

RETAIL POOLING AGREEMENT

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RETAIL POOLING AGREEMENT, entered into in the City of, Province of (insert name of province), Canada.

BETWEEN: V1 (name of individual), (occupation), domiciled and residing at (insert civic number and street name), in the City of (insert name of city), Province of (insert name of province), (postal code);

OR

V2 (corporate or business name), a legal person duly incorporated pursuant to the Act (name of statute under which the corporation was incorporated), having its principal place of business at (insert civic number and street name), in the City of (insert name of city), Province of (insert name of province), (postal code);

OR

V3 (corporate or business name), a legal person duly incorporated pursuant to the Act (name of statute under which the corporation was incorporated), having its head or registered office at (insert civic number and street name), in the City of (insert name of city), Province of (insert name of province), (postal code), represented by (name of representative), its (title of representative), duly authorized for the purposes hereof;

OR

V4 (corporate or business name), a legal person, duly incorporated pursuant to the Act (name of statute under which the corporation was incorporated), having its head or registered office at (insert civic number and street name), in the City of (insert name of city), Province of (insert name of province), (postal code), and duly registered under number (.....) in accordance with (insert name of statute pursuant to which the entity is registered), represented by (name of representative), its (title of representative), duly authorized for the purposes hereof as he(she) so declares [or as indicated in the resolution of the [sole director or board of directors]];

HEREINAFTER REFERRED TO AS "MERCHANT";

AND: (identification of the wholesaler);

MEERCHANT	WHOLESALER

HEREINAFTER REFERRED TO AS "WHOLESALER";
HEREINAFTER COLLECTIVELY REFERRED TO AS THE "PARTIES".

RECITALS

THE PARTIES MAKE THE FOLLOWING REPRESENTATIONS:

- (A) MERCHANT is engaged in the business of retail sales;
- (B) WHOLESALER is the result of the grouping of several merchants offering the same Products and Services as MERCHANT and its purpose is to maintain central purchasing centres and to develop a Network of independent merchants operating their business under the (identification of the trade-mark used for such purpose) Banner as common group banner;
- (C) MERCHANT, after studying the terms of adhesion to the group and the advantages resulting from such, considers it opportune to join the group;
- (D) MERCHANT also wishes to use the Services, the publicity, the name and the trade-mark offered by WHOLESALER;
- (E) WHOLESALER agrees to supply MERCHANT with Products intended for resale;
- (F) WHOLESALER wishes to authorize the use, by MERCHANT, of the Services, of the publicity, of the name and of the trade-mark it offers;
- (G) The PARTIES wish to set out in writing the terms of their agreement regarding such purpose;
- (H) It is the intent of the PARTIES that their agreement be construed as a contract by mutual agreement.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

0.00 INTERPRETATION

MEERCHANT	WHOLESALER

0.01 Definitions

Unless otherwise indicated, capitalized words and expressions appearing in the Agreement shall be interpreted or construed as follows:

0.01.01 Agreement

means this agreement including its recitals and schedules, any related or ancillary agreement or document identified therein, as well as any amendment made thereto from time to time by the PARTIES in compliance with Section 12.05; the terms “herein”, “hereof”, “hereto”, “herewith”, “hereunder”, “hereby” and other similar terms, when used in the Agreement, shall generally refer to the agreement as a whole rather than to a specific part thereof, unless otherwise indicated in the text;

0.01.02 Authorized Location

Means the addresses specified herein as well as any other address which may, from time to time, be authorized by WHOLESALER as a sale point for MERCHANT;

0.01.03 Banner

Means the Trade-Mark or trade name under which merchants are grouped to operate their business;

0.01.04 Best Effort

means the efforts which a prudent Person desirous of achieving a result would use in similar circumstances to maximize, to the extent reasonably practicable, the probability that a result will occur and includes state of the art as it relates to any trade or profession in addition to generally acknowledged best practices in a field of activity;

0.01.05 Breach

means any misrepresentation, inaccuracy, error, omission, non-compliance, infringement, failure, claim or other circumstance relating to a representation, warranty, covenant, obligation or other provision of the Agreement leading to:

- (a) any infringement of the Agreement; or
- (b) any claim by any Person or other occurrence or circumstance which (i) is inconsistent with a covenant, obligation or other provision of the Agreement and (ii) causes damage to such Person;

0.01.06 Change in Control

MEERCHANT	WHOLESALER

means, in relation to any PARTY to the Agreement whose legal status is that of a business corporation, any one of the following events:

- (c) the direct or indirect acquisition by any Person or entity of securities of such a corporation representing more than FIFTY PERCENT (50%) of the corporation's voting rights;
- (d) an agreement for the sale or disposition of all or substantially all of such a corporation's assets;
- (e) a reorganization of such corporation leading to an assignment of a PARTY's rights in the Agreement to a Related Person;
- (f) a merger of such a corporation; or
- (g) the approval by the shareholders of such a corporation of a plan for its complete liquidation;

0.01.07 Confidential Information

means any commercial, technical, scientific, financial, legal, personal or other information disclosed by a PARTY relating to the disclosing PARTY's business activities, strategies or opportunities, Intellectual Property, Suppliers, customers, financial condition or employees which, at the time of disclosure, is designated as confidential, is disclosed in confidence, or would be understood by the receiving PARTY, exercising reasonable business judgment, to be confidential, but excludes:

- (a) information known to the receiving PARTY before the date on which it is received;
- (b) information known by the public or available to the public before the date on which it is received;
- (c) information which becomes known by or available to the public after the date on which it is received and which does not result from a breach of confidentiality on the part of the receiving PARTY;
- (d) information received at any time by a Person not bound to one of the PARTIES by an undertaking of confidentiality with regard to such information;
- (e) information independently produced by the receiving PARTY;

MEERCHANT	WHOLESALER

- (f) personal information provided by an individual when such information is being used for the purpose for which it has been previously disclosed or any other purpose permitted by Law;

0.01.08 Discount Allowances

Means the part of the discount allowances granted by a Supplier to which MERCHANT is entitled and which are credited to MERCHANT's Discount Allowance Account in compliance with the programs offered to the latter from time to time by WHOLESALER;

0.01.09 Discount Allowances Account

Means the account in which WHOLESALER holds, to MERCHANT's credit, sums of money called "Discount Allowances";

0.01.10 Encumber or Encumbrance

encumber means to create or grant an encumbrance and encumbrance means a legal cause of preference, a dismemberment of ownership rights, an ownership modality, a restriction on the right to sell or a security interest;

0.01.11 Event of Default

refers to any of the following events:

- (a) if a PARTY fails to make any of the payments (of principal or interest) according to the timetable set and if it fails to cure such default within (.....) days following receipt of notice to such effect;
- (b) if any of the security mentioned in the Agreement is reduced in value, forfeited or expires before the obligation it guarantees is performed;
- (c) if a PARTY, in its interim or annual financial statements, does not show a working capital having a ratio of at least 1:1;
- (d) if the operations of a PARTY are interrupted for any reason whatsoever during (.....) consecutive days or more;
- (e) if a PARTY assigns its property for the benefit of its creditors or involuntarily liquidates its property;
- (f) if a PARTY becomes insolvent or if a petition in bankruptcy is instituted against it and a final judgment is handed down confirming its bankruptcy;

MEERCHANT	WHOLESALER

- (g) if a PARTY sells, assigns or transfers its rights in the Agreement, in whole or in part, without having obtained the prior written consent of
- (h) if a PARTY does not comply with one or more of its undertakings pursuant to the Agreement or to any ancillary agreement and such default is not cured within (.....) following receipt of a notice of default from
- (i) if a PARTY (or any of its Subsidiaries) is subject to a Change in Control;

0.01.12 Force Majeure

means any event beyond the control of a PARTY which could not have been reasonably foreseen and against which it could not have protected itself such as, without limiting the generality of the foregoing, natural disasters, epidemics, fires, accidents, acts of war (whether declared or not), insurrections, riots, acts of terrorism, wildcat strikes, partial or total work stoppages or slowdowns, lock-outs, changes in market conditions, power or communications breakdowns, interventions by civil or military authorities, compliance with any orders of governmental authorities, courts or tribunals or public authorities;

0.01.13 Fundamental Provisions

means, in the opinion of the PARTIES, Parts of the Agreement;

0.01.14 Intellectual Property

means any intangible asset, the proprietary rights of which may be protected by contract such as trade secrets, know-how and other similar assets and any intangible asset, the proprietary rights of which are protected by Canadian or foreign Laws such as patents, copyright, trademarks, industrial designs, integrated circuit topographies or plant species and includes any application made to and any registration or patent issued by a public authority for the purpose of securing proprietary and/or intellectual property rights to such intangible assets;

0.01.15 Legal Representatives

means, in respect of each PARTY and, as the case may be, it's authorized assignee, when a natural person, the executors or administrators of his estate, his legal heirs, legatees, successors or mandataries and, when a legal person, its directors, officers, shareholders, members, employees and representatives;

0.01.16 Network

Means all “.....” merchants in Canada;

MEERCHANT	WHOLESALER

0.01.17 PARTY

refers to a signing party to the Agreement and includes its Legal Representatives;

0.01.18 Person

means, as the case may be, a natural person, partnership, joint-stock company, business corporation, cooperative, association, labour union, trust or any other organization whether incorporated or unincorporated, or any public authority of foreign, federal, provincial, territorial or municipal jurisdiction which is not a party to the Agreement, and includes their Legal Representatives;

0.01.19 Prime Rate

means, for each day, the annual rate of interest which the main business bank of WHOLESALER sets for that day, according to the financial markets, which it discloses publicly and based upon which it sets the interest rates for the loans it grants in Canada in Canadian currency;

0.01.20 Products

Means, for the full duration of the Agreement, all products manufactured, obtained, or sold by WHOLESALER from time to time, which WHOLESALER intends for sale and which MERCHANT may choose to resell. This includes, without limitation, the products listed in Schedule 0.01.20 hereof, and any other product or other supply of a similar nature or used for similar purposes, whether or not it was put at MERCHANT's disposal by WHOLESALER;

0.01.21 Related Person

means, in relation to a PARTY, any Person identified in Subsection 251(2) of the *Income Tax Act* (Canada), R.S.C. 1985, c.1. (1st Supp.) or any Person not dealing at arm's length with such PARTY;

0.01.22 Rotating Credit

Means the funds advanced by WHOLESALER to MERCHANT intended for the operation of the Business and reimbursable upon request of which reimbursement is guaranteed mainly by the accounts receivable, inventory and work-in-progress of MERCHANT;

0.01.23 Services

MEERCHANT	WHOLESALER

Means the specialized services performed by WHOLESALER, namely the advertising, management and delivery of wares;

0.01.24 Subsidiary

means an entity controlled by or under common control of a PARTY to the Agreement, through ownership or control of more than FIFTY PERCENT (50%) of the voting rights or other means of ownership or control, provided that such control continues to exist;

0.01.25 Supplier

Means any of WHOLESALER’s suppliers of Products or Services intended for resale by the merchants which are part of the Network;

0.01.26 Territory

Means the territory contained in the geographical area delineated in the following manner:

- (a) TO THE NORTH:
- (b) TO THE SOUTH:
- (c) TO THE EAST:
- (d) TO THE WEST:

0.01.27 Trade-Marks

Means the words, designs, and combinations of words and designs, the trade-mark(s) and trade names used or offered by WHOLESALER and which may be resold by MERCHANT. The word “Mark”, when used in the Agreement, refers to the trade-mark described hereinabove.

0.02 Precedence

The Agreement reflects the entire understanding between the PARTIES. It supersedes all other written or verbal promises or covenants made prior to its signing in addition to any schedules hereto attached and all amendments agreed upon by the PARTIES which do not comply with Section 12.05 of the Agreement.

0.03 Jurisdiction

0.03.01 Governing Law

MEERCHANT	WHOLESALER