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Terms of Service

Date of Last Revision: February 22, 2023

1. Introduction.

- 1.1. **Acceptance.** By using the Website or Services in any manner, you are bound by these Terms of Service, as well as the Incorporated Terms identified below (collectively, the “Terms”). If you do not agree to the Terms, then do not use the Website or Services. If you are accepting these Terms on behalf of a company, organization, government, or other legal entity, you represent and warrant that (a) you are authorized to do so, (b) the entity agrees to be legally bound by the Terms, and (c) neither you nor the entity are barred from using the Services or accepting the Terms under the laws of the applicable jurisdiction.
- 1.2. **Scope.** These Terms govern your use of the Website and the Services. Except as otherwise specified, these Terms do not apply to Third-Party Products, which are governed by their own terms of service.
- 1.3. **Incorporated Terms.** The following policies, guidelines, and agreements (“Incorporated Terms”) are hereby incorporated into, and form an integral part of, the Terms to which you are agreeing to be bound:
 - a) [Privacy Policy](#)
 - b) [Acceptable Use Policy](#)
 - c) [API Terms](#)
 - d) [Fees and Billing Terms](#)
 - e) [Infringing Materials Protocol](#)
 - f) [Jurisdiction-Specific Terms](#)
 - g) [Merchant-Client Terms](#)
 - h) [Mobile App Terms](#)
 - i) [Store Terms](#)
 - j) [Data Processing Addendum](#)

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entity, then “BigCommerce” means the entity identified in the following table:

Country of Residence of Merchant	BigCommerce Entity
Governing Law	
United States	BigCommerce, Inc., a Texas corporation in the United States
New York	
United Kingdom	BigCommerce UK Ltd., a United Kingdom limited company
England and Wales	
European Union	BigCommerce Software Ireland Ltd., an Irish limited company
Ireland	
Australia	BigCommerce Pty. Ltd., an Australia proprietary limited company
New South Wales, Australia	
Any other jurisdiction	BigCommerce Pty. Ltd., an Australia proprietary limited company
New York	

1.5. Certain Definitions.

- a) “Order Form” or “Order” means one or more BigCommerce order forms executed by the parties for the purchase of Services and that reference these Terms.
- b) “Services” means all BigCommerce products, services, and materials located on or accessible through the Website or otherwise described in an Order.
- c) “Third-Party Products” means any third-party information, website, product, service, or materials referenced in, accessible through, or provided in connection with, the Website or Services.
- d) “Website” means the BigCommerce website located at www.bigcommerce.com (including all associated internet country codes), together with all BigCommerce websites and webpages accessible there, and the Account control panel.

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Without limiting the foregoing, the Services and Website are not intended to be used by individuals under the age of 18. If you do not qualify, please do not use the Services or access the Website.

- 2.2. **Registration.** In order to use the Services, you must establish a Services account (“Account”) by registering with BigCommerce. You may be required to submit a valid means of payment for which you are authorized to purchase Services. You will provide true, accurate, current, and complete information when registering for an Account and will update the information as necessary to keep your Account and payment information current. As part of the registration process, you will provide BigCommerce with a user name and password for your Account (together “Account Credentials”). BigCommerce reserves the right to refuse registration of, or cancel, accounts that violate these Terms or BigCommerce’s Acceptable Use Policy.

3. Security.

- 3.1. **Generally.** You are responsible for maintaining the security of your Account Credentials and for all Services ordered, accessed, or otherwise used in connection with your Account Credentials and all actions taken in association therewith. You will not share your Account Credentials with any third party.
- 3.2. **Payment Cards.** BigCommerce is responsible for the security of credit cardholder data to the extent that BigCommerce has control of that data. To that end, BigCommerce undertakes regular assessments consistent with the applicable Payment Card Industry Data Security Standards (“PCI”). You represent and warrant that you will determine the PCI merchant requirements applicable to you and your use of the Services.
- 3.3. **Checkout Environment; PCI.** BigCommerce will provide a secure environment (including appropriate technical, physical and organizational security measures and safeguards) for customer data stored and processed via the standard BigCommerce checkout (“Customer Data”) in order to protect Customer Data from unauthorized access and use. BigCommerce’s secure environment is certified under the Payment Card Industry Data Security Standard. BigCommerce will maintain PCI certification for the designated portions of the Services that you use to store and process credit card data, subject to the following (each a “PCI Compliance Condition”): (i) you comply with BigCommerce documentation and in-product notifications, and (ii) you use a

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noncompliance, in the event any PCI Compliance Condition is not satisfied. For example, you will be solely liable for PCI compliance with respect to modifications to the checkout environment, including modifications via apps or a developer, modifications of BigCommerce's distributed open source checkout code in any manner that could result in or contribute to PCI noncompliance, use of a checkout environment not provided by BigCommerce, or use of a payment provider for which BigCommerce does not provide an integration.

4. Use Restrictions. This is an agreement for Services, and you are not granted a license to any software by these Terms. Except as permitted and non-excludable under applicable law, you will not, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of or included in the Services or any software, documentation or data related to the Services ("Software"); modify, translate or create derivative works based on the Services or any Software; or copy (except for archival purposes), distribute, pledge, assign or otherwise transfer or encumber rights to the Services or any Software; use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.

5. Intellectual Property.

5.1. User Content.

a) License. We do not claim any intellectual property rights over the content you provide to BigCommerce. All of your content remains yours. When providing content using the Services (directly or indirectly), you grant us a non-exclusive, worldwide, royalty-free, sublicensable (through multiple tiers) right to exercise any and all copyright, trademark, patent, publicity, moral (where permitted), database, and/or other intellectual property rights (collectively, "IP Rights") you have in that content or associated with your store in connection with our provision of the Services, in any media known now or developed in the future.

b) Representations and Warranties. You represent and warrant that, for all such content you provide, you own or otherwise control all necessary rights to do so and to meet your obligations under these Terms. You represent and warrant that such content is accurate. You represent and warrant that use of any such content (including derivative works) by us, our users, or others in contract with us, and in compliance with these Terms, does not and will not

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5.2. BigCommerce Content.

a) Restrictions. All rights not expressly granted by BigCommerce to you in these Terms are hereby reserved by BigCommerce. There are no implied rights save to the extent rights cannot be excluded by applicable law. You may not use, imitate, or copy, in whole or in part, any BigCommerce trademark, service mark, trade dress, logo, or other branding (collectively, "Marks") without, in each instance, BigCommerce's prior written consent, in BigCommerce's discretion. All permitted use of BigCommerce's Marks will inure to the benefit of BigCommerce.

b) Ownership. As between the parties, the Website and Services, including, without limitation, any and all APIs, Software, documentation, images, video, content, logos, page headers, custom graphics, design and user interface elements, scripts, and other materials contained therein or provided in connection therewith, and all modifications, enhancements, and updates thereto, as well as all IP Rights associated with any of these materials (collectively, "BigCommerce IP") are owned by BigCommerce and/or its third party sponsors, partners, and suppliers. You have no right or license in or to the BigCommerce IP other than the right to use the Services, in compliance with the Terms, during the applicable subscription period.

5.3. Feedback. You may provide BigCommerce with ideas, opinions, recommendations, feedback, or advice in connection with your use of the Services (collectively, "Feedback"). If you submit Feedback to BigCommerce, you hereby grant BigCommerce an irrevocable, perpetual, transferable, non-exclusive, fully-paid-up, royalty-free, worldwide license (sublicensable through multiple tiers) to: (a) use, copy, distribute, reproduce, modify, create derivative works of, adapt, publish, translate, publicly perform, and publicly display such Feedback (or any modification thereto), in whole or in part, in any format, medium or application now known or later developed; and (b) use, and permit others to use, Feedback in any manner and for any purpose (including, without limitation, commercial purposes) that BigCommerce deems appropriate in its discretion (including, without limitation, incorporating Feedback, in whole or in part, into any technology, product or service).

6. Indemnification.

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court costs) arising out of or relating to your breach of any of these Terms, the User Content, or use by you or any third party (authorized, permitted or enabled by you) of the Services, except to the extent the foregoing directly result from BigCommerce's own gross negligence or willful misconduct. BigCommerce reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you. This Indemnification Section will survive any termination or expiration of these Terms.

7. Discussion Areas.

- 7.1. **No Warranty.** BigCommerce makes no representations or warranties with respect to any forums, blogs, private messages, emails, or other electronic discussion mediums made available through or in connection with the Services (collectively, "Discussion Areas") or with respect to any information or materials contained in the Discussion Areas. Your use of, or reliance upon, any such information or materials is at your sole risk.
- 7.2. **Your Postings.** All information, content, or materials you post to a Discussion Area must comply with the Acceptable Use Policy. BigCommerce will have no obligation to monitor the Discussion Areas, but may do so at its discretion and may delete, move, or edit any information or materials in the Discussion Areas.

8. Arbitration Agreement, Class Action Waiver and Mediation.

- 8.1. **Purpose.** This Arbitration Agreement and Class Action Waiver ("Arbitration Agreement") facilitates the prompt and efficient resolution of any disputes that may arise between you and BigCommerce. For the purpose of this Arbitration Agreement, "BigCommerce" means BigCommerce, Inc., a Texas corporation, and each of its parents, subsidiaries, and affiliated companies, and each of their respective officers, directors, employees, and agents. This Arbitration Agreement applies to these Terms and any other agreement you may have with BigCommerce. Arbitration is a form of private dispute resolution in which parties to a contract agree to submit their disputes and potential disputes to a neutral third person (called an arbitrator) for a binding decision, instead of having such dispute(s) decided in a lawsuit, in court, by a judge or jury trial. You have the right to opt-out of this Arbitration Agreement (as explained below), which means you would retain your right to litigate your disputes in a court, either before a judge or jury. Please read this Arbitration Agreement carefully. It

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represented in a case filed in court by others (including, but not limited to, class actions). Entering into this Arbitration Agreement constitutes a waiver of your right to litigate claims in court and all opportunity to be heard by a judge or jury. There is no judge or jury in arbitration, and court review of an arbitration award is limited. The arbitrator must follow this Arbitration Agreement and can award the same damages and relief as a court (including attorney's fees, if otherwise authorized by applicable law). The term "Dispute" means any dispute, claim, or controversy between you and BigCommerce regarding any aspect of your relationship with BigCommerce, whether based in contract, statute, regulation, ordinance, tort (including, but not limited to, fraud, misrepresentation, fraudulent inducement, negligence, gross negligence or reckless behavior), or any other legal or equitable theory, and includes the validity, enforceability or scope of this Arbitration Agreement (with the exception of the enforceability of the Class Action Waiver clause below). "Dispute" is to be given the broadest possible meaning that will be enforced. WE EACH AGREE THAT, EXCEPT AS PROVIDED BELOW, ANY AND ALL DISPUTES, AS DEFINED ABOVE, WHETHER PRESENTLY IN EXISTENCE OR BASED ON ACTS OR OMISSIONS IN THE PAST OR IN THE FUTURE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION RATHER THAN IN COURT IN ACCORDANCE WITH THIS ARBITRATION AGREEMENT.

- 8.2. Pre-Arbitration Dispute Resolution. For all Disputes you must first give BigCommerce an opportunity to resolve the Dispute. You must commence this process by mailing written notification to:

Legal Department
BigCommerce, Inc.
11305 Four Points Drive
Building II, First Floor
Austin, TX 78726

That written notification must include (1) your name, (2) your address, (3) a written description of the Dispute, and (4) a description of the specific relief you seek. If BigCommerce does not resolve the Dispute to your satisfaction within 45 days after it receives your written notification, you may pursue your Dispute in arbitration.

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Disputes, and the arbitration will be conducted before a single arbitrator. The arbitration will be commenced as an individual arbitration, and will in no event be commenced as a representative or class arbitration. All issues will be for the arbitrator to decide, including the scope of this Arbitration Agreement. For arbitration before the AAA, the AAA's Commercial Arbitration Rules and the AAA's Optional Rules For Emergency Measures Of Protection will apply. The AAA rules are available at www.adr.org or by calling 1-800-778-7879. For arbitration before JAMS, the JAMS Comprehensive Arbitration Rules & Procedures and the JAMS Recommended Arbitration Discovery Protocols For Domestic, Commercial Cases will apply. The JAMS rules are available at www.jamsadr.com or by calling 1-800-352-5267. This Arbitration Agreement governs in the event it conflicts with the applicable arbitration rules. Under no circumstances will class action, representative action, or collective action procedures or rules apply to the arbitration. Because your contract with BigCommerce, these Terms, and this Arbitration Agreement concern interstate commerce, the Federal Arbitration Act ("FAA"), if applicable, governs the arbitrability of all Disputes. However, the arbitrator will apply applicable substantive law consistent with the FAA and the applicable statute of limitations or condition precedent to suit.

- 8.4. Exclusions from Arbitration/Right to Opt Out. Notwithstanding the above, you or BigCommerce may choose to pursue a Dispute in court and not by arbitration if (a) the Dispute qualifies, it may be initiated in small claims court or equivalent in the applicable jurisdiction; or (b) YOU OPT-OUT OF THESE ARBITRATION PROCEDURES WITHIN 30 DAYS FROM THE DATE THAT YOU FIRST CONSENT TO THIS AGREEMENT (the "Opt-Out Deadline"). You may opt out of this Provision by mailing written notification to:

Legal Department
BigCommerce, Inc.
11305 Four Points Drive
Building II, First Floor
Austin, TX 78726

Your written notification must include (1) your name, (2) your address, and (3) a clear statement that you do not wish to resolve disputes with BigCommerce through arbitration. Your decision to opt-out of this Arbitration Provision will

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- 8.5. **Arbitration Award.** The arbitrator may award on an individual basis any relief that would be available pursuant to applicable law, and will not have the power to award relief to, against or for the benefit of any person who is not a party to the proceeding. The arbitrator's award will be in writing, will be signed by the arbitrator, and will include a determination of all the questions submitted to the arbitrator the decision of which is necessary in order to determine the controversy. Such award by the arbitrator will be final and binding on the parties, except for any right of appeal provided by law, and may be entered in any court having jurisdiction over the parties for purposes of enforcement.
- 8.6. **Location of Arbitration.** You may initiate arbitration in the federal judicial district that includes your address that you provide in your written notification of Pre-Arbitration Dispute Resolution. In the event that BigCommerce initiates an arbitration, it may only do so in the federal judicial district that includes your address that you provide in your written notification of Pre-Arbitration Dispute Resolution or the billing address for your account.
- 8.7. **Payment of Arbitration Fees and Costs.** BigCommerce will pay all arbitration filing fees and arbitrator's costs and expenses upon your written request given prior to the commencement of the arbitration. You are responsible for all additional fees and costs that you incur in the arbitration, including, but not limited to, attorneys or expert witnesses. Fees and costs may be awarded by the arbitrator as provided pursuant to applicable law. In addition to any rights to recover fees and costs under applicable law, if you provide notice and negotiate in good faith with BigCommerce as provided in the "Pre-Arbitration Dispute Resolution" Section and the arbitrator concludes that you are the prevailing party in the arbitration, you will be entitled to recover from BigCommerce your actual and reasonable attorney's fees and costs as determined by the arbitrator.
- 8.8. **Class Action Waiver.** The parties agree that the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a class or representative proceeding or claims (such as a class action, representative action, consolidated action or private attorney general action) unless both you and BigCommerce specifically agree in writing to do so following initiation of the arbitration. Neither you, nor any other user of the Services, can be a class representative, class member, or otherwise participate in a class, representative, consolidated or private attorney general proceeding without having complied with the opt-out requirements above.

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otherwise have had a right or opportunity to bring Disputes in a court, before a judge or jury, and/or to participate or be represented in a case filed in court by others (including class actions). You give up those rights, to the extent permitted by applicable law. Other rights that you would have if you went to court, such as the right to appeal and to certain types of discovery, may be more limited in arbitration. The right to appellate review of an arbitrator's decision is much more limited than in court, and in general an arbitrator's decision may not be appealed for errors of fact or law.

- 8.10. **Severability.** If any clause within this Arbitration Agreement (other than the Class Action Waiver clause above) is found to be illegal or unenforceable, that clause will be severed from this Arbitration Agreement, and the remainder of this Arbitration Agreement will be given full force and effect. If the Class Action Waiver clause is found to be illegal or unenforceable, then this entire Arbitration Agreement will be unenforceable, and the Dispute will be decided by a court.
- 8.11. **Continuation.** This Arbitration Agreement will survive the termination of your contract with BigCommerce and your use of the Services.

9. **Anti-Corruption, Export and Sanctions Compliance.** With respect to these Terms, you represent, warrant, and covenant that you:

- 9.1. have not and will not violate, or cause any party to be in violation of, any applicable anti-bribery or anti-corruption law (including, but not limited to, the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.S. domestic bribery statute in 18 U.S.C. 201, the U.S. Travel Act, or the UK Bribery Act 2010), anti-kickback laws, anti-money laundering and anti-terrorist financing laws, sanctions, embargoes, export controls, import controls, anti-fraud laws, or any other applicable law, regulation, or order (collectively, "Applicable ABAC Laws");
- 9.2. have not and will not use or apply the Services or the Website in violation of Applicable ABAC Laws;
- 9.3. have not and will not with a corrupt, improper, or illegal intention directly or indirectly (through third parties) pay, provide, promise, offer, authorize, solicit, or accept any money, gift, hospitality, entertainment, favor, financial advantage, or other thing of value to or from any individual, organization, political party, or entity whether in the public or private sector in any country in order to obtain, retain, or direct regulatory approvals, licenses, permits, business, contracts,

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vendors, and partners (collectively, “Relevant Parties”) to comply with all of the terms contained in this Anti-Corruption, Export and Sanctions Compliance Section;

- 9.5. are not, and will ensure that your Relevant Parties and customers are not, (a) nationals, residents, agents or representatives of Iran, Cuba, North Korea, Syria, the Crimea Region of Ukraine, or any other region subject to comprehensive U.S. sanctions; (b) on the List of Specially Designated Nationals & Blocked Persons, the Sectoral Sanctions Identifications (SSI) List, or Foreign Sanctions Evaders List maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, or any other applicable list of sanctioned, embargoed, blocked, criminal, or debarred persons maintained by any U.S. or non-U.S. government, the European Union, Interpol, the United Nations, the World Bank, or any other public international organization (each such list, a “Sanctions List”); (c) an entity that is 50% or more owned, individually or in the aggregate, directly or indirectly, by, is controlled by (including without limitation by virtue of such person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any person or entity on a Sanctions List; or (d) otherwise the target of any sanctions, suspensions, embargoes or debarment by the U.S. government or any other government or public international organization;
- 9.6. shall secure all necessary export/sanctions licenses or authorizations to the extent applicable and necessary;
- 9.7. shall implement an effective, risk-based compliance program and necessary internal controls (including, but not limited to, conducting sanctions screenings of your Relevant Parties and customers) to ensure compliance with Applicable ABAC Laws and this Anti-Corruption, Export and Sanctions Compliance Section;
- 9.8. shall review and adhere to BigCommerce’s Company Associate Compliance Guide if provided by BigCommerce; and
- 9.9. shall reasonably cooperate with BigCommerce to (a) ensure compliance with sanctions, embargoes, and other Applicable ABAC Laws and/or (b) review and remediate actual or potential violations of sanctions or other Applicable ABAC Laws, including, but not limited to, suspending or terminating the supply of products or services to customers or other persons that appear on a Sanctions List or are otherwise the target of sanctions and other similar restrictions. A

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breach will entitle BigCommerce to seek to be indemnified by you and/or obtain injunctive and other emergency or equitable relief, in addition to any other remedies which may be available under applicable laws.

10. CGA Terms.

10.1. **Modifications.** BigCommerce reserves the right, in its discretion, to change, modify, add to, or remove portions of the Terms (collectively, “Changes”), at any time. BigCommerce will notify you of Changes by sending an email to the address identified in your Account and by posting a revised version of the Terms incorporating the Changes to its Website. Your continued use of the Website or Services following notice of the Changes (or posting of the Terms incorporating the Changes in the event your email address is no longer valid, is blocked, or is otherwise not able to receive the notice) will mean that you accept and agree to the Changes. Such Changes will apply prospectively beginning on the date the Changes are posted to the Website.

10.2. Term; Termination.

a) **Term.** The Services will be provided to you for the duration of your Services subscription or Order Form, unless earlier cancelled by you or terminated by BigCommerce. You may cancel your Services subscription at any time. These Terms will automatically terminate upon the cancellation of all of your Services subscriptions. BigCommerce may terminate these Terms or your Services subscription(s) at any time, with or without cause, upon written notice. BigCommerce will have no liability to you or any third party because of such termination. Termination of these Terms will terminate all of your Services subscriptions.

b) **Effect of Termination.** Upon termination of these Terms by either party for any reason, or cancellation or expiration of your Services subscriptions: (i) BigCommerce will cease providing the Services; (ii) you will not be entitled to any refunds of any subscription or usage fees, or any other fees, pro rata or otherwise; (iii) any fees you owe to BigCommerce will immediately become due and payable in full; and (iv) BigCommerce may delete your archived data within 30 days. All sections of the Terms that expressly provide for survival, or by their nature should survive, will survive termination of the Terms, including, without limitation, confidentiality, indemnification, warranty disclaimers, and limitations of liability.

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OR YOUR USER'S USE OF THE WEBSITE, SOFTWARE, OR SERVICES AND WILL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXTRAORDINARY, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION THE FOLLOWING, UNLESS PROHIBITED BY APPLICABLE LAW, LOSS OF USE, BUSINESS INTERRUPTIONS, LOSS OF DATA, LOSS OF PROFITS, AND LOST REVENUE, WHETHER SUCH DAMAGES ARE ALLEGED IN TORT, CONTRACT OR ANY OTHER LEGAL OR EQUITABLE THEORY, AND WHETHER OR NOT BIGCOMMERCE IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

b) Aggregate Liability. BIGCOMMERCE AND ITS SUPPLIERS AND AFFILIATES WILL IN NO EVENT BE LIABLE IN AGGREGATE FOR MORE THAN THE TOTAL FEES ACTUALLY RECEIVED BY BIGCOMMERCE FROM YOU FOR THE SERVICES DURING THE 12-MONTH PERIOD BEFORE THE CLAIM OR CAUSE OF ACTION AROSE.

c) Multiple Claims; Time Limits. MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMITATION. ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE WEBSITE, SOFTWARE, OR SERVICES MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CLAIM OR CAUSE OF ACTION ACCRUES, OTHERWISE SUCH CLAIM AND CAUSE OF ACTION WILL BE PERMANENTLY BARRED.

d) Jurisdictions; Limitations. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION AND/OR LIMITATION OF LIABILITY FOR FRAUD, WILLFUL MISCONDUCT, GROSS NEGLIGENCE, DEATH OR PERSONAL INJURY OR FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR OTHER DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. IN SUCH EVENT, THE LIABILITY OF BIGCOMMERCE AND ITS SUPPLIERS AND AFFILIATES FOR SUCH DAMAGES WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. THIS LIMITATIONS OF LIABILITY SECTION WILL SURVIVE ANY TERMINATION OR EXPIRATION OF THESE TERMS.

10.4. Disclaimers.

a) General. YOUR USE OF THE WEBSITE, SOFTWARE, AND SERVICES WILL BE AT YOUR OWN RISK AND ARE PROVIDED "AS IS", "AS AVAILABLE" AND "WITH ALL FAULTS". BIGCOMMERCE AND ITS

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CONDITIONS AND REPRESENTATIONS OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

b) Specific. BIGCOMMERCE MAKES NO WARRANTIES, CONDITIONS OR REPRESENTATIONS ABOUT (i) THE ABILITY OF THE WEBSITE, SERVICES, OR SOFTWARE TO PERFORM WITHOUT LIMITATION OR RESTRICTION IN ANY GIVEN ENVIRONMENT, (ii) THE ACCURACY, COMPLETENESS, OR CONTENT OF THE WEBSITE, SERVICES, OR SOFTWARE, (iii) THE ACCURACY, COMPLETENESS, OR CONTENT OF ANY LINKED SITES (THROUGH HYPERLINKS, BANNER ADVERTISING OR OTHERWISE), AND/OR (iv) THIRD-PARTY PRODUCTS, AND BIGCOMMERCE ASSUMES NO LIABILITY OR RESPONSIBILITY THEREWITH.

c) Third-Party Products. THE REFERENCE TO, OR AVAILABILITY OF, THIRD-PARTY PRODUCTS IN CONNECTION WITH THE SERVICES OR WEBSITE DOES NOT CONSTITUTE, AND WILL NOT BE CONSTRUED AS CONSTITUTING, AN ENDORSEMENT, AUTHORIZATION, SPONSORSHIP, OR AFFILIATION BY OR WITH BIGCOMMERCE WITH RESPECT TO SUCH THIRD-PARTY PRODUCTS.

d) Legal, Tax, Financial, Other Communications. NO ORAL OR WRITTEN INFORMATION OR ADVICE OR COMMUNICATIONS PROVIDED BY BIGCOMMERCE OR ANY OF ITS EMPLOYEES WILL CONSTITUTE PERSONAL, LEGAL, TAX OR FINANCIAL ADVICE OR CREATE A WARRANTY, CONDITION OR REPRESENTATION OF ANY KIND.

e) Jurisdictions; Limitations. THESE DISCLAIMERS APPLY TO THE FULLEST EXTENT PERMITTED BY LAW AND WILL SURVIVE ANY TERMINATION OR EXPIRATION OF THESE TERMS. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION AND/OR LIMITATION OF IMPLIED REPRESENTATIONS, CONDITIONS OR WARRANTIES, OR ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. IN SUCH EVENT, BIGCOMMERCE'S WARRANTIES, CONDITIONS AND REPRESENTATIONS WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW IN SUCH JURISDICTION.

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information, whether written or oral, that the Receiving Party should reasonably understand is confidential to the Disclosing Party.

b) **Obligations.** The Receiving Party will: (i) hold the Confidential Information of the Disclosing Party in trust and confidence and not disclose or release the Confidential Information to any third party except as provided in these Terms; and (ii) not use the Confidential Information for any purpose except for the purposes described in these Terms. The disclosure of Confidential Information pursuant to these Terms is not intended in any way to transfer or grant any right, title or interest in or to such Confidential Information to the Receiving Party unless otherwise expressly indicated by the Disclosing Party in writing.

c) **Standard of Care.** The standard of care imposed on each party pursuant to this Section will be the same degree of care as it uses to avoid the unauthorized use, disclosure, or dissemination of its own Confidential Information of a similar nature, but not less than a commercially reasonable degree of care.

d) **Limitation.** Each party will disclose the Confidential Information of the other party only to those of its employees, consultants and contractors (“Personnel”) who have agreed, either as a condition of employment, representation or in a written agreement, to be bound by terms and conditions substantially as protective as the confidentiality terms and conditions applicable to the Receiving Party under this Section.

e) **Exclusions.** Confidential Information excludes information that is (i) rightfully in the Receiving Party’s possession without obligation of confidentiality prior to receipt from the Disclosing Party, (ii) a matter of public knowledge through no fault of the Receiving Party, (iii) rightfully furnished to the Receiving Party by a third party without restriction on disclosure or use; or (iv) independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information.

f) **Requests for Confidential Information.** A Receiving Party may disclose Confidential Information pursuant to a valid court order or order of an authorized government agency, provided that (if not legally prohibited) the Receiving Party has given the Disclosing Party prompt notice so that the

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g) Survival. The terms of this Section will survive for as long as the Confidential Information remains confidential.

- 10.6. Backup Storage. For its own operational efficiencies and purposes, BigCommerce from time to time back up data on its servers, but is under no obligation or duty to you to do so under these Terms or otherwise. IT IS SOLELY YOUR DUTY AND RESPONSIBILITY TO BACKUP SEPARATELY YOUR FILES AND DATA THAT MAY RESIDE ON BIGCOMMERCE SERVERS. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL BIGCOMMERCE BE LIABLE TO YOU, YOUR USERS, OR ANY THIRD PARTY FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, FOR LOSS OF FILES AND/OR DATA ON ANY BIGCOMMERCE SERVER.
- 10.7. No Assignment by You. You may not assign your rights or obligations under these Terms without the prior written consent of BigCommerce, which BigCommerce may refuse in its sole discretion. Any attempted assignment without prior written consent from BigCommerce will be deemed null and void. BigCommerce may assign its rights and/or obligations under these Terms at any time. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 10.8. Entire Agreement. These Terms are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of these Terms, and any modifications must be in a writing signed by both parties, except as otherwise provided herein.

11. Miscellaneous.

- 11.1. Governing Law; Jurisdiction. The law that will govern the validity and construction of these Terms and apply in any dispute or lawsuit arising out of or relating to these Terms is as set forth in table in the Contracting Entity Section above. YOU HEREBY CONSENT TO, AND WAIVE ALL DEFENSES OF LACK OF PERSONAL JURISDICTION AND FORUM NON CONVENIENS WITH RESPECT TO, THE JURISDICTION AND VENUE OF THE FEDERAL AND STATE COURTS LOCATED IN TRAVIS COUNTY, TEXAS (USA). The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms and is hereby expressly excluded.

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- 11.3. **Waiver.** No waiver of any provision of these Terms, nor consent by BigCommerce to the breach of or departure from any provision of these Terms, will in any event be binding on or effective against BigCommerce unless it be in writing and signed by a duly authorized representative of BigCommerce, and then such waiver will be effective only in the specific instance and for the specific purpose for which given.
- 11.4. **Notices.**
- a) You consent to receive electronically any communications from BigCommerce. We may communicate with you through the email address specified in your account or by posting notices on the Website. You agree that all agreements, notices, disclosures and other communications that are provided to you electronically satisfy any requirement that such communications be in writing. All notices from us intended for receipt by you shall be deemed delivered when sent to the email address you provide to us.
 - b) Notices to BigCommerce must be sent to:
trustandsafety@bigcommerce.com.
- 11.5. **Section Headings.** The section headings and titles in these Terms are for convenience only and have no legal or contractual effect. These Terms will be interpreted without application of any strict construction in favor of or against you or BigCommerce.
- 11.6. **Independent Contractors.** No agency, partnership, joint venture or employment relationship is created by these Terms or your use of the Services, and you do not have any authority of any kind to bind BigCommerce in any respect whatsoever.
- 11.7. **Marks.** BigCommerce shall have the non-exclusive right and license to use the names, trademarks, service marks and logos associated with your store(s) to promote the Services.
- 11.8. **Force Majeure.** BigCommerce will have no liability to you, your users, or any third party for any failure by BigCommerce to perform its obligations under these Terms in the event that such non-performance arises as a result of the occurrence of an event beyond the reasonable control of BigCommerce,



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- 11.9. Third-Party Service Integration. Certain Third-Party Products may be integrated with the Services. BigCommerce may, in its discretion and without liability to you, decide to no longer support such integration and migrate your Services subscription to a different integration. BigCommerce may from time to time recommend, provide access to, link to, or enable Third-Party Products. Such Third-Party Products are owned and controlled by a third party entity whom BigCommerce has no ownership or control over (“Third-Party Product Provider”). Third-Party Products are made available for your convenience and any purchase, use of, or access to such Third-Party Products is solely between you and the Third- Party Product Provider. When accessing, enabling, or otherwise engaging Third-Party Products you are agreeing to be bound by the additional terms provided by the Third-Party Product Provider with whom you are engaging. It is your responsibility to understand the terms and conditions and/ or privacy policy of any Third-Party Products you are accessing, linking to, or otherwise engaging prior to any engagement with that Third-Party Product Provider.
- 11.10. Hosting Services. BigCommerce has entered into arrangements with one or more third parties for hosting services that are essential to the Services, incorporated within the Services and without which the Services could not be provided to you.

PRODUCT	▼
PARTNERS	▼
CUSTOMERS	▼
RESOURCES	▼
USE CASE SOLUTIONS	▼
INDUSTRY SOLUTIONS	▼



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