



## **TERMS OF SERVICE**

*This Terms of Service policy was revised on September 30, 2016.  
Your continued use of the Volusion site means you agree to these revised terms.*

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*Your continued use of the Volusion site means you agree to these revised terms.*

VOLUSION IS ONLY WILLING TO PROVIDE THE SERVICES TO YOU UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS AGREEMENT. PLEASE READ THIS AGREEMENT CAREFULLY AS IT AFFECTS YOUR LEGAL RIGHTS AND REMEDIES.

## General Terms

### 1. Overview

The following agreement (“Agreement”) is entered into between you (“Customer” or “you”) and Volusion, LLC (“Volusion”), a Delaware limited liability company having a business at 1835-A Kramer Lane, Suite 100, Austin, TX 78758 and is made effective on the date of electronic acceptance. This agreement sets forth the terms and conditions that govern your use of this website and the products and services (collectively, the “Services”) found at this site, and is in addition to and not in lieu of any specific terms and conditions that apply to your purchase of a particular Service. In the event that you provide a purchase order or other ordering document to facilitate your purchase, the document is incorporated by reference only to the extent that it identifies the Services to be purchased, and all other terms and conditions included in such document are hereby rejected by Volusion.

Your electronic acceptance and/or use of the Services signifies that you have read, understood and agreed to be bound by the terms and conditions of this Agreement as well as any policies posted on this website and that by such acceptance and/or use of the Services you agree that any previous agreements between you and Volusion will be terminated and superseded by this Agreement. You acknowledge and agree that Volusion’s acceptance of this Agreement and the provision of Services are performed at Volusion’s offices in Austin, Texas, USA. Volusion, in its sole discretion, may refuse to provide the Services to any one at any time and for any reason. If Volusion exercises this right, Volusion will not charge you for the Services and/or refund you for the amounts paid for the Services during the month that Volusion invokes its right to deny Service.

Volusion, in its sole and absolute discretion, may change or modify this Agreement, and the corporate policies and/or Service Specific Terms which are incorporated herein, at any time, and such changes or modifications shall be effective immediately upon the earlier of (i) our email notification to you advising you of such changes or modifications (ii) your electronic acceptance of this Agreement after such changes or modifications have been made to this Agreement as indicated by the “Last Revised” date at the top of this page or (iii) your continued use of the Services after Volusion posts the amended Agreement to <http://www.volusion.com>.

Volusion may offer a mobile application that allows you to access your online store through your mobile device. If you access your online store via a mobile application, you agree that all the terms of this Agreement shall govern such access. Your use of any mobile application shall also be governed by a separate Licensed Application End User License Agreement.

## 2. Eligibility, Point of Contact, Account Ownership

The Services found at this Site are available only to Customers who can form legally binding contracts under applicable law. By using the Services found at this Site, you represent and warrant that you are (i) at least eighteen (18) years of age and/or (ii) otherwise recognized as being able to form legally binding contracts under applicable law. You further represent and warrant that you are not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons and are not otherwise a person to whom Volusion is legally prohibited to provide the Services.

Customer shall designate a single "Point of Contact" in the accompanying Order Form. Customer's Point of Contact shall have full authority to enter into agreements and make binding decisions on behalf of Customer. Customer agrees that Volusion may rely on representations made by Customer's Point of Contact. Customer may change its Point of Contact at any time by giving written notice to Volusion in accordance with the notice provisions of this Agreement. Volusion is under no obligation to accept instructions from anyone other than the Point of Contact. Notwithstanding the foregoing, Volusion shall not be liable for any loss or damage resulting from Volusion's reliance on any instruction, notice, document or communication reasonably believed by Volusion to be genuine and originating from an authorized representative of Customer's corporate entity. If there is reasonable doubt about the authenticity of any such instruction, notice, document or communication, Volusion reserves the right (but not the obligation) to require additional authentication from Customer. In order to permit Volusion to protect the quality of its products and services, you hereby consent to Volusion staff being able to access your account and records on a case by case basis to investigate complaints or other allegations or abuse.

## 3. Dispute of Site or Account Ownership

The entity or person creating the account and designated as the owner shall be deemed the account owner. For security reasons, only the account owner or Point of Contact designated by the account owner shall be allowed to make changes, cancellations, or designate a new Point of Contact. Disputes sometimes arise between or among multiple persons claiming ownership of or rights in a site, store or account. **Volusion is not obligated to and will not resolve any such disputes.** If multiple persons are claiming ownership of or rights in a site, store or account, and, in Volusion's sole judgment, there is no certainty as to the ownership of or rights in said site or account, then Volusion will, to the extent of its knowledge and ability, notify said persons of the dispute and demand that said persons promptly, conclusively, and finally resolve the dispute in a manner which makes clear who the owner(s) and/or interest holder(s) is/are and in a manner which relieves Volusion of all liability or obligations concerning the dispute. If the disputing persons fail so to resolve the dispute within what Volusion, in its sole judgment, deems to be a reasonable time, then Volusion, at its sole option and without any obligation to do so, may suspend or terminate the account until such persons resolve said dispute and reach certainty regarding ownership of or rights in said site, store and/or account. The person or persons conclusively and finally determined by court order or settlement agreement to be the rightful owner(s) or interest holder(s) of said site, store and/or account shall be obligated to pay all amounts due and comply with the Transfer Policy, if required, to transfer ownership of the site, store and/or account to the rightful owner. Failure of the rightful owner of said site, store and/or account timely pay in full all of said amounts shall be deemed a breach of these Terms and shall subject the account to immediate termination.

To transfer ownership of an account, Customer must contact Volusion and comply with the Transfer Policy.

#### **4. Recommendations**

Volusion personnel may from time to time recommend third party software or other products and services for your consideration. VOLUSION MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING PRODUCTS AND SERVICES THAT ARE NOT PURCHASED FROM VOLUSION, INCLUDING THE COMPATIBILITY OF SUCH PRODUCTS AND SERVICES WITH VOLUSION SOFTWARE. Your use of any such products and services is governed by the terms of your agreement with the provider of those products and services.

#### **5. Software Updates**

From time to time, Volusion may update the software associated with a Service for many reasons, including but not limited to, (a) to maintain PCI compliance; (b) to fix bugs or problems in previous versions; and/or (c) to enhance functionality or features. Volusion makes no warranty that such updates will not affect your use of the Services or introduce new but unknown bugs into the software. Further, Volusion shall not be responsible for the effect an update has on any code not provided by Volusion and any modifications to such code to restore functionality shall be Customer's sole responsibility and cost.

Where support is provided by Volusion, Volusion will provide technical support for the most recent update or version of the Software associated with a Service. From time to time, Volusion may provide support for an older version(s), however Volusion reserves the right to suspend or terminate such support at any time, with or without notice.

#### **6. Use of Customer's Name and Trademarks**

Customer hereby grants Volusion a non-exclusive right and license to use Customer's name and such of Customer's trade names, trademarks, and service marks (collectively, "Customer's Marks") as are listed on User Content or otherwise provided to Volusion in connection with this Agreement (a) on Volusion's own Web Sites, (b) in printed and online advertising, publicity, directories, newsletters, and updates describing Volusion's Services, and, (c) in applications reasonably necessary and ancillary to the foregoing. Customer may use Volusion's trade name, trademarks, and service marks (collectively, "Volusion's Marks") in advertising and publicity in conjunction with the offering of User Content via Volusion, provided that Customer shall submit copy to Volusion for its prior written approval, and provided further that under no circumstances shall such use imply that Volusion endorses, sponsors, certifies, approves or is responsible for User Content. Notwithstanding the foregoing, Customer need not obtain Volusion's prior written approval where use of Volusion's Marks is limited to inclusion in a list of systems via which User Content is available.

#### **7. Use of User Content**

Some of the features of this website or the Services found at this website may allow Customer to view, post, publish, share, store, or manage (a) ideas, opinions, recommendations, or advice ("User Submissions"), or (b) literary, artistic, musical, or other content, including but not limited to photos and videos (together with User Submissions, "User Content"). By providing User Content to Volusion via any method (e.g. site submission, email, survey responses, etc.), you represent and warrant to Volusion that (i) you have all necessary rights to distribute User Content via this website or via the Services found at this website, either because you are the

author of the User Content and have the right to distribute the same, or because you have the appropriate distribution rights, licenses, consents, and/or permissions to use, in writing, from the copyright or other owner of the User Content, and (ii) you do not violate the rights of any third party.

The provisions in this Section apply specifically to Volusion's use of User Content posted to Volusion's corporate websites or submitted directly to Volusion. The applicable provisions are not intended to and do not have the effect of transferring any ownership or licensed rights (including intellectual property rights) you may have in content posted to your hosted websites.

You shall be solely responsible for any and all of your User Content or User Content that is submitted through your Account, and the consequences of, and requirements for, distributing it.

You acknowledge and agree that:

- Your User Submissions are entirely voluntary.
- Your User Submissions do not establish a confidential relationship or obligate Volusion to treat your User Submissions as confidential or secret.
- Volusion has no obligation, either express or implied, to develop or use your User Submissions, and no compensation is due to you or to anyone else for any intentional or unintentional use of your User Submissions.
- Volusion may be working on the same or similar content, it may already know of such content from other sources, it may simply wish to develop this (or similar) content on its own, or it may have taken / will take some other action.

Volusion shall own exclusive rights (including all intellectual property and other proprietary rights) to any User Submissions provided to Volusion by any method, and shall be entitled to the unrestricted use and dissemination of any User Submissions provided for any purpose, commercial or otherwise, without acknowledgment or compensation to you or to anyone else.

## 8. Sublicense

Customer may not sublicense or resell any of Volusion's Services to any third parties without the prior written permission of Volusion. By way of example and not limitation, Customer may not provide Web Hosting services through its Volusion Services to any third party without Volusion's prior written permission. Any attempts to do so would be considered a material breach and grounds for termination of this Agreement.

## 9. Fees and Payment

**A. Fees.** In consideration of the Services, Customer will pay to Volusion all fees due according to the prices and terms listed on the website. Neither EU Directive 97/7/EC nor Regulation 13(1)(c) of the UK Consumer (Distance Selling) Regulations 2000 will apply to Customer sales from Volusion. Customer agrees that Volusion may delay beginning performance of any Service for this Refund Period and that any performance begun prior to the expiration of the Refund Period will only be done with Customer's agreement to waive such Refund Period. All sales are final and Volusion offers no partial or full refunds of any kind on any purchase unless otherwise expressly noted, even if your Services are suspended, terminated or transferred before the end of the Services. Volusion expressly reserves the right to change or modify its prices and fees at any time, and

such changes or modifications shall be posted online at this Site and effective immediately without need for further notice to you. If you have purchased Services for a period of months or years, changes or modifications in prices and fees shall be effective when the Services in question come up for renewal. Volusion may, at its sole option, extend payment terms to You. Should Volusion extend payment terms, You agree that Your obligation to pay Volusion for the Services ordered begins on the date of purchase and does not end until paid in full, even if the Services are abandoned, suspended, terminated or transferred prior to such time.

**B. Payment.** Unless otherwise agreed to in writing by Volusion, all payments are due upon signup, the Services will not begin until payment is received. All recurring charges will be due on the monthly anniversary date of your initial signup. It is Customer's obligation to review all monthly charges for accuracy. Failure to dispute a charge within six (6) months following such charge shall constitute Customer's agreement that all charges are valid and Customer agrees to waive any claims it may have had regarding such charge. If a payment is returned or rejected by Volusion's bank, or incurs additional costs for Volusion (e.g., bank fees) for any reason, then Customer may be charged a service fee of \$40 and be required reimburse all such fees and costs incurred by Volusion, and Customer shall be immediately deemed to be in default of this Agreement. Accounts and all amounts in default are subject to a late payment charge of 1.5% per month, or the maximum amount permitted by law, whichever is greater, until fully paid. If Customer defaults, Customer agrees to pay Volusion its reasonable expenses, including attorney, in house legal expenses and collection agency fees, incurred in enforcing its rights.

**C. Billing Policies and Cycles.** Unless otherwise agreed to in writing by Volusion, we offer billing via credit card or debit card charge only. All initial fees must be paid prior to service setup. These fees may include service setup fees and first month service charge. Our billing cycle begins on the day we setup your account, and is due on that day each month thereafter. Volusion attempts to automatically charge the credit card on file for any past due invoice for current, suspended and cancelled accounts. Accounts suspended and reactivated must pay all past due and current amounts as well as a reactivation fee. Accounts past due over 30 days cannot be reactivated. You must sign up for new service and pay the full setup fees associated with the plan you choose. To cancel your account, you must follow the procedure in Section 18. To ensure that you are not billed for another month of service, you must cancel your account before your billing cycle due date.

**Note:** All billing correspondence (invoices, notifications, etc.) is done via email. It is crucial that you maintain a current email address with us.

**D. Taxes.** All fees charged by Volusion for the Services are exclusive of all taxes, VAT and similar fees now in force or enacted in the future imposed on the transaction and/or the delivery of Services, all of which Customer will be responsible for and will pay in full, except for taxes based on Volusion's net income. If Volusion is required to pay directly any such taxes, Customer will, upon receipt of Volusion's invoice, promptly reimburse Volusion for any such taxes paid by Volusion.

**E. Annual Plans.** If you purchase Services on an annual or multi-year plan, you will be billed in advance for each 12 months of such Services according to the prices and terms listed on the website for such Services. Notwithstanding Section 18, NO REFUNDS or credits of any type will be provided for unused or cancelled portions of Services on an annual or multi-year plan that is terminated prior to the expiration of the then current term. All Services having an annual or multi-year term will automatically renew for successive one-year

terms unless you provide notice to Volusion of your intent not to renew at least 30 days prior to the expiration of a term. All fees charged for additional Services purchased during the term of an annual or multi-year plan and any additional fees and expenses incurred during such term shall be billed and paid in accordance with this Section 9.

## **10. Acceptable Use Policy**

**A. Acceptable Use Policy.** Volusion maintains on its Web site Volusion's then-current Acceptable Use Policy ("AUP"). Customer agrees to abide by the AUP. Volusion may modify its AUP at any time, and shall post the then-current AUP on Volusion's Web site, which will be effective upon posting.

**B. End Users to Comply with AUP.** Customer acknowledges that Volusion may terminate an end user's access to Customer's Web Site for noncompliance with Volusion's AUP. Volusion may thus terminate such end user's access to Customer's Content even if the end user has not violated Customer's own terms and conditions of use of its Web Site. Volusion acknowledges that Customer may terminate a User's access to Customer's Content for noncompliance with Customer's terms and conditions.

## **11. Security**

Customer acknowledges that the Internet is not a secure or completely reliable system, and that the purpose of the Services is to allow end users easy access to Customer's Content. Volusion will take those precautions Volusion deems reasonable in its sole discretion to secure Customer's Web Site from attack, but Volusion makes no warranty that there will be no outages or interruptions of service, or that Customer's Content will be secure against attack of any form by end users or other third parties.

## **12. PCI Guidelines**

Volusion provides a framework to its customers which is CISP certified under optimal security settings. However, if a Volusion customer chooses to utilize the software other than as intended, utilize third party services or software, fail to install a SSL Certificate, or otherwise combine the software with software not approved by Volusion (each a "Customer Fail Point"), Customer may fail to comply with the minimum PCI standards regardless of Volusion's certification.

Therefore, if a Volusion customer chooses to engage in one or more Customer Fail Points, that customer assumes all liability for their actions and the inherent risk associated with viewing, processing, storing or transmitting credit card information and agrees to indemnify Volusion of any costs, claims or damages associated with such risk. Volusion will not be responsible for any such risk or liability regardless of the security settings.

Further, if a merchant chooses to view credit card information, they are certifying that they understand and are following all PCI guidelines for viewing credit card information. These guidelines can be found at Visa's website: <https://usa.visa.com/support/small-business/data-security.html>.

If a merchant does not follow all of the PCI guidelines when viewing credit card information, that merchant is in breach of its contract with Volusion and possibly Visa/MasterCard/Discover/American Express. You agree to indemnify and hold Volusion harmless from any and all claims, costs or damages associated with your failure to follow PCI guidelines.



Regardless of any Customer Fail Point, a customer must comply with the PCI DSS and assume liability applicable to PCI DSS. In addition, per PCI guidelines, stores must use a strong security protocol such as SSL to safeguard sensitive cardholder data over networks.

At its discretion, Volusion reserves the right to change the security settings of any merchant at any time with or without warning. Volusion further reserves the right, but not the obligation, to suspend or terminate any merchant that is suspected or proven to be in violation of minimum PCI guidelines.

### **13. Prohibited Practices**

Volusion shall have no duty or obligation to monitor Customer's Content or any other Content provided or distributed by others, and Volusion shall not edit or otherwise exercise any control over Customer's Content. Nevertheless, Volusion may, in its sole discretion at any time, without notice to Customer, and without liability to Customer, remove from public view, disconnect, or terminate the hosting of any of Customer's Content or other Content that Volusion deems in its sole discretion to be offensive or illegal, for any one or more of the following reasons: (i) the content is adjudicated to be in violation of the laws of the state where the server resides; illegal or sexually explicit Content or activities, or any Content that allegedly violates the law, rules or regulations of any country or subdivision thereof; (ii) the content constitutes harassment of Users, including, but not limited to, by means of Customer's billing practices; or (iii) Customer's noncompliance with or material breach of any of the terms and conditions of the AUP or this Agreement; or (iv) claims made by third parties against Volusion that Customer or any of its end users has engaged in one or more of the above practices.

### **14. No Solicitation**

Customer agrees Customer will NOT approach any employees of Volusion and its affiliates with proposals to hire them as its own employees or contractors. If you were to hire any of Volusion's employees, you agree to pay Volusion for each employee hired the greater amount of three (3) years' salary for that employee as you are to pay such employee, or \$200,000.

### **15. Customer's Indemnification**

Customer shall indemnify and hold harmless Volusion from and against any and all claims, demands, actions, causes of action, suits, proceedings, losses, damages, costs, and expenses, including reasonable attorneys fees and fees attributable to in house legal personnel, arising from or relating to Customer's provision, or an end user's use, of Customer's Content, or any act, error, or omission of Customer in connection therewith, including but not limited to matters relating to incorrect, incomplete, or misleading information; libel; invasion of privacy; infringement of a copyright, trade name, trademark, service mark, or other intellectual property or other right; or violation of any applicable law. This indemnification is in addition to any indemnification required under the UDRP or any similar policy.

### **16. DISCLAIMER OF WARRANTIES**

CUSTOMER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT YOUR USE OF THIS SITE AND THE SERVICES FOUND AT THIS SITE SHALL BE AT YOUR OWN RISK AND THAT THIS SITE AND THE SERVICES FOUND AT THIS SITE ARE PROVIDED "AS IS", "AS AVAILABLE" AND "WITH ALL FAULTS". VOLUSION, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS DISCLAIM ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF TITLE,

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. VOLUSION, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT (I) THE ABILITY OF THE SOFTWARE TO PERFORM WITHOUT LIMITATION OR RESTRICTION IN ANY GIVEN ENVIRONMENT (II) THE ACCURACY, COMPLETENESS, OR CONTENT OF THIS SITE, (III) THE ACCURACY, COMPLETENESS, OR CONTENT OF ANY SITES LINKED (THROUGH HYPERLINKS, BANNER ADVERTISING OR OTHERWISE) TO THIS SITE, AND/OR (IV) THE SERVICES FOUND AT THIS SITE OR ANY SITES LINKED (THROUGH HYPERLINKS, BANNER ADVERTISING OR OTHERWISE) TO THIS SITE, AND VOLUSION ASSUMES NO LIABILITY OR RESPONSIBILITY FOR THE SAME.

IN ADDITION, YOU SPECIFICALLY ACKNOWLEDGE AND AGREE THAT NO ORAL OR WRITTEN INFORMATION OR ADVICE PROVIDED BY VOLUSION, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS (INCLUDING WITHOUT LIMITATION ITS CALL CENTER OR CUSTOMER SERVICE REPRESENTATIVES), WHETHER DIRECTLY OR INDIRECTLY, WILL (I) CONSTITUTE LEGAL OR FINANCIAL ADVICE OR (II) CREATE A WARRANTY OF ANY KIND WITH RESPECT TO THIS SITE OR THE SERVICES FOUND AT THIS SITE, AND USERS SHOULD NOT RELY ON ANY SUCH INFORMATION OR ADVICE AND YOU SHOULD CONSULT AN APPROPRIATE PROFESSIONAL FOR SPECIFIC ADVICE TAILORED TO YOUR SITUATION.

THE FOREGOING DISCLAIMER OF REPRESENTATIONS AND WARRANTIES SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW, AND SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT OR YOUR USE OF THIS SITE OR THE SERVICES FOUND AT THIS SITE.

#### **17. LIMITATION OF LIABILITY**

**VOLUSION ASSUMES NO RESPONSIBILITY** WITH RESPECT TO CUSTOMER'S OR END USER'S USE OF THE SERVICES AND SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, BUSINESS INTERRUPTIONS, AND LOSS OF PROFITS, LOST REVENUE OR PUNITIVE OR EXEMPLARY DAMAGES, EVEN IF VOLUSION IS AWARE OF THE POSSIBILITY THEREOF. VOLUSION SHALL IN NO EVENT BE LIABLE IN AGGREGATE FOR MORE THAN THE TOTAL FEES ACTUALLY RECEIVED BY IT FROM CUSTOMER FOR THE SERVICES DURING ANY 12-MONTH PERIOD.

IN ADDITION, YOU SPECIFICALLY ACKNOWLEDGE AND AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS SITE OR THE SERVICES FOUND AT THIS SITE MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE SUCH CAUSE OF ACTION SHALL BE PERMANENTLY BARRED.

THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW, AND SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT OR YOUR USE OF THIS SITE OR THE SERVICES FOUND AT THIS SITE.

#### **18. Term and Termination.**

You may terminate your right to access and use the Service - only by logging in to [customer care.volusion.com](https://customer care.volusion.com) and following the instructions available. For security reasons, Volusion requires that you authenticate any cancellation, including paying the stated termination fee where applicable (i.e. Merchant Services, etc.).

Failure to do so will result in the cancellation request not being processed and you will be liable for all recurring fees until such authentication is complete. **PLEASE NOTE** that a cancellation of a particular Service may not cancel all Services associated with your account.

Volusion may terminate this Agreement and/or your right to access and use the Service, in whole or in part, at any time and for any reason. Volusion reserves the right, but not the obligation, to cancel or suspend your Service if your site(s) causes a sudden significant increased draw on system resources (i.e. a DDOS attack) that in Volusion's sole opinion impairs its ability to provide Services to other customers. Volusion also reserves the right to immediately terminate this Agreement and/or your right to access and use the Service, in whole or in part, if Volusion finds that you have been abusive to Volusion employees.

Upon expiration or effective termination of the Service by either party for any reason, (a) Volusion will cease providing the Service, (b) you will not be entitled to any refunds of any usage fees or any other fees, pro rata or otherwise, unless Volusion terminates such Service without cause, and (c) any outstanding balance for your usage of the Service through the effective date of such termination or expiration will be immediately due and payable in full.

#### **19. No Assignment by Customer**

Customer may not assign this Agreement without the prior written consent of Volusion, which Volusion may refuse in its sole discretion. Any attempt by Customer to assign this Agreement without prior written permission shall be deemed null and void. Volusion may assign this Agreement, which shall be effective upon written notice provided to Customer.

#### **20. No Third-Party Beneficiaries**

Nothing in this Agreement shall be deemed to confer any third-party rights or benefits.

#### **21. Notices of Trademark and Copyright Infringement**

Volusion supports the protection of intellectual property. If you would like to submit (i) a trademark claim for violation of a mark on which you hold a valid, registered trademark or service mark, or (ii) a copyright claim for material on which you hold a bona fide copyright, please refer to Volusion's Trademark and/or Copyright Infringement Policy below.

To cover the increasing cost of processing abuse claims, Volusion reserves the right to charge Customer a processing fee for each instance of notification received from a legitimate copyright holder. Volusion reserves the right to suspend or terminate any Services if, upon notification, Customer fails to comply with a legitimate infringement claim within the specified time.

#### **22. Proprietary Rights Notice**

The Service, which includes but is not limited to, all intellectual property rights in the Service are, and shall remain, the property of Volusion or its licensor (as applicable). All rights not expressly granted to you in this Agreement are hereby expressly reserved and retained by Volusion and its licensors (as applicable). Without limiting the generality of the foregoing, you shall not (and shall not allow any third party to): (a) use the Service outside of the scope of the limited license herein granted, including but not limited to use for the sole purpose of obtaining a competitive advantage against Volusion; (b) sublicense, distribute, copy, modify, adapt, translate,

or prepare derivative works from, to the Service; (c) use the trademarks, trade names, service marks, logos, domain names and other distinctive brand features or any copyright or other proprietary rights associated with the Service for any purpose without the express written consent of Volusion; (d) register, attempt to register, or assist anyone else to register any trademark, trade name, service marks, logos, domain names and other distinctive brand features, copyright or other proprietary rights associated with Volusion (or any of its affiliates or licensors); (e) reverse engineer, disassemble, or decompile any software or otherwise attempt to discover any source code or trade secrets related to the Service, in any manner, except as permitted by applicable law; or (f) remove, obscure, or alter any notice of copyright, trademark, or other proprietary right appearing in or on any item included with the Service.

### **23. Notices**

(i) Any notice or other communication (“Notice”) required or permitted under this Agreement shall be in writing and either delivered personally or sent by facsimile, overnight delivery, express mail, or certified or registered mail, postage prepaid, return receipt requested, to the address listed above in this Agreement, for Volusion or the address provided in the application form submitted with the payment for Customer; (ii) a Notice delivered personally shall be deemed given only if acknowledged in writing by the person to whom it is given. A Notice sent by facsimile shall be deemed given when transmitted, provided that confirmation of that transmission was received. A Notice sent by overnight delivery or express mail shall be deemed given twenty-four (24) hours after having been sent. A Notice that is sent by certified mail or registered mail shall be deemed given forty eight (48) hours after it is mailed. If any time period in this Agreement commences upon the delivery of Notice to any one or more parties, the time period shall commence only when all of the required Notices have been deemed given; (iii) either party may designate, by Notice to the other, substitute addresses, addressees or facsimile numbers for Notices, and thereafter, Notices are to be directed to those substitute addresses, addressees or facsimile numbers.

### **24. Miscellaneous**

Except for disputes governed by the Uniform Domain Name Resolution Policy, the laws of the State of Texas shall govern the validity and construction of this Agreement and any dispute arising out of or relating to this Agreement, without regard to the principles of conflict of laws; and you hereby consent to (and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to) the jurisdiction and venue of the federal and state courts of in Travis County, Texas, USA. You agree to waive the right to trial by jury in any action or proceeding that takes place relating to or arising out of this Agreement. The parties specifically exclude from application to this Agreement from the United Nations Convention on Contracts for the International Sale of Goods.

If a ruling by any court that one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect shall not affect any other provision of this Agreement. Thereafter, this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had been amended to the extent necessary to be enforceable within the jurisdiction of the court making the ruling and to preserve the transactions originally contemplated by this Agreement to the greatest extent possible. The section and subsection headings have been included for convenience only, are not part of this Agreement and shall not be taken as an interpretation of any provision of this Agreement. This Agreement represents the entire

understanding of the parties with respect to the subject matter hereof, and there are no representations, promises, warranties, covenants or understandings with respect thereto other than those contained in this Agreement. Without limiting the generality of the foregoing, it is expressly agreed that the terms of any purchase order issued by Customer with respect to the Services provided under this Agreement shall not be applicable and that any acceptance of such purchase order by Volusion shall be for acknowledgment purposes only.

Failure to insist upon strict compliance with any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver of that term, covenant or condition or of any other term, covenant or condition of this Agreement. Any waiver or relinquishment of any right or power hereunder at any one or more times shall not be deemed a waiver or relinquishment of that right or power at any other time. The remedies set forth in this Agreement are cumulative and are in addition to any other remedies allowed by law. Resort to one form of remedy shall not constitute a waiver of alternate remedies.

## **25. Additional Service Specific Terms**

In addition to the general Terms of Service above, you also agree to be bound by the additional service specific terms applicable to the Services you purchase and/or use. The following Service Specific Terms and Policies are hereby incorporated by reference and will be binding upon the parties.

### **E-Commerce/Hosting Services**

#### **E-commerce License**

Volusion grants you a limited, non-exclusive license to use the ecommerce solution as defined by the package you have selected for the sole purpose of operating an online store. All rights not expressly granted are hereby reserved by Volusion.

#### **Hosting Services**

Volusion shall provide storage for the Software and content of Customer's Web Site and make it available for end-users to access (the "Hosting Services"). Customer will be allocated the disk space and SQL disk space as designated in the plan purchased. Should Customer use more than the designated disk space, Volusion reserves the right to charge an Overage fee at then current list price. Disk space overages shall be calculated by using a daily average over a monthly period. You may monitor your disk space usage in myVolusion.

Customer agrees that if it goes over the allocated disk space, Volusion shall charge and Customer shall pay an overage fee for each 1 GB block used in whole or in part. For clarity and not limitation, if Customer uses .5 GB over the allocated space, Customer will be charged for 1GB, if the customer uses 1.3 GB, Customer will be charged for 2GB. Customer will have the option to pre-purchase blocks of additional space above and beyond that included in the plan. Such blocks of additional space shall be sold as a reoccurring add-on to the Plan subject to the terms and conditions herein.

Should Customer use more than the designated SQL disk space, Volusion reserves the right to clean SQL tables and charge Customer for such service, require Customer clean tables or otherwise reduce space usage, or charge a fee for such overage. Volusion, in its sole discretion, may select to take any or all of the above actions; however it has no obligation to take any of the above actions.

The servers used to provide the Hosting Services are physically located in the United States of America and as such all content will be subject to the laws thereof.

You agree Volusion has no control of availability of the Hosting Services on a continuous or uninterrupted basis. Volusion makes no warranty that the Hosting Services will be uninterrupted, error-free, or completely secure. You acknowledge that there are risks inherent in Internet connectivity that could result in the loss of your privacy, confidential information and property.

You further agree that as a normal course of its business, it may be necessary for Volusion to migrate its servers. As a result, even though you may have a dedicated IP, You may be assigned a different IP number. Volusion does not warrant that you will be able to consistently maintain Your given IP numbers.

### **Burst Capacity**

From time to time your site may be subject to an event expected to cause a significant spike in traffic, such as appearance on a nationally syndicated television show or substantially advertised promotion. Volusion reserves the right, but not the obligation to quarantine your site, throttle traffic or invoke other necessary techniques to protect other customers from being affected in the event of a sudden, significant increase in traffic. Volusion encourages you to provide advanced notice of such planned events to us so that we can create a response plan to minimize the effect on your site. Unless otherwise agreed to by an authorized Volusion Manager, any move to a quarantined or otherwise dedicated server will be will not last more than seven (7) days, and will not include any additional support, or any warranties of increased bandwidth, uptime, connections per second, or other enhanced performance metrics. Unless you purchase a Burst Capacity bundle and/or pre-pay for expected bandwidth overages, all normal overage fees shall apply. If you purchase a Burst Capacity bundle that includes Fraud Score, you will receive a 1 month subscription to the designated Fraud Score package. Your subscription will automatically renew as a recurring monthly subscription unless and until you cancel such subscription as provided for in Section 18.

### **Service Level Warranty**

Volusion warrants that the network will be available 99.9% of the time in a given month. This service level warranty shall not apply to performance issues: (1) to the extent caused by factors outside of Volusion's reasonable control; (2) that resulted from any actions or inactions of Customer or any third parties not affiliated with Volusion, for example a DDOS attack on Customer's site or another customer's site hosted on the same server; (3) that resulted from Customer's equipment and/or third party equipment; (4) that resulted from software related issues; or (5) that are scheduled by Volusion for purposes of maintaining or updating the Web Site or the Software. The network availability measurement expressly excludes downtime caused by (1)-(5) above.

Subject to Section 17 of this Agreement, if you experience Network Downtime above and beyond the 99.9% availability, upon request Volusion will refund a customer 5% of the monthly fee for each 30 minutes of Downtime (up to and not to exceed 100% of customer's monthly fee). This is your sole and exclusive remedy for failure to meet the Service Level Warranty. "Network Downtime" exists when a particular customer is unable to transmit and receive data and Volusion records such failure in the Volusion trouble ticket system. Network Downtime is measured from the time the trouble ticket is opened by the customer to the time the

server is once again able to transmit and receive data. If Customer fails to comply with this requirement, Customer forfeits its right to a receive service credit.

### **Web Site Content**

You shall be solely responsible for providing, updating, uploading and maintaining your web site and any and all files, pages, data, works, information and/or materials on, within, displayed, linked or transmitted to, from or through your web site, including, without limitation, trade or service marks, images, photographs, illustrations, graphics, audio clips, video clips, email or other messages, meta tags, domain names, software and text. Your web site content shall also include any registered domain names provided by you or registered on behalf of you in connection with the Services. Notwithstanding anything in this Agreement to the contrary, in no event shall your web site violate Volusion's AUP or consist of pages containing any of the following types of content:

1. pornographic, obscene or excessively profane content;
2. content intended to advocate or advance computer hacking or cracking;
3. gambling;
4. illegal activity;
5. drug paraphernalia; or
6. hate, violence or racial or ethnic intolerance.

### **Information Shared with Partners**

As a condition of purchasing and using the Hosting Services, you acknowledge and agree Volusion may provide your personal information to their partners, as required to provide the plans for which you are purchasing.

### **Your Obligations**

You acknowledge and agree Volusion shall have the right to seek justification in connection with your use of the Hosting Services, specifically your purchase of IP addresses, and you shall be obligated to provide any and all information reasonably sought by Volusion pursuant to such justification. You acknowledge and agree that you are required to begin using at least ninety percent (90%) of your purchased IP addresses within thirty (30) days of assignment of such IP addresses to you. In the event you do not begin using at least ninety percent (90%) of your assigned IP addresses, you acknowledge and agree Volusion shall have the right to reclaim any unused IP addresses after the expiration of such thirty (30) day period. In connection with such purchase, you acknowledge and agree that your name and justification may be disclosed to certain registries, including, but not limited to, the American Registry of Internet Numbers, in accordance with policies promulgated by any and all such registries and such information may be displayed publicly on the Whois database.

You represent and warrant to Volusion that:

1. Your Content does not and shall not contain any content, materials, data, work, trade or service mark, trade name, link, advertising or services that actually or potentially violate any applicable law or regulation;
  2. infringe or misappropriate any proprietary, intellectual property, contract or tort right of any person;
- and

3. that you own your web site content and all proprietary or intellectual property rights therein, or have express written authorization from the owner to copy, use and display the content on and within your web site.

You also warrant that the web site being hosted by Volusion will not be used in connection with any illegal activity. If you are hosting your web site on Volusion's servers, you are responsible for ensuring there is no excessive overloading on Volusion's DNS or servers. In the event you exceed your allotted bandwidth, compute cycles or disk space and thereby overload Volusion's DNS or servers, you shall be assessed any and all fees, costs and penalties associated with such overloading. You may not use Volusion's servers and your web site as a source, intermediary, reply to address, or destination address for mail bombs, Internet packet flooding, packet corruption, denial of service, or other abusive activities. Server hacking or other perpetration of security breaches is prohibited and Volusion reserves the right to remove sites containing information about hacking or links to such information. Use of your web site as an anonymous gateway is prohibited. Volusion prohibits the use of software or scripts run on its servers that cause the server to load beyond a reasonable level, as determined by Volusion. You agree Volusion reserves the right to remove your web site temporarily or permanently from its servers if Volusion is the recipient of activities that threaten the stability of its network. You agree not to engage in unacceptable use of any Services, which includes, without limitation, use of the Services to:

1. in any application or situation where failure of the Services could lead to death or serious bodily injury of any person, or to severe physical or environmental damage;
2. disseminate or transmit unsolicited messages, chain letters, unsolicited commercial email, or unreasonably large volumes of email on a daily basis, provided, Volusion, in its sole discretion, may permit you, if you have a legitimate purpose and after request, to send more email than Volusion's standard SMTP relay limit;
3. disseminate or transmit any material that, to a reasonable person may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening or malicious;
4. disseminate or transmit files, graphics, software or other material, data or work that actually or potentially infringes the copyright, trademark, patent, trade secret or other intellectual property right of any person;
5. create a false identity or to otherwise attempt to mislead any person as to the identity, source or origin of any communication;
6. export, re-export or permit downloading of any message or content in violation of any export or import law, regulation or restriction of the United States and its agencies or authorities, or without all required approvals, licenses and/or exemptions;
7. interfere, disrupt or attempt to gain unauthorized access to any computer system, server, network or account for which You do not have authorization to access or at a level exceeding your authorization;
8. disseminate or transmit any virus, trojan horse or other malicious, harmful or disabling data, work, code or program;
9. engage in any other activity deemed by Volusion to be in conflict with the spirit or intent of this Agreement or any Volusion policy; or
10. use your server as an "open relay" or similar purposes.



Volusion prohibits the running of a public recursive DNS service on any Volusion server. All recursive DNS servers must be secured to allow only internal network access or a limited set of IP addresses. Volusion actively scans for the presence of public DNS services and reserves the right to remove any servers from the network that violate this restriction.

### **Storage and Security**

At all times, you shall bear full risk of loss and damage to your web site and all of your web site content. You are entirely responsible for maintaining the confidentiality of your password and account information. You agree you are solely responsible for all acts, omissions and use under and charges incurred with your account or password or in connection with the Site or any of your web site content displayed, linked, transmitted through or stored on the Server. You shall be solely responsible for undertaking measures to:

1. prevent any loss or damage to your web site content;
2. maintain independent archival and backup copies of your web site content;
3. ensure the security, confidentiality and integrity of all your web site content transmitted through or stored on Volusion servers; and
4. ensure the confidentiality of your password.

Volusion's hosting servers are not an archive and Volusion shall have no liability to you or any other person for loss, damage or destruction of any of your content. You are solely responsible for the backup of your content. Volusion shall have no liability to you or any other person for your use of the Hosting Services in violation of these terms or any applicable law or regulation. You shall at all times use the Hosting Services as a conventional and/or traditional web site. You shall not use the Hosting Service in any way, as determined in Volusion's sole discretion, that shall impair the functioning or operation of Volusion's Services or equipment. You acknowledge and agree that Volusion has the right to carry out a forensic examination in the event of a compromise to your server or account.

In the event you terminate, moving your web site off of the Volusion hosting servers is your responsibility. Volusion will not transfer or FTP your web site to another provider. In the event your use of the Services is terminated, Volusion will not transfer or manage your Services or your web site content.

### **Third-Party Software**

Additionally, in the event you elect to install or seek assistance from Volusion in connection with the installation of any third-party software, the following terms shall apply. You represent and warrant you have the right to use and install the third-party software, and have paid the applicable licensing fees for the third party software, and the third-party software does not and shall not infringe on the intellectual property rights of any other person or entity. You agree to defend, indemnify and hold harmless Volusion and its employees, officers and directors for, from and against any and all claims brought against Volusion and its employees, officers and directors by a third-party alleging the software infringes: (i) the third-party's rights; or (ii) a U.S. patent, trademark, copyright or other intellectual property right. You agree that in such an event you shall pay all resulting costs, damages, expenses and reasonable attorneys' fees that a court awards and settlements incurred by Volusion in connection with any such claims.

## **Suspension of Hosting Services**

Volusion may suspend Services without liability if: (i) we reasonably believe that the Hosting Services are being used in violation of this Agreement or our Policies; (ii) you don't cooperate with our reasonable investigation of any suspected violation of this Agreement or our Policies; (iii) there is an attack on your hosted system or your hosted system is accessed or manipulated by a third party without your consent, (iv) we are required by law, or a regulatory or government body to suspend your Hosting Services; or (v) there is another event for which we reasonably believe that the suspension of Services is necessary to protect the Volusion network or our other customers. We will use commercially reasonable efforts to give you advance notice of a suspension under this paragraph of at least twelve (12) business hours unless we determine in our sole discretion that a suspension on shorter or contemporaneous notice is necessary to protect Volusion or its other customers from imminent and significant operational, legal or security risk.

## **Website Vulnerability**

If your website is the target of a DDoS or other attack, you consent to Volusion performing mitigation procedures with or without notice to you and without liability for any delay, disruption or interruption of service. Such procedures may include, but are not limited to, taking your website offline in order to isolate your website in a quarantine server, implementing ACL (access control lists), IP filtering, IP blocking, or any other mitigation techniques necessary to block the DDoS or other attack. Further, these techniques will remain in place until your website experiences at least 48 hours of continuous non-malicious, "normal" traffic.

If your website is moved to a quarantine Server, it will remain there for a minimum of 48 hours. After the initial 48 hour period, Volusion will evaluate all traffic targeting your merchant website. If any traffic targeting your merchant website is deemed to be malicious, in Volusion's sole discretion, your website will remain on said quarantine Server until it experiences 48 hours of continuous non-malicious, "normal" traffic.

## **Domain Name Registration**

### **Generic Top Level Domain Registrations**

Volusion is an accredited registrar with the Internet Corporation for Assigned Names and Numbers ("ICANN") for various generic top-level domain names including .com, .net, biz, ("gTLDs").

You acknowledge that you have read, understood and agree to be bound by all terms and conditions of ICANN's Uniform Domain Name Dispute Resolution Policy (the "UDRP"), as amended from time to time, which is hereby incorporated and made a part of this Agreement by reference for all gTLD domain name registrations or renewals. You acknowledge that Volusion is a registrar bound by an agreement between Volusion and ICANN. You agree that Volusion may modify this agreement in order to comply with applicable law and the terms and conditions set forth by the ICANN and/or the Registry Administrator chosen by ICANN, as well as any registration rules or policies that may be published from time to time by Volusion.

### **No Guarantee of Registration or Renewal**

As a domain name registrar, Volusion is, upon accepting your application to register or renew a domain name, your sponsor for that application. No domain name registrations shall be deemed effective unless and until we deliver the domain name registration or renewal application you provide us to the appropriate registry

administrator, as applicable, and that registry administrator accepts your application and activates your domain name registration or renewal. You will be entitled to a refund only if your registration is unsuccessful.

You acknowledge and agree that Volusion does not guarantee that you will be able to register or renew a desired domain name, even if our systems indicate that domain name is available or you are able to complete an order with respect to such name. You also understand that Volusion cannot know with certainty whether or not the domain name which you are seeking to register is simultaneously being sought by a third party, or whether there are any inaccuracies or errors in the domain name registration or renewal process or related databases, including the various WHOIS or other registry databases. You also acknowledge and agree that Volusion is not responsible for any inaccuracies or errors in the domain name registration or renewal process. **YOU ARE SOLELY RESPONSIBLE FOR MAKING SURE THAT YOUR REGISTRATION OR RENEWAL HAS BEEN PROPERLY PROCESSED.** You further acknowledge and agree that Volusion may elect to accept or reject your application for registration or renewal for any reason at its sole discretion, such rejection including, but not limited to, rejection due to a request for registration or renewal of a prohibited domain name. You also acknowledge and agree that Volusion is not liable or responsible in any way for any errors, omissions or any other actions by any third party including any registry administrator arising out of or related to your application for and registration of, renewal of, or failure to register or renew a particular domain name.

### **Your Representations**

By applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and warrant to us that (a) the statements that you made in connection with such registration, maintenance, or renewal are complete and accurate, and your contact information will be kept current; (b) the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; (c) you are not registering the domain name for an unlawful purpose; and (d) you will not use the domain name in violation of any applicable laws, regulations, or Volusion's rules or policies. You agree and acknowledge that it is your responsibility to determine whether your domain name registration or use infringes or violates someone else's rights, including, but not limited to, whether any foreign language translations of your domain name, either between roman-alphabet languages, between non-roman alphabet languages, or between roman-alphabet and non-roman alphabet languages, infringe or violate someone else's rights.

### **Domain Name Registrant**

When registering a domain name with us, you will be asked to designate a registrant for the domain name. The registrant of a domain name possesses all rights granted by Volusion under this Agreement to act with respect to that domain name and any other services obtained from Volusion for use with that domain name. These rights include (but are not limited to) the authority to terminate, transfer (where permitted by the Agreement), or modify such services, or obtain additional services.

**IF A REGISTRANT TRANSFERS A DOMAIN NAME TO ANOTHER REGISTRAR OR TO A NEW REGISTRANT, THE VOLUSION SERVICES ASSOCIATED WITH THAT DOMAIN NAME MAY TERMINATE FOLLOWING THE TRANSFER.**

### **Administrative Contact**

During the registration process or thereafter, you must also designate an administrative contact.

The administrative contact may be the same person or entity as the registrant, or may be different. The registrant may delegate certain of its rights to the administrative contact, including managing the domain name, purchasing additional services and transferring the domain name registration to a different registrar. The registrant is responsible for all actions or omissions of the administrative contact.

### **Coming Soon Web Page**

All domain names registered through Volusion are pointed to a “Coming Soon” Web page, which informs visitors that the registrant has recently registered their domain name via Volusion. The Coming Soon Web page may be modified at any time by Volusion without prior notice to you and may include such things as, without limitation (i) links to additional products and services offered by Volusion, (ii) advertisements for products and services offered by third-parties, and/or (iii) an internet search engine interface. If for any reason you do not wish to have the domain name you have registered pointed to a Coming Soon Web page, please notify our Customer Support.

### **Fees, Service Term, Renewal Reminders**

Each domain name registration is for a one-year initial term, or such longer term as you may order or as may be required by a particular registry administrator, and is renewable thereafter for successive one to ten-year terms, as set forth during the renewal process.

Any renewal of your Services with us is subject to our then-current terms and conditions, including, but not limited to, payment of all applicable Service fees at the time of renewal and the registry administrator’s acceptance of such renewal.

The Renewal Grace Period, while subject to change at any time, is currently 30 days. If you do not purchase the renewal from Volusion during the Renewal Grace Period your domain name will be flagged for deletion. Once a domain name has been deleted you have a 30-day redemption window during which you may pay Volusion a Redemption fee to redeem your domain name. The Redemption fee is subject to change under the terms of this agreement. If the domain name is not redeemed prior to the end of the 30-day redemption period your domain name will be released and it will become available for registration through all domain name providers on a first-come-first-served basis. To transfer a domain name during the redemption period, you must first redeem the domain (at the current redemption fee) and then purchase a domain transfer at the transfer fee. The transfer fee is subject to change under the terms of this agreement.

In the case of a domain name that has been transferred to Volusion as the registrant for any reason, Volusion retains the right to modify the contact information in the WHOIS record for such domain name registration to include Volusion’s contact information or that of a third party. In addition, we reserve all rights regarding such domain name registration including, without limitation, the right to (a) make the domain name registration available to other parties for purchase; and (b) to disable the DNS so that the domain name no longer resolves on the Internet, or to direct the domain name to an IP address designated by us, including, without limitation, to an IP address which hosts a parking, under construction or other page that may include promotions and advertisements for, and links to, Volusion’s Web site, Volusion’s product and service offerings, third-party Web sites, third-party product and service offerings, and/or Internet search engines, as well as advertise the sale or auction of such domain name registration. We will reinstate any such Service solely at our discretion, and

subject to our receipt of the applicable Service or renewal fee and our then-current reinstatement fee.

You acknowledge that you assume all risk and all consequences if you wait until close to or after the end of a Service term to attempt to renew such Service. If a Service is not successfully renewed prior to the expiration of its then-current term, all your rights to such Service will terminate, and we will have no obligation to allow you to renew a Service once its expiration date has passed, even if a registry administrator or third party service provider provides a grace period to Volusion upon expiration or termination of such Service. You acknowledge that post-expiration renewal or redemption processes implemented on your behalf are subject to our then-current fees.

Specifically, with respect to domain names, you acknowledge and agree that Volusion may, upon expiration or termination, elect, at its sole discretion, to: (i) delete the domain name, (ii) renew the domain name on behalf of a third party, (iii) sell the domain name; or (iv) otherwise make such domain name available to third parties. Any expired gTLD domain name that is not sold, renewed or otherwise made available to a third party will generally be deleted between 35 and 45 days from the expiration date.

In addition, upon expiration of a domain name registration, Volusion may elect, at its sole discretion, to disable the DNS so that the domain name no longer resolves on the Internet, or to direct the domain name to an IP address designated by us, including, without limitation, to an IP address which hosts a parking, under construction or other page that may include promotions and advertisements for, and links to, Volusion's Web site, Volusion's product and service offerings, third-party Web sites, third-party product and service offerings, and/or Internet search engines, as well as advertise the sale or auction of the expired domain name registration. Additionally, you agree that we may modify the contact information in the WHOIS record for the expired domain name registration to include Volusion's contact information or that of a third party.

### **Your Obligations**

You are solely responsible for the credit card and billing contact information you, your agents or Point of Contact provide to Volusion and you acknowledge and agree that you will promptly inform Volusion of any changes thereto (e.g., change of expiration date or account number).

You acknowledge and agree that, to the extent necessary, it is your responsibility to: (1) provide all equipment, including a computer and modem, necessary for you to establish a connection to the Internet; and (2) provide for your own connection to the Internet and pay any telephone service fees associated with such connection.

You are solely responsible for ensuring the Services are renewed. VOLUSION SHALL HAVE NO LIABILITY TO YOU OR ANY THIRD PARTY IN CONNECTION WITH THE RENEWAL OR ANY ATTEMPT TO RENEW THE SERVICES AS DESCRIBED HEREIN, INCLUDING, BUT NOT LIMITED TO, ANY FAILURE OR ERRORS IN RENEWING OR ATTEMPTING TO RENEW THE SERVICES. The foregoing limitation of liability is in addition to any other limitations of liability set forth in this Agreement.

### **Information and Its Use**

You hereby acknowledge and agree that, in connection with your use of certain of Volusion's Services, you are required to provide certain information and to update promptly this information as needed to keep it current, complete and accurate.

In addition to such other information that Volusion may require you to provide in order to obtain the Services, Volusion requires that you submit the following information in connection with domain name registration, administration and renewal services.

- Your full name (or the name of the entity and authorized contact person, if registration is for an organization, corporation or association), postal address, email address, voice telephone number, and fax number, where available;
- The domain name being registered; and
- The name, postal address, email address, voice telephone number, and where available, fax number for the registrant, administrative contact, technical contact and billing contact for the domain name registration.

You acknowledge and agree that when you renew a domain name registration, the type of information you are required to provide may have changed. If you do not wish to provide the new required information, the registration may not be renewed, in Volusion's sole discretion.

### **Additional Information Maintained**

In addition to the information you provide, we maintain records relating to any domain name application received by Volusion, as well as any domain name registered through, administered, or renewed by Volusion. We also maintain records relating to other Services that we provide to you. These records may include, but are not limited to:

- The original creation date of a domain name registration, renewal, or request for Services;
- The submission date and time of a registration or renewal application, or request for Services to us and by us to the proper registry;
- Communications (electronic or paper form) constituting submissions, forwarding, modifications, or terminations of service and related correspondence between you and us;
- Records of your account, including dates and amounts of all payments and refunds;
- The IP addresses of the primary nameserver and any secondary nameservers for the domain name;
- The corresponding names of those nameservers;
- The name, postal address, email address, voice telephone number, and where available, fax number of various contacts for the Services;
- The expiration date of a domain name registration; and
- Information regarding all other activity between you and us regarding your use of the Services.

### **Accurate Data**

In the event that (i) in applying for Service(s) or the registration of a domain name you are providing information about a third party, or (ii) you license a domain name registered in your name to a third party, you hereby represent and warrant that you have (a) provided notice to that third party of the disclosure and use of that party's information as set forth in this Agreement, and (b) obtained that third party's express consent to the disclosure and use of that party's information as set forth in this Agreement.

You acknowledge and agree that willfully providing inaccurate or unreliable information or willfully failing to update information promptly will constitute a material breach of this Agreement that will be a sufficient basis

for cancellation of your domain name registration or Service(s), in our sole discretion. You further acknowledge and agree that your failure to respond for over fifteen (15) calendar days to an inquiry by Volusion concerning the accuracy of contact details associated with your domain name registration shall constitute a material breach of this Agreement and will be a sufficient basis for cancellation of your domain name registration.

You agree that Volusion (itself or through its third party service providers) is authorized, but not obligated, to use certain address or billing correction services to update and/or to change any address or billing information associated with your account (including, without limitation, registrant address, billing contact address, and credit card information), and you agree that Volusion may use such changed information for all purposes in connection with your account (including the sending of renewal notices or invoices or for automatic renewal charges).

### **Disclosure and Use of Information**

You acknowledge and agree that Volusion may make available information you provide or that we otherwise maintain, to such public or private third parties as applicable laws require or permit, including, but not limited to, making publicly available, or directly available, some or all of such information: (i) for inspection by law enforcement officials (including in the case of potential criminal activity); (ii) to respond to criminal and civil subpoenas and court orders that reasonably appear to be valid; (iii) in connection with the sale of all or certain of our assets; (iv) to enforce or apply the terms of this Agreement; and (v) to protect the rights, property, or safety of Volusion, our users, or others, whether during or after the term of your use of the Service.

You further acknowledge and agree that Volusion may make publicly available, or directly available to third parties, some, or all, of the information you provide, for purposes of inspection (such as through our WHOIS service) or for targeted marketing and other purposes as required or permitted by applicable laws.

You hereby consent to any and all such disclosures, guidelines, limits and restrictions on disclosure or use of, information provided by you in connection with the registration of a domain name or use of any Services (including any updates to such information), whether during or after the term of your registration of a domain name or other Services. You hereby irrevocably waive any and all claims and causes of action you may have arising from such disclosure or use of information provided by you.

We will not process data about any identified or identifiable natural person that we obtain from you in a way incompatible with the purposes and other limitations which we describe in this Agreement.

Volusion will take reasonable precautions to protect the information it obtains from you from our loss, misuse, unauthorized access or disclosure or use, or alteration or destruction, of that information. However, Volusion will have no liability to you or any third party provided that such reasonable precautions are taken.

### **Transfers; Agents and Licenses**

You agree that you may not transfer a domain name registration to another domain name registrar during the first sixty (60) days from the effective date of the initial domain name registration with us, or at any time after its expiration date unless the domain name is renewed with Volusion prior to initiation of the transfer of registrar. After that time, you may transfer your domain name registration to a third party domain name registrar of your choice, subject to our then-current policies and procedures.

You agree that, if you are using the Services for someone else, you represent and warrant that you have: (a) provided notice to that third party of your intent to purchase the Service(s); (b) obtained that third party's express consent to purchase the Service(s) on its behalf; and (c) the authority to nonetheless bind that person as a principal to all terms and conditions provided herein, including the UDRP. You accept liability for harm caused by wrongful use of the Services.

You agree that if you license the use of a domain name or other Service registered in your name to a third party, you nonetheless remain the Service holder of record, and remain responsible for all obligations under this Agreement, including but not limited to payment obligations, and providing (and updating, as necessary) both your own full contact information, and accurate technical, administrative, billing and zone contact information adequate to facilitate timely resolution of any problems that arise in connection with the domain name registration or Service. As further required by ICANN, you shall accept liability for harm caused by wrongful use of the domain name registration, unless you promptly disclose the identity of the licensee to a party providing you with reasonable evidence of actionable harm.

### **System Performance Degradation**

Volusion depends upon its own and third party, computer systems to provide the Services, and to provide timely information to Volusion's customer service team. Occasionally, these computer systems are subjected to exceptional volumes of incoming data, service requests, processes, electronic mail messages, and/or WHOIS queries that result in significant degradation of system processing and response time. Regardless of the reason, in those instances when there is system performance degradation, Volusion reserves the right, in its sole discretion, to filter or block electronic messages, data and/or processes originating from or traveling to the identified sources of the high volume traffic. Volusion will attempt to selectively restore service after system performance returns to normal limits, provided that such restoration does not result in an adverse impact on the system. Volusion further reserves the right to permanently filter or block repeated sources of high volumes of electronic traffic.

Finally, you acknowledge and agree that if your server is involved in an attack on any computer system, either with or without your knowledge or complicity, your account will be shut down while the matter is investigated and resolved in Volusion's absolute discretion.

### **Suspension, Cancellation, Transfer or Modification of Service(s)**

You acknowledge and agree that Volusion may suspend, cancel, transfer or modify your use of the Services at any time, for any reason, in Volusion's sole discretion and without notice to you. You also acknowledge and agree that Volusion shall not be liable to you or to any third party for any such modification, suspension or discontinuance of the Services. Without limiting the foregoing, Volusion may, in its sole discretion, suspend, cancel, transfer or modify a domain name registration (a) to correct mistakes made by Volusion, another registrar, or the applicable registry administrator, (b) to resolve a dispute related to that domain name, (c) within thirty (30) calendar days of the creation date of that domain name registration, (d) if you materially breach this Agreement (including any applicable additional rule or policy) and do not cure such breach within five (5) calendar days of notice by Volusion, (e) if you use the domain name registered to you to send unsolicited commercial advertisements in contradiction to either applicable laws or customary acceptable usage policies of the Internet, or (f) if you use a domain name in connection with unlawful activity.



You further acknowledge and agree that your domain name registration is subject to suspension, cancellation, transfer or modification pursuant to the terms of any rules or policies applicable to your domain name registration, including, but not limited to (i) the UDRP, (ii) any ICANN adopted policy, (iii) any registrar (including Volusion) or registry administrator procedures, or (iv) any other ccTLD registry administrator procedures. You also agree that Volusion shall have the right in its sole discretion to suspend, cancel, transfer or otherwise modify your domain name registration at such time as Volusion receives what reasonably appears to be (a) an authentic notification from a court of competent jurisdiction, or (b) an arbitration award requiring the suspension, cancellation, transfer or modification of your domain name registration.

### **PROVISIONS SPECIFIC TO .BIZ registrations**

If you are registering a .BIZ domain name you also agree to:

#### **.BIZ Restrictions**

Registrations in the .BIZ TLD must be used or intended to be used primarily for bona fide business or commercial purposes. For purposes of the .BIZ Registration Restrictions (“Restrictions”), “bona fide business or commercial use” shall mean the bona fide use or bona fide intent to use the domain name or any content, software, materials, graphics or other information thereon, to permit Internet users to access one (1) or more host computers through the DNS:

1. To exchange goods, services, or property of any kind;
2. In the ordinary course of trade or business; or
3. To facilitate (i) the exchange of goods, services, information, or property of any kind; or, (ii) the ordinary course of trade or business. Registering a domain name solely for the purposes of (1) selling, trading or leasing the domain name for compensation, or (2) the unsolicited offering to sell, trade or lease the domain name for compensation shall not constitute a “bona fide business or commercial use” of that domain name.

#### **.BIZ Certification**

As a .BIZ domain name registrant, you hereby certify to the best of your knowledge that:

1. The registered domain name will be used primarily for bona fide business or commercial purposes and not (i) exclusively for personal use; or (ii) solely for the purposes of (1) selling, trading or leasing the domain name for compensation, or (2) the unsolicited offering to sell, trade or lease the domain name for compensation. More information on the .BIZ restrictions, which are incorporated herein by reference, are available online.
2. The domain name registrant has the authority to enter into the registration agreement; and
3. The registered domain name is reasonably related to the registrant’s business or intended commercial purpose at the time of registration.

#### **Domain Name Dispute Policy**

If you reserved or registered a .BIZ domain name through us, you agree to be bound by our current domain name dispute policy that is incorporated herein and made a part of this Agreement by reference. Please take the time to familiarize yourself with that policy. In addition, you hereby acknowledge that you have read

and understood and agree to be bound by the terms and conditions of the following documents (currently available at [Icann.org](http://Icann.org)), as they may be amended from time to time, which are hereby incorporated and made an integral part of this Agreement:

1. The Uniform Domain Name Dispute Policy;
2. The Start-up Trademark Opposition Policy (“STOP”); and
3. The Restrictions Dispute Resolution Criteria and Rules.

The STOP sets forth the terms and conditions in connection with a dispute between a registrant of a .BIZ domain name (“Registrant”) with any third party (other than Registry Operator or Registrar) over the registration or use of a .BIZ domain name registered by Registrant that is subject to the Intellectual Property Claim Service. The Intellectual Property Claim Service is a service introduced by Registry Operator to notify a trademark or service mark holder (“Claimant”) that a second-level domain name has been registered in which that Claimant claims intellectual property rights. In accordance with the STOP and its associated Rules, those Claimants will have the right to challenge registrations through independent ICANN-accredited dispute resolution providers.

The UDRP sets forth the terms and conditions in connection with a dispute between a Registrant and any party other than the Registry Operator or Registrar over the registration and use of an Internet domain name registered by Registrant.

The RDRP sets forth the terms under which any allegation that a domain name is not used primarily for business or commercial purposes shall be enforced on a case-by-case, fact specific basis by an independent ICANN-accredited dispute provider. None of the violations of the Restrictions will be enforced directly by or through Registry Operator. Registry Operator will not review, monitor, or otherwise verify that any particular domain name is being used primarily for business or commercial purposes or that a domain name is being used in compliance with the SUDRP or UDRP processes.

### **Domain Name Dispute Policy Modifications**

You agree that we, in our sole discretion, may modify our dispute policy. We will post any such revised policy on our web site at least thirty (30) calendar days before it becomes effective. You agree that, by maintaining the reservation or registration of your domain name after modifications to the dispute policy become effective, you have agreed to these modifications. You acknowledge that if you do not agree to any such modification, you may terminate this Agreement. We will not refund any fees paid by you if you terminate your Agreement with us.

### **Domain Name Disputes**

You agree that, if your use of our domain name registration services is challenged by a third party, you will be subject to the provisions specified in our dispute policy in effect at the time of the dispute. you agree that in the event a domain name dispute arises with any third party, you will indemnify and hold us harmless pursuant to the terms and conditions set forth below in this Agreement. If we are notified that a complaint has been filed with a judicial or administrative body regarding your use of our domain name registration services, you agree not to make any changes to your domain name record without our prior approval. We may not allow you to make changes to such domain name record until (i) we are directed to do so by the judicial or administrative

body, or (ii) we receive notification by you and the other party contesting your registration and use of our domain name registration services that the dispute has been settled. Furthermore, you agree that if you are subject to litigation regarding your registration and use of our domain name registration services, we may deposit control of your domain name record into the registry of the judicial body by supplying a party with a registrar certificate from us.

### **Reservation of Rights**

Volusion and the .BIZ Registry Operator, NeuLevel, Inc. expressly reserve the right to deny, cancel or transfer any registration that it deems necessary, in its discretion, to protect the integrity and stability of the registry, to comply with any applicable laws, government rules or requirements, requests of law enforcement, in compliance with any dispute resolution process, or to avoid any liability, civil or criminal, on the part of Volusion and/or NeuLevel, Inc., as well as their affiliates, subsidiaries, officers, directors and employees. Volusion and NeuLevel, Inc. also reserve the right to freeze a domain name during resolution of a dispute.

### **Indemnification**

You agree to indemnify, defend and hold harmless the .BIZ Registry Operator, NeuLevel, Inc., and its directors, officers, employees, agents, and affiliates from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses arising out of or relating to the Registered Name holder's domain name registration. This indemnification requirement shall survive the termination or expiration of the registration agreement.

### **Provisions specific to .COM and .NET registrations**

#### **Indemnification**

You agree to indemnify, defend and hold harmless the .COM .and NET Registry Operator, Norton™, Inc., and its directors, officers, employees, agents, and affiliates from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses arising out of or relating to the Registered Name holder's domain name registration.

### **Fraud Score**

Fraud Score Service offered by Volusion uses proprietary data, algorithms and other information and technology of Volusion and its licensors to help merchants identify potentially fraudulent online transactions. You acknowledge and agree that Volusion (or its licensors) may, in each of their sole discretion, respectively, change the form and nature of the Service at any time, from time to time, without prior notice to you. You acknowledge and agree that Volusion (or its licensors) may, in each of their sole discretion, respectively, stop (permanently or temporarily) providing the Service (or any features within the Service) to you or to users generally at any time, from time to time, without prior notice to you.

Your license of, use of, and access to Fraud Score Service is conditioned upon your compliance with these Additional Service Terms.

### **Appropriate Uses**

You will not nor will You permit others to use Fraud Score Service in any way that violates federal, state, local,

international law or the rights of others;

You will not submit queries designed to extract information from Fraud Score Service, if such information is not specifically to be used for the validation of an online transaction;

You will not submit false or fictitious input fields, including but not limited to, internet protocol address, bank identification numbers and information (e.g., bank name, bank customer service number), and billing location;

You will not use a robot, spider, other automatic device, or manual process to monitor or copy any data or databases made available by Fraud Score Service;

You will not build or store derivative databases based on the information provided by Fraud Score Service;

You will not take any action designed to compromise security or tamper with system resources and/or accounts; and

You will not reproduce, duplicate, copy, sell, trade or resell Fraud Score Service for any purpose.

### **Privacy**

You will not (and will not allow any third party to) use Fraud Score Service to track or collect personally identifiable information of others, nor will you (or will you allow any third party to) associate any data gathered from use of Fraud Score Service with any personally identifying information from any source. You will have and abide by an appropriate privacy policy and will comply with all applicable laws relating to the collection of information from your customers and other visitors.

### **EXCLUSION OF WARRANTIES / LIMITATIONS OF LIABILITY**

IN ADDITION TO THE WARRANTY EXCLUSIONS AND LIMITATIONS OF LIABILITY IN THE AGREEMENT, YOU EXPRESSLY ACKNOWLEDGE AND UNDERSTAND THAT YOUR USE OF FRAUD SCORE SERVICE IS AT YOUR SOLE RISK AND THAT FRAUD SCORE SERVICE IS PROVIDED WITH ALL FAULTS AND ON AN "AS IS" AND "AS AVAILABLE" BASIS.

IN PARTICULAR AND NOTWITHSTANDING ANYTHING TO THE CONTRARY, VOLUSION (AND EACH OF ITS AFFILIATES AND LICENSORS), EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY TO YOU THAT YOUR USE OF FRAUD SCORE SERVICE WILL MEET YOUR REQUIREMENTS; THAT YOUR USE OF FRAUD SCORE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR; THAT ANY INFORMATION OBTAINED BY YOU AS A RESULT OF YOUR USE OF FRAUD SCORE SERVICE WILL BE ACCURATE OR RELIABLE; OR THAT ANY DEFECTS OR ERRORS IN THE OPERATION, FUNCTIONALITY OR RESULTS OF ANY PART OF FRAUD SCORE SERVICE WILL BE CORRECTED. VOLUSION FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

YOU ARE ENTIRELY RESPONSIBLE FOR ENSURING THAT YOUR SYSTEM SETTINGS ARE CONFIGURED CORRECTLY IN ORDER FOR THE SERVICE TO FUNCTION PROPERLY.

**FOR THE AVOIDANCE OF DOUBT AND NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE**

**CONTRARY, YOU EXPRESSLY ACKNOWLEDGE AND UNDERSTAND THAT FRAUD SCORE SERVICE SHALL ONLY BY USED BY YOU AS A GAUGE OF RISK OF FRAUD RELATED TO A PARTICULAR CUSTOMER ORDER; THAT YOU WILL NOT RELY ON FRAUD SCORE SERVICE GENERALLY OR ANY PARTICULAR RESULTS OF FRAUD SCORE SERVICE TO MAKE ANY DECISIONS GENERALLY OR WITH RESPECT TO ANY PARTICULAR CUSTOMER ORDER; THAT NEITHER VOLUSION NOR ANY OF ITS AFFILIATES OR LICENSORS PROVIDES ANY GUARANTEE AS TO THE RELIABILITY, COMPLETENESS OR ACCURACY OF FRAUD SCORE SERVICE (INCLUDING BUT NOT LIMITED TO THE CALCULATION OF THE FRAUD SCORE ASSOCIATED WITH ANY PARTICULAR CUSTOMER ORDER); AND THAT YOU ASSUME ALL RISK ASSOCIATED WITH ANY RELIANCE YOU PLACE ON FRAUD SCORE SERVICE.**

Nothing in these Additional Terms shall exclude or limit any warranty or liability which may not be lawfully limited or excluded under applicable law. Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of certain liabilities. Accordingly, only the provisions hereof which are lawful in your jurisdiction will apply to you and liability hereunder will be limited to the maximum extent permitted by the laws of your jurisdiction.

## **Design and Development**

### **Definitions**

*“Software”* means the Volusion eCommerce software, current release version, including any updates provided by Volusion, and Volusion’s proprietary technology and source code.

*“Custom Work Product”* means all designs, discoveries, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, information, and materials made, conceived, or developed by Volusion after the Effective Date on behalf of Customer in furtherance of the Web Site or other Services provided to Customer under the terms of this Agreement, and paid for by Customer. Custom Work Product does not include any preexisting software owned by Volusion, or any User Content or any third party software products incorporated into the Custom Work Product.

*“Generic Modules”* means discrete computer program subroutines that are not specific to the functions of the Custom Work Product but are useful generally in Volusion’s business and that are designated as “Generic Modules” in writing signed by both parties.

*“Volusion Technology”* means any and all existing software, technology, know how, algorithms, procedures, techniques, and solutions associated with the use, design, development, testing, and distribution of the Custom Work Product and improvements to such existing software and related technology, which technology is owned by Volusion or its suppliers and used by Volusion in the development effort hereunder.

*“Intellectual Property”* means intellectual property or proprietary rights, including but not limited to copyright rights, moral rights, patent rights (including patent applications and disclosures), rights of priority, mask work rights, and trade secret rights, recognized in any country or jurisdiction in the world.

### **Development Services**

Volusion agrees to provide web site development and related services that substantially comply with the information provided by Customer to Volusion in responses to the Design Preferences Form and agreed to by

Volusion (the “Statement of Work”.) Customer understands that Volusion’s design and development obligations are limited to those expressly set forth in the Statement of Work and may be used on the designated domain name only. Any design or development work above and beyond the Statement of Work as requested by Customer is subject to Volusion acceptance and will be charged to Customer at additional fees.

### **Testing**

Volusion will provide Customer with a link to the work designed, created, and/or produced by Volusion in connection with this Agreement and as further set forth in the Statement of Work (the “Deliverables”). Customer shall have 14 days after Volusion provides the link to inspect and test the Deliverables to determine if it conforms to the Statement of Work. If, and only if, the Deliverables fail to materially conform to the specifications in the Statement of Work, Volusion will use commercially reasonable efforts to resolve the failure provided that Customer shall give Volusion written notice of the failure describing the defect in the Deliverable with sufficient specificity so as to allow Volusion to easily identify and rectify the failure. Such specificity should include specific page, file or URL references and detailed information about the nature of the defect.

### **Time to Cure**

After receipt of notice of a material non-conformity, Volusion shall have 30 days to remedy such failure or defect and redeliver such Deliverables to Customer. Customer shall have 14 days after Volusion redelivers to inspect and test the Deliverables to determine if it conforms to the Statement of Work. If the Deliverables continue to fail to materially conform to the specifications in the Statement of Work, then: (i) either Party may terminate this Agreement; or (ii) if both Parties agree, Volusion will be given an opportunity to cure any defects in accordance with this section.

### **Acceptance**

The Deliverables shall be deemed to be accepted upon the earlier of (a) written notice by Customer to Volusion of such acceptance or (b) expiration of the time period for Customer’s inspection without written notice to Volusion of material non-conformance. Customer shall not unreasonably withhold or delay acceptance.

### **Mirroring Design**

The Deliverables are provided for use on the designated domain only. Should you desire to mirror the design on one or more different domains you must submit an order identifying the new or additional domain. The initial mirroring may be completed without additional charge; however any future updates or modifications to the design will require additional fees on a per domain basis.

### **Ownership of User Content**

Customer acknowledges and agrees that (a) unless expressly stated elsewhere, Volusion has no proprietary, financial, or other interest in Customer’s Content; (b) Volusion does not, by virtue of offering or hosting Customer’s Content, edit, distribute, market, sublicense, publish, or otherwise provide Customer’s Content to end users; and (c) Customer is solely responsible for the information, data, graphics, text, quality, performance, and all other aspects of its Content. Customer warrants that it owns or has the right to use and offer the

Content in connection with Customer's Marks in the manner in which such Content is offered and will be offered by Customer during the term of this Agreement.

### **Protection of Content**

Customer acknowledges and agrees that Customer is solely responsible for ensuring the integrity of its Content. Although Volusion may, from time to time, provide data backup services, Customer is advised that Volusion is not an insurer and is in no way responsible for any damages resulting from the loss of Customer's Content, regardless of the reason for such loss. Customer is solely responsible for backing up/archiving Customer's Content.

### **Grant of License**

Upon final and full payment of all fees associated with the Deliverables, Volusion grants to Customer a limited, non exclusive, license to use, reproduce, display, and perform, works based upon the Deliverables, Volusion Technology, the Generic Modules, and all Intellectual Property rights contained in the Custom Work Product on the designated domain. This license shall only extend to the extent necessary for the Customer to maintain a web site while hosted with Volusion.

### **Volusion's Rights**

Custom Work Product, Software, Volusion's Content, Volusion Technology, the Generic Modules, and all Intellectual Property rights contained therein are and will remain the sole and exclusive property of Volusion.

### **Volusion's Rights to Customer Content**

Customer grants to Volusion a non exclusive, worldwide, perpetual, royalty free license to reproduce, modify, display, perform, adapt, transmit, distribute, improve, and otherwise use customer content in connection with Volusion's performance under this Agreement.

### **Volusion's Right to Re-Use Deliverables**

Customer understands and specifically acknowledges that Volusion may, in its sole discretion, use some or all of the Deliverables (excluding content provided by customer) in the future in commercial development projects for other customers. Nothing in this Agreement shall be construed to limit Volusion's right to do so or to use any information in non-tangible form retained by Volusion as ideas, information and understandings retained in the human memories of its employees, contractors and agents, provided that Volusion may only use information of general applicability and not Customer's Confidential Information. This provision shall not be construed to operate to grant Volusion any rights under Customer's patents or copyrights.

### **Customer to Cooperate**

Customer will provide reasonable assistance and cooperation to Volusion to acquire, transfer, maintain, perfect, and/or enforce the Intellectual Property rights in the web site (excluding content provided by Customer) and Custom Work Product, including, but not limited to, execution of a formal assignment or such other documents as may be reasonably requested by Volusion. Customer hereby appoints the officers of Volusion as Customer's attorneys in fact to execute such documents on Customer's behalf for this purpose.

## **Security Interest**

To the extent that Customer has any interest or right with respect to the Deliverables, such interest or right shall be subject to (and Customer hereby grants to Volusion) a security interest to the extent of the difference between the payments that are due and the payments that are actually made by the Customer for such Deliverables. Upon request of Volusion, Customer shall execute any instrument required to perfect such security interest.

## **Fees for Design Services**

The purchase of Design Services is a purchase of the time and creativity of Volusion's Design Services team. As such, this is a limited resource and Volusion requires that purchases be consummated within a reasonable amount of time. If you purchase Design Services, including but not limited to Custom Theme designs, you must provide the required input, as required in the Welcome email sent by Volusion, within one (1) month of your order date. Failure to timely provide the required input to initiate the design or to timely respond to additional inquiries which cause inactivity on the Services for one (1) month will result in the Services being deemed closed and delivered in full satisfaction. No further Services will be provided without the purchase of additional Services and You will not be entitled to a refund.

While the sale of Volusion Services are final and without a right to refund, we understand that Design Services require a longer involvement and circumstances may change. In order to provide flexibility to You, Volusion allows the following refunds for Custom Design Services only: If after the initial consultation with the Design Service team, Customer no longer wishes to purchase the design package, Customer may notify Volusion within one (1) business day to obtain a full refund. Once the Design Services team has begun work on the project, full refunds are no longer available. A partial, pro-rated refund may be obtained within thirty (30) days after the first Customer input is required for the specified Service. Such refund will be pro-rated to compensate Volusion for any expenditure in time, money or other resources already spent on the partial provision of the Services. No refunds will be issued for Premium Themes once they are installed on the customer store.

## **Marketing Services**

You acknowledge that the efficacy of Volusion's Marketing Services, including but not limited to PPC, Feed Services, Email Marketing, SEO Services and Social Media Marketing, (each and collectively "Marketing Services") may be dependent on third party services such as Google, Microsoft, Yahoo, Facebook or Twitter. Volusion will not be held liable for any changes in their algorithms, rules, policies or procedures that may negatively impact the campaign and/or cause it to be paused or disapproved. No refunds will be provided for Services rendered (including set up fees) but determined ineffective due to these third parties.

Marketing Services and all related billing will begin the earlier of the date that the Customer's Web Site becomes available to the public or sixty (60) days after purchase of the service. Feedback from Customer may be required prior to beginning or continuing Marketing Services. In the event such Feedback is required, Customer agrees to provide all required Feedback no later than sixty (60) days following a request for Feedback. Should Customer fail to provide Feedback within sixty (60) days, the project or campaign shall be deemed canceled and no refunds or credits will be issued. No refunds will be issued for services that have



been set up, including but not limited to credits for 3 month or 6 month services.

## **PPC**

### **Standard PPC Marketing Services provided**

Volusion agrees to direct a certain amount of visitors to the Customer's website per year and for a fee. The number of visitors varies per plan and is viewable at Volusion's website. Clicks per month are estimated and based on the yearly total. Volusion will endeavor to deliver the total number of clicks per year for the chosen plan before that year has expired. However, if Volusion does not deliver the full amount of clicks within that year, we will continue to deliver traffic to your site at no extra charge until we have reached the total clicks per year the plan lists. If you cancel before a month is over, you will not receive any additional clicks. Volusion will apply commercially reasonable efforts to qualify visitors. However, there is NO GUARANTEE on the number of conversions produced by visitors and there is NO GUARANTEE against fraudulent clicks.

### **Managed plan PPC Marketing Services provided**

If you purchase a Managed PPC plan, Volusion agrees to spend an agreed amount per month on ad spend for a management fee. This ad spend is estimated per day and may exceed a given day's budget by as much as 20% but will not exceed the agreed upon total per month. As with the standard PPC services, Volusion will apply commercially reasonable efforts to qualify visitors. However, there is NO GUARANTEE on the number of conversions produced by visitors and there is NO GUARANTEE against fraudulent clicks.

### **Custom PPC Marketing Services provided**

If you purchase a custom PPC plan, Volusion agrees to spend an agreed amount per month on ad spend. This ad spend is estimated per day and may exceed a given day's budget by as much as 20% but will not exceed the agreed upon total per month. Custom PPC plans require a minimum three (3) month commitment (the "Commitment period"). Early cancellation during the Commitment period will be subject to a non-refundable \$500 early cancellation fee. As with the standard PPC services, Volusion will apply commercially reasonable efforts to qualify visitors. However, there is NO GUARANTEE on the number of conversions produced by visitors and there is NO GUARANTEE against fraudulent clicks.

### **Acceptable Use Policy**

Volusion not offer PPC Marketing Services to any site in violation of the Volusion AUP. Volusion retains the right to determine whether a site is in violation of the AUP in its sole discretion.

### **Social Media Marketing**

By purchasing the Social Media Marketing Services, you agree to allow Volusion to post on your behalf and give Volusion full access/administrative rights as required to complete its obligations under this agreement. Volusion will assist in managing your social media marketing efforts by providing updates and/or original profile content on an agreed upon schedule. Volusion will manage responses and interactions regarding the Volusion generated material. Volusion will not manage or respond to posts not related to the Volusion provided content (including, but not limited to, product/service inquiries, complaints and requests for refunds).

Volusion cannot begin providing Social Media Marketing Service until you provide account information. Setting

up the social media account is your responsibility. Further you are responsible for maintaining the security of such accounts and updating Volusion if any account information (user name, password, etc.) changes.

The Social Media Marketing Services may include Facebook Advertising and/or Twitter Advertising, as agreed upon by the parties. All such Advertising Services shall be additionally governed by the service specific terms below. No credits or refunds will be issued for scheduled content not posted due to your failure to provide timely approvals or to update Volusion with your social media account information. There is NO GUARANTEE that the Social Media Marketing Services or any associated post will generate any additional conversions. Subject to Section 9 herein, no refunds will be provided for unused portions of multi-month service packages. For clarity, if you purchase a promotional discounted 3 month package, NO REFUNDS will be given if you wish to cancel the service after the first month.

### **Facebook Advertising**

In addition to the basic Facebook advertising that may be provided as a part of Social Media Marketing Services, you may select to purchase Facebook Advertising Services from Volusion separate from Social media marketing Services. This additional service may have a spend limit as defined by Volusion. If you purchase Facebook Advertising services, Volusion agrees to create and manage Facebook advertising campaigns for a fee. Volusion warrants that it will not fraudulently increase the number of “Likes” any ad generates. However, there is NO GUARANTEE on the number of “Likes” or associated conversions produced by visitors and there is NO GUARANTEE against fraudulent “Likes”. Further Volusion cannot control who may “Share” or otherwise forward Volusion generated advertisements. You acknowledge that all Facebook Advertising Services are furnished by using third party applications and tools and as such are limited by the capabilities of such applications and tools. You further agree to be bound by any terms and conditions required by such third party applications and tools.

### **Twitter Advertising**

If your Custom Social Media marketing Service includes Twitter Advertising Services, Volusion agrees to create and manage Twitter advertising campaigns. This additional service may have a spend limit as defined by Volusion. Volusion warrants that it will not fraudulently increase the number of clicks any ad generates. However, there is NO GUARANTEE on the number of clicks or associated conversions produced by visitors and there is NO GUARANTEE against fraudulent clicks. Further Volusion cannot control who may “retweet” or otherwise forward Volusion generated advertisements. You acknowledge that all Twitter Advertising Services are furnished by using third party applications and tools and as such are limited by the capabilities of such applications and tools. You further agree to be bound by any terms and conditions required by such third party applications and tools.

### **Merchant Services**

In addition to the terms and conditions herein, you acknowledge that Volusion is providing services that enable Customer to accept a transaction payment through a secure channel by use of its customer’s credit or debt card (“Merchant Services”) through a third-party service provider, and, accordingly, this Agreement and use of the Merchant Services is subject to such providers’ acceptance of your application and your acceptance of the providers’ terms and conditions.

## **Email**

If you chose a solution that includes email, Volusion will license to you the initial environment subject to the terms herein. You will otherwise be responsible for administering your mail service, including adding mailboxes, wireless or other service components, adding additional storage capacity, managing settings and configuring spam filters.

### **Limitations on Email Services**

Volusion may provide some functions designed to filter unwanted email such as spam. You acknowledge that such filters are limited and may result in the capture of legitimate email as well as fail to capture some unwanted email. You further acknowledge that third party filtering systems may prevent the successful delivery of your messages.

### **Backups**

Volusion is not responsible for the complete backup of your email. Volusion may perform routine data backups on a “snap shot” bases at a specific moment. This will capture those items that are present during the exact time of the backup and will not capture a backup of every email that is sent, received or stored. This backup may only be retrieved for a limited time, generally no more than fourteen (14) days from date of backup. Any request for retrieval will be performed at a time and materials basis with a minimum 2 hour charge. Volusion does not warrant that the retrieval will be successful in recovering the item(s) desired. Failure to do so shall in no way wave Customer’s obligation to pay for the retrieval services.

### **Spam**

Volusion has a zero tolerance spam -also known as Unsolicited Commercial Email (UCE)- policy. Volusion does not permit spam being sent using Volusion mail servers.

All email sent via Volusion servers must meet the following criteria:

1. The recipient of your email has made a purchase, requested information, responded to a questionnaire or a survey, or had offline contact with you.
2. Marketing/Newsletter emails must provide a working link for users to unsubscribe.
3. All requested to unsubscribe must be processed within 10 days.
4. Email “from address” must contain the domain name of your Volusion store.
5. Email subject lines must not contain misleading information.

Volusion may actively monitor our mail servers for abuse. Any customer found to be using Volusion mail servers to send spam will be immediately cut-off from use of Volusion Services without refund.

Use of any mass email programs in conjunction with Volusion SMTP servers is strictly prohibited.

### **Processing Fees**

To cover the increasing cost of processing spam claims, Volusion reserves the right to charge Customer a processing fee for each instance of notification received from recipient of Customer’s email. Volusion reserves the right to suspend or terminate any Services if Volusion has a reasonable good faith belief that Customer is

engaging in UCE or UCE related activities.

## **Content Privacy**

We respect your privacy. The content of your items is your confidential information and will be treated as such. We agree that our personnel will not view the content of your items except in the specific ways defined below. However, you agree that we may view and use the message routing data for our general business purposes, including maintaining and improving security, improving our services, and developing products. In addition, you agree that we may disclose message routing data to third parties in aggregate statistical form, provided that we do not include any information that could be used to identify you.

## **Our Limited Rights to View and Use Your Content**

You agree that our personnel may view the content of your email and other items for the following purposes: i. as necessary to respond to your specific support request; ii. to ensure that backups are being performed properly; iii. for Bulk Mail, to ensure compliance with our requirements for Bulk Mail stated above; iv. as appropriate to the exercise of our rights to use and disclose as required by law or court order; and v. for Junk Mail, to improve our email filter.

If we use third party vendors to help us provide Services to you, we may permit those vendors to view and use your email content for the same purposes described above, provided that the vendors are subject to confidentiality and privacy restrictions at least as stringent as those stated we provide. In addition, we may share the content of your Junk Mail with independent third party abuse agencies and trade groups for the purpose of assisting in industry initiatives to control undesirable email.

You acknowledge that Volusion is required to establish an abuse@[yourdomain].com and

postmaster@[yourdomain].com address for each of your domains. Volusion personnel or the personnel of our third party vendor will review the content of all mail received at these addresses. You may configure your Mail Service such that mail is not received at these addresses but is instead forwarded to someone within your organization.

**WE WILL NOT EMPLOY TECHNOLOGY TO READ YOUR EMAIL MESSAGES IN ORDER TO TARGET, DISPLAY OR SEND MARKETING ADS BASED ON THE CONTENT OF THOSE EMAIL MESSAGES.**

## **Email Marketing Services**

If you purchase Volusion's Email Marketing Services, Volusion will collaborate with you to create email campaigns highlighting your products and services. All campaigns will be sent from a Volusion-managed email account on your behalf through third-party service providers. To enable Volusion to provide this service, you must provide an email account and password. If you do not provide the required email and access, Volusion may create an email account on your behalf for use in providing the Email Marketing Services. Volusion has no control over, and you agree that Volusion has no liability for, the products or services provided by any third-party service provider. You agree that in order to participate in Volusion's Email Marketing Services, you also agree to abide by any terms and conditions required by those third-party service providers.

You will be required to regularly update your unsubscribe list via the Volusion admin. Volusion is not

responsible for emails sent to addresses that have unsubscribed or the resulting violations of any law or regulation caused by your failure to timely update the list. Volusion will use the information provided by you to comply with the identification requirements of the CAN-SPAM Act. Failure to provide accurate information or to timely update the information provided may result in a violation of laws or regulations governing email marketing. Volusion will have no liability for any such violation. Volusion will not send any email marketing that it, in its sole discretion, determines to be spam or otherwise in violation of any law, regulation or the Volusion Acceptable Use Policy.

Campaigns will be created in the standard format. Should you desire a custom design that is different from the standard format, please contact Design Services to get a quote. All campaigns are created in collaboration with you and will not be sent unless you have provided the appropriate approvals. Approvals that are not received prior to the scheduled send time will not be sent until the next scheduled send time. You are solely responsible for approving campaigns in a timely manner. No credits or refunds will be issued for missed campaigns that were delayed due to your untimely approvals. You also acknowledge that different email platforms may render the email format differently. As such the email format that you approved may be altered when viewed by a customer from a different format. Limitations contained in the email and other third-party tools may restrict certain format changes. While Volusion will provide content individualized to you and your store, the formatting and other functional requirements will be limited by the tool capabilities.

While Volusion will create the email content, you are responsible for setting up and maintaining any links referenced in the email (i.e. social media accounts and/or landing pages.) Moreover, successful campaigns may result in additional bandwidth to your store. Regular bandwidth overages or Burst Capacity charges will apply in the event of increased bandwidth usage.

## SSL Certificates

When purchasing an SSL Certificate, you are required to provide requested information in a timely manner in order to complete the purchase. If you fail to respond to our inquiries within 30 days or otherwise delay completion of the SSL Certificate process for 30 days or more, you agree that such order will be considered completed and will charge the non-refundable fee associated with such SSL Certificate. Should you wish to reinstate the SSL Certificate process after such time, you will need to place a new order and timely respond to all requirements. No credit for the completed order will be issued.

In addition to the terms and conditions of this Agreement, you acknowledge that Volusion may provide the SSL Services through a third-party service provider, and accordingly, use of the SSL Services is subject to such service provider's acceptance of your application and your acceptance of their terms and conditions.

If you are purchasing a Norton branded SSL, you agree to be bound by the contract terms applicable to the Product as specified by Norton and published at <http://www.verisign.com/repository/subscriber/index.html>, or <http://www.thawte.com/repository/index.html>, or <http://www.geotrust.com/resources/repository/legal.asp> (as applicable); and you acknowledge that Norton shall be an express third party beneficiary of the obligations contained in this Agreement. Norton may modify its contract terms from time to time and you agree to flow-down such new terms to your new customers. In order to maintain the trust and integrity of the Norton PKI, Norton in its sole discretion retains the right to revoke a customer's Product for activities that

Norton considers harmful to the Norton PKI

## SEO

### SEO Services

“SEO Services” means the search engine optimization services for Customer’s Web Site described in this Agreement. SEO Services do not include any programs or other services not specifically described herein.

Customer hereby approves Volusion to access Customer-owned Google Account, including access to Blogger, Google Analytics, Google Webmaster Tools and Google Base, and other Customer-owned search engine marketing or other online accounts, as necessary, for the purpose of performing tasks as part of the SEO Services. Customer shall provide access information and passwords as needed and requested by Volusion from time to time.

As part of the SEO Services Volusion may “ghostwrite” certain articles on behalf of the Customer to be attributed to an individual within the Customer’s organization (usually the owner) when published on Customer’s blog and third party Web Sites. Customer authorizes Volusion to write and publish articles on his/her behalf on Customer’s Web Site, blog and third party websites. Customer has the option to approve or suggest changes to articles within 2 business days of completion. If Customer suggests modifications, changes will be implemented and the article will be published without further delay. If Customer does not respond within 2 business days (Monday through Friday excluding Holidays), approval is assumed and the article will be published.

Customer acknowledges that Volusion will not be held responsible for delays in service caused by Customer’s failure to provide necessary and requested information in a timely manner, including but not limited to approvals, login info and passwords, keywords, and other critical feedback (each and collectively “Feedback”). Such delays on the side of the Customer can seriously impair the SEO Services and negatively affect results. Should Customer fail to provide the required Feedback within one (1) month from the request, Volusion may, at its sole discretion, terminate the SEO Services. No refunds will be provided for Services (including set up fees) that have been terminated hereunder or otherwise affected by Customer delays

Volusion is not liable for any loss of ranking or traffic. Further Volusion is not liable for any other changes or issues caused by other search engine optimization companies or by the Customer or any third party. Customer agrees to notify Volusion promptly if customer engages in any other SEO efforts or partners and/or hires another search engine optimization company during this contract term. Volusion does not guarantee any increase in sales. Volusion also does not guarantee any exact placement in any search engines.

Subject to Section 9 (Fees and Payment), Customer will be charged a monthly recurring fee each month of the SEO Service plan purchased. For example, if Customer purchases a 6 month SEO Service plan, Customer will be charged in 6 monthly increments -at the beginning of the billing cycle for each month of the 6 month term. Customer understands that Volusion incurs expense and has tailored the pricing of such plans based on the term commitment. As such, Customer agrees that the purchase of a particular plan is a non-cancelable commitment for the entire plan term (i.e. 6 months, 12 months, etc.) irrespective of how the plan is charged. At the end of the term commitment, Volusion will continue to provide the SEO Services on a month to month

basis unless terminated by Customer. Should Customer wish to terminate the SEO Services prior to the end of the plan term, Customer agrees to pay an early termination fee equal to 50% of the amounts due for the remainder of the plan term, such fee will be due and payable upon termination.

As part of the SEO Services, Volusion may include additional services (e.g. PPC or Feeds) subject to the terms and conditions herein.

## **Abuse, Trademark, Copyright Policies**

Whether you are the holder of a trademark, service mark, or copyright, Volusion is committed to helping you protect your legal rights. Therefore, we have established the following policies for considering trademark and/or copyright infringement claims.

### **Domain Name Dispute Claims**

Please refer to the Uniform Domain Name Dispute Resolution Policy (the “UDRP”) if you have a concern or dispute concerning a registered domain name. The UDRP covers domain names disputes; this policy specifically excludes domain name disputes.

### **Copyright and Trademark Claims**

1. To notify Volusion that there has been a copyright or trademark violation, please follow the specific instructions in (A) for filing a trademark claim, or (B) filing a copyright complaint.
2. If you are responding to a complaint of infringement, you will need to follow our Counter Notification policy in (C).

### **Trademark Claims**

1. Please understand Volusion is not in a position to mediate trademark disputes between Customers and trademark owners. As a result, we strongly encourage trademark owners to resolve their disputes directly with the Customer who posted the content in question. Contacting the Customer may allow for a quicker resolution to your claim in a way that is beneficial to both the owner and the Customer.
2. If you (the “Complaining Party”) are unable to reach a resolution with the Customer in question and would like to submit a trademark claim for violation of a mark on which you hold a valid, registered trademark or service mark (registered with the United States Patent and Trademark Office or, for foreign marks, registered with the appropriate intellectual property organization of your country; state registrations are not considered valid for these purposes), Volusion requests that the Complaining Party substantiate such claim by providing the following information via email to [abuse@volusion.com](mailto:abuse@volusion.com). The words “Trademark Claim” should appear in the subject line.

To be considered effective, a notification of a claimed trademark violation must include the following information:

- The trademark, service mark, trade dress, name, or other indicia of origin (“mark”) that is claimed to be infringed, including registration number.
- The jurisdiction or geographical area to which the mark applies.
- The name, post office address and telephone number of the owner of the mark identified above.
- The goods and/or services covered by or offered under the mark identified above.

- The date of first use of the mark identified above.
  - The date of first use in interstate commerce of the mark identified above.
  - A description of the manner in which the Complaining Party believes its mark is being infringed upon.
  - Sufficient evidence that the owner of the website that is claimed to be infringing is a Volusion customer.
  - The precise location of the infringing mark, including electronic mail address, etc.
  - A good faith signed certification, signed under penalty of perjury, stating that you:
    1. Have a good faith belief that the use of the trademarks described within the complaint are not authorized by the trademark owner or its agent, nor is such use otherwise defensible or permissible under law.
    2. You represent that the information in the complaint is true and correct and that you are authorized to act on behalf of the trademark owner.
3. Upon receipt of the appropriate information identified in Section 1 above, for trademark claims, Volusion will initiate an investigation. While Volusion is investigating the claim, Volusion, at its sole discretion and without any legal obligation to do so, notify the posting party it will lock down the posting party's domain name(s), redirect the posting party's DNS, forward the Complaining Party's written notification to the posting party, and/or if it is solely stored on a Volusion server, temporarily remove or deny access to the challenged material.
  4. If Volusion concludes that the Complaining Party has raised a legitimate trademark claim, it may, at its sole discretion and without any legal obligation to do so, continue to suspend the posting party's Volusion account and/or if it is solely stored on a Volusion server, deny access to the challenged material. If Volusion concludes that the Complaining Party has not raised a legitimate claim or if it is not clear whether the Complaining Party has raised a legitimate claim, Volusion will restore access to the challenged material subject to a valid court order.
  5. The Complaining Party should understand that Volusion, an ICANN accredited registrar, and its customers are bound by the UDRP. Nothing in this Policy should be construed to supersede the UDRP, nor the obligation of Volusion and its customers to abide by it in the context of domain name disputes.

## Copyright Claims

1. If the Complaining Party would like to submit a copyright claim for material on which you hold a bona fide copyright, Volusion requests that the Complaining Party substantiate such claim by providing Volusion with the following information via email to [abuse@volusion.com](mailto:abuse@volusion.com). The words "Copyright Claim" should appear in the subject line. A copyright claim can also be submitted by mail to: Copyright Agent, Volusion, LLC, 1835-A Kramer Lane, Suite 100, Austin, TX 78758.

To be considered effective, a notification of a claimed copyright infringement must be provided to Volusion and must include the following information:

- i. An electronic signature of the copyright owner, or a person authorized to act on behalf of the owner, of an exclusive copyright that has allegedly been infringed.
- ii. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works



- on that site.
- iii. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit Volusion to locate the material.
  - iv. Information reasonably sufficient to permit Volusion to contact the Complaining Party, such as an address, telephone number, and, if available, an electronic mail address at which the Complaining Party may be contacted.
  - v. A statement that the Complaining Party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
  - vi. A statement that the information in the notification is accurate, and under penalty of perjury, that the Complaining Party is the owner, or is authorized to act on behalf of the owner, of an exclusive right that is allegedly infringed.
2. For Copyright Claims, upon receipt of appropriate notification from the Complaining Party, pursuant to Section 1 of Copyright Claims above, Volusion will remove or disable access to the material that is claimed to be infringing.
  3. If the Complaining Party provides Volusion with appropriate notification, pursuant to Section 1 of Copyright Claims above, including information reasonably sufficient to permit Volusion to locate and remove or disable the material in question, or includes information concerning repeat infringement, then Volusion will forward the Complaining Party's written notification to such alleged Infringer and shall take reasonable steps promptly to notify the Infringer that it has removed or disabled access to the material.

### **Counter Notification Policy**

1. Counter Notification. If you have received a notice of copyright or trademark infringement, you may provide Counter Notification by emailing [abuse@volusion.com](mailto:abuse@volusion.com) and including the following:
  - i. An electronic signature of the Infringer.
  - ii. Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.
  - iii. A statement under penalty of perjury that the Infringer has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.
  - iv. The Infringer's name, address, and telephone number, and a statement that the Infringer consents to the jurisdiction of the Federal District Court for the judicial district of Texas, or if the Infringer's address is outside of the United States, for any judicial district in which Volusion may be found, and that the Infringer will accept service of process from the Complaining Party or an agent of such Party.
2. Upon receipt of a Counter Notification as described in Section 1 above, Volusion shall promptly provide the Complaining Party with a copy of the Counter Notification, and inform such Party that it will replace the removed material or cease disabling access to it in ten (10) business days. Volusion will replace the removed material and cease disabling access to it in not less than ten (10), nor more than fourteen (14), business days following receipt of the Counter Notification, unless Volusion first

receives notice from the Complaining Party that such Complaining Party has filed an action seeking a court order to restrain the Infringer from engaging in infringing activity relating to the material on Volusion's system or network.

### **Repeat Infringers**

It is Volusion's policy to provide for the termination, in appropriate circumstances, of Volusion customers and account holders who repeatedly violate this policy or are repeat infringers of copyrighted works, trademarks or any other intellectual property.

### **Processing Fees**

To cover the increasing cost of processing abuse claims, Volusion reserves the right to charge Customer a processing fee for each instance of notification received from a legitimate copyright holder. Volusion reserves the right to suspend or terminate any Services if, upon notification, Customer fails to comply with a legitimate infringement claim within the specified time.

### **Civil Subpoena Policy**

Volusion's **Privacy Policy** prohibits the release of customer or account information without express permission from the customer, except when required by law, to conform to the edicts of the law, or to comply with legal process properly served on Volusion or one of its affiliates.

If you seek the identity or account information of a Volusion customer in connection with a civil legal matter, you must fax, mail, or serve Volusion, LLC with a valid subpoena.

### **Submission of Subpoenas**

Volusion is headquartered in Austin, Texas and all criminal subpoenas should be served at that location or mailed to:

#### **Legal Department**

*Volusion, LLC  
Attn: Legal Dept.  
1835-A Kramer Lane, Suite 100  
Austin, TX 78758*

Alternatively, the criminal subpoena can be faxed to:

(888)480-0945  
Attn: Legal Department

### **Notice to Customer and Response Time**

Upon the receipt of a valid civil subpoena, Volusion will promptly notify the customer whose information is sought via e-mail or U.S. mail. If the circumstances do not amount to an emergency, Volusion will not immediately produce the customer information sought by the subpoena and will provide the customer an opportunity to move to quash the subpoena in court. Volusion reserves the right to charge an administration fee to the customer by charging the Payment Method the customer has on file with Volusion.

## **Fees for Subpoena Compliance**

Volusion will charge the person or entity submitting the civil subpoena for costs associated with subpoena compliance. Payment must be made within thirty (30) days from the date of receipt of the Volusion invoice. Checks should be made out to Volusion, LLC.

Volusion's subpoena compliance costs are as follows:

Research - \$75.00/hour

Federal Express - Cost as Billed

Copies - \$.25/page

## **Policies Regarding E-mail**

Volusion's email servers are located in the United States. Volusion will not produce the content of e-mail, as the Electronic Communications Privacy Act, 18 U.S.C. §2701 et seq., prohibits an electronic communications service provider from producing the contents of electronic communications, even pursuant to subpoena or court order, except in limited circumstances. Volusion's e-mail servers do not retain deleted or sent e-mail.

Volusion reserves the right to request a copy of the complaint and any supporting documentation that demonstrates how the Volusion e-mail address is related to the pending litigation and the underlying subpoena.

## **Criminal Subpoena Policy**

Volusion's Privacy Policy prohibits the release of customer or account information without express permission from the customer, except when required by law, to conform to the edicts of the law, or to comply with legal process properly served on Volusion or one of its affiliates.

If you seek the identity or account information of a Volusion customer in connection with a criminal matter, and you are a member of the law enforcement community, you must fax, mail, or serve Volusion, LLC with a valid subpoena.

## **Submission of Subpoenas**

Volusion is headquartered in Austin, Texas and all criminal subpoenas should be served at that location or mailed to:

### **Legal Department**

*Volusion, LLC*

*Attn: Legal Dept.*

*1835-A Kramer Lane, Suite 100*

*Austin, TX 78758*

Alternatively, the criminal subpoena can be faxed to:

(888) 480-0945

Attn: Legal Department

## **Policies Regarding Email**

Volusion will not produce the content of e-mail, as the Electronic Communications Privacy Act, 18 U.S.C. §2701 et seq., prohibits an electronic communications service provider from producing the contents of electronic communications, even pursuant to subpoena or court order, except in limited circumstances. Volusion's e-mail servers do not retain deleted or sent e-mail.

Volusion reserves the right to request a copy of the complaint and any supporting documentation that demonstrates how the Volusion e-mail address is related to the pending investigation and the underlying subpoena.

## **Privacy Policy and Statement**

Our Privacy Policy, which can be found here, is incorporated into this Agreement. We encourage you to read Our Privacy Policy and to use the information it contains to help you make informed decisions.

## **Acceptable Use Policy**

In order to maintain our system integrity and resources we expect our customers to act responsibly. When you use any Volusion services, in any form, you automatically agree to the following Conditions.

Volusion maintains high standards and values, and expects the same from its customers. We reserve the right to suspend or cancel a customer's access to any or all Services provided when we decide, in our sole discretion, that the account has been inappropriately used. In short we may decline Services because of:

### **Adult Material (as described below)**

- Illegal content
- Use of the Services in a manner in which it was not intended
- Use of the Services in a manner which does not conform to Volusion's values

Volusion reserves the right to place hyperlinks to "<http://www.volusion.com>" at the bottom/footer of your website.

### **Adult Material Policy**

Volusion maintains a strict "No Adult Material Policy". Any presentation of material that is sexual, pornographic or obscene in nature, as determined in Volusion's sole discretion, will not be allowed. By way of example and not limitation, "Adult Material" includes any of the following:

1. Any photos or videos showing frontal nudity on either men or women.
2. Any photos or videos showing any sexually explicit nudity.
3. Any audio clips or text containing sexually explicit material.
4. Any explicit adult toys such as vibrators, etc.
5. Any sites with direct links to other sites containing such material.
6. Any site engaged in the sale of sexually explicit items.

If your site contains material that you are unsure about, please let us know before placing the order.

## Transfer Policy

Volusion will only provide access to an account to the designated Owner or Point of Contact of that account regardless of whether someone else maintains, pays for or otherwise administers the account. The “Owner” of the account is the person or entity whose name was used to set up the account. Only the Owner will be authorized to transfer the ownership of the Volusion store or other Services. Volusion is not a court of law and will not arbitrate or adjudicate disputes between potential Owners. If there is a dispute of the named Owner’s right to the store or Services, Volusion will comply with any court order or settlement agreement.

To transfer ownership of one of your Volusion store orders, we will need a signed, notarized copy of the Transfer of Ownership form. As an alternative, you may send a faxed copy of a notarized contract or sales agreement signed by both current and new account holders as long as it specifically mentions the Volusion account as part of the sales agreement. Once completed, please fax the form to 1-800-424-3021, marked to the attention of Account Services.

Then the new owner must visit our website and purchase a separate store order. In the comments section of the form, write, “Ownership transfer request; please mirror [www.\\_\\_\\_\\_\\_.com](http://www._____.com)” (the setup fee will not be waived). If the new owner intends to use the domain name configured on the original account, we will have to cancel the original account so that we can set up the new account. If the new Owner intends to use a new domain name, we will keep the original account active and perform the mirror, in which case you would need to visit <http://customer.volusion.com> and fill out the online cancellation form for your account once the data has been copied for the new Owner.

Please note that an existing SSL certificate cannot be transferred from the existing account to the new account. A new one will need to be added to the new order, or purchased separately later at [www.volusion.com/ecommerce-ssl-certificates](http://www.volusion.com/ecommerce-ssl-certificates). Please be sure that the domain registration’s WHOIS information matches the new order details. Note that the store will only be accessible at its new temporary address for up to 72 hours while the updated settings propagate.

If you have Volusion merchant services, you will not be able to transfer ownership of that account to the new Owner. The new Owner may sign up for one at [www.volusion.com/ecommerce-credit-card-processing](http://www.volusion.com/ecommerce-credit-card-processing). The original merchant service account will have to be manually canceled by Customer by visiting <http://my.volusion.com> and submitting a ticket to “merchant services support.”

In addition, email cannot be transferred along with store data. We recommend that you locally archive any sensitive email data prior to requesting transfer. If you have questions about how to do so, please contact Technical Support.

Please note that once the new Owner places a store order, we recommend that you place your store in maintenance mode and refrain from any administrative updates, as new data added during or after the copying procedure may fail to appear in new owner’s store, and/or may cause duplication of database record ID#. This will also prevent customers from placing orders which might be affected by the data copying. Since PCI guidelines prevent us from copying full credit card data, any order which is not captured prior to copying cannot be captured from the new, copied Volusion store.

## **UDRP**

The most recent version of the Uniform Domain Name Dispute Resolution Policy can be found at <http://www.icann.org/en/udrp/#udrp>.

## **Prior Versions**

[https://www.volusion.com/assets/documents/legal/volusion\\_terms\\_of\\_service\\_3\\_31\\_14.pdf](https://www.volusion.com/assets/documents/legal/volusion_terms_of_service_3_31_14.pdf)