

## TIRECONNECT TERMS OF SERVICE

### PLEASE READ THIS CAREFULLY BEFORE PROCEEDING

*Last updated and effective: June 28, 2023*

This TIRECONNECT TERMS OF SERVICE (this “**Agreement**”) is by and between Bridgestone Americas Tire Operations, LLC (“**Company**”), and you, either individually or on behalf of another entity (defined below) (“**User**”).

BY CLICKING ON THE BUTTON MARKED “**I ACCEPT THESE TERMS AND CONDITIONS**”, USER INDICATES ACCEPTANCE OF THIS AGREEMENT AND THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT. If User is entering into this Agreement on behalf of User’s employer, User’s franchisees, a tire retailer or other automotive professional each such party shall also be considered a User and the rights granted and restrictions and limitations recited herein apply to all such parties as well as to User as a representative of . **User represents and warrants that User has the power and authority to bind all Users it has direct or indirect control over to this Agreement. As used in this Agreement, “User” refers not only to the individual accepting this Agreement, but also all entities it controls, whether directly or indirectly, including through a franchise arrangement.** Company shall not be liable, and User agrees to indemnify and hold Company and any of its affiliates, subsidiaries, employees, and agents harmless from and against, all damages, liabilities, penalties, costs and expenses incurred by Company and any of its affiliates, subsidiaries, employees or agents as a result of any inaccuracy, false representation or other violation or failure by User in connection with this paragraph.

User agrees that any use of any features or content accessible in or through the Service (defined below) shall be subject to this Agreement, together with any additional applicable Company and/or third-party terms and conditions, disclaimers, and disclosures. IF USER DOES NOT ACCEPT THESE TERMS AND CONDITIONS, USER SHOULD CLICK ON THE BUTTON MARKED “**I DO NOT ACCEPT**” AND DISCONTINUE ANY USE OF THE SERVICE.

Company reserves the right to modify this Agreement by providing User at least three (3) months’ prior written notice of such modification. Changes are not retroactive; they apply, as of the effective date of such change, only to renewals. User accepts changes by allowing the Service to renew after receipt of the change notice. Except as otherwise provided in this Agreement, all changes must be in writing, signed by both parties.

#### 1. **Background.**

(a) Company provides an online service that is provided via a proprietary script, sequence of code, interface, private uniform resource locator, or other electronic means (the “**Service**”) for Users to locate certain information (including without limitation, inventory and pricing information) provided by certain third-party users (“**Wholesalers**”) who have provided such information through the Service.

(b) User desires to utilize the Service to search for automotive tires and related services based on certain criteria, including but not limited to availability, price, geographical location of Wholesalers, and access to additional services from Wholesalers.

3. **Username and Passwords.** In order to access certain features available through the Services, User may be required to create an account. By setting up an account, User agrees to provide Company with accurate and complete information. Each User is responsible for protecting and maintaining the secrecy of its/his/her username and password. Company will not be responsible or liable for any loss or damage that results from User’s failure to comply with this security obligation. User is solely responsible for any and all activities or actions that occur under User’s account, whether or not User has authorized such activities or actions. User agrees to notify Company immediately of unauthorized use of User’s username or password.

4. **Provision of the Service.** The Service, and any integrated third-party software provided in connection with it, contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Company hereby grants User a limited, revocable, personal, non-exclusive, non-assignable, non-transferable right to access and use the Service during the Term of this Agreement solely for User’s internal business purposes, subject to the terms and conditions of this Agreement. User expressly acknowledges and agrees that the Service is merely a

conduit for information. User acknowledges and agrees that it may only access information from Wholesalers that have expressly elected to provide information to User through the Service. User acknowledges and agrees that neither User nor any Wholesaler is under any obligation to purchase or sell any tires or services as a result of any searches performed using the Service. Any transaction between a User and any Wholesaler for the purchase of products and/or services shall occur at User's own risk and entirely outside the Service. Company makes no warranty that (a) any individual Wholesaler will use or be available or accessible on or through the service; and (b) User will be able to locate any products or services in its search results. User acknowledges that the Services do not include: (i) dealing with account administration tasks (such as contact info updates, tire price updates, and service updates); (ii) providing in-person training (unless arranged separately); (iii) providing custom reports related to Service usage; and (iv) any other services excluded under the Bridgestone - TireConnect Client Account Support Policy (included in these TireConnect Terms of Service).

6. **Confidentiality. "Confidential Information"** means any and all information disclosed by Company to User in connection with the Service. Without limitation of the foregoing, this Agreement and all information relating to the Service is Confidential Information, including without limitation, the layout, design, structure and functionality of the Service. Notwithstanding the foregoing, "Confidential Information" does not include any information that User can demonstrate by written documentation (a) was known to User prior to its disclosure hereunder; (b) is or becomes known through no wrongful act of User; or (c) has been rightfully received by User from a third party authorized to make such a disclosure. Except as expressly permitted in this Agreement, User shall not use any of Company's Confidential Information except as expressly necessary for it to use and access the Service, and shall not disclose any of Company's Confidential Information to any person or entity. User shall use the same degree of care to protect Company's Confidential Information as it uses to protect its own confidential information of like nature, but in no circumstances less than reasonable care. In the event Confidential Information of Company is required to be disclosed by court order or disclosure is otherwise required by law, User shall provide prompt advance notice to enable Company to seek a protective order or otherwise prevent or limit such disclosure. User acknowledges that a breach of this Section 6 would cause irreparable harm to Company, the extent of which would be difficult to ascertain. Accordingly, User agrees that, without limiting any other remedies to which Company may be legally entitled, Company shall have the right to obtain immediate injunctive relief in the event of a breach of this Section 6 by User.

7. **Termination.** Either party may terminate this Agreement at any time in writing with prior written notice (email sufficing) to the other party's primary contact or to the address on record for the non-terminating party. Upon User's termination, User's access to the Service shall continue until the last day of the last monthly period for which User has paid Company.

8. **Representations and Warranties.** User represents and warrants to Company and acknowledges and confirms that Company is relying upon such representations and warranties in connection with the provision of the Service:

- (a) If User is entering into this Agreement on behalf of any other party or parties, all such Users are validly existing and in good standing under the laws of its jurisdiction of incorporation or formation; and
- (b) User has good and sufficient power, authority and right to enter into and deliver this Agreement, and to perform its obligations hereunder. The execution, delivery and performance by User of this Agreement, and the consummation of the transactions contemplated hereby:
  - (i) have been duly authorized by all necessary action on the part of User; and
  - (ii) do not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) result in a violation or a breach of, or a default under or give rise to a right of termination, greater rights or increased costs, amendment or cancellation or the acceleration of any obligation under any contracts or instruments to which User is a party or by which User is bound.

9. **Intellectual Property Rights and Restrictions; Data.**

- (a) The Service is proprietary to Company and/or its licensors. All right, title and interest in and to the Service and all copyrights, trade secret rights, patents, trademarks and any other intellectual property and proprietary rights in and to the Service shall at all times remain the exclusive property of Company and/or its licensors. All rights not expressly granted under this Agreement are reserved by Company. User agrees that in the event of an actual or threatened breach of this Section by User, Company will have no adequate remedy at law and will be entitled to injunctive and other equitable relief, without bond and without the necessity of showing actual money damages. User

agrees to use the Service in compliance with all applicable federal, state, and local laws, rules, and regulations. Under the terms of this Agreement, User may not and may not attempt to, and may not permit others to: (i) transfer, sublicense or assign the license or User's rights under it; (ii) use the Service or other component elements of the Service except as expressly permitted by this Agreement; (iii) distribute, rent, sell, loan, lease, sublicense or otherwise deal in the Service and or any other component elements of the Service; (iv) alter, adapt, merge, modify, translate, or create derivative works based on the Service or other component elements of the Service in any way, or for any purpose, other than with the prior written consent of Company; (v) reverse-engineer, disassemble or de-compile the Service, or any portion thereof, or otherwise attempt to obtain the source code for the Service; (vi) remove, change or obscure any identification marks or notices of proprietary rights and restrictions in the Service or any other component elements of the Service; or (vii) enable any timesharing or service bureau use of the Service to any third party.

(b) The parties agree that all proprietary information and data of User provided to or accessed by Company under this Agreement is and shall remain proprietary to and owned by User. The parties acknowledge and agree that Company shall have the perpetual right to use, compile, extract, combine, modify, and aggregate any such data for provision of the Service and in order to create de-identified, demographic or other aggregate data ("**Aggregate Data**"), which Company may use for any purpose, without limitation: (i) improving its products and services; and/or (ii) creating statistical and/or benchmarking data. Company shall own all right, title, and interest in and to such Aggregate Data.

(c) User acknowledges and agrees that User may be providing certain feedback, statements, suggestions and ideas ("**Ideas**") to Company, directly or through a third party, in connection with User's use of the Service, which Company may use in future modifications to the Service, multimedia works and/or advertising and promotional materials relating thereto. In addition, User acknowledges and agrees that Company will have access to certain analytic and demographic data ("**Data**") with respect to User's use of the Service. User hereby assigns to Company any and all rights and interest in any Ideas and Data, including but not limited to any copyright, patent right, moral right, and all other intellectual property rights.

10. **Third-Party Products.** Company may provide connections, links or access to content, products, websites and services of Wholesalers and other third parties ("**Third-Party Connections**"). User should refer to the separate terms of use, privacy policies, and other rules applicable Third-Party Connections before User accesses them. Company will use reasonable efforts to maintain the connections between the Service and Third-Party Connections but does not author, edit or monitor these Third-Party Connections. User acknowledges and agrees that Company makes no guarantee and expressly disclaims any warranty and shall not be liable to User with respect to: (a) the availability of or content provided on such Third-Party Connections, nor does inclusion of any connection imply endorsement of the Third-Party Connections by Company, or vice versa; (b) third party content accessible through such Third-Party Connections; (c) any loss or damage whatsoever User may incur from dealing with any Third-Party Connection; (d) User's dealings with any third parties found on or through the Service; and (e) interoperability of the Service with any Third-Party Connections. User bears all risk associated with the use of the Third-Party Connections, third-party services, and User's correspondence or business dealings with businesses and advertisers other than Company found on or through the Service.

11. **Privacy Policy.** Company is committed to controlling the collection, use and disclosure of the Personal Information provided to Company. This Privacy Policy (this "**Policy**") informs User of Company's practices with respect to the online collection, use, and disclosure of such information. This Policy forms a part of the Agreement, is subject to all of the terms thereof, including without limitation the limitation on liability and indemnification provisions, and is hereby incorporated therein by this reference. This Policy applies only to information collected through the Service and not to information collected offline.

(a) **Information Company Collects.** Company collects personal and other information from User when User provides information to Company or whenever User interacts with Company via the Service. The Service collects two types of information when the User interacts with Company through the Service:

(1) Technical Information and (2) Personally Identifiable Information.

(i) **Technical Information:** Company collects and uses the following Technical Information to administer the Service.

(A) **IP Addresses.** An IP address is a unique string of numbers that is assigned to User's computer by User's Internet Service Provider. Web servers automatically identify User's computer by its IP address. Company uses User's IP address to help diagnose problems with its server, to administer the Service, avoid hacking attacks on the Service's server(s), and may use it and aggregate it to gather broad demographic, geographic, and industry information. The Service may also gather "traffic data" that may be helpful for marketing purposes or

for improving the products and services Company offers. Company does not link IP addresses or traffic data to any personally identifiable information except to investigate improper activity with respect to the Service, if requested or required to do so by law enforcement or if otherwise permitted or required to do so by law without User's consent.

(B) **Cookie and Web Beacon Information.** As is the case with many websites and web-based applications, the Service uses a technology called "cookies," which are small data files that are downloaded onto User's computer or mobile device. The use of cookies is standard on the Internet, and allows Company to tailor User's visits to the Service to User's individual preferences. Although most web browsers automatically accept cookies, User can change User's browser to prevent cookies or notify User whenever User is sent a cookie. However, if User disables or blocks cookies on User's browser, some features on the Service may not work correctly. When User visits the Service, a web beacon allows Company to capture certain additional types of information about User's activities and use of the Service over time, such as which web pages User choose to visit and details about any items that User purchases. Company also may contract with third party service providers who assign cookies and/or web beacons to conduct Service tracking for Company and collect information about User's visits to the Service over time as well as User's visits to other websites in order to provide marketing analytics about goods and services of interest to User, User's preferences, how User shares information about Company's products and services with others, and to improve Company's marketing efforts. Company may combine such information about User's visits to and use of the Service as well as User's visits to other websites with other information that Company or Company's third-party providers collect about User, such as User's user ID, name, email address and mailing address.

(ii) **Personally Identifiable Information:** "Personally Identifiable Information" is information such as User's name, email address, billing address, shipping address, credit card information or User's telephone number. Sometimes this personal information is needed when User engages with Company or when User contacts Company. Company may ask User to provide Company with personal information on a voluntary basis in certain areas of the Service. In particular, to obtain access to the Service, Company may request that User provide certain personal information, including name, email and physical address, company identification, and telephone number, and create a login name and password. Company will use this information to maintain User's account and contact User regarding the Service. Company may use User's information to communicate with User as necessary to facilitate User's access to the Service.

(b) **How Company Uses Gathered Information.** In addition to the uses described above, the information User shares with Company may be used as follows:

(i) **Technical Information:** Company and Company's third-party partners may use a variety of technologies, now known or hereafter devised, to collect Technical Information. Technical Information is used internally for administration of the Service, troubleshooting and to help improve the quality of the Service and its design. Company uses User's IP address to help diagnose problems with Company's server, to administer the Service, avoid hacking attacks on the Service's servers, and may use it to gather broad demographic information. Company may use cookies and other tracking technologies to conduct Service tracking and to tailor User's visit to the Service.

(ii) **Personally Identifiable Information:** Personally Identifiable Information collected by Company may be used for purposes that include administration of the Service and communications with User, to assist User in finding information, services and software on the Service, to assist in creating and presenting content relevant to User's needs, to maintain the highest quality of the Service, and other purposes as may be indicated at the time of disclosure. Company may also provide this information to subsidiaries, affiliates, strategic partners and other trusted businesses or persons for the purpose of processing information on Company's behalf.

(iii) **Other Uses:** Company may disclose Personally Identifiable Information or Technical Information if Company is required to do so by law or Company in good faith believes that such action is necessary to (A) comply with the law or with legal process; (B) protect and defend Company's rights and property; (C) protect against misuse or unauthorized use of the Service; or (D) protect the personal safety or property of Company's users or the public. Please note that Company may not provide User with notice prior to disclosure in such cases.

(iv) **Retention and Storage:** Personally Identifiable Information is retained for as long as User uses the Services plus any longer period of time that is necessary to company with any legal obligations. Technical Information may be retained indefinitely if de-identified. Personally Identifiable Information and Technical Information collected is stored and processed in the United States and may be stored or processed in any other country in which Company or its affiliates, subsidiaries or agents maintain facilities in which they provide services to Company. Personally Identifiable Information and Technical Information will be subject to the laws of the United States and those other jurisdictions. By continuing to use and access the Service, User consents to any such transfer of information outside of User's country.

(c) **Security.** The Service incorporates reasonable safeguards to protect the security, integrity, and privacy of the personal information Company has collected. Security of information communicated by or to Company

over the Internet is of utmost concern to Company; however, no data transmission over the Internet can be guaranteed to be 100% secure. Please note that User's email, like most, if not all, non-encrypted Internet communications, may be accessed and viewed by other Internet users, without User's knowledge and permission, while in transit to Company. For that reason, please do not use email to communicate information to Company that User considers confidential. While Company strives to protect User's personal information, Company cannot ensure or warrant the security of any information User transmits to Company or through the Service. Once Company receives User's transmission, Company will use reasonable efforts to ensure its security on Company's internal systems. Depending on the nature of the inquiry, User's communication may be discarded or archived.

(d) **Access and Correction.** User has certain rights to know about the Personally Identifiable Information that Company holds about User and gathered through the Service, including the right to access, correct, amend or delete the information that Company has on file if it is incorrect. If User wishes to exercise these rights, please contact Company.

(e) **Disclosure Through Business Transfers.** As Company continues to develop its business, Company may buy, merge or partner with other companies or businesses, and in so doing, acquire or share customer information. In such transactions, user information may be among the transferred or shared assets. Similarly, in the event that a portion or substantially all of Company's assets are sold or transferred to a third party, customer information (including Personally Identifiable Information) would likely be one of the transferred business assets.

(f) **Commitment to Children's Privacy.** Protecting the privacy of children is very important to Company. The Children's Online Privacy and Protection Act of 1998 ("COPPA") defines a "Child" as anyone under the age of 13. Company strictly adheres to COPPA. For that reason, Company does not collect or maintain information obtained through the Service from those Company actually knows are under 13, and no part of the Service is structured to attract anyone under 13, and Company does not knowingly collect or use the personal information of minors for marketing purposes.

(g) **External Links.** The Service may provide links to various websites that Company does not control (including but not limited to Third-Party Connections). When User clicks on one of these links, User will be transferred out of the Service and connected to the website of the organization or company that User selected. Company is not responsible for the nature, quality or accuracy of the content or opinions expressed on such websites, and such websites are not investigated, monitored or checked for quality, accuracy or completeness by Company. Inclusion of any linked website on the Service does not imply or express an approval or endorsement of the linked website by Company, or of any of the content, opinions, products or services provided on these websites. Even if an affiliation exists between the Service and a third-party website, Company exercises no control over linked sites and has no responsibility for their privacy practices. Each of these linked sites maintains its own independent privacy and data collection policies and procedures. While Company expects its partners and affiliates to respect the privacy of Company's users, Company cannot be responsible for the actions of third parties. **If User visits a website that is linked from the Service, Company encourages User to consult that website's privacy policy before providing any personal information and whenever interacting with any website.**

(h) **Special Notice to California Residents.** Under the California Civil Code, residents of the State of California that have provided any Personally Identifiable Information to Company have the right to request a list of all third parties to which Company has disclosed Personally Identifiable Information during the preceding year for direct marketing purposes. Alternatively, the law provides that if Company has a privacy policy that gives either an opt-out or opt-in choice for use of Personally Identifiable Information by third parties (such as advertisers or affiliated companies) for marketing purposes, Company may instead provide User with information on how to exercise User's disclosure choice options, free of charge. Company qualifies for the alternative option; it has established this Policy that provides User with details on how User may either opt-out or opt-in to the use of User's Personally Identifiable Information by third parties for direct marketing purposes. If User is a California resident and requests information about how to exercise User's third party disclosure choices, please send a request to Company with a preference on how Company's response to User's request should be sent.

(i) **Account Revisions; Revoking and Deleting Personal Information.** Company welcomes User's questions, comments and all feedback pertaining to User's privacy or any other issue with regard to the Service. At any time, User may ask Company to cease further use of User's email address to send User correspondence, and direct Company to delete any Personally Identifiable Information User has supplied. Although it is not always possible to remove or modify such information, Company will make reasonable efforts to do so. If User has given Company information for one of those third parties Company mentioned above and Company has already passed it on, Company may not be able to delete or change the information. In the event that User has given Company Personally Identifiable Information in the past and then has second thoughts or wants to update it, or if User has any other questions regarding

this Policy or the Service, User may contact support department of the Company at support@tireconnect.ca or 1-888-792-7072 ext. 100.

**12. NO WARRANTY, CONSEQUENTIAL DAMAGE WAIVER, AND LIMITATION OF LIABILITY.**

(a) The Service is intended, and User shall use it solely, for informational purposes, and use and/or reliance on any information available through the Service is at User's sole risk. User acknowledges and agrees that the Service is merely a conduit of information, and Company is not responsible or liable for the Service, any information or materials thereon, or User's use thereof. Company cannot ensure that information provided is exhaustive or complete on every subject or that it will necessarily include all of the most recent information available. It is User's responsibility to evaluate the information and results of information that User accesses and/or receives through the Service. User acknowledges and agrees that Company makes no guarantee, and expressly disclaims any warranty, that the Service will be interoperable with any other system, service, site, software, content, or information, whether provided by Company, User, or a third party. User understands that the Service may contain, errors, "bugs" and other problems, which may result in system failure or failure in the use of the Service or loss of data or access by third parties to personal information provided to Company or obtained by User or on User's behalf through use of the Service. USER UNDERSTANDS AND AGREES THAT THE SERVICE IS PROVIDED ON AN "AS IS", "WITH ALL FAULTS", AND "AS AVAILABLE" BASIS. USER UNDERSTANDS AND AGREES THAT COMPANY AND ALL THIRD PARTY SERVICE OR DATA PROVIDERS, LICENSORS OR DISTRIBUTORS ("REPRESENTATIVES") DO NOT MAKE ANY EXPRESS, IMPLIED, OR STATUTORY WARRANTY OR CONDITION OF ANY KIND FOR THE SERVICE INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OR CONDITION WITH REGARD TO THE SERVICE'S PERFORMANCE, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, SECURITY OR NON-INFRINGEMENT, DATA OR SYSTEM INTEGRITY, OR RESULTS THAT MAY BE OBTAINED FROM OR THROUGH THE SERVICE.

(b) COMPANY MAKES NO WARRANTY, AND EXPRESSLY DISCLAIMS ANY OBLIGATION: (A) THAT THE SERVICE WILL MEET USER'S REQUIREMENTS OR WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS; (B) THAT ANY CONTENT WILL BE UP-TO-DATE, COMPLETE, COMPREHENSIVE OR ACCURATE; (C) REGARDING THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE; (D) THAT THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL OBTAINED BY USER THROUGH THE SERVICE (IF ANY) WILL MEET USER'S EXPECTATIONS; OR (E) THAT DEFECTS, IF ANY, WILL BE CORRECTED. USER ACKNOWLEDGES AND AGREES THAT IT BEARS THE ENTIRE RISK AS TO THE USE, QUALITY, PERFORMANCE, AND RESULTS OF THE SERVICE (INCLUDING WITHOUT LIMITATION, ANY TRANSACTION(S) BETWEEN USER AND ANY THIRD PARTY LOCATED BY USER IN THE COURSE OF USING THE SERVICE) AND THE USE AND TRANSMISSION OF ALL DATA USER UPLOADS, ACCESSES, VIEWS, USES, OR SUBMITS TO OR THROUGH THE SERVICE. WHOLESALERS, NOT COMPANY, ARE SOLELY RESPONSIBLE FOR ALL INFORMATION AND DATA PROVIDED BY SUCH WHOLESALERS.

(c) IN NO EVENT WILL COMPANY OR ANY OF ITS REPRESENTATIVES BE LIABLE TO USER OR ANY OTHER PARTY FOR (i) PUNITIVE, EXEMPLARY, INCREASED OR AGGRAVATED DAMAGES; (ii) ANY DIRECT OR INDIRECT DAMAGES, INCLUDING ANY LOSS OF PROFITS OR INVESTMENT, LOSS OF BUSINESS, LOSS OF SAVINGS, CORRUPTION OR THEFT OF DATA, VIRUSES, SPYWARE, OTHER ECONOMIC OR COMMERCIAL LOSS OR ANY OTHER INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND EVEN IF COMPANY OR ANY OF ITS REPRESENTATIVES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (iii) FOR ANY CLAIM BY ANY OTHER PARTY. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, AND SO PARTS OF THE ABOVE LIMITATION MAY NOT APPLY TO USER. IF ANY EXCLUSION, DISCLAIMER OR OTHER PROVISION CONTAINED IN THIS AGREEMENT IS HELD TO BE INVALID FOR ANY REASON BY A COURT OF COMPETENT JURISDICTION AND COMPANY BECOMES LIABLE THEREBY FOR LOSS OR DAMAGE THAT COULD OTHERWISE BE LIMITED, SUCH LIABILITY WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT PAID BY USER FOR THE SERVICE OR ONE HUNDRED DOLLARS (\$100.00 USD), WHICHEVER IS LESS.

(d) User agrees that any claim or cause of action arising out of User's use of the Service or this Agreement must be filed within one (1) year after such claim or cause of action arose or it shall forever be barred, notwithstanding any statute of limitations or other law to the contrary. Within this period, any failure by Company to enforce or exercise any provision of this Agreement or related right shall not constitute a waiver of that right or provision.

13. **Indemnity.** USER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS COMPANY AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY CLAIMS, LIABILITIES, CAUSES OF ACTION, DEMANDS, RECOVERIES, LOSSES, DAMAGES, FINES, PENALTIES, AND OTHER COSTS OR EXPENSES OF ANY KIND OR NATURE INCLUDING BUT NOT LIMITED TO REASONABLE LEGAL AND ACCOUNTING EXPENSES, ARISING IN CONNECTION WITH:

- (a) USER'S ACTS OR OMISSIONS;
- (b) USER'S PARTICIPATION IN AND/OR USE OF THE SERVICE; AND/OR
- (c) ANY CLAIM ARISING OUT OF OR RELATED TO USER'S RELATIONSHIP WITH ANY THIRD PARTY (INCLUDING WITHOUT LIMITATION, ANY ACTUAL OR PROPOSED TRANSACTION BETWEEN USER AND A WHOLESALER).

14. **General Provisions.**

(a) **Entire Agreement.** This Agreement, together with any attachments hereto, constitutes the full and complete understanding between the parties hereto and supersedes all prior understandings, whether written or oral, pertaining to the subject matter hereof and cannot be modified except by a written instrument signed by the parties hereto.

(b) **Modifications.** It is understood and agreed that any modifications to the terms and conditions of this Agreement shall require a written amendment agreed to and signed by both parties prior to the effectiveness of such amendment.

(c) **Severability.** If any one or more of the provisions contained herein for any reason are held to be invalid, illegal, or unenforceable in any respect, such condition shall not affect any other provision thereof and this Agreement shall be construed as if such condition had never been contained herein.

(d) **Construction.** Headings used in this Agreement are used for clarity only and do not constitute substantive matters to be considered in construing the terms of this Agreement.

(e) **Waiver.** The failure of either party to enforce any provision of this Agreement, or to seek relief for any breach or failure to comply with any representation, warranty, obligation or duty of a party under this Agreement, shall not waive any right to enforce such provision in the future or to seek relief for any subsequent breach.

(f) **Not Assignable.** User shall not assign any of its rights or obligations under this Agreement without prior written consent of Company. This Agreement is binding on the successors and permitted assigns of the parties.

(g) **Independent Contractor.** The relationship of the parties established by this Agreement is that of independent contractors. Neither party has any express or implied right or authority to assume or create any obligation on behalf of the other or to bind the other to any contract, agreement or undertaking with any third party. Nothing in this Agreement shall be construed to create a partnership, franchise, joint venture, employment or agency relationship. Neither party shall assume liability or responsibility for the other party's personnel. Each party shall: (i) ensure it and its personnel comply with all applicable laws, regulations and licensing requirements; and (ii) be responsible for the supervision, control, compensation, withholdings, health and safety of its personnel.

(h) **Arbitration.**

(i) User agrees that any dispute arising out of or relating in any way to the Service or this Agreement requires that such claim be resolved exclusively by confidential binding arbitration; provided, that to the extent User has in any manner violated or threatened to violate confidentiality or intellectual property rights, Company may seek injunctive or other appropriate relief. For disputes arising in the United States, the arbitration shall be conducted before three neutral arbitrators in Nashville, Tennessee, U.S.A., in accordance with the rules of the American Arbitration Association ("AAA"), as then in effect. No claims of any other parties may be joined or otherwise combined in the arbitration proceeding. Unless otherwise expressly required by applicable law, each party shall bear its own attorneys' fees without regard to which party is deemed the prevailing party in the arbitration proceeding. Except for punitive and consequential damages (which may not be awarded), and subject to this Agreement, the arbitrators shall be authorized to award either party any provisional or equitable remedy permitted by applicable law. The parties shall equally share all AAA (or ADRIC, as applicable) charges and fees associated with the arbitration. For disputes arising in Canada, the arbitration shall be conducted before three neutral arbitrators in Ontario, Canada in accordance with the rules of the ADR Institute of Canada ("ADRIC").as then in effect.

(ii) BECAUSE THE USE OF THE SERVICE REQUIRES THE ARBITRATION OF ANY CLAIMS OR DISPUTES EXISTING BETWEEN THE PARTIES, NEITHER PARTY WILL HAVE THE RIGHT TO PURSUE THAT CLAIM IN COURT OR BEFORE A JUDGE OR JURY OR TO PARTICIPATE IN A CLASS ACTION OR ANY OTHER COLLECTIVE OR REPRESENTATIVE PROCEEDING. THE ARBITRATORS' DECISION WILL BE FINAL AND BINDING. OTHER RIGHTS THAT EITHER PARTY WOULD HAVE IF SUCH PARTY WENT TO COURT, INCLUDING WITHOUT LIMITATION THE RIGHT TO CONDUCT DISCOVERY OR TO APPEAL, MAY BE LIMITED OR UNAVAILABLE IN ARBITRATION.

(iii) The award of the arbitrators may be enforced in any court having jurisdiction thereof. For disputes arising in the United States, each party hereby consents (A) to the non-exclusive jurisdiction of the courts of the State of Tennessee or to any federal court located within the State of Tennessee for any action (i) to compel arbitration; (ii) to enforce any award of the arbitrators; or (iii) at any time prior to the qualification and appointment of the arbitrators, for temporary, interim or provisional equitable remedies; and (B) to service of process in any such action by registered mail or any other means provided by law. Should this Section 14(h) be deemed invalid or otherwise unenforceable for any reason, it shall be severed and the parties agree that exclusive jurisdiction and venue for any claims will be in state/provincial or federal courts in Nashville, Tennessee, for disputes arising in the United States, and in Toronto, Ontario, Canada for disputes arising in Canada.

For disputes arising in Canada, each party hereby consents (A) to the non-exclusive jurisdiction of the courts of the Province of Ontario or to any federal court located within Toronto, Ontario for any action (i) to compel arbitration; (ii) to enforce any award of the arbitrators; or (iii) at any time prior to the qualification and appointment of the arbitrators, for temporary, interim or provisional equitable remedies; and (B) to service of process in any such action by registered mail or any other means provided by law. Should this Section 14(h) be deemed invalid or otherwise unenforceable for any reason, it shall be severed and the parties agree that exclusive jurisdiction and venue for any claims will be in provincial or federal courts in Toronto, Ontario, Canada.

(i) **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its provisions related to conflicts of law. The venue for disputes shall be in the proper state or federal courts located in Nashville, Davidson County, Tennessee. In the event the dispute arises in Canada, this Agreement shall be governed by and construed in accordance with the laws of Ontario, without regard to its provisions related to conflicts of law. All such disputes for Canadian-only entities shall be filed and adjudicated in the courts in Toronto, Ontario.

(j) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Agreement which was so faxed.

(k) **Errors.** User acknowledges and agrees that the Service may contain errors, and User is responsible for establishing backup, log, batch, review, and other procedures and controls appropriate to maintain the integrity and continuity of User's operations. As a condition of use of the Service, User agrees that in the event of an error in the Service, a designated Company representative shall, in Company's sole discretion, be permitted to access User personal information as reasonably necessary to correct such error.