



Merchant Contract.



Etelegate.com

MERCHANT SERVICES AGREEMENT

This MERCHANT SERVICES AGREEMENT (this “**Agreement**”) is made and entered into as of the date set forth on the signature page hereof (**the 1st day of December, the year 2006**) by and between Etelegate LLC, a Delaware limited liability company, whose principal office is located at 29 Harley Street, London, England W1G 9QR (“**ETEL**”) and the merchant ‘whenimalone.com’ whose name address and other information appear on the signature page (“**Merchant**”).

In connection with entering into this Agreement, ETEL and Merchant acknowledge that:

- ETEL provides preliminary fraud scrubbing of electronic payment transactions, actual payment processing, billing and collection services, providing authorization, data capture and funds transfer in connection with electronic transactions and any of their related functions to internet merchants (all such services being collectively referred to as the “**Merchant Services**”).
- Merchant offers goods or services to consumers or other businesses (“**Offerings**”) through one or more Internet websites (“**Website**”) and Merchant’s customers purchase the Offerings using credit or debit cards issued by credit card companies, including but not limited to MasterCard® and VISA® (“**Credit Card Companies**”).
- The credit or debit card purchases of the Offerings will be processed through a merchant account or merchants accounts with one or more banks (collectively, “**Merchant Bank**”) which are processing purchases for the Credit Card Companies and the transactions may be processed through one or more intermediary processors (“**Intermediary Processors**”) before being accepted for payment by the Merchant Bank.
- On the terms and conditions contained herein, Merchant wishes to engage ETEL to process the credit card or debit card payments for its Offerings through Intermediary Processors with the Merchant Bank.

In consideration of the above recitals and the mutual covenants and conditions set forth herein, the parties agree as follows:

1. Merchant Services.

1.1. Description of Merchant Services. ETEL shall process the credit card and debit card payments for Merchant's Offerings through a Merchant Bank and Intermediate Processors, as may be appropriate from time to time (the "**Merchant Services**"), and will use commercially reasonable efforts to successfully process the payment transactions for the Offerings and to integrate the Merchant Services with Merchant's Website.

1.2. Merchant Settlements. ETEL will perform reconciliation and settlement with Merchant according to the pay schedule below, for payments that ETEL has received on transactions that are 25 days behind. The amount due to Merchant from each settlement will be wired directly to the Merchant's bank account as designated by Merchant. A wire transfer fee of \$50.00 will be charged to each settlement payment. ETEL will not release funds to the Merchant, if the funds are withheld from ETEL for any reason by any Credit Card Company, Merchant Bank, Intermediate Processor or otherwise, or if the Merchant's account with ETEL has been suspended.

1.3. Holdback Rolling Reserve. Merchant authorizes ETEL to establish a 180-day rolling reserve on Merchant's account with ETEL, which will be equal to the rolling reserve rate set forth in Section 2.2 (the "**Holdback Reserve**"). ETEL will fund the Holdback Reserve by withholding funds from each of Merchant's settlements. Funds will be released from the Holdback Reserve on the 180th day after the settlement date on which they were withheld, less any costs associated with charge back's from Credit Card Companies, Merchant Banks or Intermediate Processors. ETEL may adjust the Holdback Reserve rate in accordance with Section 2.3.

1.4. Charge backs. The parties acknowledge that Credit Card Companies, Intermediate Processors and Merchant Banks may charge fees, penalties and charge backs against the transactions being processed in the events of customer complaints or ineligible transactions. ETEL will not be liable to Merchant in the case of any fees, penalties or charge backs imposed by Credit Card Companies, Intermediate Processors and Merchant Banks for any reason. ETEL will use all commercially reasonable means to work with Credit Card Companies, Intermediate Processors, Merchant Banks and Merchant's customers to minimize charge backs. On notification of a charge back, ETEL will deduct the sum in question, plus the charge back fee, from the Merchant's next weekly settlement. Such amount will not be deducted from Holdback Reserve.

1.5. Non-payment of remittance. Merchant acknowledges that processing credit card transactions is subject to the changing policies and procedures of Credit Card Companies, Merchant Banks and Intermediate Processors and that ETEL cannot control changes in the approach taken by Credit Card Companies, Merchant Banks or Intermediate Processors. Merchant acknowledges that ETEL is performing a contractual service for Merchant in processing the transactions for its Offerings, and ETEL does not thereby become a debtor of Merchant. ETEL is not responsible for any mistake, failure to pay or delay in payment caused by any Credit Card Company, Merchant Bank or Intermediary Processor. Accordingly, ETEL may refuse to pay, and shall not be responsible for payment of, any remittance or portion thereof which relates to transactions that: (a) are ineligible, fraudulent or illegal, or that violate the requirement of the Credit Card Company, Merchant Bank, Intermediate Processor or applicable law, (b) have been performed, according to consumer claims, without consent, (c) are disputed by the consumer because the merchandise or services were not

received or were returned, rejected, or defection, or because Merchant failed to perform any obligation in connection with its Offerings, (d) result in delays or refusals to process because of credit card company or Merchant Bank policies and procedures as they may be in effect from time to time and (e) may, in ETEL's sole and absolute judgment, cause losses.

1.6. Merchant Business Practices. Merchant may not use ETEL's services to perform any activities whatsoever outside the agreed merchant business. If Merchant engages in any such activity, ETEL may terminate Merchant's account, and freeze any funds pending final settlement.

1.7. Account Suspension or Closure. ETEL reserves the right to suspend or close the Merchant's account without notice. Within 48 hours of suspension or closure, ETEL must furnish the Merchant with the reason for suspension and an outline of required actions the Merchant must take to re-activate its account, if any. Upon suspension or closure, funds in Merchant's account will be frozen. If Merchant's account is closed and not re-opened, all non-released funds will remain in a reserve account for a period of time deemed necessary by ETEL, not exceeding six months, to guard against charge backs. If ETEL is required to take any action to close or suspend the Merchant's account, consulting fees will be charged to the Merchant in order to reimburse for any costs, time and/or fees incurred to ETEL as a consequence of such action. These costs will be deducted from the frozen funds prior to final release.

1.8. Term. The term of this Agreement shall be from the date hereof until it is terminated pursuant to Section 8 of this Agreement

1.9. Non-exclusive License. ETEL hereby grants to Merchant a license, on a non-exclusive, non-transferable, "code" only basis, to use ETEL's proprietary computer software (the "**Software**") solely in connection with the Merchant Services. ETEL shall remain the sole and absolute owner of the Software and any other utilities or related ETEL data installed on Merchant's server. ETEL reserves the right to remove the Software at any time. Merchant shall not copy, transfer, disclose, reverse engineer, disassemble or otherwise alter the Software installed by ETEL.

2. Charges for Merchant Services.

2.1. Set-up Charges. Merchant shall pay ETEL for the reasonable costs of setting up the Merchant Services for the Merchant.

2.2. Rates. Merchant will pay for Merchant Services at the rates established by ETEL for such services from time to time, based upon Merchant sales volume and experience. Rates may be adjusted from time to time to reflect changes in Merchant's volume, approval, decline, charge back or other experience. Initially, Merchant will pay will be levied as per the following Schedule, based upon Merchant's projected sales volume.

Rolling Reserve	
180 Days	10.00%
Settlements	
Wire Transfers	\$50.00

Other Fees						
Monthly Account Fee	\$59.00					
Fraud Scrubbing Transaction Fee	\$0.00					
Chargeback Fee (Over 1%)	\$150.00					
Set-up Fee						
Gateway integration & Account setup (Taken out of processing)	\$0.00					
Up Front Setup Fee	\$0.00					
Payment Schedule	Paid on 1st and 15th of each month 15 days behind					
Your Merchant Reference Number	O1414476					
Transaction Rates and Fees						
	Visa	Mastercard	Check	Discover	JCB	Default
Transaction Fee	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75
Discount Rate	8.75 %	8.75 %	8.75 %	8.75 %	8.75 %	8.75 %
Decline Fee	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75
Customer Service Fee	\$1.95	\$1.95	\$1.95	\$1.95	\$1.95	\$1.95
	Visa	Mastercard	Check	Discover	JCB	Default
Refund Fee	\$15.00	\$15.00	\$15.00	\$15.00	\$15.00	\$15.00
Chargeback Fee	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00
Reserve Rate	10.00 %	10.00 %	10.00 %	10.00 %	10.00 %	10.00 %
* The default Rates and fees for any future payment methods that become available are marked under 'Default'						

2.3. Change in Rates. By notice to Merchant, ETEL, from time to time, may make reasonable adjustments in the rates that it charges to Merchant. If ETEL adjusts operating fees to reflect higher transaction costs resulting from fees charged by, processes required by or any other factors caused by a Merchant Bank, Merchant or other entity over which ETEL has no control, ETEL may adjust operating fees retroactively to reflect higher transaction costs.

3. Intellectual Property.

3.1. General. All right, title and interest in and to any original works of authorship, inventions, discoveries, patents, ideas, concepts or any improvements relating to Merchant Services which are created by or conceived, first reduced to practice, made or developed by ETEL prior to the

Effective Date or in anticipation of, in the course of or as a result of design and development work pursuant to this Agreement, including without limitations any source code (collectively, the “**Intellectual Property**”), shall be solely owned by ETEL.

3.2. **Source code.** In any application in which ETEL develops the programming, unless otherwise agreed in writing, ETEL is the sole owner of the source code therefor. Merchant shall not copy any such software or duplicate, distribute, or divulge to any other person or organisation any information relating to such software without prior consent of ETEL. All rights granted to Merchant pursuant to this Agreement shall terminate immediately upon the termination of this Agreement, including but not limited to the non-exclusive license granted pursuant to Section 1.3 hereof.

3.3. **Trademarks.** Neither party shall publish or use or change the other party's names, logos, trademarks or service marks (collectively “**Marks**”) in any manner inconsistent with the functional use of the to Merchant Services without mutual prior written consent.

3.4. **Restriction on Use and Disclosure.** All documentation regarding Intellectual Property, technical information, software, confidential business information or other materials, in written form and clearly marked as “proprietary” or “Confidential” (“**Proprietary Information**”), furnished by either party in connection with this Agreement and all copies of such Proprietary Information shall remain the property of the disclosing party and shall be held in confidence and safeguarded by the receiving party. Merchant shall not, without the prior written consent of ETEL, use any ETEL software at any location other the server hosting Merchant's Website. Merchant shall not modify, translate, make compilations of, reverse engineer, disassemble, or decompile the ETEL software. Merchant shall not use ETEL software in performance of services for others, or assign Merchant’s rights or delegate its duties under this Agreement, or license or sublicense, or otherwise transfer ETEL software except where expressly permitted in writing by ETEL.

4. Obligations of Merchant.

4.1. Merchant shall maintain a reasonably consistent volume of processing through Merchant Services that is acceptable to ETEL.

4.2. Merchant shall be responsible for all costs and management related to the Offerings on Merchant’s Website.

4.3. Merchant shall disclose the following in a clear and understandable manner in all Internet, print, broadcast or telephone advertising and any announcements promoting Merchant's Offerings: (a) the charges for the Offerings, (b) any geographic time of day, or other limitations upon the availability of the Offerings, (c) that Merchant is solely responsible for the content of all messages, products or services delivered and all representations made during contact with customers and (d) any other information required by Federal, State, and Local laws.

4.4. Merchant shall comply with all rules and regulations established by the Credit Card Companies or the Merchant Bank on its Offerings. Merchant agrees that its on-line order form shall comply with an appropriate format acceptable to the Merchant Bank. ETEL shall not be obligated to

process any transaction that is not in compliance with any of the Credit Card Companies' or Merchant Bank's requirements.

4.5. Merchant shall not indicate in Merchant's Offerings or in any advertising or announcements promoting its Offerings that ETEL endorses the Offerings, in any way.

4.6. Merchant shall not perform or fail to perform any act, which would violate State or Federal law.

4.7. Merchant represents and warrants to ETEL that it has the legal right, pursuant to license, ownership or otherwise, to use and to disseminate any and all information, graphics, text, data video and audio that appear in any manner within the Merchant's Website.

4.8. If requested by ETEL, Merchant shall prominently display the appropriate ETEL logo, as well as the ETEL customer service hypertext link buttons, on Merchant's Website. The location of such a button shall be at the sole discretion and under the complete control of ETEL. Merchant shall provide to ETEL, at no cost or expense, an appropriate amount of space on Merchant's server, which space is to be used by ETEL for installation of the Software. The amount of space provided shall be determined by ETEL, in its sole discretion, and may be modified by ETEL from time to time. Any space used shall be under the sole control of ETEL.

4.9. Merchant shall not subject ETEL to an unacceptable frequency (as determined in the sole discretion of ETEL) of complaints, inquiries, charge backs, refunds, or penalties regarding Merchant's services or products.

4.10. Merchant shall be solely and fully responsible for payment of any and all applicable local, state, or federal sales, use, or value-added tax associated with the sale of Merchant's product/s and/or service/s. In the event sublicenses are entered into with others, Merchant will be jointly and severally liable with the others for such taxes. Any collections of said taxes by ETEL shall in no way alter Merchant's responsibility for payment of the taxes. In the event Merchant incorrectly calculates the amount of tax due on any transaction, which results in ETEL collecting an insufficient amount of money from Merchant's customer, then Merchant shall be responsible for any shortfall. The amounts withheld by ETEL as compensation for providing services under this contract do not include any amount for payment of such taxes.

4.11. Merchant shall fulfil all obligations to its customers, including but not limited to product and service fulfilment, credit and customer support and shall honor all transactions presented in connection with sales or service transactions pursuant to the Merchant Services, without discrimination, subject to the procedures set forth in this Agreement.

4.12. Merchant shall not create a transaction that Merchant knows or should have known to be fraudulent.

4.13. The access, merchandise or services described for sale by the Merchant must actually be delivered or performed immediately or in fully disclosed time frame otherwise specified to all users.

4.14. Merchant shall be solely responsible for all costs, charges, charge backs, credits, and disputes associated with the Offerings.

4.15. Merchant shall provide ETEL, upon demand, with any information, evidence, assignments or other assistance ETEL may need to help resolve any customer billing disputes regarding the nature, quality or performance of the goods or services, or in connection with any return or rejections of such goods and services.

5. Warranty, Limitation of Liability and Indemnification.

5.1. NO WARRANTY. ETEL MAKES NO WARRANTY, EXPRESSED OR IMPLIED, WITH RESPECT TO THE SOFTWARE OR TO THE QUALITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR SUITABILITY OF THE SOFTWARE FOR MERCHANT'S USES OR THE MERCHANT'S OFFERINGS. THE SOFTWARE IS NOT WARRANTED TO BE ERROR-FREE OR INTERRUPTION-FREE.

5.2. Limitations of Liability for ETEL. ETEL assumes no liability for disruptions of credit card, check processing and/or other Merchant Services caused by vandalism, theft, phone service outages, Internet disruptions, extreme or severe weather conditions, or any other causes in the nature of Force *Majeure*. Further, in no event shall ETEL be liable for any delays, damages, loss or in jury caused in whole or in part by fire, explosion, lightning, flood, theft, war, acts of god, power surges or failures, equipment breakdowns, public or quasi-public authorities, public or private utilities or carriers, including without limitation the Merchant Banks or Intermediate Processors, or any other cause beyond the reasonable control of ETEL.

5.3. Failure of Services. Failure of Merchant Services. In the event that Merchant believes that there has been a failure in the Merchant Services provided by ETEL hereunder, it shall give ETEL written notice of such failure. If proper notification is given to ETEL, and ETEL determines that there has been a failure of the Merchant Services, ETEL shall (a) revise or repeat (free of charge) the service affected by the failure; or (b) terminate this Agreement and pay an amount to Merchant to cover costs associated with such failure, which amount shall not exceed Five Hundred Dollars (\$500), except as provided below. The remedies set forth herein are Merchant's sole and exclusive remedies should ETEL breach its obligations under this Agreement. Upon the discovery of facts which reasonably indicate that ETEL has failed to perform its obligations under this Agreement, or otherwise breached a legal duty, Merchant shall verbally notify ETEL within 24 hours of such facts and follow up any such verbal notification with a written notice within thirty (30) days of such discovery. The failure to give the foregoing notices shall constitute an irrevocable waiver of all claims and causes of action which Merchant has against ETEL with respect to such incident and be an absolute bar to the institution of any proceedings or actions based on such claims or causes of action. Merchant must commence any legal action against ETEL with respect to this Agreement within (12) months after the date of the incident giving rise to the claim or cause of action, regardless of when the incident is discovered.

5.4. Consequential Damages. In no event, shall ETEL be responsible for consequential damages or punitive or exemplary damages. In no case shall Merchant be entitled to recover damages from ETEL which exceed the sum of sales retained by ETEL under this Agreement.

5.5. Laws and Regulations. Merchant and ETEL acknowledge that the Merchant Services provided by ETEL are subject to and governed by all federal and state laws and regulations and tariffs of the local and international banks, Credit Card Companies, Merchant Banks and governing bodies. If any service is declared illegal, unlawful, unauthorized or prohibited by law by any regulatory body or commission with jurisdiction, or ETEL is involuntarily forced to terminate its operations as a consequence of that action by any presiding body or other governmental agency, this Agreement will be terminated and no party shall be deemed in breach of said Agreement or have any obligation or recourse.

5.6. Indemnification. Merchant shall indemnify, defend and hold harmless ETEL, its agents, employees, officers and directors from and against any and all fines, penalties, losses, damages, injuries, claims, (including attorney's fees) or other liabilities arising out of or in connection with this Agreement, the breach of any warranty made by Merchant hereunder or the performance of this Agreement, including but not limited to claims of third parties resulting from or in connection with the Merchant's products, services, messages, representations, warranties, covenants or any claim asserted with respect to content or accessibility of the Website, caller contracts, promotions and advertising disseminated, broadcast, furnished or supplied by Merchant or any employee or customer or any one of them or any claims for trademark or patent infringement or any claim for libel or slander, obscenity or violation of copyright, trademark, other intellectual property or any failure to comply with Credit Card Company or Merchant Bank requirements or applicable law.

5.7. Taxes. Each party agrees to report and pay its own taxes imposed on its income by any jurisdiction such as state and federal income taxes. Should ETEL be required to pay any such taxes on the income of Merchant, the amount of such taxes and all related interest, fines, or penalties shall become immediately due and payable to ETEL pursuant to the Indemnification in Section 5.5. The parties agree that any tax in the nature of an excise, sales or use tax is not imposed on the transactions contemplated under this Agreement. Further, if such taxes are imposed, the burden of such taxes shall be the Merchant's responsibility.

6. Termination.

6.1. Termination by ETEL. ETEL, without notice, may immediately terminate this Agreement, reserve any incoming funds and discontinue the Merchant Services immediately if: (a) Merchant fails to pay any charge when due; (b) Merchant significantly changes the scope or focus of the Offerings without the prior written consent of ETEL; (b) Merchant fails to comply with any of its obligations or warranties set forth in this Agreement; (c) Merchant breaches any other part of this Agreement and such condition continues un-remedied for ten (10) days after receipt of written notice; (c) Merchant becomes insolvent, bankrupt, appoints a receiver or dissolves; (d) Merchant assigns or attempts to assign the Agreement or any of Merchant's duties to another party; (e) Merchant's death or incapacity if Merchant is a natural person; or (f) Merchant's use of the Merchant Services for illegal activity. In the event ETEL terminates the Agreement pursuant to this section, ETEL may charge a reasonable termination fee and ETEL reserves the right to withhold any payment to Merchant until matters in dispute are resolved to its satisfaction.

6.2. Termination by Either Party. Either party may terminate this Agreement, without cause, by giving the other party thirty (30) days written notice to the address herein noted, as may be

modified from time to time in writing, by each party. Upon termination, ETEL shall be allowed to withhold any or all of the proceeds then on deposit within the Holdback Reserve or operating accounts for the purpose of satisfying any customer refunds, credits, recessions, charge backs, fees, fines or penalties levied by Credit Card Companies or Merchant Bank, or any participating regulatory agency, for a period of up to ten months. Upon termination, it shall be Merchant's responsibility to: (a) provide ETEL with all consumer communications relating to requests for cancellations, credits and refunds; (b) immediately discontinue ETEL scripts and proprietary Software; and (c) remove cancelled usernames from its password file to prevent access by cancelled members.

7. Confidentiality.

7.1. All information whether as originally constituted or modified, in whatever media (copy, photocopy, photograph, email, or reproduction or dissemination by any other means) and not evidently public (that is, not made reasonably available to the online or offline public) provided within this Agreement in written form and marked as "confidential" by either party is deemed confidential. Any disclosure of confidential information to a third party shall be deemed a breach of this Agreement, and the cause of an injury whose money damages would be difficult to ascertain and insufficient as an adequate remedy. In such event, both parties agree that the injured party would have the right to seek injunctive relief, including specific performance of this Agreement, by appropriate legal means. Nothing in this Agreement shall be construed as granting or conferring any rights, by license or otherwise, in any confidential information disclosed to the receiving party.

7.2. All ETEL database records of active, recurring members of Merchant's Website, which have originated from Merchant's Website, shall be considered to be a part of Merchant's database for purposes of rebilling. These records will include information pertaining to Merchant's customers such as name, address, rebilling date, and banking information, to the extent that this information is available to ETEL. Said database records shall be released (in an electronic format acceptable to both ETEL and Merchant) to Merchant within seventy-two (72) hours of termination of this Agreement. ETEL shall not withhold Merchant's database information in lieu of any fee or dispute. ETEL reserves the right to process membership renewals for a period of one-hundred-and-twenty (120) days after termination by Merchant of this Agreement. Merchant is entitled only to those database records that originate from, and relate to, the Website. Merchant acknowledges that it has no right, title, or interest in the database maintained by ETEL for itself and on behalf of other merchants.

8. Miscellaneous.

8.1. **Force Majeure** Neither party nor their respective affiliates, subsidiaries, or subcontractors shall have liability for delays, disruptions or damages due to: phone service outages, mechanical, power, communication failures, Internet disruptions, vandalism or theft, fire, explosion, lightning, pest damage, power surges or failures, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to obtain parts or supplies or network access, transportation, or other causes beyond a party's control whether or not similar to the foregoing.

8.2. Assignment. Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, ETEL may assign this Agreement, without consent to: (a) a subsidiary, affiliate, or parent company; (b) any firm, corporation or entity which ETEL controls, is controlled by, or under common control with; (c) any partnership in which ETEL has a majority interest; or (d) to any entity which succeeds to all or substantially all of ETEL assets whether by merger, sale or otherwise.

8.3. Merchant Investigations. Merchant acknowledges and agrees that it is entering into this Agreement based upon its own independent decision and investigation.

8.4. Severability. If any portion of the Agreement is found to be invalid or unenforceable, the parties agree that the remaining portions shall remain in effect. The parties further agree that in the event such invalid or unenforceable portion is an essential part of this Agreement, they will immediately begin negotiations for a replacement.

8.5. Modification and Waiver. Except as hereinafter provided, no Amendment or modification of this Agreement shall be valid unless in writing and signed by all parties hereto. ETEL reserves the right to amend this Agreement at any time and any manner to take into account changes in law or regulations or industry mandates and to accommodate changes imposed on ETEL, and to make other changes deemed necessary by ETEL, provided that such changes do not materially alter the ongoing obligations of the parties, by sending the Merchant a specimen of the changed Agreement. Unless the Merchant rejects the changed Agreement and terminates this Agreement by notice to ETEL in writing within fifteen (15) days after ETEL sends the changed Agreement, the changed Agreement shall replace this Agreement and be in full force and effect.

8.6. Notices. Any notice required by this Agreement may be delivered personally, by telecopy, telex, e-mail or other form of written electronic transmission, or by registered or certified mail, or overnight delivery form, postage prepaid. Notices will be effective and deemed delivered upon receipt when delivered personally; three business days after posting with the United States Postal Service when mailed; one business day after pick-up by the courier service when sent by overnight courier, properly addressed and prepaid; and one business day after the date of the sender's electronic confirmation or receipt when sent by facsimile transmission or e-mail. Notices will be sent to the addresses, FAX numbers or e-mail addresses set forth in this Agreement, unless either party notifies the other in writing of an address, FAX number or e-mail address change.

8.7. Governing Law. If the parties to this Agreement have any dispute arising from an alleged breach of Agreement or arising from the Agreement itself, such dispute shall be submitted to binding arbitration in accordance with the rules (in effect at the time of the dispute) of the International Chamber of Commerce ("ICC"). A party to this Agreement may not institute a suit in law or in equity regarding any dispute under this Agreement. Any dispute or cause of action of Merchant with respect to this Agreement must be commenced within one (1) year after the claim or cause of action arose or such cause of action shall be barred. Any matter where the amount in dispute is less than \$25,000 shall be determined by a single arbitrator mutually agreeable to both parties, or lacking such an agreement, as may be selected by ICC procedures. Any matter where the amount in dispute is greater than \$25,000 shall be determined by three (3) arbitrators with each

party selecting one (1) arbitrator and the two (2) arbitrators so selecting the third arbitrator. Each arbitrator shall have no less than five (5) years experience in the selected e-commerce industry. This Agreement shall be governed by and construed in accordance with the laws of the .

8.8. Relationship of Parties. This Agreement is not intended to and does not create an agency, debtor/creditor, partnership, or joint venture relationship between the parties. There will be no sharing in profits and losses of the parties under this Agreement.

8.9. Exclusivity. Nothing in this Agreement will prevent ETEL from offering its services to other merchants either directly or through an agent. It is the intention of the parties that ETEL shall not necessarily be the exclusive, method of processing for the Merchant. The parties understand that it is prudent that the Merchant should have more than one processing method.

8.10. Effectiveness. This Agreement shall not be effective until executed by the Merchant and accepted by ETEL at its principal place of business.

8.11. Successors and Assigns. This Agreement will be binding upon the successors, assignees and legal representatives of the parties.

8.12. Denominations. All transactions and payouts shall be drawn in US dollars.

8.13. Reservation of Rights. Any rights not expressly granted to Merchant herein are reserved by ETEL.

8.14. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof.

8.15. Acceptance. By clicking "I Agree," "I Accept," or by using or attempting to use the Merchant Services; or by signing a signature page to this Agreement, Merchant acknowledges that it understands and agrees to the terms and conditions contained in this Agreement. Merchant has read, understands, and agrees to abide by this Agreement, and any documents incorporated by reference, and Merchant agrees that it intends to form a legally binding contract with ETEL on the terms and conditions contained herein; and that this Agreement constitutes "a writing signed by Merchant" under any applicable law or regulation.

Date: the 1st day of December, the year 2006

Merchant Name:

whenimalone.com

By: 

Name:

Davis Pickering

Title: Owner

Owner

Address:

669 Star Flower Ave,

Waterloo, CANADA

N2V 2L2

Telephone:

519 635-7529

Fax:

N/A

e-mail:

davispickering@rogers.com

Etelegate.com

By: Accepted By Etelegate.com

Date: the 1st day of December, the year 2006