

## TERMS AND CONDITIONS

Any Customer acquiring Products and/or Services directly from TrueCommerce must sign a TrueCommerce Order Form that lists the Products and/or Services to be provided by TrueCommerce and the fees to be paid by Customer to TrueCommerce. Any Customer acquiring Software Products from a TrueCommerce Business Partner must sign a TrueCommerce Registration Form that lists the Software Products to be acquired from the TrueCommerce Business Partner. When Customer signs the Order Form or a Registration Form, a contract is formed between TrueCommerce and Customer consisting of the Order Form or Registration Form, whichever applicable and these TrueCommerce *Terms and Conditions* (collectively referred to as the "**Agreement**"):

### GENERAL TERMS

1. **DEFINITIONS.** Capitalized terms that are not defined in context shall have the following meanings:
  - a. **TrueCommerce**—the legal entity that signs a TrueCommerce Order Form or a TrueCommerce Registration Form, as the case may be, with Customer, which shall either be True Commerce, Inc., a Delaware, USA corporation, or a TrueCommerce Affiliate.
  - b. **TrueCommerce Business Partner**—a company authorized by TrueCommerce to promote, market, sell, support, deliver or implement certain Products or Services.
  - c. **TrueCommerce Product**—a software program, software service, or a resource (such as an information database), that is generally available from TrueCommerce, updates or modifications to any of the foregoing provided to Customer by TrueCommerce, associated Documentation, and all copies of the foregoing. TrueCommerce Products may be delivered to Customer by TrueCommerce or a TrueCommerce Business Partner or may be made accessible to Customer via remote access through the Internet. Network Services are considered a TrueCommerce Product. Support Services, Professional Services, Hardware Products, Third-Party Software Products and Deliverables are not considered TrueCommerce Products.
  - d. **Affiliate**—an entity controlling, controlled by, or under common control with a party, for so long as such control relationship exists.
  - e. **Confidential Information**— information of a party that is marked confidential or with a similar proprietary legend or that, due to the nature of the information and/or the circumstances under which it was disclosed, should reasonably be assumed to be confidential information of the discloser. Software Products, Services, TrueCommerce pricing, these Terms and Conditions and any product plans of TrueCommerce provided to Customer prior to general announcement are all considered Confidential Information of TrueCommerce. Confidential Information includes copies, summaries and other derivatives of Confidential Information. Customer Data is considered Confidential Information of Customer.
  - f. **Customer** —the legal entity that signs a TrueCommerce Order Form or a TrueCommerce Registration Form.
  - g. **Customer Data**— Customer Data means (i) all data and information generated, provided or submitted by, or caused to be generated, provided or submitted by or on behalf of, Customer or its Affiliates in connection with the Services; (ii) all data and information regarding the business of Customer or its Affiliates collected, generated or submitted by, or caused to be generated, provided or submitted by, TrueCommerce and/or its Affiliates and subcontractors in connection with its performance of Services; (iii) all data and information regarding the business of Customer or its Affiliates processed or stored, and/or then provided to or for Customer or its Affiliates, as part of the Services, including, without limitation, data contained in forms, reports and other similar documents provided by TrueCommerce as part of the Services; or (iv) all data and information processed or stored in connection with Customers use of a TrueCommerce Product. Customer owns all right, title and interest in and to Customer Data.
  - g. **Deliverable**—the work product or work of authorship resulting from the performance of Professional Services or any item that TrueCommerce designates as a Deliverable in an Order Form or Registration Form. Software Products, Services, Documentation and Hardware Products are not considered Deliverables.
  - h. **Documentation**—user manuals and online help materials related to a Product that are contained in or accompany the Product or that are otherwise made available to Customer by TrueCommerce.
  - i. **EDI**—electronic data interchange or similar transactions that transfer data from one computer system to another by standardized message formatting, without the need for human intervention.
  - j. **Effective Date**—the Effective Date indicated on the Order Form or the Registration Form.
  - k. **Hardware Product**—a computer, server, bar code reader, printer, or a handheld, mobile, wireless, or other device or item of equipment that is manufactured by a third party, listed on an Order Form and provided to Customer by TrueCommerce, and all related Documentation and accessories, parts, and upgrades.
  - l. **TrueCommerce Affiliate**—any legal entity, directly or indirectly, controlling, controlled by or under common control with TrueCommerce Network Holdings, LLC.
  - m. **Products**—Hardware Products and Software Products.
  - n. **Professional Services**—consulting, integration, customization, training or other technical services performed for Customer by TrueCommerce under an Order Form.
  - o. **Network Services**—the electronic trading network services provided by TrueCommerce to enable a Customer to transmit and route EDI transactions between Customer and its trading partners. Network Services excludes any network monitoring services,

- p. **Order Form**—an order form, quote, work request, statement of work or other document that is signed by duly authorized representatives of Customer and TrueCommerce that contains (i) a list of Products and/or Services to be provided to Customer by TrueCommerce, (ii) fees to be paid by Customer to TrueCommerce, method of payment and payment terms, and (iii) any additional rights and obligations of the parties.
- q. **Registration Form**—a form signed by, or a click-thru license agreement agreed to by, Customer that contains a list of Software Products to be provided to Customer by a TrueCommerce Business Partner that, along with this Agreement, governs Customer's use of such Software Products.
- r. **Services**—Support Services and Professional Services.
- s. **Software Products**—TrueCommerce Products, Third-Party Software Products and Network Services.
- t. **Support Services**—the help desk, defect correction, maintenance and related services offered by TrueCommerce to support Customer's use of Software Products.
- u. **Third-Party Software Product**—a software program produced and branded by a third party provider for which Customer purchases a license from TrueCommerce as specified in an Order Form.
- v. **Support Term**—the Initial Support Term and any Renewal Support Terms for which Customer has paid applicable Support Services fees. The "Initial Support Term" is a twelve-month period beginning on the date that is thirty days after the Effective Date of the Order Form listing the Support Services. A "Renewal Support Term" is a twelve-month period beginning on the expiration of the Initial Support Term or a preceding Renewal Support Term.

## 2. SCOPE OF THE AGREEMENT.

- a. **Scope.** The Agreement is effective and binding on the parties on the Effective Date. Neither party is obligated to sign any Order Form or Registration Form. Any Products or Services acquired by Customer directly from TrueCommerce that are not specified in an Order Form, or that are provided prior to the execution of an Order Form, are also subject to the Agreement.
- b. **Use of Software Products and Services by Customer's Affiliates.** Customer's Affiliates that are controlled, directly or indirectly, by Customer ("**Controlled Affiliates**") may use Products and Services on the same terms as Customer. References to Customer in these Terms and Conditions include Controlled Affiliates using the Products and Services and Customer guarantees its Controlled Affiliates' compliance with the Agreement. A Customer Affiliate that is not controlled by Customer may use such items only if an authorized representative of the Customer Affiliate confirms in writing that the Customer Affiliate has agreed to be bound by the Agreement and that TrueCommerce may enforce the Agreement directly against such Customer Affiliate. Customer Affiliates using Products and Services under the Agreement must not be direct competitors of TrueCommerce. Upon TrueCommerce's request, Customer shall promptly confirm in writing whether or not a legal entity is an Affiliate or Controlled Affiliate of Customer.
- c. **Affiliate Liability.** The TrueCommerce legal entity signing an Order Form or specified in a Registration Form, and not any Affiliate of such entity, is solely responsible for performance under the Agreement and claims arising out of it.
- d. **Purchases from TrueCommerce Business Partners.** Software Products acquired from a TrueCommerce Business Partner are subject to the Agreement, but Customer may be responsible to the Business Partner for the payment of fees, in which case the payment terms in the following section of the Agreement do not apply to Customer. TrueCommerce Business Partners are independent legal entities and separate from TrueCommerce. TrueCommerce is not responsible for the actions or statements of TrueCommerce Business Partners or obligations they have to Customer.

## 3. PAYMENT AND DELIVERY.

- a. **Fees.** Fees and other charges for Products and Services are specified in an Order Form. Fees specified in an Order Form are valid for thirty days from the date the Order Form is provided to Customer and thereafter are subject to change at any time prior to TrueCommerce's acceptance of the Order Form.
- b. **Taxes.** Customer shall pay all sales, use, excise, value added and similar taxes and duties levied by any taxing authority on the Agreement or the purchase of Products and Services ("**Taxes**"), other than taxes imposed on TrueCommerce's net income or payroll, unless Customer provides TrueCommerce with appropriate resale or exemption documentation for the delivery location and TrueCommerce agrees that Customer may resell the Products or Services being acquired. Unless expressly indicated otherwise, fees and charges specified in an Order Form are stated exclusive of Taxes.
- c. **Withholding Tax.** If Customer is required by law to withhold and remit any Tax relating to the Agreement or the purchase of Products and Services, Customer shall withhold and remit the Tax payment to the applicable tax jurisdiction and furnish to TrueCommerce a Tax certificate or other acceptable evidence of payment of such Tax as required by the relevant taxing authority.
- d. **Financing.** Customer purchases that will be financed by a third-party must be approved in advance by TrueCommerce to ensure appropriate Tax treatment.
- e. **Delivery.** TrueCommerce will deliver certain Products by arranging for shipment to the address specified in the Order Form or Registration Form, in which case Customer shall pay related transportation and handling charges as specified in a TrueCommerce invoice, unless the Order Form or Registration Form provides otherwise. TrueCommerce may elect in its sole discretion to deliver Software Products electronically, to make them available for electronic download by Customer, or to make them available for use over the Internet or other electronic delivery system.

- f. **Payment.** Customer agrees to pay, without offset, all amounts stated on a TrueCommerce invoice in accordance with the terms of Order Forms. Unless expressly stated otherwise in this Agreement or in an Order Form, Customer shall pay such amounts within thirty days after the invoice date or such other period stated in the Order Form. Late payments shall accrue interest on the sum due, from the date due, at the rate of one and one-half percent (1½%) per month or the highest rate permitted by law, whichever is less; provided, however, that if applicable law requires the use of a statutory interest rate, the statutory interest rate shall apply. TrueCommerce may without liability suspend the further delivery of Products and/or the performance of Services at any time that Customer is not in compliance with its payment obligations to TrueCommerce or is otherwise in breach of the Agreement. TrueCommerce's rights relating to late payment charges and the suspension of Product deliveries and Services performance shall be in addition to any other right that TrueCommerce may have if Customer fails to make any payment due to TrueCommerce under the Agreement. TrueCommerce reserves the right to require payment in advance of delivery. No endorsement or statement on or accompanying any check or payment shall be deemed an accord and satisfaction and TrueCommerce may accept the check or payment without prejudice to TrueCommerce's right to recover the balance due or pursue any other remedy permitted under the Agreement. Notwithstanding other provisions of the Agreement, and without prejudice to any termination right TrueCommerce may otherwise have pursuant to this Agreement, (i) Customer agrees that TrueCommerce may without liability therefore suspend the delivery of any Product or Service (including any hosted or subscription offerings) upon notice to Customer during any period in which Customer has failed to pay any undisputed fees or other amounts when due, and (ii) Customer shall be responsible for any costs TrueCommerce incurs in enforcing collection of any amounts due under the Agreement, including reasonable attorneys' fees, court or arbitration costs, or collection agency fees.
- g. **Payment Disputes.** Customer shall notify TrueCommerce in writing within thirty days after receiving an invoice of any good faith dispute concerning the invoice. The notice shall include reasonable details relating to the dispute, including the specific amount disputed by Customer. Customer's dispute of an amount due will not relieve Customer of its obligation to pay any undisputed amounts. The failure of Customer to dispute invoiced amounts in accordance with this section shall constitute a waiver by Customer of any objection to such amounts.
- h. **Third-Party Costs.** Customer acknowledges that fees for Third-Party Software Products and Hardware Products charged by TrueCommerce as a separate line item in an invoice may not include discounts, rebates or credits received by TrueCommerce from the third-party provider.
- 4. WARRANTIES.**
- a. **Warranty Statements.** TrueCommerce's limited warranty statements for TrueCommerce Products, Services and Deliverables are set forth in the appropriate sections of this Agreement.
- b. **Warranty and Support Exclusions.** TrueCommerce warranties and Support Services obligations shall not apply to any Customer claims resulting from (i) any nonconformance that TrueCommerce cannot recreate after exercising reasonable efforts in an attempt to do so; (ii) misuse or use of a TrueCommerce Product, Service or Deliverable in a manner not contemplated by its Documentation (including unauthorized distribution to a third party); (iii) any modification made by any party other than TrueCommerce, a TrueCommerce Affiliate, or their personnel; (iv) Customer's use of a TrueCommerce Product, Service or Deliverable in combination with software or hardware not provided by TrueCommerce or specified as compatible by TrueCommerce in applicable Documentation; (v) Customer's failure to promptly implement new releases made available by TrueCommerce or to follow TrueCommerce instructions in their implementation; or (vi) a virus or similar malicious code not introduced by TrueCommerce.
- c. **Third-Party Software Products and Hardware Products.** TrueCommerce provides Third-Party Software Products (including software licensed without fee or charge, also referred to as freeware or open source) and Hardware Products "AS IS" and without warranties or indemnities of any kind, although the original manufacturers or third-party suppliers of such items may provide their own warranties or indemnities. TrueCommerce will pass through to Customer any available warranties and indemnities that are not provided directly to Customer and will enforce on behalf of Customer any available warranties that cannot be passed through to Customer. TrueCommerce may from time to time recommend third-party software, hardware or services to Customer for Customer's consideration. TRUECOMMERCE MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING SOFTWARE, HARDWARE OR SERVICES THAT ARE NOT LISTED IN AN ORDER FORM OR REGISTRATION FORM. Customer's use of any such software, hardware and services is governed by the terms of Customer's agreement with the provider of such items.
- d. **Disclaimer.** THE WARRANTIES AND ANY ASSOCIATED REMEDIES EXPRESSED OR REFERENCED IN THE AGREEMENT ARE EXCLUSIVE. NO OTHER WARRANTIES, WRITTEN OR ORAL, ARE EXPRESSED OR IMPLIED BY TRUECOMMERCE OR MAY BE INFERRED FROM A COURSE OF DEALING OR USAGE OF TRADE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TRUECOMMERCE DISCLAIMS AND CUSTOMER WAIVES ALL IMPLIED WARRANTIES OR CONDITIONS INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, UNINTERRUPTED OR ERROR-FREE OPERATION, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. THE FOREGOING EXCLUSIONS SHALL NOT APPLY TO CUSTOMER WITH RESPECT TO ANY WARRANTIES THAT ARE REQUIRED BY APPLICABLE LAW WITHOUT THE POSSIBILITY OF CONTRACTUAL WAIVER. NO ORAL OR WRITTEN INFORMATION OR ADVICE OUTSIDE OF THE AGREEMENT SHALL BE DEEMED TO CREATE A WARRANTY OR IN ANY WAY INCREASE THE EXPRESS WARRANTIES AND REMEDIES IN THE AGREEMENT. ANY WARRANTIES REQUIRED BY APPLICABLE LAW THAT BY LAW CANNOT BE DISCLAIMED OR EXCLUDED ARE LIMITED IN DURATION TO THE APPLICABLE WARRANTY PERIOD AND THE REMEDIES SPECIFIED IN THE AGREEMENT TO THE EXTENT PERMITTED BY APPLICABLE LAW.
- 5. INDEMNITIES.**
- a. **Third-Party Infringement Claims.** If a third party brings a claim against Customer (or a Customer Affiliate authorized to use a TrueCommerce Product, Service or Deliverable under the Agreement) alleging that the TrueCommerce Product, Service or Deliverable infringes any patent or copyright owned by the third party and enforceable in the United States, Canada, Australia or any country that is a member of the European Union, TrueCommerce shall defend the claim at its expense. TrueCommerce shall pay defense costs, any settlement amount negotiated by TrueCommerce, and damages finally awarded by a court.
- b. **Remedies for Infringement Claims.** If a third-party infringement claim is made or appears likely, then TrueCommerce shall be entitled but not required to modify the TrueCommerce Product, Service, or Deliverable to make it noninfringing, procure any necessary license, or replace the affected item with one that is functionally comparable. If TrueCommerce determines that none of these alternatives is reasonably available, then

upon TrueCommerce's written request Customer shall return the infringing TrueCommerce Product or Deliverable to TrueCommerce or discontinue using the infringing Service and TrueCommerce shall issue Customer a refund equal to: (i) a pro-rata amount of the fees paid for the TrueCommerce Product or Deliverable, based on a five (5)-year amortization schedule; or (ii) if the claim relates to an infringing Service, the lesser of twelve (12) months' charges for the Service or the amount paid by Customer for that Service.

- c. **Exclusions.** TrueCommerce has no obligation for any claim of infringement arising from, and Customer shall indemnify TrueCommerce and its Affiliates against, any third-party claim arising from: (i) TrueCommerce's compliance with Customer's or Customer-provided third-party designs, specifications, instructions, or technical information; (ii) modifications made by any party other than TrueCommerce, a TrueCommerce Affiliate, or their personnel; (iii) Customer's noncompliance with applicable Documentation; (iv) use of TrueCommerce Products, Services or Deliverables for purposes not contemplated by the Agreement or applicable Documentation (including unauthorized distribution to third parties) or use after TrueCommerce notifies Customer to discontinue use due to an infringement claim; (v) Customer's use or combination of TrueCommerce Products, Services, or Deliverables with products, software, or services that are not provided by TrueCommerce; or (vi) a TrueCommerce Product, Service, or Deliverable that is not at the most current release level available from TrueCommerce if the most current release level is noninfringing.
- d. **Sole and Exclusive.** This INDEMNITIES section states TrueCommerce's entire liability for claims of intellectual property infringement.
- e. **Bodily Injury Cross-Indemnity.** Customer and TrueCommerce shall each defend and indemnify the other and the other's employees, officers, directors and agents, against all damages for bodily injury, including death, or damage to real or tangible personal property to the extent proximately caused by the indemnifying party in the course of performing under the Agreement.
- f. **Conditions.** Each party's indemnification obligations under this INDEMNITIES section are conditioned on the indemnified party: (i) promptly notifying the indemnifying party of any indemnifiable claim in writing; (ii) cooperating with the indemnifying party in the defense of the claim; and (iii) granting the indemnifying party sole control of the defense or settlement of the claim.

## 6. INTELLECTUAL PROPERTY RIGHTS.

- a. **TrueCommerce Products, Services, and Deliverables.** TrueCommerce Products and Deliverables are licensed for Customer's use as indicated in the *Software Terms* section of this Agreement. These items are not sold to Customer and no title transfers to Customer. TrueCommerce retains exclusive ownership of all TrueCommerce Products, Services, and Deliverables and all intellectual property rights, title and interest in them, and in any ideas, concepts, know how, documentation, or techniques developed or learned by TrueCommerce in connection with its performance of Services. Deliverables are not considered "works made for hire" under copyright law. All rights not expressly granted to Customer are reserved by TrueCommerce and there are no implied licenses.
- b. **Third-Party Software Products.** Third-Party Software Products are licensed for Customer's use as indicated in the *Software Terms* section of this Agreement. Third-Party Software Products are owned by a TrueCommerce provider. Third-party providers are intended beneficiaries of the LIMITATIONS OF LIABILITY AND REMEDIES section of this Agreement and independently may protect their rights in Third-Party Software Products in the event of any infringement.
- c. **Customer Data.** TrueCommerce shall use Customer Data provided to it by Customer solely to perform its obligations under the Agreement. No other right, title or interest of any kind is granted to TrueCommerce pursuant to the Agreement in or to Customer data that TrueCommerce may have access to while providing Services or that is processed by TrueCommerce Products.
- d. **Suggestions.** If Customer suggests any new features, functionality or improvements for Products, Services or Deliverables they shall become the sole and exclusive property of TrueCommerce and TrueCommerce shall not be subject to any confidentiality restrictions or royalty obligations.
- e. **Trademarks.** Customer shall not register or use any mark or internet domain name that contains any trademark, service mark or logo owned by TrueCommerce or a TrueCommerce Affiliate or that is confusingly similar to such marks or logos.
- f. **Use of Products and Services in High-Risk Applications.** Products and Services are not designed or intended for use in the planning, construction, maintenance, or operation of a nuclear, weapons, air-traffic control, petroleum processing, military, medical, or other high-risk facility or operation. Customer is solely liable if any items purchased by Customer are used for these applications and shall indemnify and hold TrueCommerce harmless from all loss, damage, expense, or liability in connection with any such use.

## 7. CONFIDENTIAL INFORMATION.

- a. **Nondisclosure Obligation.** If a party receives Confidential Information (in such role, "**Recipient**") from the other party (in such role, "**Discloser**"), then Recipient shall protect such Confidential Information from disclosure to third parties by exercising at least the same degree of care it uses to protect its own similar information, and in any event not less than reasonable care. Customer agrees to use TrueCommerce Confidential Information only in connection with its licensed use of Products and Services.
- b. **Exceptions.** The foregoing obligations shall not apply to any Confidential Information that (i) is or becomes available to the public, other than by breach of a duty by Recipient; (ii) is in the rightful possession of the Recipient without an obligation of confidentiality; or (iii) is independently developed by Recipient without use of or reference to Confidential Information of Discloser. Confidential Information may be disclosed by Recipient as required by a court or governmental authority of competent jurisdiction, provided that prior to any such disclosure Recipient provides Discloser with prompt written notice so that Discloser may seek an appropriate protective order. The obligations under this CONFIDENTIAL INFORMATION section shall survive for a period of two years following the return or destruction of the Confidential Information.
- c. **Use of Business Contact Information.** Customer authorizes TrueCommerce and its Affiliates (and their successors and assigns, contractors and TrueCommerce Business Partners) to store and use Customer's business contact information wherever TrueCommerce and its Affiliates do business, in connection with the delivery of Products and Services, or in furtherance of TrueCommerce's business relationship with Customer and its Affiliates.

## 8. LIMITATIONS OF LIABILITY AND REMEDIES.

- a. **Limitation of Liability.** Each party's total aggregate liability is limited to the amount paid by Customer for the Product or Service that is the subject of a claim. For items for which Customer pays on a recurring basis, such as monthly or yearly, the maximum liability equals twelve months of fees.
- b. **Disclaimer of Indirect Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL COSTS OR DAMAGES INCLUDING DOWNTIME COSTS; LOST BUSINESS, REVENUES, PROFITS OR MANAGEMENT TIME; FAILURE TO REALIZE EXPECTED SAVINGS; LOSS OF GOODWILL; LOSS OR UNAVAILABILITY OF OR DAMAGE TO DATA; OR SOFTWARE RESTORATION.
- c. **Legal Theory.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS SHALL APPLY REGARDLESS OF THE BASIS OF LIABILITY, INCLUDING NEGLIGENCE, MISREPRESENTATION, BREACH OF ANY KIND, OR ANY OTHER CLAIMS IN CONTRACT, TORT OR OTHERWISE AND REGARDLESS OF WHETHER DAMAGES WERE FORESEEABLE.
- d. **Exceptions to Limitations and Exclusions.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, THIS **LIMITATIONS OF LIABILITY AND REMEDIES** SECTION SHALL NOT BE APPLIED TO LIMIT (i) CUSTOMER'S OR ITS AFFILIATES' PAYMENT OBLIGATIONS; (ii) CLAIMS BY A PARTY FOR INFRINGEMENT OF THEIR INTELLECTUAL PROPERTY RIGHTS OR BREACH OF A CONFIDENTIALITY OBLIGATION AGAINST THE OTHER PARTY OR ITS AFFILIATES; (iii) CLAIMS FOR PERSONAL INJURY (INCLUDING DEATH) OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY TO THE EXTENT A PARTY IS LIABLE FOR SUCH ITEMS UNDER APPLICABLE LAW; (iv) A PARTY'S EXPRESS INDEMNITY OBLIGATIONS UNDER THE AGREEMENT; (v) LIABILITY BASED ON WILLFUL MISCONDUCT OR FRAUDULENT MISREPRESENTATION, BUT ONLY TO THE EXTENT SUCH LIABILITY MAY NOT BE EXCLUDED, LIMITED OR WAIVED AS A MATTER OF APPLICABLE LAW; OR (vi) ANY OTHER LIABILITY TO THE EXTENT THE LIABILITY MAY NOT BE EXCLUDED, LIMITED OR WAIVED AS A MATTER OF APPLICABLE LAW.
- e. **Application to Third Parties.** TRUECOMMERCE'S AFFILIATES, SUPPLIERS, SUBCONTRACTORS AND BUSINESS PARTNERS, AND CUSTOMER'S AFFILIATES ARE INTENDED BENEFICIARIES OF THE LIMITATIONS AND EXCLUSIONS IN THIS **LIMITATIONS OF LIABILITY AND REMEDIES** SECTION. THERE ARE NO OTHER THIRD-PARTY BENEFICIARIES UNDER THE AGREEMENT. TRUECOMMERCE AND ITS AFFILIATES, SUPPLIERS, SUBCONTRACTORS AND BUSINESS PARTNERS SHALL HAVE NO LIABILITY FOR CLAIMS MADE BY CUSTOMER'S CUSTOMERS, SERVICE PROVIDERS, AND OTHER THIRD PARTIES.
- f. **Limitations Period.** Neither party will bring a legal action against the other more than two years after the cause of action arose unless applicable law prohibits this contractual limitation.

## 9. TERMINATION.

- a. **Termination for Convenience.** Customer may terminate the Agreement for convenience upon thirty days' prior written notice to TrueCommerce.
- b. **Termination for Cause.** Either Customer or TrueCommerce may terminate the Agreement on written notice if the other party fails to comply with a material term of the Agreement after it has been notified in writing of the nature of the failure and, if curable, has been provided with a reasonable period of time to cure the failure.
- c. **Termination Upon Change in Financial Position.** Either party may terminate the Agreement by giving written notice to the other party if the other party (i) ceases to do business as a going concern; (ii) becomes insolvent, bankrupt or the subject of a receivership or administration; (iii) has a trustee or liquidator appointed for it; or (iv) has any substantial part of its property subjected to any levy, seizure, assignment or sale for or by a third party.
- d. **Effects of Termination.** Subject to the following section, if the Agreement is terminated for any reason, Customer's payment obligations shall survive the termination (subject, in the case of Customer's termination of the Agreement for cause as a result of material breach by TrueCommerce, to Customer's remedies against TrueCommerce as provided in the Agreement).
- e. **Termination of Professional Services for Convenience.** If Customer terminates an Order Form under which Professional Services are separately stated for Customer's convenience, TrueCommerce shall wind up the Professional Services in an orderly manner and Customer shall pay TrueCommerce only for Professional Services performed and expenses incurred by TrueCommerce up to the date the Professional Services cease. For Professional Services or Deliverables subject to a fixed price, Customer will remain obligated to pay any outstanding fees and TrueCommerce will not be obligated to refund any fees paid as of the effective date of termination. .
- f. **Procedures upon Termination.** Upon termination of the Agreement for any reason, licenses to Software Products and Deliverables shall immediately terminate and Customer shall immediately: (i) return to TrueCommerce all Hardware Products that have not been paid for; (ii) cease using and return, if applicable, to TrueCommerce all Software Products and Deliverables, together with all Documentation and other materials provided by TrueCommerce and all copies of any of the foregoing, or destroy such items, and cease using all Services; (iii) purge all copies of Software Products, Deliverables and Documentation from all computers and network servers and from any computer storage device or medium on which Customer has placed such items; (iv) pay TrueCommerce all amounts remaining due; and (v) provide TrueCommerce written certification from an officer of Customer that Customer has complied with all of the foregoing obligations. Customer Data processed by TrueCommerce Products and stored on TrueCommerce owned servers may be purged within thirty (30) days after the effective date of termination.
- g. **Survival.** Any provisions of the Agreement that require or contemplate performance or application after termination are enforceable against the other party and its respective successors and assignees notwithstanding termination, including the PAYMENT, INDEMNITIES, INTELLECTUAL PROPERTY RIGHTS, CONFIDENTIAL INFORMATION, LIMITATIONS OF LIABILITY AND REMEDIES, DISPUTES, and

TERMINATION sections of this Agreement. Any termination will be without prejudice to the terminating party's legal rights and remedies as provided under the Agreement, including injunction and other equitable remedies, subject to the limitations and exclusions set forth in this Agreement.

## 10. DISPUTES.

- a. **Good Faith Negotiations.** In the event of any dispute, claim, question, or disagreement arising from or relating to the Agreement, or an alleged breach of the Agreement (a "**Dispute**"), the parties agree to use their best efforts to settle the Dispute through good faith negotiations ("**Good Faith Negotiations**"). Failure by either party to engage in Good Faith Negotiations to resolve a Dispute shall be considered a material breach of the Agreement.
- b. **Mandatory Arbitration.** If the parties are unable to resolve a Dispute through Good Faith Negotiations within a period of sixty days, then, upon written notice by either party to the other, the Dispute shall be finally settled by arbitration.
- c. **Arbitration Rules.**
- (i) *Customer Located in the United States.* If Customer is located in the United States, the arbitration shall be administered by the American Arbitration Association ("**AAA**") in accordance with its Commercial Arbitration Rules, which are available at the AAA web site at [www.adr.org](http://www.adr.org). The Agreement shall be considered to be made pursuant to a transaction involving interstate commerce and shall be governed by the U.S. Federal Arbitration Act.
- (ii) *Customer Located in Canada.* If Customer is located in Canada, the arbitration will be conducted in accordance with the provisions of the Arbitration Act, 1991 (Ontario) or its successor legislation.
- (iii) *Outside the United States and Canada.* If Customer is located outside of the United States and Canada, the arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce ("**ICC**"), which are available at the ICC web site at [www.iccwbo.org/uploadedFiles/Court/Arbitration/other/rules\\_arb\\_english.pdf](http://www.iccwbo.org/uploadedFiles/Court/Arbitration/other/rules_arb_english.pdf). Either party shall have the right to have recourse to and shall be bound by the pre-arbitral referee procedure of the ICC in accordance with its Rules for a Pre-Arbitral Referee Procedure.
- d. **Preliminary Relief.** Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under the Agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the arbitral tribunal's determination of the merits of the controversy.
- e. **Final and Binding.** The arbitral award shall be final and binding and the parties renounce any form of appeal or revision, provided that either party may within two weeks after the date of the award request the arbitrator to give a written clarification of the award or to correct any computational or typographical errors. Any such clarification or correction shall be provided by the arbitrator to the parties within thirty days after the date of the request and shall become part of the award. The execution of the arbitral award shall be suspended until the arbitrator provides any requested clarification or correction.
- f. **Waiver of Right to Jury Trial.** Each party waives their right, if any, to a jury trial with respect to any Dispute and agrees that no Dispute may be brought as a class action or as a private attorney general. Neither party may act as a class representative or participate as a member of a class of claimants with respect to any Dispute.
- g. **Arbitrator.** The parties will attempt to select a single arbitrator by mutual agreement. If they are unable to do so, the parties may request the appointment of a single neutral arbitrator as provided in the governing rules. The arbitrator shall be a retired judge or a practicing attorney actively engaged in the practice of law for at least ten years with significant experience in legal issues related to computer software technology and related services. In a dispute governed by the ICC rules, the arbitrator shall not be of a nationality of either of the parties, unless both parties agree otherwise.
- h. **Language of Proceedings.** All arbitration proceedings shall be conducted in the English language.
- i. **Venue.**
- (i) *Customer Located in the United States.* If Customer is located in the United States, then any arbitration proceeding shall be conducted in Pittsburgh, Pennsylvania, USA.
- (ii) *Customer Located in Canada.* If Customer is located in Canada, then any arbitration proceeding shall be conducted in Toronto, Ontario, Canada.
- (iii) *Customer Located in a Country in Europe, Middle East, Africa, or Asia.* If Customer is located in a country in Europe, the Middle East, Africa or Asia, then any arbitration proceeding shall be conducted in London, England.
- (iv) *Customer Located in Australia.* If Customer is located in Australia, then any arbitration proceeding shall be conducted in Sydney, New South Wales, Australia.
- (v) *Customer Located in any other Country.* If Customer is located in any other country, then any arbitration proceeding shall be conducted in Pittsburgh, Pennsylvania, USA.
- j. **Exclusion.** In no event shall either the United Nations Convention on Contracts for the International Sale of Goods or any version of the Uniform Computer Information Transactions Act adopted by any state in the United States apply to, or govern, the Agreement.

- k. **Evidence and Limitations.** No written or oral statements of position or offers of settlement made in the course of the Dispute resolution process shall (i) be offered into evidence for any purpose; or (ii) constitute an admission or waiver of rights by either party. The arbitrator shall have no authority to award punitive damages or other damages not measured by the prevailing party's actual damages or to exceed the contractual limitations on damages and remedies set forth in the Agreement.
- l. **Fees.** Except as expressly provided otherwise in the Agreement, each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration.
- m. **Confidentiality.** Except as may be required by law, neither a party nor the arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.
- n. **If Customer is a U.S. Government Agency.** If Customer is a U.S. government agency, the Agreement is subject to the Contract Disputes Act of 1978, as amended, in lieu of the arbitration provisions of this DISPUTES section.

## 11. GENERAL.

- a. **Force Majeure.** Neither party shall be liable for performance delays or nonperformance due to causes beyond its reasonable control. This provision shall not apply to Customer's payment obligations.
- b. **Governing Law and Jurisdiction.**
  - (i) *Customer Located in the United States.* If Customer is located in the United States, the Agreement shall be governed by and interpreted pursuant to the laws of the Commonwealth of Pennsylvania, U.S.A., without regard to its conflict of laws principles that might require the application of law from another jurisdiction. Subject to the provisions of the Agreement mandating arbitration, each party irrevocably submits to the exclusive jurisdiction of the state and federal courts located in Allegheny County, Pennsylvania with respect to any Dispute.
  - (ii) *Customer Located in Canada.* If Customer is located in Canada, unless expressly prohibited by local law without the possibility of contractual waiver, the Agreement shall be governed by and interpreted pursuant to the laws of the Province of Ontario, Canada without regard to its conflict of laws principles that might require the application of law from another jurisdiction. Subject to the provisions of the Agreement mandating arbitration, each party irrevocably submits to the exclusive jurisdiction of the provincial and federal courts located in Ontario, Canada with respect to any Dispute.
  - (iii) *Customer Located in Countries in Europe, the Middle East, Africa, or Asia.* If Customer is located in a country in Europe, the Middle East, Africa or Asia, unless expressly prohibited by local law without the possibility of contractual waiver, the Agreement shall be governed by and interpreted pursuant to the laws of England without regard to its conflict of laws principles that might require the application of law from another jurisdiction. Subject to the provisions of the Agreement mandating arbitration, each party irrevocably submits to the exclusive jurisdiction of the courts of England with respect to any Dispute. In addition, if the Agreement is controlled by the laws of England, no person who is not a party to the Agreement shall be entitled to enforce or take the benefit of any of its terms under the Contracts (Rights of Third Parties) Act 1999.
  - (iv) *Customer Located in Australia.* If Customer is located in Australia, unless expressly prohibited by local law without the possibility of contractual waiver, the Agreement shall be governed by and interpreted pursuant to the laws of the State of New South Wales, Australia, without regard to its conflict of laws principles that might require the application of law from another jurisdiction. Subject to the provisions of the Agreement mandating arbitration, each party irrevocably submits to the exclusive jurisdiction of the state and federal courts located in New South Wales with respect to any Dispute.
  - (v) *Customer Located in any other Country.* If Customer is located in any other country, unless expressly prohibited by local law without the possibility of contractual waiver, the Agreement shall be governed by and interpreted pursuant to the laws of the Commonwealth of Pennsylvania, USA, without regard to its conflict of laws principles that might require the application of law from another jurisdiction. Subject to the provisions of the Agreement mandating arbitration, each party irrevocably submits to the exclusive jurisdiction of the state and federal courts located in Allegheny County, Pennsylvania with respect to any Dispute.
- c. **Language.** If Customer is located in France or Quebec, Canada, the following clause applies: The parties hereby confirm that they have requested that the Agreement be drafted in English. Les parties contractantes confirment qu'elles ont exigé que le présent contrat et tous les documents associés soient rédigés en anglais. Any language translation of this Agreement is for convenience only and no such translation will be binding against the parties except as required by applicable law without the possibility of contractual waiver.
- d. **Publicity.** Either party may in its discretion disclose the existence of the Agreement (but not the terms or conditions of the Agreement) and that Customer is a customer of TrueCommerce.
- e. **Assignment.** Except as expressly provided otherwise in the Agreement, Customer may not assign, delegate or otherwise transfer all or any part of the Agreement without prior written consent from TrueCommerce. A change of control of Customer shall be deemed an assignment for purposes of the Agreement, but TrueCommerce shall not unreasonably withhold its consent to a deemed assignment arising as a result of a change of control of Customer. Any attempted assignment, delegation, or transfer without consent is void. TrueCommerce shall have the right to assign the Agreement to any successor to its business or assets to which the Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise.
- f. **Export and Import and Prohibited Persons and Uses.** If Customer exports, re-exports, or imports Products or Services, technology, or technical data acquired under the Agreement, then Customer assumes responsibility for complying with applicable laws and regulations and for obtaining required export and import authorizations. Customer represents and warrants to TrueCommerce that it is not a person to whom TrueCommerce is prohibited from providing Products and Services under U.S. law or regulation and that Customer shall not use any Products

or Services for any purpose prohibited by U.S. law or regulation. TrueCommerce may suspend performance if Customer is in violation of any applicable law or regulation.

- g. **Notices.** All notices that are required under the Agreement shall be in writing and shall be considered effective upon receipt.
- h. **Entire Agreement.** The Agreement the entire agreement between TrueCommerce and Customer regarding Customer's acquisition of the Products and/or Services specified in the Order Form or Registration Form, as applicable. The Agreement supersedes and replaces any previous communications, representations, or agreements, or Customer's additional or inconsistent terms, whether oral or written. In the event any provision of the Agreement is held invalid or unenforceable, the remainder of the Agreement shall remain enforceable and unaffected thereby.
- i. **Enforceability of Limitations.** THE TERMS OF THE AGREEMENT THAT LIMIT, DISCLAIM, OR EXCLUDE WARRANTIES, REMEDIES, OR DAMAGES ARE INTENDED BY THE PARTIES TO BE INDEPENDENT AND REMAIN IN EFFECT DESPITE THE FAILURE OR UNENFORCEABILITY OF ANY OTHER PROVISION OF THE AGREEMENT. THE PARTIES HAVE RELIED ON THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THE AGREEMENT IN DETERMINING WHETHER TO ENTER INTO IT.
- j. **Waiver.** Neither party's failure to exercise or delay in exercising any of its rights under the Agreement shall constitute or be deemed a waiver or forfeiture of those rights.
- k. **Amendment.** For a change to the Agreement to be valid, authorized representatives of each party must sign a written amendment. Changes in any other form are void, including any handwritten interlineations to any portion of the Agreement. Any conflicting or additional terms and conditions on or accompanying any purchase order or other communication from Customer are void. TrueCommerce's failure to object to provisions contained in any purchase order or other communication from Customer will not be construed as a waiver of this section.
- l. **Facsimile Copies.** Signatures exchanged via facsimile or other reliable electronic image (such as PDF) shall be deemed originals.
- m. **Interpretation.** Headings are for convenience only and do not affect the meaning or interpretation of the Agreement. The Agreement shall not be construed either in favor of or against one party or the other, but rather in accordance with its fair meaning. When the term "including" is used it shall be construed in each case to mean "including, but not limited to."
- n. **Order of Precedence.** In the event of a conflict, the terms of an Order Form or Registration Form shall prevail over this Agreement, except that the LIMITATIONS OF LIABILITY AND REMEDIES section of this Agreement may not be modified in an Order Form or Registration Form.
- o. **Relationship of the Parties.** Each party is an independent contractor in the performance of the Agreement. Neither party is nor will claim to be a legal representative, partner, franchisee, agent or employee of the other, unless explicitly provided otherwise in the Agreement. Personnel of each party and their Affiliates shall not be deemed employees or agents of the other party.
- p. **Subcontracting.** TrueCommerce retains the right to subcontract the performance of any Service, or any part of a Service, to its Affiliates or subcontractors selected by TrueCommerce, so long as TrueCommerce remains liable to Customer for the performance of the Service as specified in the Agreement.

## SOFTWARE TERMS

### 12. LICENSES.

- a. **License Grant.** Subject to the terms and conditions of the Agreement, TrueCommerce grants Customer a nonexclusive, nontransferable, personal license to use the TrueCommerce Products specified in an Order Form or a Registration Form.
- b. **Perpetual Licenses.** If TrueCommerce licenses a TrueCommerce Product to Customer on a perpetual basis ("**Perpetual License**"), as indicated in an Order Form or Registration Form, or if TrueCommerce does not indicate in the Order Form or Registration Form that the license is granted on a Subscription License basis (as defined below), then the license shall be considered perpetual, but subject to termination for breach of the Agreement or as otherwise provided in the Agreement.
  - (i) **Right to Make Backup Copies.** For TrueCommerce Products for which Customer has been granted a Perpetual License, TrueCommerce grants Customer a nonexclusive, nontransferable, personal license to: (i) make a copy of TrueCommerce Products to be used solely for archival and disaster recovery purposes, provided that the copy is kept in a secure location and contains the copyright and other proprietary notices contained in the original; (ii) make copies of Documentation as reasonably necessary to support its authorized users in their use of TrueCommerce Products; and (iii) use any training course materials provided by TrueCommerce for training authorized users in their use of TrueCommerce Products.
  - (ii) **Licenses Temporary until Fees Paid.** All licenses are temporary until Customer has paid all applicable fees. Licenses may be canceled by TrueCommerce if the license fees are not paid in accordance with the terms of the Agreement.
- c. **Software Service / Subscription or Term Licenses.** If TrueCommerce licenses a TrueCommerce Product to Customer either as a software service (SaaS), or on a subscription basis or for a specified term ("**Subscription License**"), as set forth in an Order Form or Registration Form, the license shall remain in effect for the indicated period of time (the "**Initial Subscription Term**") and shall automatically renew for subsequent renewal terms (each a "**Renewal Subscription Term**"), unless Customer notifies TrueCommerce in writing of its intent not to renew at least sixty days prior to the start of a Renewal Term. The license is in effect only during the Initial Subscription Term and any applicable Renewal Subscription Terms. If no Initial Subscription Term is specified in the Order Form or Registration Form, the Initial Subscription Term shall be for a period of twelve months. Payment of applicable subscription fees is required to use the TrueCommerce Products during the Initial Subscription Term or Renewal Subscription Term. Subscription fees for Renewal Subscription Terms are subject to an increase not to exceed [**five percent (5%)**] over the fees charged for the preceding term, unless a greater increase is required by an escalation of a Third-Party Software Product provider's rates, in which case TrueCommerce shall provide Customer reasonable advance notice of the amount of the proposed increase. Customer



understands and agrees that if Customer terminates a Subscription License for Customer's convenience prior to the end of the Initial Subscription Term or Renewal Subscription Term, TrueCommerce will have no obligation to refund any paid but unused subscription fees and Customer shall pay TrueCommerce an early termination fee to be calculated as the remaining unpaid months in the term multiplied by the then current monthly fee.

- d. **Scope of Licenses and Use of Products by Service Providers.** The licenses granted to Customer apply solely to the executable (i.e., object code) form of TrueCommerce Products, and solely to Customer's use of the TrueCommerce Products for Customer's own internal business purposes. If Customer contracts with a third party for TrueCommerce Product implementation, customization, consulting, hosting or outsourcing services, the third party may use the TrueCommerce Product as licensed solely for purposes of providing such services, provided that (i) the third party is a TrueCommerce Business Partner authorized to provide such services; or (ii) TrueCommerce grants written approval in advance. No other service providers are entitled to access TrueCommerce Products. Customer is responsible for the third party's compliance with the Agreement. Customer shall not permit access to TrueCommerce Products by any other third party (except for Customer Affiliates expressly authorized to use such items under the Agreement).
- e. **Third-Party Software Products.** Third-Party Software Products are licensed to Customer under the terms of the license agreement accompanying the Third-Party Software Product or the Order Form or Registration Form. If no license agreement accompanies the Third-Party Software Product or the Order Form or Registration Form, then TrueCommerce grants Customer a nonexclusive, nontransferable, personal license to use the Third-Party Software Product for its own internal business purposes only. This license for Third-Party Software Products is subject to all the limitations and restrictions applicable to TrueCommerce Products. Software provided under any open source licensing model is governed solely by such open source licensing terms, which shall prevail over the Agreement.
- f. **Use Restrictions.** Unless expressly provided otherwise in the Agreement, Customer shall not sublicense, resell, lease, rent, copy, distribute or permit access to Software Products or Services or operate a software service bureau, outsourcing, time-sharing, application service provider, hosting, or similar business using them or otherwise use them for the benefit of another party (other than Customer Affiliates as expressly permitted in the Agreement). Customer shall not exceed the license counts (e.g., the number of server or desktop copies, number of concurrent users, number of "seats") or other numeric restrictions or authorizations specified in an Order Form or Registration Form and paid for by Customer. Some Software Products may require license keys or contain other technical protection measures. TrueCommerce will provide Customer with software keys to the extent required to allow Customer to use Software Products in accordance with the Agreement. Customer acknowledges that TrueCommerce may monitor Customer's compliance with license counts and other use restrictions through the Internet or other remote access to Software Products.
- g. **Customer Compliance.** Customer will not nor will Customer allow any third party to (i) attempt to gain unauthorized access to the Software Products, or its related systems and networks; (ii) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Software Products; (iii) use the Software Products to post, transmit or store material or information in violation of any local, state, federal or foreign law, regulation or treaty, or any third party privacy or intellectual property rights, including without limitation those related to privacy, electronic communications and anti-spam legislation; (iv) publish, post, upload or otherwise transmit Customer Data that contains any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another; or (v) use or permit the use of any tools in order to probe, scan or attempt to penetrate or benchmark the Software Products.
- h. **Prohibition on Reverse Engineering.** Customer shall not modify, reverse engineer, disassemble, decrypt, decompile, create a patent based on, make derivative works of, or attempt to discover or modify in any way the underlying source code of Software Products and Services. If Customer has other rights under local law, TrueCommerce will honor those rights.
- i. **U.S. Government Use.** Software Products are "commercial computer software" and "commercial computer software documentation" pursuant to DFAR Section 227.7202 and FAR Section 12.212 (and any successor sections). Use of Software Products, including reproduction and display of them, by the United States of America and/or any of its instrumentalities, regardless of form (collectively, the "**Government**"), is governed by the Agreement. Under no circumstances shall TrueCommerce be obligated to comply with any Government requirements regarding cost or pricing data or cost accounting requirements. If any Government requirement might apply, Customer shall notify TrueCommerce of the Government requirement and obtain a waiver or exemption for the benefit of TrueCommerce before Customer may use the Software Product.
- j. **Pre-Release.** From time to time, TrueCommerce may offer Customer an opportunity to use a prerelease version of a Software Product ("**Beta Version**") for a limited period of time ("**Beta Period**"), for demonstration, testing, evaluation, or other nonproduction purposes ("**Beta Purposes**"). Beta Versions are covered by the provisions of the Agreement, except that all Beta Versions are provided "AS IS" and without any warranty of any kind, express or implied.
- k. **Prerelease Software Products.** For Beta Versions that have not been made generally available by TrueCommerce, Customer agrees that such Beta Version: (i) may not be used in a production environment; (ii) are not expected to function with the same reliability as generally available Software Products and may contain defects that are not found in generally available Software Products; (iii) will not be subject to any obligation by TrueCommerce to correct defects; and (iv) may not ever be made generally commercially available.
- l. **Return or License of Trial Products.** If Customer does not pay for and acquire a standard license to use the Beta Version at the end of the Beta Period, Customer shall promptly return the Beta Version to TrueCommerce and destroy all copies of them and any related Documentation in Customer's possession. The nature, features, functionality, and performance of all Software Products, including Beta Versions, constitute Confidential Information of TrueCommerce subject to the "Confidential Information" section of the Agreement.
- m. **Statement of Verification.** Upon TrueCommerce's written request, which shall be made no more frequently than once per calendar year, Customer shall furnish TrueCommerce with a document signed by Customer's authorized representative listing the locations where Software Products are installed on Customer's owned and operated hardware (if any) and the number and type of licenses being used for each Software Product. Customer is responsible for implementing reasonable procedures to ensure its compliance with the Agreement.

- n. **Audit.** Customer agrees that TrueCommerce or its independent audit firm may audit Customer's and its Affiliates' compliance with the license terms specified in the Agreement. Any such audit shall be at TrueCommerce's expense, require reasonable notice, and shall be performed during normal business hours and in such a manner to minimize any impact to Customer's business. If an audit reveals unlicensed use of any Software Products, then Customer shall immediately pay TrueCommerce the applicable license fee for the Software Products at list price for the period of use, together with the costs reasonably incurred by TrueCommerce in connection with the audit.
- o. **Limits.** If Customer and its Affiliates fully comply with the requirements of the above "Statement of Verification" and "Audit" sections and Customer's unlicensed use of Software Products was not willful, then TrueCommerce's remedy for Customer's unlicensed use shall be limited to the retroactive recovery of license fees at list price and reimbursement for the cost of the audit. If Customer or its Affiliates do not fully comply with the above "Statement of Verification" and "Audit" sections and/or their unlicensed use of Software Products is willful, in addition to the foregoing remedies TrueCommerce shall be entitled to all remedies and penalties legally available.
- p. **EDI Templates, Mailboxes and Data Transmissions.** If Customer acquires a license to a TrueCommerce Product that contains features allowing Customer to create screen templates, print templates and/or document turn-around maps (collectively, "**Customer Templates**") for use in EDI transactions, the Customer Templates may be provided by Customer to properly licensed users of the same TrueCommerce Product with which Customer transacts business using EDI ("**Customer's Trading Partners**"). The Customer Templates, and any similar templates provided by TrueCommerce, may not be disclosed to or used by any other party or used by Customer or Customer's Trading Partners for any other purpose. Customer agrees not to charge any of Customer's Trading Partners for the use of Customer Templates or templates provided by TrueCommerce. Customer and Customer's Trading Partners shall be solely responsible for maintaining adequate controls over their respective mailboxes and data transmissions, and for monitoring such mailboxes and transmissions. Customer shall also be solely responsible for setting applicable data processing and transmission parameters, for inspecting all data input and output for content, accuracy and completeness, and for having appropriate safeguards in place to identify data and processing errors
- q. **Additional Terms for EDI Subscription Licenses.** If Customer acquires an EDI Subscription License, Customer understands and agrees that during the Initial Subscription Term or Renewal Subscription Term Customer may not cancel any trading partner maps. Prior to the start of any Renewal Subscription Term, Customer may cancel trading partner maps by contacting TrueCommerce in writing at least sixty days' prior to the expiration of the then current term. If Customer cancels a trading partner map and subsequently requires reactivation of the trading partner map, additional subscription and/or Professional Services Fees will apply.

### 13. SOFTWARE WARRANTIES AND REMEDIES.

- a. **TrueCommerce Product Warranty for Perpetual Licenses.** TrueCommerce warrants that each TrueCommerce Product licensed by Customer under a Perpetual License shall conform in all material respects with its Documentation. This warranty applies for a period of thirty days from the delivery date, unless a longer warranty period is specified in an Order Form.
- b. **TrueCommerce Product Warranty for Subscription Licenses.** TrueCommerce warrants that each TrueCommerce Product licensed by Customer under a Subscription License shall conform in all material respects with its Documentation during the Subscription Term.
- c. **Warranty Limitation.** TrueCommerce does not warrant that the operation of TrueCommerce Products will be uninterrupted or error free, will meet Customer requirements, or will be compatible with other software products except for compatibility committed in the Documentation or expressly set forth in an Order Form or Registration Form.
- d. **Exclusive Remedies.** If notified in writing of a valid warranty claim for a TrueCommerce Product during the warranty period TrueCommerce shall, at its option, use commercially reasonable efforts to correct the defect at TrueCommerce's facilities or replace the TrueCommerce Product with a functionally comparable product that complies with the warranty. If TrueCommerce is unable, within a reasonable period of time, to provide a correction or replace the TrueCommerce Product with a functionally equivalent substitute, TrueCommerce shall notify Customer and Customer shall be entitled to a refund of the purchase price paid for the TrueCommerce Product licenses and a refund of fees paid for unused Support Services for the TrueCommerce Product upon prompt return of the TrueCommerce Product and all copies of it to TrueCommerce. Upon return of the TrueCommerce Product all licenses shall be deemed cancelled. This section states TrueCommerce's entire liability and Customer's sole remedy for TrueCommerce Product warranty claims.
- e. **Regulatory Requirements.** Certain Software Products may include functionality designed to assist Customer in complying with various regulatory requirements that may be applicable to Customer. Customer is solely responsible for understanding the regulatory requirements that apply to its business and for selecting and using Software Products in a manner that complies with applicable requirements.

#### SUPPORT TERMS

- 14. **SUPPORT.** If Customer is enrolled in a TrueCommerce Support Services plan and has paid applicable Support Services fees or has paid applicable subscription fees under a Subscription License, then for each Software Product covered by the Support Services plan or licensed under a Subscription License TrueCommerce shall:
  - a. in response to reports from Customer that a TrueCommerce Product does not conform in material respects with its Documentation, exercise commercially reasonable efforts to reproduce and remedy the nonconformance. If a nonconformance in a TrueCommerce Product is materially affecting Customer's ability to operate its business and Customer notifies TrueCommerce of this fact, TrueCommerce will address the nonconformance with an effort that is commensurate with the extent to which the error affects Customer's ability to operate its business;
  - b. make available to Customer new releases of TrueCommerce Products made generally available to TrueCommerce's other customers, provided, however, that TrueCommerce reserves that right to charge additional license fees for new releases of TrueCommerce Products that provide substantial new functionality or that incorporate new third-party components;
  - c. during TrueCommerce's standard support hours, make Support Services personnel available to answer operational questions and to accept reports of any nonconformance;

- d. in the event TrueCommerce intends to withdraw Support Services for a TrueCommerce Product licensed by Customer under a Perpetual License, notify Customer at least twelve months in advance; and
- e. provide the foregoing Support Services for the most current version of each TrueCommerce Product licensed by Customer under a Perpetual License and the immediately preceding version.

**15. CUSTOMER RESPONSIBILITIES.** Customer agrees to:

- a. obtain adequate training for its personnel that interact with TrueCommerce's Support Services personnel and that assist in the implementation of TrueCommerce Products and upgrades to them;
- b. consult TrueCommerce Product Documentation and the TrueCommerce Support Services web site regarding the proper operation of TrueCommerce Products and for available fixes and workarounds before reporting any nonconformance;
- c. install and maintain any hardware and software necessary to permit TrueCommerce remote Internet access to Customer's system for the purposes of problem diagnosis, delivering corrections, and monitoring compliance;
- d. allow TrueCommerce access to and use of Customer information, data and facilities required for TrueCommerce to perform Support Services;
- e. maintain adequate and current back-up copies of software, Customer Data and configuration information as necessary to ensure that a failure of a Software Product will not have a materially negative impact on Customer's business operations; and
- f. provide to TrueCommerce such back-up copies of software, data and configuration information as requested by TrueCommerce to perform Support Services for Customer.

**16. SUPPORT SERVICES FEES FOR PERPETUAL LICENSES.**

- a. **Support Services Fees.** Support Services fees shall be due and payable annually in advance. Fees for the Initial Support Term are mandatory. After the Initial Support Term, Support will automatically renew for Renewal Support Terms unless Customer notifies TrueCommerce that it is canceling Support Services as provided in the following "Cancellation of Support Services" section. Payment of the fees for the Initial Support Term and each Renewal Support Term is required for Customer to receive Support Services during such period. Support Services fees for Renewal Support Terms are subject to an increase not to exceed five percent (5%) over the fees charged for the preceding term, unless a greater increase is required by an escalation of a Third-Party Software Product provider's rates, in which case TrueCommerce shall provide Customer reasonable advance notice of the amount of the proposed increase.
- b. **Cancellation of Support Services.** Customer may cancel its enrollment in a TrueCommerce Support Services plan by providing TrueCommerce written notice of such cancellation prior to the beginning of a Renewal Support Term. Cancellation of Support Services will not relieve Customer of its payment obligations for the Initial Support Term or for the current or any previous Renewal Support Term, nor will it obligate TrueCommerce to provide Customer a refund or credit for any unused Support Services during such previous periods. Customer may re-enroll in a TrueCommerce Support Services plan at any time by paying a reinstatement fee equal to the total Support Services fees that would have been paid to TrueCommerce had Customer not terminated Support Services or the then-current license fee for the applicable Product, whichever is less. Termination of Support Services will not terminate Customer's rights to use a TrueCommerce Product, which shall be determined by the license grant.
- c. **Additional Fees and Charges.** TrueCommerce shall not be required to provide After Hours Support or to perform Out-of-Scope Services, but TrueCommerce may in its discretion agree to do so upon request from Customer. Fees for After Hours Support and Out-of-Scope Services are separately chargeable, on a time and expenses basis, at TrueCommerce's then-current hourly rates and will be charged to Customer within thirty days after such Services are performed or the charges are incurred. TrueCommerce shall have no obligation to provide Support Services or Out-of-Scope Services at Customer's site, but if TrueCommerce agrees to do so at Customer's request Customer shall reimburse TrueCommerce for any travel expenses incurred.
  - (i) **After Hours Support.** "After Hours Support" means Support Services performed outside of TrueCommerce's normal support hours, at Customer's request. TrueCommerce's normal support hours are posted on its web site at <http://www.TrueCommerce.com/solutions/truecommerce/support-services>.
  - (ii) **Out-of-Scope Services.** "Out-of-Scope Services" include, but is not limited to: (a) Support Services for, or arising or made more time consuming as a result of customer modifications to a TrueCommerce Product; (b) Support Services for, or arising or made more time consuming as a result of problems with operating systems, data bases, hardware, third-party software or other environmental problems not caused by a TrueCommerce Product; (c) Support Services arising as a result of the use of a TrueCommerce Product outside its intended operating environment or in a manner not contemplated by its Documentation; (d) training and consultation for issues clearly covered by Documentation; (e) training covered by TrueCommerce training classes; (f) additional time required to provide Support Services as a result of Customer's use of unqualified personnel as TrueCommerce's point of contact; (g) Support Services required to be performed on Customer's premises; (h) Support Services arising as a result of Customer's failure to promptly install new releases or versions of TrueCommerce Product that TrueCommerce makes available; (i) assistance with installing new releases or versions of a TrueCommerce Product; (j) assistance with routine operating procedures, for example running backups; (k) consulting covered by other TrueCommerce Services offerings, such as assistance with implementation, modification, or training; and (l) providing any Support Services to Customer's customers. Out-of-Scope Services will be billed in hour increments with a minimum charge of one hour.

**d. Custom Modifications.**

- (i) **Support for Custom Modifications.** If TrueCommerce has created custom modifications to a TrueCommerce Product for Customer (“**Custom Modifications**”) then Customer shall be entitled to Support Services for the Custom Modifications if Customer is paying Support Services fees for them.
  - (ii) **Migration of Custom Modifications to New Releases.** If Customer desires to have Custom Modifications migrated to a new release or version of a TrueCommerce Product, TrueCommerce may accept this work as a Professional Service if TrueCommerce determines the work is feasible and/or required. TrueCommerce will provide Customer a quote for such work and if Customer desires the work to be performed, Customer and TrueCommerce must sign an Order Form describing the Professional Services to be performed and incorporating the *PS Terms*. Payment of Support Services fees does not entitle Customer to have Custom Modifications migrated to new releases and versions of TrueCommerce Products.
- e. **Support for Third-Party Software Products and Hardware Products.** Support Services for Third-Party Software Products and Hardware Products may be available from TrueCommerce or a third-party provider, or a combination of the two (i.e., with TrueCommerce providing “first level” Support Services and the provider providing “second level” Support Services). When a third-party provider is involved the provider may require a separate agreement between Customer and the provider and separate charges may apply.
- f. **Support Procedures and Hours.** Procedures for submitting problem reports and TrueCommerce’s normal Support Services hours are posted on the TrueCommerce web site at <http://www.TrueCommerce.com/solutions/truecommerce/support-services>.
17. **SUPPORT SERVICES WARRANTY AND REMEDY.** TrueCommerce warrants that its Support Services personnel shall use a reasonable level of care and skill in performing Support Services. This warranty applies for a period of thirty days after TrueCommerce completes the performance of Support Services with respect to a nonconformance reported by Customer. If TrueCommerce does not perform Support Services in accordance with this warranty and Customer notifies TrueCommerce in writing within the warranty period, TrueCommerce shall promptly re-perform the Support Services in accordance with the warranty without additional charge to Customer. If TrueCommerce is unable to do so, it shall refund the fees paid for one month’s worth of Support Services. If TrueCommerce notifies Customer that it is unable to correct a material nonconformance in a TrueCommerce Product after exercising commercially reasonable efforts in an attempt to do so, and the nonconformance materially diminishes Customer’s ability to obtain value from the TrueCommerce Product, upon written request from Customer TrueCommerce shall accept a return of the TrueCommerce Product and shall issue Customer a refund equal to: (i) the fees paid for any unused portion of the current Renewal Support Term; and (ii) a pro-rata amount of the license fees paid for the TrueCommerce Product, based on a five (5)-year amortization schedule. This section states TrueCommerce’s entire liability and Customer’s sole remedy for a Support Services warranty claim.

## PROFESSIONAL SERVICES TERMS

### 18. PROFESSIONAL SERVICES.

- a. **Professional Services.** TrueCommerce shall perform any Professional Services and provide any Deliverables specified in an Order Form signed by TrueCommerce. In particular, TrueCommerce will assist Customer with implementing or using Software Products by performing the tasks set forth in TrueCommerce’s implementation guide as TrueCommerce responsibilities (“Implementation Guide”), which is incorporated herein by this reference and a copy of which will be provided upon request from Customer. Customer shall perform tasks identified as Customer responsibilities and any tasks that are not listed in the Order Form, the Implementation Guide or otherwise specified in the Agreement as a TrueCommerce responsibility. TrueCommerce and Customer may jointly develop a “**Detailed Project Plan**” and/or a “**Business Process Review Document**” that will refine the task list and assumptions contained in an Order Form for Professional Services. Upon completion, the Detailed Project Plan or Business Review Document will automatically be deemed incorporated into the Order Form for the purpose of re-defining TrueCommerce’s and Customer’s responsibilities. Once agreed upon both parties must agree in writing to change a Detailed Project Plan or Business Process Review Document.
- b. **Changes to an Order Form for Professional Services.** Requests by Customer and recommendations by TrueCommerce for changes to an Order Form for Professional Services, or to a Detailed Project Plan or Business Process Review Document, shall become effective on a prospective basis only and only upon mutual agreement by the parties in writing. Any such changes are subject to any TrueCommerce change management procedures that may be set forth in the Order Form, Detailed Project Plan or Business Process Review Document.
- c. **Customer Materials Required to Perform Professional Services.** If Customer provides TrueCommerce with any of its own or any third-party materials or data for use by TrueCommerce in the performance of Professional Services, then Customer grants TrueCommerce a nonexclusive, royalty-free right and license (or sublicense) to use such materials solely to the extent necessary for TrueCommerce to perform its obligations.
- d. **Authorization to Accept Software License Terms.** In the course of providing Services, TrueCommerce may be required to install copies of Third-Party Software Products or third-party software products not provided by TrueCommerce. As part of the installation process, TrueCommerce may be required to accept “shrink-wrap,” “click-wrap” or similar license agreements accompanying such software (“**Shrink-Wrap Terms**”) on behalf of Customer. Shrink-Wrap Terms may be in electronic format or contained with the software documentation. Customer acknowledges that it is Customer’s responsibility to review Shrink-Wrap Terms at the time of installation and Customer authorizes TrueCommerce to accept Shrink-Wrap Terms on its behalf.
- e. **License for Deliverables and Restrictions.** Deliverables are licensed to Customer under the same license, and subject to the same restrictions, as TrueCommerce Products. The license and restrictions are set forth in Section 12 of this Agreement.
- f. **Professional Services Fees.** Professional Services specified in the Order Form will be performed either on a fixed fee basis (if so specified) or on a time and expenses basis at the hourly rates specified in the Order Form. If no hourly rates are specified in an Order Form, TrueCommerce’s standard hourly rates as of the effective date of the Order Form shall apply. The Order Form also may contain an estimate of the total fees required to perform the Professional Services. This estimate is based on TrueCommerce’s experience with previous similar engagements and is not a guarantee. Customer will be billed for the actual hours worked, which may be greater or less than the hours estimated in the Order Form.

- g. Scheduling.** In the event Customer schedules Professional Services to be performed by TrueCommerce at Customer's site and Customer cancels the Professional Services on less than five business days' advance notice to TrueCommerce, Customer will pay TrueCommerce for eight hours of time for each TrueCommerce consultant scheduled to be on Customer's site for each day they were scheduled to be on site up to a maximum of three days per consultant. **Reimbursement of Travel and Living Expenses.** Customer is responsible for the reasonable travel and living expenses of TrueCommerce personnel traveling to Customer's site to perform Professional Services. TrueCommerce personnel will comply with TrueCommerce's travel and expense reimbursement policies when traveling to Customer's site, a copy of which is attached to this Agreement as **Attachment A**. If a project requires a TrueCommerce consultant to work at Customer's site for longer than a week, the consultant shall have the option of returning home on weekends at Customer's expense. TrueCommerce's travel and expense reimbursement policy is subject to change at any time upon reasonable prior notice to Customer.
- h. Customer Responsibilities and Dependencies.** Customer shall comply with the general obligations specified in the Agreement and any specific Customer obligations described in the Order Form, in a timely manner. Customer acknowledges that TrueCommerce's ability to deliver Professional Services in accordance with its warranty is dependent upon Customer's full and timely cooperation with TrueCommerce, and the accuracy and completeness of any information and data Customer provides. Additionally, the parties acknowledge that successful completion of the Professional Services will require their full and mutual good faith cooperation. When agreement, approval, acceptance, consent or similar action by either party is required by the Agreement or otherwise reasonably requested by a party, such action will not be unreasonably delayed or withheld by the other party. Customer agrees that to the extent its failure to meet its responsibilities results in a failure or delay by TrueCommerce in performing its obligations under the Agreement, TrueCommerce shall not be liable for such failure or delay. Customer shall provide TrueCommerce personnel, as reasonably necessary, with (i) use of and access to Customer's systems, facilities, working space, office services, and other resources; (ii) access to and support of qualified Customer personnel; and (iii) accurate, reliable and timely Customer information, data (including test data), and documentation.
- j. Hiring of TrueCommerce Employees.** Customer agrees not to solicit, or make offers of employment to, or enter into consultant relationships with, TrueCommerce employees or subcontractors involved, directly or indirectly, in the performance of the Agreement during the term of the Agreement and within a one-year period after its termination. Customer shall not be prevented from hiring any such employee or consultant who responds to a general hiring program conducted in the ordinary course of business and not specifically directed at such TrueCommerce employees or consultants.
- k. Similar Services.** Nothing in the Agreement shall prohibit TrueCommerce from providing Professional Services or Deliverables similar to those provided under the Agreement to other TrueCommerce customers.

## 19. PROFESSIONAL SERVICES AND DELIVERABLES WARRANTIES AND REMEDIES.

- a. Professional Services Warranty.** TrueCommerce warrants for a period of thirty days from the completion of Professional Services that its personnel shall use a reasonable level of care and skill in performing the Professional Services.
- b. Deliverables Warranty.** TrueCommerce warrants for a period of thirty days from the acceptance of any Deliverable that the Deliverable shall substantially conform to relevant acceptance criteria for the Deliverable specified in the Order Form, provided that if no acceptance criteria are specified in the Order Form, TrueCommerce warrants for a period of thirty days from delivery that the Deliverable shall substantially conform to the description of the Deliverable set forth in the applicable Order Form.
- c. Exclusive Remedies.** If Professional Services or Deliverables are not provided in accordance with the terms of the TrueCommerce warranty and Customer notifies TrueCommerce in writing within the warranty period, TrueCommerce shall attempt to correct any nonconformance confirmed by TrueCommerce within a reasonable period of time by re-performing the Service or correcting the Deliverable without additional charge to Customer. Customer shall provide TrueCommerce with sufficient information to permit TrueCommerce to confirm the nonconformance and shall provide assistance and cooperation as reasonably requested by TrueCommerce to permit TrueCommerce to make required corrections. If TrueCommerce is unable to comply with the foregoing obligations, TrueCommerce shall refund a reasonable portion of the fees paid by Customer for the Services or the Deliverable to compensate Customer for the deficiency in the Services or Deliverable. If all the fees paid for a Deliverable are refunded by TrueCommerce, Customer shall promptly return the Deliverable to TrueCommerce. This section states TrueCommerce's entire liability and Customer's sole remedy for warranty claims relating to Professional Services and Deliverables.
- d. Warranty Exclusions.** TrueCommerce shall not be responsible for a breach of warranty that would not have occurred but for (i) changes to a Deliverable that were implemented by someone other than TrueCommerce personnel; (ii) changes to or errors in software or hardware with which the Deliverable operates or interfaces, or on which the Deliverable or Professional Services otherwise rely (excluding TrueCommerce Products); or (iii) improper use of a Deliverable.

## HARDWARE TERMS

- 21. TITLE AND RESPONSIBILITIES BEFORE FULL PAYMENT.** TrueCommerce transfers title to Hardware Products to Customer upon receipt of Customer's full payment for it and Customer grants TrueCommerce a purchase money security interest in each Hardware Product and all related goods and proceeds, whenever acquired, until such time as TrueCommerce receives full payment. Customer will comply with all requirements relating to the security interest and authorizes and directs TrueCommerce to file, without signature of Customer where permitted by law, one or more financing statements (and amendments thereto and continuations thereof) relative to the security interest granted herein. At TrueCommerce's request, Customer shall execute and deliver to TrueCommerce additional documentation that TrueCommerce deems necessary or desirable to perfect TrueCommerce's security interest. A photographic or electronic reproduction of the Order Form and these *Hardware Terms* shall be sufficient as a financing statement where permitted by law. Until TrueCommerce has received full payment for each Hardware Product, Customer shall: (i) maintain adequate replacement value insurance on it from the time it is delivered to Customer's location; (ii) not assign, transfer, dispose of or alter it; and (iii) keep it free of encumbrance of any kind. Noncompliance with these obligations is considered a material breach.

22. **RISK OF LOSS; SALE AND DELIVERY.** TrueCommerce bears the risk of loss or damage to Hardware Products until delivery to the address specified in an Order Form. TrueCommerce will arrange for shipment of purchased Hardware Products on Customer's behalf. Quoted delivery dates are estimates only. TrueCommerce is not liable for shipping delays. Customer is responsible for providing a suitable physical environment for each Hardware Product.
23. **INSTALLATION.** Unless stated otherwise in an Order Form, Customer is responsible for installing Hardware Products.
24. **LICENSED INTERNAL CODE.** Certain Hardware products may contain internal software or firmware code ("**Internal Code**"). If a license for Internal Code does not accompany the Hardware Product, the following terms apply: The Hardware Product manufacturer owns Internal Code (including any update, replacement or copy of it). Customer is entitled to execute Internal Code on the specific Hardware Product that it accompanies. Customer shall not otherwise use, copy, display, adapt, modify or distribute any Internal Code, in whole or in part, electronically or otherwise. Customer also shall not reverse assemble, reverse compile or otherwise translate Internal Code. Customer may transfer possession of Internal Code to another party only in connection with a transfer of the associated Hardware Product. The transferee is entitled to use the Internal Code only if the transferee accepts these license terms. Customer shall not otherwise sublicense, assign or transfer Internal Code.

## NETWORK SERVICES

25. **Network Services Plans and Fees.** If Customer is licensed to use an EDI TrueCommerce Product, then Customer may enroll in a Network Services Plan, unless, however, an Order Form specifies that an EDI TrueCommerce Product requires enrollment in a Network Services Plan in which case Customer must select a Network Services Plan. Network Services Plans include a monthly access fee to the TrueCommerce EDI Network ("Access Fee") and a usage rate for transactions delivered and received for both testing and production purposes ("Usage Fees") (collectively the Access Fee and Usage Fees are referred to herein as "Network Fees"). Network Fees are based on the specific Network Services Plan selected by Customer under an Order Form. Payment of the Access Fee is required for Customer to access and use the Network Services. Customer may request to change their Network Services Plan at any time by providing advance written notification to TrueCommerce. Any Network Services Plan changes will take effect on the first day of the month following the date TrueCommerce received Customer's written request to change Network Services Plans. It is Customer's sole responsibility to determine and select the Network Services Plan that is appropriate for its business needs. Network Fees may be revised by TrueCommerce at any time upon written notice to Customer.
26. **Payment of Network Fees:** TrueCommerce will invoice Customer for Network Services on a monthly basis. Access Fees are billed in advance for access to the Network Services during following month, and Usage Fees are billed in arrears for Network Services provided during the preceding month. Payment of Network Fees shall be due and payable on the first day of each calendar month, with the first payment due upon the effective date of the Order Form. All Network Fees are payable via an automatic charge to Customer's Visa, MasterCard, American Express or Discover credit card or by a direct debit. Customer will provide TrueCommerce with its credit card or direct debit information in order to effect the automatic charging or debiting of Network Fees. Customer will provide TrueCommerce with written notice immediately upon the occurrence of any event that would affect TrueCommerce's ability to charge a Customer's credit card or debit Customer's designated bank account. All fees are non-refundable and will not be prorated.
27. **Networks Services Term and Termination.** Unless an Order Form specified otherwise, Network Services remain in effect for a period of not less than one month until Customer or TrueCommerce terminates Network Services in accordance this Agreement. TrueCommerce may terminate and deactivate Customer's access to Network Services immediately in the event Customer fails to pay applicable Network Fees or upon Customer's written request.
28. **Network Reactivation Fees.** Customer agrees pay a one-time fee of \$100 for each instance where Customer's Network Services account with TrueCommerce is reactivated within six months after deactivation as a result of either a voluntary or involuntary deactivation of Network Services ("Reactivation Fee"). If a Network Services reactivation occurs more than six months after the date of deactivation, then a higher one-time fee will apply. Reactivation Fees are due in advance of TrueCommerce providing Customer with access to Network Services.
29. **Customer Responsibilities for Network Services.** Customer and Customer's Trading Partners shall be solely responsible for maintaining adequate controls over their respective mailboxes and data transmissions, for monitoring such mailboxes and transmissions, and for bringing to TrueCommerce's attention any nonconforming transmissions, failure to receive transmission or inability to access any mailbox. Customer shall also be solely responsible for setting applicable data processing and transmission parameters, for inspecting all data input and output for content, accuracy and completeness, and for having appropriate safeguards in place to identify data and processing errors. Customer shall maintain, and shall require Customer's Trading Partners to maintain, adequate supporting materials to enable TrueCommerce to regenerate card files, tape files, disk files, printer outputs and data furnished by or to Customer and to re-perform any necessary processing. In the event Customer or Customer's Trading Partners fail to maintain adequate supporting materials, TrueCommerce's liability shall be strictly limited to the same cost or regenerations, reprocessing, or replacement, at TrueCommerce's then current rates, as if Customer or its trading partners had so maintained adequate supporting data or copies.
30. **VAN Providers.** In the event the Network Services then currently offered by TrueCommerce include access and/or interconnection to a gateway or third party valued added network whereby electronic commerce services (the "VAN") are provided by and between TrueCommerce and a third party, TrueCommerce shall be responsible for the Network Services only to the extent of the transmissions of transaction sets, messages data or other communications (collectively, "VAN Data") to, or receipt of VAN Data for Customer from, such VAN. In no event shall TrueCommerce or the VAN be responsible for the accuracy or content of any VAN Data transmitted or received by the applicable VAN when improperly transmitted by the Customer or Customer's Trading Partner or during any period of time while any VAN Data is in transmission. TrueCommerce reserves the right to use or not to use a VAN and may, in its sole discretion, discontinue the availability of any VAN in the event such VAN is no longer generally offered by TrueCommerce and/or the respective VAN provider.
31. **Network Services Warranty and Remedies.** During the Network Services term, TrueCommerce warrants that once it receives an EDI transaction, TrueCommerce will use reasonable efforts to correctly format the EDI transaction so that the receiving party's system (i.e., the VAN for transactions from Customer to trading partner and the Customer for transactions from a trading party to the Customer) may accept the transaction, and electronically forward the transaction to the VAN. In the event TrueCommerce fails or is unable to correctly format the EDI transaction as warranted, TrueCommerce, may, at its sole option and as its sole liability, refund to Customer any amounts paid by Customer for the Network Services which resulted such incorrectly formatted EDI transaction, not to exceed the greater of payments made with respect to the thirty (30) days of Network Services immediately preceding the date of loss of or damage to the EDI transaction, or the sum of ten thousand

(\$10,000) dollars. TrueCommerce will not be responsible in any manner for any nonconforming Network Services to the extent caused by Customer or Customer's trading partners. Further, TrueCommerce shall not be responsible for the failure of Customer or any third party to act on any communication transmitted to or by Customer in accordance with this Agreement. Customer acknowledges that TrueCommerce is in no respect responsible for the creditworthiness or performance of any trading partner of Customer. This section sets forth TrueCommerce's entire liability and Customer's sole remedy for Network Services claims.

## ATTACHMENT A

### TRAVEL EXPENSE REIMBURSEMENT POLICY

1. **Airfare:** For destinations requiring air travel, TrueCommerce will obtain an economy, coach or equivalent fare available to the business traveler on a scheduled major airline. For international travel of over six hours in a single flight segment, TrueCommerce personnel will be entitled to use business class.
2. **Auto Travel:** If TrueCommerce personnel use a personal automobile in lieu of air travel, Customer will reimburse TrueCommerce at a rate per mile equivalent to the United States Internal Revenue Service ("IRS") mileage allowance rate for a direct, practical route.
3. **Local Transportation:** Customer will reimburse TrueCommerce for local transportation expenses, such as auto rentals, taxis, buses, light rail, tolls and parking fees. For auto rentals, TrueCommerce will rent intermediate or smaller models, if available, from a national car rental agency, unless the number of individuals being transported requires a larger vehicle. Trips to the airport in the city of residence by TrueCommerce personnel shall be reimbursable only to the extent mileage to the airport exceeds mileage to the home office.
4. **Lodging:** Customer will reimburse TrueCommerce for lodging charges, which will be commensurate with the average seasonal rates charged in the immediate area for three star hotels, if reasonably available, or four star hotels if TrueCommerce has a corporate agreement that allows for, other otherwise can obtain rates equivalent to a three star hotel.
5. **Meals:** Customer will reimburse TrueCommerce for actual meal expenses, up to TrueCommerce's then current daily meal cap, or pay TrueCommerce's per diem fee.
6. **Miscellaneous:** Customer will reimburse TrueCommerce for other reasonable travel expenses, including reasonable tipping, valet and laundry charges if a trip extends beyond four days.
7. **Travel Time:** Travel time of TrueCommerce personnel will be billed at fifty percent (50%) of the applicable billable rate.
8. **Non-Reimbursable Expenses.** Customer will not be required to reimburse TrueCommerce for personal expenses such as hotel shop purchases, in-room movies and sundry items. Customer will not be required to reimburse TrueCommerce for any charges associated with personal side trips. If any of these charges appears on receipts, TrueCommerce will deduct or exclude them from Customer's invoice. If TrueCommerce personnel visit more than one customer on the same trip TrueCommerce will apportion the expenses in a reasonable manner between the customers.
9. **Receipts.** To support travel expense items on invoices, TrueCommerce will retain in its files receipts for lodging, airline travel, rental cars and all other non-per diem expenditures of an amount that would require a receipt under IRS guidelines. TrueCommerce will make these receipts available to Customer upon request.
10. **Cancellations and Rescheduling.** If Customer cancels or reschedules a trip after TrueCommerce has booked airline, car or hotel reservations, TrueCommerce will attempt to cancel the reservations without incurring a penalty. Customer will reimburse TrueCommerce for charges TrueCommerce is unable to avoid, including cancellation and rescheduling charges.
11. **Policy Changes.** TrueCommerce may change its expense reimbursement policies from time to time and will give Customer at least thirty days' advance notice of any changes that would result in higher payments by Customer.