



Volusion Partner Program Terms and Conditions

Last Updated: July 26, 2018

This is an agreement between you, as partner and Volusion, LLC, a Delaware limited liability company. By agreeing to be a partner of Volusion, You agree to be bound by the following Terms and Conditions (these "**Terms**"). These Terms are effective as of the date set forth above. You agree that We may change or modify these Terms at any time at Our discretion without notice and that any such changes or modifications shall be effective immediately upon the earlier of (i) our email notification to You advising You of such changes or modifications; (ii) Your electronic acceptance of these Terms after the "Last Update" date listed above; or (iii) Your continued participation in the Partner Program (defined below) after the "Last Update" date listed above. These Terms, together with any Partner Agreement (defined below) are sometimes referred to collectively as this "**Agreement**."

1. DEFINITIONS

For purposes of this Agreement, the following terms shall have the definitions ascribed to them below:

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with such entity. For purposes of this definition, "Control" means direct or indirect ownership or control of more than 50% of the voting interest of the subject entity.

"Application" means a software application, website, connector, extension or other independent software or interface, whether

developed by Us, You or a third party and whether proprietary or open-sourced, that supplements, utilizes or and/interacts with the Volusion Platform, the Volusion API or one or more Stores.

"Effective Date" means the last date on which either You or Us have executed the Partner Agreement, or, if the Partner Agreement is electronically accepted, the date that We send to You confirmation of Your acceptance in the Partner Program.

"Our Marketing Collateral" means all marketing materials and collateral provided by Us to You regarding Our Services, including, any marketing brochures, product lists, corporate logos, tutorials or demonstrations and electronic marketing materials.

"Our Services" means the products and services that we provide on, through or in connection with the Volusion Platform.

"Partner Agreement" means a Partner Agreement that specifically incorporates these Terms and that is executed or otherwise electronically accepted by You.

"Partner Program" means the terms and conditions set forth in this Agreement; provided, however, that if You are enrolled in a Program Type, the Partner Program shall include the terms and conditions set forth in this Agreement, as well as the Program Benefits, Program Policies and Program Qualifications.

"Program Benefits" means the materials and/or services that may be provided to You under the applicable Partner Type based on Your Program Level.

"Program Level" means the level of Your participation in the applicable Partner Type, which specifies Your obligations and Your benefits for each such level, as described in any applicable Partner Program Guide posted on Our website or in any documentation that We provide to You.

If We do not designate multiple Program Levels, any reference to a Program Level in these Terms shall refer to the applicable Partner Program in general.

"Program Policies" means, collectively, the policies and documentation describing the applicable Program Type and the Program Qualifications and Program Benefits for each Program Level, as well as other policies governing Your participation in the Partner Program, as set forth at the Partner Program website or in any documentation We provide to You.

"Program Qualifications" means any requirements applicable to the designated Program Level.

"Program Type" means a category or sub-category of the Partner Program that is designated in the Partner Agreement, as defined in the Partner Agreement as well as any Program Benefits, Program Policies and Program Qualifications. A Program Type may have multiple Program Levels.

"Store" means an e-commerce store hosted by Us on the Volusion Platform.

"Volusion", "We", "Us" or "Our" means Volusion, LLC, a Delaware limited liability company.

"Volusion API" means each of Our proprietary application programming interfaces, which are used by developers to utilize or interact with the Volusion Platform.

"Volusion App Store" means an online directory of Applications maintained by Us.

"Volusion Documentation" means any technical or other specifications or documentation that We may make available or provide to You

(whether in writing or electronically), including those set forth on Our website at <https://www.volusion.com>, relating to or for use in connection with Our Services

"Volusion Platform" means the Volusion ecommerce solution platform owned and operated by Us, including all updates, corrections, bug fixes, and/or maintenance modifications made by Us.

"You", "Your" or "Partner" means the corporation or other legal entity that is a party to the Partner Agreement with Us.

"Your Documentation" means any technical or other specifications or documentation that You may make available or provide to Us (whether in writing or electronically), including those set forth on Your website relating to or for use in connection with Your Service.

"Your Marketing Collateral" means all marketing materials and collateral provided by You to Us regarding Your Service, including, any marketing brochures, product lists, corporate logos, tutorials or demonstrations and electronic marketing materials.

"Your Service(s)" shall have the meaning set forth in the Partner Agreement.

2. PARTNER PROGRAM

2.1. General. Upon the execution of the Partner Agreement by You and Us, or Your electronic acceptance of the Partner Agreement and Our confirmation to You of Your acceptance into the Partner Program, You will become a member of the Partner Program, and, if designated in the Partner Agreement, You will become enrolled in the Program Type set forth in the Partner Agreement. Unless otherwise set forth in the Partner Agreement, each of Your Affiliates that desires to be included as a member of the Partner Program must execute a separate Partner Agreement.

2.2. Program Levels. If You are enrolled in a Program Type, You will be enrolled in the Program Level designated in the Partner Agreement. After the Effective Date, You will have the opportunity to apply for another Program Level if You meet the Program Qualifications for such Program Level.

2.3. Program Qualifications. If You are enrolled in a Program Type, You represent that You satisfy the Program Qualifications for Your Program Level. You hereby agree to notify Us in writing if You no longer meet the Program Qualifications for Your Program Level. Upon such notice, or if We determine at any time that You fail to satisfy the Program Qualifications for Your Program Level, We may, in Our sole discretion, reclassify Your membership to a Program Level for which You do qualify.

2.4. Fees. If You are enrolled in a Program Type, Your enrollment in the Partner Program at certain Program Levels may be subject to fees as described in the Program Policies. Your continued membership in the Partner Program is at all times subject to Your timely payment of any applicable fees for Your Program Level. Fees are payable annually in advance, within 30 days of the invoice date, unless otherwise stated in the Program Policies or the Partner Program Application. Payment obligations are non-cancelable and any fees paid are non-refundable.

2.5. Training; Certification. We may offer to You, and/or You may be required to participate in, various technical training programs for free or for an additional fee as described in the Partner Agreement or, for a Program Type, in the Program Policies for Your Program Level. The Program Qualifications for certain Program Levels may require certifications as described in the Program Policies. You will not hold Yourself out as an "accredited" or "certified" partner of Ours without Our prior written consent and unless You have fulfilled and maintain the then-current requirements applicable to such designation as set forth in the Program Policies. We may withdraw Your right to promote, market or otherwise use such designation at any time in Our sole discretion.

2.6. Program Policies. The Program Policies with respect to any Program Type, including the Program Qualifications and Program Benefits described therein, are subject to change in Our sole discretion; provided, however, that the Program Benefits will not be materially decreased, and the Program Qualifications shall not be materially altered, for You during a term for which You have paid fees for the applicable Program Level. You are responsible for reviewing the Program Policies regularly.

2.7. Opt-In to Marketing. Your participation in the Partner Program will serve as an opt-in to receive Our marketing communications. You may opt-out from receiving Our marketing materials by contacting Us directly.

2.8. Expenses. Unless otherwise agreed to in the Partner Agreement, You shall bear all of Your own costs and expenses associated with Your compliance with this Agreement and Your participation in the Partner Program.

3. RESPONSIBILITIES AND RESTRICTIONS

3.1. Our Responsibilities. As between You and Us, We are responsible for all aspects of the development, operation and maintenance of the Volusion Platform and any other of Our products, services and websites, including, but not limited to, customer service and support. We will use Our commercially reasonable efforts to ensure that the Our Marketing Collateral is accurate in all material respects.

3.2. Our Restrictions. We are authorized to represent to third parties only those facts about You and Your other products and services as are stated in Your Marketing Collateral or Your Documentation. We shall not, without Your written consent, (i) modify Your Marketing Collateral or use any brochures, documents, emails or other marketing collateral other than Your Marketing Collateral or (ii) use Your name, trade name, trademarks, service marks, logo or other designations for any purpose

other than Our marketing and promotional activities using Your Marketing Collateral. Our use of Your Marketing Collateral shall be subject to this Agreement and must comply with any trademark usage guidelines, partner branding and logo usage guidelines and press release guidelines that You may set forth in writing from time to time.

3.3. Your Responsibilities. As between You and Us, You are responsible for all aspects of the development, operation and maintenance of Your Service and any other of Your products, services and websites, including, but not limited to, customer service and support. During the term of this Agreement, You shall make all commercially reasonable efforts to maintain service levels and customer satisfaction levels with respect to Our customers that meet or exceed Your company goals. You will use Your commercially reasonable efforts to ensure that Your Marketing Collateral is accurate in all material respects. You will conduct all activities hereunder in accordance with the highest industry standards. You shall promptly forward to Us all information concerning any complaints, suspected defects, loss or damage claims, or security problems that may come to Your attention relating to Us or Our Services.

3.4. Your Restrictions. You are authorized to represent to third parties only those facts about Us, Our Services and Our other products and services as are stated in this Agreement, Our Marketing Collateral or the Volusion Documentation. You shall not engage in any deceptive, misleading, illegal or unethical marketing activities, or activities that otherwise may be detrimental to Us, Our customers, Our Services, or to the public. You shall not make any false, misleading or disparaging statements with respect to Us or Our Services or make any statements or representations that are purported to be made by Us. Unless otherwise provided in the Partner Agreement or by Our written consent, You shall not: (i) modify Our Marketing Collateral or use any brochures, documents, emails or other marketing collateral other than Our Marketing Collateral or (ii) use Our name, trade name, trademarks, service marks, logo or other designations for any purpose other than

Your marketing and promotional activities using Our Marketing Collateral; (iii) engage in any e-mail, telemarketing, broadcast, fax or other marketing or promotion with respect to Our Services; (iv) engage in any marketing or promotional activity related to Us or Our Services in any unauthorized area, location, territory or jurisdiction, as defined by Us, in Our sole discretion, from time to time; (v) create Internet "links" to Our Services or to otherwise "frame" or "mirror" them; and (vi) represent that You or Your, Affiliates, employees or agents are "Volusion Experts" or as being in anyway endorsed, authorized or affiliated with Us. Your use of Our Marketing Collateral shall be subject to this Agreement and must comply with any trademark usage guidelines, partner branding and logo usage guidelines and press release guidelines that We may set forth from time to time (the "**Guidelines**"). We may change the Guidelines, and You shall promptly modify Your use of Our Marketing Collateral to conform to any such changed Guidelines.

3.4. Restrictions on Use of Our Platform and Our Services. You shall not: (i) use any "malware" or "spyware" (including, but not limited to, pop-up banners that hide banners that are displayed on a web site, icons placed beside keywords found in text that if clicked will take the visitor to another web site, or other similar practices or techniques) or use any other aggressive advertising or marketing methods in any dealings relating to Us or Our Services; (ii) use Our Services to send or store any code, files, scripts, agents or programs intended to do harm, including, for example, worms, viruses, time bombs and Trojan horses; (iii) use Our Services to store or transmit infringing, libelous or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (iv) bid on keywords such as "Volusion" or any misspellings or similar alterations thereof or any other name, mark or other identifier used by Us – be it separately or in combination with other keywords –in pay-per-click campaigns without Our written consent; (v) use "Volusion" or any misspellings or similar alterations thereof or any other name, mark or other identifier used by Us in Your domain name, including any sub-domains, without Our written consent; (vi) interfere with or disrupt the integrity of Our Services or the data contained therein; (vii) access Our Services to build a competitive

product or service or to benchmark with another product or service; or (viii) recruit or market directly to other Volusion partners using data, content or contact information obtained from Us or Our Services; or (ix) attempt to gain unauthorized access to Our Services.

4. PROPRIETARY RIGHTS; LICENSES; RESTRICTIONS

4.1. Our Property. All rights not expressly granted to You herein are reserved by Us, and nothing in this Agreement transfers or assigns to You any of Our intellectual property or other proprietary rights in Volusion, the products or services We offer through the the Volusion Platform or any of Our other technology, products, services, trade secrets, know how, information and system data, including any modifications, enhancements and derivatives thereof ("**Our Property**"). Our Property shall include all rights in any copy, modification, adaptation or derivation of Our Property, including any improvement or development thereof.

4.2. Your Property. All rights not expressly granted to Us herein are reserved by You, and nothing in this Agreement transfers or assigns to Us any of Your intellectual property or other proprietary rights in You, the products or services You offer through Your Service or any of Your other technology, products, services, trade secrets, know how, information and system data, including any modifications, enhancements and derivatives thereof ("**Your Property**"). Your Property shall include all rights in any copy, modification, adaptation or derivation of Your Property, including any improvement or development thereof, and shall include the Integration.

4.3. Our License. Subject to the Guidelines We may set forth from time to time, We grant to You a limited, non-exclusive, revocable, non-sublicensable, non-transferable license to use Our Marketing Collateral and to display certain logos and trademarks that We provide to You in Our Marketing Collateral or that We authorize in writing for Your use in carrying out Your obligations under this Agreement. We reserve the

right to require You to stop using Our logos or trademarks in Our sole discretion. You agree to comply with all marking requirements, including but not limited to patent, copyright, trademark, and confidentiality notices, issued by Us from time to time.

4.4. Your License. Subject to any guidelines You may set forth from time to time, You grant to Us a limited, non-exclusive, revocable, non-sublicensable, non-transferable license to use Your Marketing Collateral and to display certain logos and trademarks that You provide to Us in Your Marketing Collateral or that You authorize in writing for Our use in carrying out Our obligations under this Agreement. You reserve the right to require Us to stop using Your logos or trademarks in Your sole discretion. We agree to comply with all marking requirements, including but not limited to patent, copyright, trademark, and confidentiality notices, issued by You from time to time.

4.5. Your Restrictions. You shall not (a) use Our Property in a manner that misrepresents Your relationship with Us or is otherwise misleading or that reflects negatively on Us or may harm Our rights herein; (b) take any action that jeopardizes Our proprietary rights or acquire or assert any right in Our Property; or (c) modify Volusion or decompile, reverse-engineer, disassemble or otherwise attempt, directly or indirectly, to obtain or create source code for Our Services or Our other products and services.

4.6. Our Restrictions. We shall not (a) use Your Property in a manner that misrepresents Our relationship with You or is otherwise misleading or that reflects negatively on You or may harm Your rights herein; (b) take any action that jeopardizes Your proprietary rights or acquire or assert any right in Your Property; or (c) modify Your Service or decompile, reverse-engineer, disassemble or otherwise attempt, directly or indirectly, to obtain or create source code for Your Service or Your other products and services.

4.7. Competitive Products or Technologies. Nothing in this Agreement will impair the right of either party to develop, acquire, license, market, promote, sell or distribute products or technologies that perform the same or similar functions as, or otherwise compete with, any of the products, services or technologies that the other party may develop, produce, market, or distribute, provided that such development, acquisition, license, marketing, promotion, sale or distribution does not violate the provisions of Section 7 of these Terms.

4.8. Feedback. You grant to Us a worldwide, perpetual, irrevocable, royalty-free, transferable, sublicensable license to use and incorporate into Our Services any suggestion, enhancement request, recommendation, correction or other feedback provided by You relating to Our Services or the Volusion Platform.

5. OUR CUSTOMER DATA AND YOUR CUSTOMER CONFIGURATION/USAGE DATA

5.1. Our Customer Data. "Our Customer Data" means electronic data or information submitted by Our customers into Our system, including the Volusion Platform. To the extent Your Service transfers, or any Application facilitates the transfer, of Our Customer Data outside of Our system, You represent and warrant that You have notified all users who have access to Our Customer Data through Your Service, or will notify them prior to their use of Your Service, that their data will be transmitted outside of Our system and to that extent We are not responsible for the privacy, security or integrity of such data. You further represent and warrant that to the extent You or Your Service stores, processes, collects or transmits Our Customer Data, You will not, without appropriate prior user consent or except to the extent required by applicable law: (i) modify the content of Our Customer Data in a manner that adversely affects the integrity of Our Customer Data; (ii) disclose Our Customer Data to any third party; or (iii) use Our Customer Data for any purpose other than providing functionality to Your users of Your Services. You shall also maintain and handle all of Our Customer

Data in accordance with industry standard privacy and security measures reasonably adequate to preserve its confidentiality and security and to assure compliance with all applicable privacy laws and regulations and the Payment Card Industry Data Security Standards.

5.2. Your Customer Configuration/Usage Data. "Your Customer Configuration/Usage Data" means information stored in Our systems about Your customers' configuration and usage of Your Service. To the extent You receive access to Your Customer Configuration/Usage Data in or from Our systems, You represent and warrant that You have notified all of Your users who are subjects of Your Customer Configuration/Usage Data, or will notify them prior to their use of Your Service, that You may receive such data from Us, and to that extent We are not responsible for the privacy, security or integrity of Your Customer Configuration/Usage Data. You further represent and warrant that to the extent You or Your Service stores, processes, collects or transmits Your Customer Configuration/Usage Data, You will not, without appropriate prior user consent or except to the extent required by applicable law: (i) modify the content of Your Customer Configuration/Usage Data in a manner that makes it inaccurate or misleading; (ii) disclose Your Customer Configuration/Usage Data to any third party other than Your applicable customer; or (iii) use Your Customer Configuration/Usage Data except in connection with Your relationship with Your applicable customer. You shall also maintain and handle all of Your Customer Configuration/Usage Data in accordance with privacy and security measures reasonably adequate to preserve its confidentiality and security and all applicable privacy laws and regulations. Notwithstanding the foregoing, this paragraph does not restrict Your use or disclosure of aggregated data containing Your Customer Configuration/Usage Data, provided none of Our customers is identified or identifiable through such aggregated data or through Your use of such aggregated data.

6. COMPLIANCE WITH LAWS

6.1. Your Compliance with Laws. You shall comply, and shall ensure that any third parties performing sales or referral activities on Your behalf comply, with all applicable foreign and domestic laws, governmental regulations, ordinances, and judicial administrative orders, including, but not limited to, trademark and copyright laws, ICANN policies and procedures governing domain names, the United States Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1, et seq. (the "**FCPA**") and applicable international and domestic export control laws or regulations that apply to Our Services (collectively "**Applicable Laws**"). Without limiting the generality of the foregoing, You further represent, warrant and agree that (i) any of Your sales activities in connection with Your activities related to this Agreement and Your receipt of any referral fees in connection with such activities are consistent with Applicable Laws, (ii) no portion of any fees paid or payable by Us to You hereunder will be paid to, or accrued directly or indirectly for the benefit of, any person, firm, corporation or other entity, other than You, and (iii) no payments or transfers of anything of value shall be made which have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business or any improper advantage. Our Services are subject to Export Administration Regulations ("**EAR**") and thus may not be exported, re-exported or downloaded by any person in any controlled countries under the EAR. Moreover, Our Services may not be exported, re-exported or downloaded by any person or entity subject to U.S. or international sanctions regardless of location. You shall promptly inform Us in writing upon becoming aware of any violations of Applicable Laws in connection with this Agreement.

6.2. Our Compliance with Laws. We shall comply, and shall ensure that any third parties performing sales or referral activities on Our behalf comply, with all Applicable Laws and shall not engage in any deceptive, misleading, illegal or unethical marketing activities, or activities that otherwise may be detrimental to You, Your customers, Your Services, or to the public. We represent and warrant that Our sales activities under this Agreement are consistent with Applicable Laws.

7. CONFIDENTIALITY

7.1. Definition. "Confidential Information" means: (i) any information (including any and all combinations of individual items of information) disclosed (directly or indirectly) by a party hereto (a "**Discloser**") to the other party ("**Recipient**") pursuant to this Agreement that is in written, graphic, machine readable or other tangible form (including, without limitation, research, product plans, products, services, equipment, customers, markets, software, inventions, discoveries, ideas, processes, designs, drawings, formulations, hardware, specifications, product configuration information, pricing, marketing and finance documents, prototypes, samples, data sets, and equipment) and is marked "Confidential," "Proprietary" or in some other manner to indicate its confidential nature; (ii) any personally identifiable information of employees, customers, potential customers and partners ("**PII**"); (iii) oral information disclosed (directly or indirectly) by Discloser to Recipient pursuant to this Agreement; provided that such information is designated as confidential at the time of its initial disclosure; and (iv) information otherwise reasonably expected to be treated in a confidential manner under the circumstances of disclosure under this Agreement or by the nature of the information itself. Confidential Information may include information of a third party that is in the possession of Discloser and is disclosed to Recipient under this Agreement. Confidential Information shall not, however, include any information, other than PII, that: (a) was publicly known or made generally available without a duty of confidentiality prior to the time of disclosure by Discloser to Recipient; (b) becomes publicly known or made generally available without a duty of confidentiality after disclosure by Discloser to Recipient through no wrongful action or inaction of Recipient; (c) is in the rightful possession of Recipient without confidentiality obligations at the time of disclosure by Discloser to Recipient as shown by Recipient's then-contemporaneous written files and records kept in the ordinary course of business; or (d) is obtained by Recipient from a third party without an accompanying duty of confidentiality and without a breach of such third party's obligations of confidentiality.

7.2. Non-use and Non-disclosure. Recipient shall not use any Confidential Information of Discloser for any purpose outside the scope of this Agreement. Recipient shall not disclose any Confidential Information of Discloser or permit any Confidential Information of Discloser to be disclosed, either directly or indirectly, to any third party without Discloser's prior written consent. Recipient shall not disclose Confidential Information of Discloser or permit the disclosure of Confidential Information of Discloser to Recipient's employees, except that Recipient may disclose Discloser's Confidential Information to those employees of Recipient who are required to have such information for purposes consistent with this Agreement; provided that such employee has signed a non-use and non-disclosure agreement in content at least as protective as the provisions hereof, prior to any disclosure of Confidential Information to such employee.

7.3. Maintenance of Confidentiality. Recipient shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of Discloser. Without limiting the foregoing, Recipient shall take at least those measures that it employs to protect its own confidential information of a similar nature. Recipient shall not make any copies of the Confidential Information of Discloser unless the same are previously approved in writing by Discloser. Recipient shall reproduce Discloser's proprietary rights notices on any such authorized copies in the same manner in which such notices were set forth in or on the original. Recipient shall promptly notify Discloser of any unauthorized use or disclosure, or suspected unauthorized use or disclosure, of Discloser's Confidential Information.

7.4. Compelled Disclosure. If Recipient becomes legally compelled to disclose any Confidential Information, other than pursuant to a confidentiality agreement, Recipient will provide Discloser prompt written notice, if legally permissible, and will use its commercially reasonable efforts to assist Discloser in seeking a protective order or another appropriate remedy. If Discloser waives Recipient's compliance

with this Agreement or fails to obtain a protective order or other appropriate remedy, Recipient will furnish only that portion of the Confidential Information that is legally required to be disclosed; provided that any Confidential Information so disclosed shall maintain its confidentiality protection for all purposes other than such legally compelled disclosure.

8. WARRANTY; DISCLAIMER

Each party represents and warrants to the other that (i) it has the right to enter into this Agreement and perform its obligations in the manner contemplated by this Agreement, and (ii) this Agreement does not and shall not conflict with any other agreements entered into by it. EXCEPT FOR THE FOREGOING WARRANTIES, TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, BOTH PARTIES DISCLAIM ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED, CONCERNING OR RELATED TO THE PRODUCTS, SERVICES AND MATERIALS PROVIDED HEREUNDER, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. LIMITATION OF LIABILITY

EXCEPT FOR BREACHES OF SECTION 7, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE THIS AGREEMENT AND THEIR PERFORMANCE OF THEIR OBLIGATIONS HEREUNDER, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE), OR ANY OTHER PECUNIARY LOSS, WHETHER OR NOT YOU ADVISED US OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES OR LOST PROFITS. EXCEPT FOR BREACHES OF SECTION 7, NEITHER PARTY'S LIABILITY FOR ACTUAL DAMAGES

ARISING OUT OF THIS AGREEMENT WILL EXCEED THE REFERRAL FEES PAID OR PAYABLE BY YOU TO US IN THE SIX-MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

10. INDEMNIFICATION

Subject to this Agreement, You shall defend, indemnify and hold Us harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with Claims made or brought against Us by a third party (i) arising out of or related to any acts or omissions of You in connection with Your activities under this Agreement; or (ii) alleging that the use of Your Service infringes, misappropriates or violates any intellectual property rights of, or has otherwise violated applicable law with respect to, a third party; provided, that We (a) promptly give You written notice of such Claim; (b) give You sole control of the defense and settlement of such Claim (provided that You may not settle or defend any such Claim unless it unconditionally releases Us of all liability); and (c) provide to You, at Your cost, all reasonable assistance.

11. RELATIONSHIP OF THE PARTIES

This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between You and Us, notwithstanding the term "partner". Neither party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other party, nor to represent the other party as agent, employee, franchisee, or in any other capacity. You shall not make any proposals, promises, warranties, guarantees, or representations on Our behalf or in Our name. There are no third-party beneficiaries to this Agreement.

12. TERM AND TERMINATION

12.1. Term. Unless otherwise provided in the Partner Agreement, the term of this Agreement will begin on the Effective Date and shall remain in effect until the first anniversary of the Effective Date. On the one-year anniversary of the Effective Date, and each one-year anniversary of such date thereafter, this Agreement shall automatically renew, unless either party gives the other party written notice at least 30 days prior to the renewal date of its intent not to renew the term.

12.2. Termination for Cause. Either party may immediately terminate this Agreement upon written notice to the other party if (i) the other party becomes the subject of a petition in bankruptcy or other proceeding relating to insolvency, or makes an assignment for the benefit of creditors; (ii) it determines, based on one or more customer or prospect complaints, that the other party's actions or statements creates a significant risk of harm to the terminating party's reputation or customer relationships; (iii) the other party has committed fraud or misrepresentation with respect to entering into and/or the performance of this Agreement; (iv) a party learns of circumstances that give it reason to believe that the other party has engaged in illegal conduct or unethical business practices in connection with performance of this Agreement; or (v) such party determines, in its reasonable judgment, that the other party is acquired by a competitor of such terminating party. Subject to the foregoing, either party may terminate this Agreement upon 30 days' written notice to the other party of such other party's material breach if the breach is not cured during that period.

12.3. Effect of Termination. Upon the termination of this Agreement for any reason, You shall no longer be a member of the Volusion Partner Program, each party will cease all marketing and promotion activities and all licenses granted hereunder shall immediately terminate. Notwithstanding the foregoing, the following Sections of these Terms will survive any termination of this Agreement: 1 (Definitions), 7 (Confidentiality), 8 (Warranty; Disclaimer), 9 (Limitation of Liability), 10 (Indemnification), 12.2 (Effect of Termination), 13 (Notices) and 14 (Miscellaneous).

13. NOTICES

Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been given (i) upon receipt by personal delivery, delivery by overnight courier (with signature acknowledgement of receipt), or delivery by certified mail, (ii) the second business day after mailing via first class mail (other than pursuant to (a)), (iii) the first business day after sending by facsimile, or (iv) immediately if sent by email. All notices shall be directed to Volusion, LLC, 1835-A Kramer Lane, Suite 100, Austin, TX 78758, attention Legal Department, for Us, or the address set forth in the Partner Program Application, for You. Either party may designate, by notice to the other, substitute addresses, addressees or facsimile numbers for notices, and thereafter, notices are to be directed to those substitute addresses, addressees or facsimile numbers.

14. MISCELLANEOUS

The laws of the State of Texas shall govern the validity and construction of this Agreement and any dispute arising out of or relating to this Agreement, without regard to the principles of conflict of laws; and You hereby consent to (and waive all defenses of lack of personal jurisdiction and forum non convenes with respect to) the jurisdiction and venue of the federal and state courts of in Travis County, Texas, USA. You agree to waive the right to trial by jury in any action or proceeding that takes place relating to or arising out of this Agreement.

A ruling by any court that one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect shall not affect any other provision of this Agreement. Thereafter, this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had been amended to the extent necessary to be enforceable within the jurisdiction of the court making the ruling and to preserve the transactions originally contemplated by this Agreement to the greatest extent possible. The section and subsection headings have been

included for convenience only, are not part of this Agreement and shall not be taken as an interpretation of any provision of this Agreement. This Agreement represents the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings among or between the parties relating to the subject matter hereof, and there are no representations, promises, warranties, covenants or understandings with respect thereto other than those contained in this Agreement.

Failure to insist upon strict compliance with any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver of that term, covenant or condition or of any other term, covenant or condition of this Agreement. Any waiver or relinquishment of any right or power hereunder at any one or more times shall not be deemed a waiver or relinquishment of that right or power at any other time. The remedies set forth in this Agreement are cumulative and are in addition to any other remedies allowed by law. Resort to one form of remedy shall not constitute a waiver of alternate remedies. Except for the obligation to pay money, neither party shall be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including act of war, terrorism, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet, provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to correct promptly such failure or delay in performance.

Each of You and Us represents and warrants that it has the legal power and authority to enter into this Agreement.

Neither You nor We may assign any rights or obligations under this Agreement without the prior written consent of the other (not to be unreasonably withheld or delayed), provided either You or We may assign this Agreement without consent of the other in connection with a merger, acquisition, corporate reorganization, or sale of all or

substantially all of the assigning party's assets. Any purported assignment in violation of this section shall be void. Each party shall bear its own costs and expenses of its performance of its obligations under this Agreement.