



TERMS OF SERVICE: CATALOG

1. **Service.** WTE Solutions / PointShop, Inc., agrees to create and host for Merchant an online store front that enables Merchant to sell products online in accordance with the Master Service Agreement ("Catalog"). Upon Client request, WTE may provide software technical support instruction based on its current Client Support services policy via the method deemed most appropriate at the sole discretion of WTE. Client requests outside of the scope of contract-included Client Support will be identified as Professional Services, Development Services, IT Services, or Database/Engineering services, and additional fees may apply.
2. **Merchant's Representations.** Merchant represents, warrants and agrees that:
 - (a) All information submitted by Merchant to WTE Solutions on the Master Service Agreement of this document (the "Master Service Agreement") or otherwise is true, accurate, current, and complete, and Merchant will maintain and update information as necessary to keep it true, accurate, current and complete at all times;
 - (b) Merchant will cooperate with WTE Solutions in supplying in a timely, accurate and complete manner all information, content and materials necessary for the creation and launch of the Catalog as requested; Merchant acknowledges that failure to provide such content and materials in a timely, accurate and complete manner will not relieve Merchant of any of its payment or other obligations under this Agreement;
 - (c) Merchant has full power, authority and legal right to: enter into this Online Service Agreement (the "Agreement") and into any transactions pursuant to this Agreement; (i) sell and offer for sale the goods and services that are sold or offered for sale at the Catalog, including but not limited to holding all necessary licenses, consents and approvals from all private and governmental entities in all applicable jurisdictions necessary to engage in the advertising and sale of the goods and services offered at the Catalog; (ii) copy and display the materials used or displayed at the Catalog, including but not limited to holding all necessary licenses with respect to materials owned by others; and (iii) process credit card transactions and deliver goods or services as specified at the Catalog;
 - (d) Merchant will not violate any law, rule or regulation, including but not limited to laws prohibiting the sale or export of certain goods and services and laws prohibiting obscenity;
 - (e) Merchant will not defame, impersonate or invade the privacy of any third party or entity;
 - (f) Merchant will not engage in any conduct that infringes the rights of any third party or entity, including but not limited to the intellectual property, business, contractual, or fiduciary rights of others;
 - (g) Merchant will not engage in, facilitate, or encourage the transmission of "junk mail," "spam," or the unsolicited mass distribution of e-mail, or engage in, facilitate, or encourage any unfair or deceptive trade or marketing practices or any other marketing practices which WTE Solutions, in their sole discretion, determine to be unethical, undesirable or improper;
 - (h) Merchant will not: (i) use or attempt to use a Catalog to circumvent the transaction engine through which WTE Solutions processes purchases made by users of the Catalog; or (ii) alter the basic configuration, functionality or shopping hierarchy of the Catalog;
 - (i) Merchant is and will be solely responsible for all goods and services offered at the Catalog and all matters related thereto, for all aspects of all sales of goods and services through the Catalog, for all materials used or displayed at the Catalog, and for all acts or omissions that occur at the Catalog or in connection with Merchant's account or password, whether attributable to Merchant's employees, consultants or otherwise;
 - (j) Merchant will not engage in any act or omission that gives rise to WTE Solutions right to suspend access to and use of the Catalog under Section 7 below; and
 - (k) Merchant will support and comply with any privacy or other policy established by WTE Solutions or WTE Solutions' hosting service provider (including, without limitation, the Rules and Regulations that appear at http://www.wte.net/contracts/ASC_TOS from time to time and will act in a manner consistent with the obligations of WTE Solutions there under.
3. **Terms and Termination of Agreement.** The Initial Term of this Agreement will commence upon the Effective Date (i.e., the date that the Agreement is signed by an authorized representative of WTE Solutions) and will remain in effect for twenty-four (24) months. Upon expiration of the Initial Term, this Agreement will automatically renew for successive twelve (12) month periods (each, a "Renewal Term") unless either party provides the other with written notice of termination at least thirty (30) days prior to the annual Renewal date. Following completion of the Initial Term, merchant may be entitled to terminate this agreement during a Renewal Term. An Early Termination Fee in the amount of \$1250 will be due immediately upon notice of a Renewal Term's termination. In addition, WTE Solutions may terminate this Agreement if: (a) Merchant fails to pay in full any charges hereunder within ten (10) days of the date due; or (b) Merchant commits any breach of this Agreement other than a breach described in clause (a) and fails to cure it within ten (10) days of receipt of notice of such breach. WTE Solutions reserves the right to immediately suspend Merchant's access to and use of the Catalog upon a breach of this Agreement. The termination of this Agreement by WTE Solutions will not be deemed in any way to constitute an election of remedies or a waiver of any rights, remedies or actions available to WTE Solutions under this Agreement or otherwise, and all such rights, remedies and actions are expressly reserved by WTE Solutions. Upon termination, WTE Solutions reserves the right to delete from its servers any and all information contained in Merchant's account or relating to Merchant or the Catalog, including but not limited to order processing information, mailing lists, and any Web pages. Any provision of this Agreement that by its terms imposes continuing obligations on the parties shall survive the termination of this Agreement.
4. **Payment.** The Hosting Fee and Email Fees payable by Merchant will be due and payable in advance on the first day of each calendar month beginning on the Effective Date. All other amounts payable by Merchant will be due and payable upon receipt. No credit terms are

extended to Merchant unless specifically stated in writing. For all monthly fees payable for a partial month, Merchant shall pay a pro-rata amount, calculated from the beginning date in which the fee is due (e.g. the Effective Date) until the end of the month in which such date occurs.

- (a) By checking the appropriate box on the Master Service Agreement and providing the applicable information, Merchant has indicated its desire to have amounts due debited from its bank checking account or charged to its credit card. If Merchant checked the box marked "ACH Debit," then: (i) Merchant hereby irrevocably authorizes WTE Solutions to debit Merchant's bank checking account through the Automated Clearing House, or any other available system, for all amounts payable hereunder, and (ii) Merchant has provided, or will provide, to WTE Solutions a voided check and necessary documentation so that WTE Solutions can properly identify the account to be debited and will provide such other information as WTE Solutions may request. If Merchant checked the box marked "Credit Card", then Merchant hereby authorizes WTE Solutions to charge all amounts payable hereunder to the credit card number provided to WTE Solutions at the time of execution of this Agreement, and all such actions by WTE Solutions are hereby irrevocably authorized and approved.
 - (b) Merchant represents, warrants and agrees that: (i) the credit card number or bank information provided by Merchant is valid; (ii) Merchant has the legal right and authority to use that credit card number or bank account; (iii) the account corresponding to any credit card number provided by Merchant has sufficient credit available to pay for all of Merchant's obligations under this Agreement; (iv) any bank account which Merchant authorizes WTE Solutions to debit through the Automated Clearing House will maintain sufficient funds to pay for all of Merchant's obligations hereunder; and (v) Merchant will maintain and update Merchant's credit card or bank account information as needed for the foregoing representations and warranties to remain true and accurate.
 - (c) Merchant acknowledges receipt of WTE Solutions' Payment Policy, which can be found posted online at <http://www.wte.net/WTE-Payment-Policy>, and accepts the current payment terms. Any changes to the WTE Solutions Payment Policy will be communicated in writing, where future use of your website or Store Management system confirms your agreement with those policy changes. In addition, Merchant understands that WTE Solutions may choose to charge late payment fees
 - (d) and/or interest on past due accounts in lieu of terminating services for non-payment at its sole discretion.
5. **Taxes.** Merchant shall be responsible for all sales, use or other taxes imposed by government authorities for the use of the products and services hereunder.
6. **Suspension of Access.** WTE Solutions reserves the right to suspend Merchant's access to and use of the Catalog upon notice to Merchant if WTE Solutions determines, in their sole discretion, that: (a) Merchant offers for sale goods or services, or uses or displays materials, that are illegal, obscene, indecent, vulgar, offensive, dangerous, or are otherwise deemed inappropriate by WTE Solutions; (b) a significant number of customers of the Catalog have complained that the Catalog has failed to fulfill customer orders in a timely fashion; (c) Merchant or the Catalog is or has become the subject of a government complaint or investigation; (d) Merchant or the Catalog violates, has violated, or threatens to violate the terms of this Agreement; (e) the merchandise, information or services offered by the Catalog constitute a possible detriment to the reputation of WTE Solutions or others; or (f) the Merchant does not handle customers or WTE Solutions staff courteously and responsively or engages in unethical or improper marketing or business practices, as determined by WTE Solutions in their sole discretion. Any suspension of Merchant's access to and use of the Catalog pursuant to this section will not relieve Merchant of any of its payment or other obligations under this Agreement.
7. **Use of Merchant Content.** Merchant agrees that WTE Solutions, their designees, licensees and assigns may use Merchant's name and branding, along with identifying and descriptive information regarding the Catalog and its products and services, in any promotional or marketing materials. By submitting content regarding Merchant's business to WTE Solutions for inclusion in the Catalog, Merchant grants WTE Solutions, their designees, licensees, and assigns the world-wide, royalty-free, and non-exclusive license to adapt, use, distribute, modify, reproduce, create derivative works from, and publish such content for the purpose, directly or indirectly, of advertising, demonstrating, displaying, distributing, marketing, presenting and promoting the Catalog or its products and services or otherwise, in any and all media, publications or systems, either with the Catalogs and products and services of others or in any other fashion. Merchant acknowledges that WTE Solutions does not, and is not obligated to pre-screen any content submitted to WTE Solutions, but that PointShop, their designees, licensees and assigns will have the right (but not the obligation) in their sole discretion to refuse or remove any such content from the Catalog or its products and services. Merchant agrees that Merchant must assess, and bear all risks associated with, the use of any content submitted to PointShop, including but not limited to any reliance on the accuracy, completeness, utility or value of such content.
8. **Marketing and Promotion.** Merchant grants PointShop the right, without further obligation or payment to Merchant, to hyperlink to PointShop on their site with our standardized footer treatment. Merchant's products may be displayed in the PointShop Mall website or other regular channels that PointShop deems fit, without further obligation or payment to Merchant. This is intended to allow for additional promotion of the Merchant or Merchant's products to help drive traffic to your website.
9. **Links.** Merchant grants PointShop the right to hyperlink or otherwise provide access to the Catalog through the PointShop commerce network. Although PointShop may submit information to search engines, PointShop can give no assurance regarding the inclusion of such information by the search engines or the manner in which such information may be included.
10. **PCI/Security Scanning and Website Monitors.** PointShop has approved the use of Trustwave for third party PCI certifications, security scanning and website monitoring. You must seek written permission to use any other third party security scanner or website monitor by emailing support@wte.net. WTE Solutions will confirm or reject approval in writing, and reserves the right to disallow their use for any reason at our sole discretion. If you do not have permission and your scanner causes system outages, you will be liable for lost revenue by all merchants affected by the outage.
11. **Ownership and Use of Information.** All page layout, design, graphics work, data files, image maps, HTML coding, software tools and applications used to design, construct, service and maintain the Catalog are and will remain the sole property of WTE Solutions. Merchant retains ownership of the content regarding Merchant's business supplied by Merchant to WTE Solutions; provided, however, that WTE Solutions will have no responsibility regarding the return of any physical materials supplied to WTE Solutions. WTE Solutions will maintain data about Merchant and the Catalog on its servers, including but not limited to information regarding Merchant's account registration, customer orders and information, sales and click stream data ("Merchant Data") and WTE Solutions may disclose any information regarding Merchant or the Catalog, including but not limited to Merchant Data, to third parties in order to conduct the business of WTE Solutions, promote the Catalog or its products or services, process payments pursuant to this Agreement, or for any other purpose related to the business of WTE Solutions, Merchant

or the Catalog. In addition, WTE Solutions may disclose Merchant Data in the good faith belief that such action is reasonably necessary: (a) to comply with any law or regulation or legal process of any kind; (b) to enforce this Agreement; (c) to respond to claims that Merchant or Catalog is engaged in activities that violate the rights of third parties; or (d) to protect the rights and interests of WTE Solutions or others; provided, however, that nothing in this section will impose a duty on WTE Solutions to make any such disclosures.

12. **Disclaimer of Warranties.** ALL INFORMATION, SERVICES AND PRODUCTS ARE PROVIDED BY WTE SOLUTIONS ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. WTE SOLUTIONS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO: (a) ANY WARRANTIES AS TO THE AVAILABILITY, ACCURACY, OR CONTENT OF INFORMATION, SERVICES OR PRODUCTS, (b) ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND (c) ANY WARRANTIES THAT THE ONLINE CATALOG SERVICES OR ACTIVITIES WILL BE UNINTERRUPTED OR ERROR-FREE. WITHOUT LIMITATION OF THE FOREGOING, WTE SOLUTIONS DISCLAIMS ANY AND ALL WARRANTIES FOR THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF ALL SERVICE AND PRODUCTS AND FOR ANY TAX CALCULATIONS PERFORMED. SECURITY MECHANISMS INCORPORATED IN THE WTE SOLUTIONS SYSTEM HAVE INHERENT LIMITATIONS, AND MERCHANT TAKES ALL INFORMATION, SERVICES AND PRODUCTS SUBJECT TO THOSE LIMITATIONS.
13. **Limitation of Liability.** WTE SOLUTIONS, THEIR LICENSORS, SERVICE PROVIDERS, PARENT COMPANIES, SUBSIDIARIES, AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, THE "SPECIFIED PERSONS"), WILL NOT BE LIABLE TO MERCHANT UNDER ANY CIRCUMSTANCES OR LEGAL THEORIES WHATSOEVER FOR: (a) DAMAGES, LOSSES OR LIABILITY CAUSED OR ALLEGEDLY CAUSED BY OR RESULTING FROM ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, SUSPENSION, TERMINATION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMMUNICATIONS LINE FAILURE, THEFT OR DESTRUCTION OF PROPERTY, OR ANY UNAUTHORIZED ACCESS TO, OR ALTERATION OR USE OF, MERCHANT INFORMATION OR CONTENT, OR ANY FRAUDULENT USE OF CREDIT CARDS BY USERS OF THE CATALOG; (b) DAMAGES, LOSSES OR LIABILITY WITH RESPECT TO ANY CLAIM MADE BY A THIRD PARTY BASED ON COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHTS REGARDING THE DATA OR SOFTWARE COMPRISED IN WTE SOLUTIONS PRODUCTS OR SERVICES OR THE USE TO WHICH SUCH DATA AND SOFTWARE IS PUT BY MERCHANT, OR (c) ANY DIRECT, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO THOSE ARISING OUT OF OR RELATING TO LOSS OF BUSINESS, LOSS OR USE OF DATA, INTERRUPTION OF BUSINESS, OR LOSS OF GOODWILL, REVENUES OR PROFITS, EVEN IF SUCH SPECIFIED PERSON IS AWARE OF THE RISK OF SUCH DAMAGES. THE LIABILITY OF WTE SOLUTIONS AND ANY SPECIFIED PERSON TO MERCHANT WILL NOT, FOR ANY REASON, EXCEED THE AMOUNT PAID BY OR ON BEHALF OF MERCHANT TO WTE SOLUTIONS. IT IS UNDERSTOOD THAT THE FOREGOING LIMITATION OF LIABILITY WILL APPLY TO ANY CLAIM MERCHANT HAS AGAINST WTE SOLUTIONS, OR ANY OF THE SPECIFIED PERSONS.
14. **Indemnity.** Merchant agrees to indemnify and hold harmless WTE Solutions, its owners, employees, partners, or any of the Specified Persons, from any loss, damage, liability, cost, claim or demand, including but not limited to penalties, interest and reasonable attorneys' fees and costs, due to, resulting from or arising directly or indirectly out of (i) Merchant's acts or omissions in connection with this agreement; (ii) the trademarks, service marks, trade names, other intellectual property, merchandise, services and information offered at or used in connection with the Catalog or any sale or offer to sell made through the Catalog; (iii) any alleged violation of this Agreement, any applicable law or regulation or any rights of another. WTE Solutions will have the right to participate in the defense of all claims pursuant to this section.
15. **Force Majeure.** Neither party will be liable to the other for any delay or failure in performance under this Agreement resulting directly or indirectly from acts of nature or similar causes beyond its reasonable control.
16. **Assignment.** Neither party may assign or transfer this Agreement, in whole or in part, to any other person or entity without the prior written consent of the other party except that, WTE Solutions may sell, transfer or assign its interest in this agreement in connection with the sale or transfer of all or substantially all of its business or assets.
17. **Independent Contractor.** Merchant is an independent contractor under this Agreement, and nothing herein will be construed to create a partnership or joint venture. Neither party has authority to enter into agreements of any kind on behalf of the other and neither party will be considered the agent of the other.
18. **Governing Law.** This Agreement will be governed by the laws of the State of North Carolina without regard to its conflicts of law provisions.
19. **Notices.** Any notices or communications under this Agreement will be in writing and will be deemed delivered upon receipt by the party to whom such communication is directed, at the address specified on the Master Service Agreement of this Agreement, if sent by: hand, (b) a commercial overnight carrier, (c) U.S. mail, return receipt requested, (d) confirmed facsimile or (e) electronic mail, or such other address as either party may give the other notice as provided herein. An update to the Terms of Service may also be provided via an update posted inside the Content Management Solution CMSDesk admin, and continued use of the CMSDesk admin signifies your agreement.
20. **Entire Agreement.** This Agreement includes the AgileSite Commerce Master Service Agreement (the "MSA"), these Terms of Service, any MSA Addendums, and any operating rules, policies or terms and conditions posted at the Content Management Solution admin (CMSDesk) and constitutes the entire agreement between WTE Solutions and Merchant with respect to the subject matter hereof. This Agreement may not be changed, modified, amended or supplemented except by in writing (which may be a facsimile) signed by authorized representatives of WTE Solutions and Merchant. This Agreement and any amendment hereto may be executed in one or more counterparts, which may be delivered in originally executed form or by facsimile transmission of an executed copy.
21. **Miscellaneous.** This Agreement and all of the provisions hereof will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. WTE Solutions' failure to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision. If a court of competent jurisdiction holds any provision of this Agreement 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 this Agreement will remain in full force and effect. Section headings are included in this Agreement for reference only and will not be construed as a substantive part hereof. At the request of WTE Solutions, Merchant will take such actions and deliver such documents and agreements, as are reasonably necessary to consummate the transactions contemplated by this Agreement.

THE CONTINUED USE OF YOUR AGILESITE COMMERCE WEBSITE AND/OR CONTENT MANAGEMENT SOLUTION ADMIN (CMSDESK) CONFIRMS YOUR AGREEMENT TO THESE TERMS OF SERVICE.