant opens an account for Merchant's Store (the "Start Date"). The term shall automatically renew for successive monthly periods at renewal rates applicable at the time, unless notice of non-renewal is provided in accordance with Section 6.2, below; provided, however, that to qualify for each renewal Merchant must at the time of renewal be in substantial compliance with the material terms and conditions of the EMSA. EtechGlobal shall have the right, but not the obligation, to review any Store for compliance with the EMSA as part of the renewal process, or at any time.

6.2 Non-Renewal. Either party, in its sole and absolute discretion, may give notice of non-renewal with or without cause and without stating any reason therefore. Any notice of non-renewal must be given at least five (5) days prior to the end of the current monthly period in order for the EMSA to expire on the last day of that monthly period; otherwise, the EMSA will expire on the last day of the following monthly period (e.g., if the Start Date were June 10, and Merchant were to provide EtechGlobal with notice of non-renewal on July 7, then the EMSA would expire on August 10). All notices under this Section 6.2 must be given in the manner described in Section 14 regarding notice.

## **7.0 TERMINATION**

7.1 Termination. Either party may terminate the EMSA on thirty (30) days notice if the other party has materially breached or is otherwise not in compliance with any provision of the EMSA, and such breach or noncompliance is not cured within such thirty (30) day period. EtechGlobal reserves the right to immediately suspend any customer access to the Store until such breach or noncompliance is cured.

7.2 Termination for Illegal or Other Activity. Notwithstanding the foregoing, EtechGlobal may, but has no duty to, immediately terminate Merchant and remove it from EtechGlobal servers if EtechGlobal in its sole discretion concludes that Merchant is engaged in illegal activities or the sale of illegal or harmful goods or services, or is engaged in activities or sales that may damage the rights of EtechGlobal or others. Any termination under this Section 7.2 shall take effect immediately and Merchant expressly agrees that it shall not have any opportunity to cure.

7.3 Waiver. Merchant expressly waives any statutory or other legal protection in conflict with the provisions of this Section 7.

7.4 Deletion of Information. Upon termination, EtechGlobal reserves the right to delete from its servers any and all information contained in Merchant's account, including but not limited to order processing information, mailing lists, and any web pages generated by the Software.

7.5 Transfer of Data. Providing the Merchant has not been terminated due to the provisions under section 7.2, the Merchant may request a copy of all product and customer data and product images from the Merchant's site. All data will in comma-delimited format and requests must be made within 30 days of termination. Data and images will be delivered to the Merchant in CD-ROM format. The cost for this service is \$300. In the event EtechGlobal dissolves or discontinues its services, the information will be delivered to the Merchant free of charge.

7.6 Survival. The provisions of Section 4 (Proprietary Rights), Section 8.1 (Merchant Information), Section 10 (Indemnity), and Section 11 (Disclaimer of Warranties and Liabilities) of this Agreement shall survive any termination of the Agreement.

## **8.0 MERCHANT PRIVACY**

8.1 Merchant Information. EtechGlobal maintains information about Merchant and the Store on EtechGlobal servers, including but not limited to Merchant's account registration information, Merchant's customer order information, sales information, and Merchant Information. Merchant grants to EtechGlobal a non-exclusive, worldwide, royalty-free, perpetual license to use Merchant Information in aggregate form (i.e., in a form that is not individually attributable to the Merchant) for research, marketing and other promotional purposes.

8.1.1 Merchant agrees that EtechGlobal may disclose Merchant Information in the good faith belief that such action is reasonably necessary: (a) to comply with the law; (b) to comply with legal process; (c) to enforce the EMSA; (d) to respond to claims that the Merchant or Store is engaged in activities that violate the rights of third parties; or (e) to protect the rights or interests of EtechGlobal, EtechGlobal Online Store or others; provided, however, that nothing in this section shall impose a duty on EtechGlobal to make any such disclosures.

8.1.2 Merchant agrees that EtechGlobal may delete customer credit card information from EtechGlobal Online servers 30 days after Merchant retrieves such information, and may delete all other Merchant Information from EtechGlobal servers at the end of each calendar year.

8.2 Password. Merchant shall receive a password from EtechGlobal to provide access to and use of the Software and Online Store Services. Merchant is entirely responsible for any and all activities, which occur under Merchant's account and password, including all other accounts and passwords entered or maintained by the Merchant. Merchant agrees to keep its password confidential, to allow no other person or company to use its account, and to notify EtechGlobal promptly if Merchant has any reason to believe that the security of its account has been compromised.

8.3 Technical Access. Merchant acknowledges and agrees that technical processing of Merchant Information is and may be required: (a) for the Service to function; (b) to conform to the technical requirements of connecting networks; (c) to conform to the technical requirements of the Service; or (d) to conform to other, similar technical requirements. Merchant also acknowledges and agrees that EtechGlobal may access Merchant's account and its contents as necessary to identify or resolve technical problems or respond to complaints about the Service.

8.4 Merchant Privacy Policy. Merchant agrees (a) to post a privacy policy in its Merchant Store that, at a minimum, discloses any and all uses of personal information collected from users by Merchant; and (b) to use personal information only as expressly permitted by Merchant's privacy policy.

## **9.0 MAINTENANCE AND SUPPORT**

9.1 Merchant can obtain assistance with any technical difficulty that may arise in connection with Merchant's utilization of the Software or Online Store Services by requesting assistance by email to support@EtechGlobal.com. EtechGlobal reserves the right to establish limitations on the extent of such support, and the hours at which it is available.

9.2 Merchant is responsible for obtaining and maintaining all telephone, computer hardware and other equipment needed for its access to and use of the Software and Online Store Services and Merchant shall be responsible for all charges related thereto.

#### 10.0 INDEMNITY

Merchant agrees to indemnify and hold harmless EtechGlobal, and its parents, subsidiaries, affiliates, officers, directors, shareholders, employees and agents, from any claim or demand, including reasonable attorneys fees, made by any third party due to or arising out of Merchant's conduct, Merchant's use of the Service, the goods or services offered at Merchant's Store, any alleged violation of the EMSA, or any alleged violation of any rights of another, including but not limited to Merchant's use of any content, trademarks, service marks, trade names, copyrighted or patented material, or other intellectual property used in connection with Merchant's Store. EtechGlobal reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Merchant, but doing so shall not excuse Merchant's indemnity obligations.

#### 11.0 DISCLAIMER OF WARRANTIES AND LIABILITIES

THE SERVICE AND SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. NEITHER THIS AGREEMENT OR ANY DOCUMENTATION FURNISHED UNDER IT IS INTENDED TO EXPRESS OR IMPLY ANY WARRANTY THAT THE ONLINE STORE SERVICES WILL BE UNINTERRUPTED, TIMELY OR ERROR-FREE OR THAT THE SOFTWARE WILL PROVIDE UNINTERRUPTED, TIMELY OR ERROR FREE SERVICE. THE SECURITY MECHANISM INCORPORATED IN THE SOFTWARE HAS INHERENT LIMITATIONS AND MERCHANT MUST DETERMINE THAT THE SOFTWARE ADEQUATELY MEETS ITS REQUIREMENTS. MERCHANT ACKNOWLEDGES AND AGREES THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT ITS OWN DISCRETION AND RISK AND THAT MERCHANT WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO ITS COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. ETECHGLOBAL, AND ITS PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS, SHALL NOT BE LIABLE, UNDER ANY CIRCUMSTANCES OR LEGAL THEORIES WHATSOEVER, FOR ANY LOSS OF BUSINESS, PROFITS OR GOODWILL, LOSS OF USE OR DATA, INTERRUPTION OF BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER, EVEN IF ETECHGLOBAL ONLINE IS AWARE OF THE RISK OF SUCH DAMAGES, THAT RESULT IN ANY WAY FROM MERCHANT'S USE OR INABILITY TO USE THE ONLINE STORE SERVICES OR THE SOFTWARE, OR THAT RESULT FROM ERRORS, DEFECTS, OMISSIONS, DELAYS IN OPERATION OR TRANSMISSION, OR ANY OTHER FAILURE OF PERFORMANCE OF THE

ONLINE STORE SERVICES OR THE SOFTWARE. ETECHGLOBAL'S LIABILITY TO MERCHANT SHALL NOT, FOR ANY REASON, EXCEED THE AGGREGATE PAYMENTS ACTUALLY MADE BY MERCHANT TO ETECHGLOBAL ONLINE OVER THE COURSE OF THE EXISTING TERM. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR LIABILITIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

#### **12.0 NO RESALE OR ASSIGNMENT OF SERVICE**

Merchant agrees not to resell or assign or otherwise transfer its rights or obligations under the EMSA without the express written authorization of EtechGlobal.

#### **13.0 FORCE MAJEURE**

Neither party shall be liable to the other for any delay or failure in performance under the EMSA resulting directly or indirectly from acts of nature or causes beyond its reasonable control.

#### **14.0 NOTICES**

Any notices or communications under the EMSA shall be by electronic mail or in writing and shall be deemed delivered upon receipt to the party to whom such communication is directed, at the addresses specified below. If to EtechGlobal, such notices shall be addressed to sales@EtechGlobal.com or 5204 S. Sand Cherry Circle, Sioux Falls, SD 57108, USA. If to Merchant, such notices shall be addressed to the electronic or mailing address specified when Merchant opens an account with EtechGlobal Online Store, or such other address as either party may give the other by notice as provided above.

#### **15.0 ENTIRE AGREEMENT**

The EMSA constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous proposals, both oral and written, negotiations, representations, writings and all other communications between the parties.

#### **16.0 GENERAL**

The EMSA and the relationship between Merchant and EtechGlobal shall be governed by the laws of the state of South Dakota without regard to its conflict of law provisions. Merchant and EtechGlobal agree to submit to the personal and exclusive jurisdiction of the Supreme Court of the State of South Dakota for the County of Lincoln or the United States District Court for the District of South Dakota. EtechGlobal's failure to exercise or enforce any right or provision of the EMSA shall not constitute a waiver of such right or provision. If any provision of the EMSA is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties intentions as reflected in the provision, and



agree that the other provisions of the EMSA remain in full force and effect. Merchant agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the EMSA must be filed within one (1) year after such claim or cause of action arose, or be forever barred. The section titles in the EMSA are for convenience only and have no legal or contractual effect.

**17.0 ADDITIONAL CONSIDERATIONS FOR ETECHGLOBAL ONLINE SHOPPING.**

17.1 Eligibility for EtechGlobal Online Shopping. In order to become eligible for discretionary placement with EtechGlobal Online Shopping, Merchant agrees to the following: (a) Merchant will comply with the EtechGlobal Online Shopping Merchant Guidelines, included with this agreement and (b) Merchant grants to EtechGlobal a non-exclusive, worldwide, royalty-free license to modify certain pages within the Merchant's Store solely for purpose of implementing features and functionality of EtechGlobal Online Shopping that, in EtechGlobal's reasonable discretion, either facilitate transactions or promote EtechGlobal Online Shopping or EtechGlobal generally.

17.2 Discretionary Submittals to Search Engines. Subject to Section 17.1 above, EtechGlobal will consider Merchant for discretionary periodic search engine submittals with search engines of EtechGlobal's choosing.

I hereby agree to the terms and conditions of the EtechGlobal Merchant Service Agreement.

Signature of Representative of Company: \_\_\_\_\_

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

Business Name: \_\_\_\_\_

License Type: \_\_\_\_ Monthly \_\_\_\_ Annual (please initial the appropriate type)

EtechGlobal, LLC representative: \_\_\_\_\_

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