

## Chargify® Service Terms

These Chargify Service Terms (these “**Service Terms**”) are between Chargify LLC, a Delaware limited

liability company (“**Chargify**”) and the person who submits an order for Chargify’s services (“**you**”). Capitalized words in these Service Terms have special meanings. See Section 11 (*Defined Terms*) at the end of these Service Terms.

Chargify may modify these Services Terms at any time, but modifications are not effective for Orders that are in place prior to the modification until the Order renews or you add new services to your account. See Section 10.21 (*Changes to Online Terms*).

If you have any questions about these Services Terms, please contact [sales@chargify.com](mailto:sales@chargify.com).

### 1. SERVICES

**1.1 Services.** Chargify agrees to provide the Services for the Term on the terms and conditions stated in the Order and these Service Terms. Chargify makes the following commitments:

1. 1.1.1 The Services will include those features listed in your Order. The Services include updates that Chargify makes generally available to its other subscribers for the same Services, subject to any fees and terms that may apply to new features.
2. 1.1.2 Chargify will use commercially reasonable efforts to make the Services available to you 24 hours per day, 7 days per week, year-round, excluding reasonable maintenance. If your Order includes a service level commitment or “SLA” for availability, Chargify makes the availability commitment to you described in that SLA.
3. 1.1.3 Chargify will provide online support documentation for your use. Your Order or SLA includes details on how to contact Chargify for support 24 x 7. Chargify weekend and holiday support is provided for urgent issues only. Weekends start Friday at 11:59 p.m. and end Monday at 12:01 a.m., United States Central time. Holidays are federal public holidays in the United States and other Chargify-announced support holidays.

**1.2 Service Levels or SLA.** If your Order includes an SLA, the SLA is subject to the following terms:

1. 1.2.1 Credit Requests. To receive a credit, you must request a credit no later than ten (10) days following the day that the Chargify commitment was not met. You must submit your request to [support@chargify.com](mailto:support@chargify.com).
2. 1.2.2 General SLA Terms. Chargify is not required to apply credits for any month that exceed the fees due from you for that month. Chargify is not required to apply unused credits to past or future months for your Services or to apply them to other services. Chargify is not required to apply a credit if any fees due from you are overdue, or if your account has been suspended or terminated for your violation of the Order or Service Terms. If you are entitled to an SLA credit after the time that you have paid your final fees to Chargify, Chargify will issue a refund to you in the amount of the credit. Time periods are measured with reference to time stamps in the Chargify system or other reliable Chargify records. The credit remedies provided in this SLA are your **sole and exclusive remedy** for damages arising from Chargify’s failure to meet a commitment for which a credit is provided.

**1.3 Fraud Check.** Chargify may refuse to provide Services if you fail its fraud check. If you fail the fraud check after your account has been provisioned, Chargify will close your account, and refund any pre-paid fees for unused services.

**1.4 Internal Use Only, No Resale of Services.** You may use the Services only in connection with your own services. If you wish to use the Services to provide billing or account services for others you must contact Chargify and make other arrangements.

**1.5 PCI Compliance.** Chargify will maintain compliance with current Payment Card Industry Data Security Standard (PCI DSS) as published by the PCI Security Standards Council. On your request, Chargify will provide you a current Attestation of Compliance issued by a PCI Qualified Security Assessor. **Chargify makes no other representations or warranties regarding security.** You agree that Chargify is not responsible to you for any harm you suffer as a result of a security breach unless the breach was the result of Chargify's failure to maintain its compliance with the PCI DSS as required by this Section.

**1.6 Test Sites.** Chargify may provide you with access to non-production sites or services at no additional charge for your use in testing changes and integrations before you implement them as part of your production Services. These services will be designated as "Test Sites" or with a similar description. Test services have significantly limited functionality compared to your production Services. For example, test services are not configured to process actual payments, are significantly slower, and are restricted as to data storage and the permitted number of records. Test services are not "Services" under this Agreement, and are provided **AS IS**, without any service level commitments, warranties or representations whatsoever. Chargify has no obligation to provide support for any test services. Any support that is provided is provided on an **AS IS** and **AS AVAILABLE** basis. Chargify has no liability for any harm or damage arising out of or in connection with your use of a test service. Chargify may terminate your test services and delete any related data at any time.

**1.7 Beta Services.** From time to time, Chargify may invite you to try test or "Beta" Services at no charge. Beta services will be designated as test, beta, pilot, limited release, developer preview, non-production, evaluation, early access or with a similar description. Beta services are for evaluation purposes and not for production use, are not considered "Services" under this Agreement, are not supported, and may be subject to additional terms. Chargify may discontinue Beta Services at any time in its sole discretion and may never make the Beta Services generally available. If a generally available version is released, there may not be an automatic update path from the Beta version to the generally available version. If not earlier terminated, any Beta services use period will expire on the date that the Beta service is released on a generally available basis. Beta Services are provided **AS IS**, and Chargify has no liability for any harm or damage arising out of or in connection with a Beta Service.

## **2. API(s).**

The Chargify API(s) are licensed to you on a non-exclusive, limited term basis for your use only in connection with the Chargify Services as permitted by the Agreement, and subject to all of the restrictions and conditions stated in the Agreement. Chargify will give you at least five (5) days advance written notice of any change to its API(s) unless a change is needed to address a critical service issue.

## **3. THIRD PARTY SERVICES**

Third party services include your payment gateway and other services that you purchase from third parties and elect to integrate with your Services, such as, accounting, customer relationship management, and tax services. Chargify does not endorse or recommend any payment gateway or other third-party service, and you are responsible for investigating the quality and suitability of your gateway and other third party services. For any third party service that you use or integrate with the Services, or that Chargify integrates for you at your request, you represent and warrant to Chargify that you have the necessary rights and licenses from the third party service provider to use their services as integrated with the Chargify Services. If Chargify collects the third party's fees from you, it will pass through the fees to the third party, but you acknowledge that Chargify is only a payment conduit and has no responsibility for the third party's services. Chargify makes no representation or warranty whatsoever regarding the third-party service and, as between you and Chargify, the third-party service is provided **AS IS**. Your use of the third-party service is subject to the legal agreement between you and the third party. You should review the third party's legal terms and privacy policies before using their services. Specifically, but without limitation, Chargify is not a payment processor, and is not responsible for any monies due to you for your transactions managed by means of the Services. If you experience unavailability or errors with your payments gateway, you should contact your gateway for support.

#### **4. INTEGRATION FEATURES**

Chargify provides integration features for third-party services as part of the Chargify Service. You acknowledge that Chargify's integration features may be unavailable or may not work properly if the service provider's API is unavailable or if the service provider modifies its API or services in a way that impacts the Chargify integration feature. Chargify will use commercially reasonable efforts to modify its integration features to maintain compatibility with service provider's APIs and services, but may discontinue an integration feature without liability to you if there is a change in the service that creates an unreasonable cost or operational burden to Chargify. Your obligations under the Agreement, for fees and otherwise, are not conditioned on the continued availability of any integration features.

#### **5. YOUR DATA**

The Personal Data, text, and graphic content that you or your users or customers transmit to the Services, or create by means of the Services is "**Your Data**." As between you and Chargify, you own and retain ownership and all rights in Your Data and Chargify may use Your Data only for the purpose of providing the Services and exercising its legal rights and remedies in connection with the Agreement. "Your Data" does not include system generated data about your use of the Services, such as user behavior or resource utilization, so long as the system generated data is not Personal Data. Chargify may aggregate Your Data with similar data from public or private data sets, including aggregate data of Chargify' other customers, and use and commercialize the resulting data sets and insights derived from the analysis of the resulting data sets ("**Aggregate Data**"), provided that: (i) if the data used to create the Aggregate Data includes any Personal Data, Chargify either excludes this data from the data set, or de-identifies the data in accordance with applicable regulatory standards, and (ii) Chargify removes from the data set any information that identifies Customer.

#### **6. FEES AND PAYMENTS**

**6.1 Fees.** The fees for the services are stated in the Order. Chargify may not increase the fees during your initial Order term, but may increase its fees for any renewal term by giving you notice of the increase at least thirty (30) days prior to the first day of your next billing cycle. Any discounts described

in the Order are for the initial term of the Order only unless otherwise stated in the Order. Fees are stated and must be paid in United States Dollars. You must pay any base, minimum, or fixed fees associated with your active Plan even if you do not use the Services. Certain terms used in the Plan have specific meanings as follows:

**% of Revenue or Percent of Revenue** means the total amount invoiced by you to your customers using the Services during a given billing cycle (including sales, use and value added tax and like charges), less the amount of refunds recorded during that billing cycle, times the applicable percentage.

**Usage** means the measure of the use of a particular Services feature during a billing cycle according to the metric described in your Plan, measured by Chargify by means of the Services platform on the last day of the billing cycle.

**6.2 Sales Tax.** The stated fees do not include any sales, use, VAT or like taxes ("**Sales Tax**"). You must pay any applicable Sales Tax that Chargify is required to collect from you under applicable law.

**6.3 Billing Cycle.** Fees are charged on a monthly basis unless otherwise stated in the Order. Your "billing cycle" begins on your Services activation date and continues for one month. If your Services

<sup>th</sup> <sup>th</sup> <sup>st</sup>

activation date is the 29 , 30 or 31 day of a month, we will adjust new billing cycles to end on the last

day of the next month that has fewer days than your service activation month. For example, if your <sup>st</sup>

service activation date is January 31 , your billing cycles will end on February 28, March 28, April 28, etc.

**6.4 Payments.** Unless you have made other arrangements with Chargify, you must authorize and maintain a current valid means for Chargify to collect its fees for the Services via payment card, PayPal, or ACH at all times during the Term. Chargify may charge the fees on or after the following times: (i) for monthly minimums, base fees, and other fixed monthly recurring fees, the first day of each billing cycle, (ii) for usage fees, % of Revenue, and other variable fees, the last day of each billing cycle, or more often if your usage fees or % of Revenue are unusually high for your account type, (iii) for one-time fees (such as set up fees), the day you submit the Order that includes the fee, and (iv) for hourly fees, at the time stated in the Order, or if no time is stated, on completion of the hourly services described in the Order. Chargify may charge any applicable Sales Tax with the charge for the related Service, or separately. If your Plan is based on a monthly fee that is stated as a % of Revenue with a "minimum," Chargify may charge the minimum on or after the first day of your billing cycle, and charge any amount by which your % of Revenue exceeds the minimum on or after the last day of your billing cycle. If Chargify agrees to accept payments against invoices, Chargify may invoice the fees at the times stated in this Subsection, and invoiced fees are due 30 days from invoice date unless otherwise agreed by Chargify in writing.

**6.5 Late Payments.** Chargify may suspend or terminate your Services or the Agreement if your payment is overdue, including if Chargify's charge to your payment card or account is rejected. Chargify may charge interest on overdue amounts at the lesser of 1.2% per month or the highest non-usurious amount permitted by applicable law. If Chargify takes legal action to collect an overdue amount, you

must also pay Chargify's reasonable costs of collection, such as attorney fees and court costs. If Chargify suspends your account for late payment, you must pay Chargify's reasonable reinstatement fee, not to exceed the minimum or base fee of your Plan.

**6.6 Plan Changes.** You may upgrade or downgrade your Plan at any time by giving notice to Chargify. You may terminate your Services completely as provided in Section 8 (*Term and Termination*).

**6.7 Currency.** If you charge your customers in a currency other than United States Dollars, Chargify will convert the currency to United States Dollars as necessary to calculate your % of Revenue or other revenue based fee using a rate published by a commercially reasonable exchange information service such as <https://openexchangerates.org/>. Chargify will convert currency on the date it calculates your fee for the billing cycle, without regard to fluctuations in the currency during the billing cycle. For example, to calculate a % of Revenue based on billings in a non-U.S. currency, Chargify will calculate the net revenue (billings less refunds/chargeback for the billing cycle) on the last day of the billing cycle, then will convert net revenue amount to U.S. Dollars, then will calculate its fee in Dollars as a percentage of this amount. Chargify will use reasonable efforts to obtain an exchange rate published on the day it calculates your fee, but may use a rate that is published up to five days prior to that day.

**6.8 General.** Fees are non-refundable. If Chargify discounts your fees in exchange for your commitment to a Term length of longer than one month and the Order is terminated prior to the end of the committed term then, unless the termination was by Chargify for convenience, or by you for Chargify's breach, you must pay an early termination fee equal to the difference between the undiscounted and discounted fees for the period prior to the effective date of termination.

## **7. YOUR OBLIGATIONS**

**7.1 Fees.** You must pay your fees when due for the Term. You must not use or attempt to use the

Services in a way that undermines Chargify's ability to correctly calculate its fees.

**7.2 Your Security Obligations.** You must use reasonable security precautions in connection with your use of the Services, such as requiring your users to establish reasonably secure passwords and using commercially reasonable efforts to protect your systems and data from malware. You may not interfere, or attempt to interfere, with the encryption features of the Services.

**7.3 Authorized Users.** You may not authorize anyone to use your Services or Services account other than your employees or other personnel, or the employees or personnel of your contractors who are subject to written restrictions that limit their use of the Services to supporting your internal business functions.

**7.4 Acceptable Use.** You may not use the Services in connection with any illegal or abusive activities, as determined by Chargify in its reasonable discretion, or in violation of the AWS Acceptable Use Policy at <https://aws.amazon.com/aup/>.

**7.5 Backups.** You must create a backup of Your Data at reasonable intervals and retain that backup in a secure location.

**7.6 Compliance with Law.** You must use the Services in compliance with applicable law.

**7.7 Representations and Warranties.** You represent and warrant to Chargify as of the effective date of each Order and on an ongoing basis that: (i) the information you submit about yourself and your activities to establish a Services account with Chargify and place an Order is true, correct, and complete, (ii) you have not been the target of any legal or regulatory investigations or proceedings in connection with your business activities, and (iii) Your Data was collected in accordance with applicable law, and that you have all necessary rights and authority to use and process Your Data as contemplated by the Agreement.

## **8. TERM, TERMINATION, SUSPENSION**

**8.1 Term.** If you sign up for a monthly Plan, the Term of the Order begins on the date of Order submission and continues on a month-to-month basis until you or Chargify terminates the Order by giving at least thirty (30) days advance written notice of termination, unless termination on fewer days' notice is permitted by Section 8.2 (Termination). If you sign up for a Plan that has a term of longer than one month, the Term of the Order begins on Order submission and continues for the period stated in the Order. On expiration of the initial term of an Order for a Plan with a term of longer than a month, the Order automatically renews for consecutive periods of the same period and the same recurring fee as the initial term unless you or Chargify gives a notice of non-renewal at least thirty (30) days prior to expiration of the initial term or then-current renewal term, as applicable. If you wish to terminate any term longer than a monthly Plan prior to expiration, Chargify may permit you to do so but you will be subject to an early termination fee equal to the recurring fee calculated monthly times the number of months remaining in the current term. This subsection 8.1 may be varied by express language in an Order.

**8.2 Termination.** Either party may terminate an Order, or the Agreement, on written notice if the other party is in material violation of any term of an Order or these Service Terms, provided that if the violation is curable the terminating party must first give the other party a written notice describing the violation in reasonable detail and at least ten (10) days to cure the violation. If Chargify materially fails to meet any SLA commitments, you may terminate the Agreement without liability to you or Chargify other than the issuance of credits as described in the SLA.

**8.3 Suspension.** Chargify may suspend your access to the Services and Your Data during any period that you are in material breach of the Agreement or your access to the Services or Your Data creates a material security vulnerability. Chargify will give you at least two (2) business days' advance notice of the suspension, unless the suspension is made under emergency circumstances. Chargify will reinstate your access to the Services when the grounds for suspension are cured unless Chargify has already terminated the Agreement as described in this Section.

**8.4 Surviving Provisions.** The following sections survive expiration or termination of the Agreement: *Fees and Payment, Confidentiality, Indemnification, Limitation of Liability, Term and Termination, Suspension, Governing Law, Disputes, Notices, General*, and any other terms that by their nature are intended to survive expiration or termination.

**8.5 Return of Your Data.** You are responsible for exporting Your Data from the Services prior to expiration of the Agreement. If Chargify terminates your Services for breach, Chargify will retain Your Data for at least 15 days from the effective date of termination. If you wish to export Your Data following a termination for breach, Chargify will either, at its option, enable short term access to the Services at a scheduled time so that you may export Your Data, or export Your Data using its standard

export tools. Chargify has no obligation to retain Your Data after the 15-day period and may destroy Your Data. Chargify has no obligation to assist you with the export of Your Data. Chargify may be available to assist with data export on an hourly fee basis at a time scheduled by Chargify.

## **9. REMEDIES, DISCLAIMERS, INDEMNIFICATION, LIMITATIONS**

**9.1 SLA Credits.** SLA credits, and your right to terminate the Agreement without liability as provided in Section 8.2 (*Termination*) , are your **sole and exclusive** remedies for Chargify's failure to meet the SLA.

**9.2 Warranty Remedy.** If Chargify makes a warranty regarding the Services other than in the SLA, and then materially fails to meet that warranty, Chargify will attempt to cure the failure or if it is unable to cure the failure through commercially reasonable efforts will refund the fees paid for the billing cycle during which the failure occurred. However, to be eligible for a warranty remedy under this section, you must give a written notice describing the failure no later than ten (10) days following the end of the billing cycle and cooperate with Chargify's reasonable efforts to cure the failure. The remedies stated in this Section are your **sole and exclusive** remedy for Chargify's breach of a Services warranty.

**9.3 Sales Tax Calculation Features.** Chargify uses third-party technology to provide the sales tax calculation features of its Services. Chargify will use reasonable care to identify a responsible provider of its sales tax calculation feature, but otherwise makes no representation or warranty whatsoever regarding the sales tax calculation feature and provides this feature **AS IS**.

**9.4 No Other Warranty.** Except as expressly stated in these Services Terms or an SLA, the Services are provided **AS IS**. **Chargify disclaims any implied warranties, such as a warranty of merchantability, fitness for a particular purpose, and non-infringement, and any representation or warranty that may arise through a course of dealing. You acknowledge that the use of the Service may not be uninterrupted, error free, or completely secure.** If applicable law requires Chargify to make a warranty notwithstanding this disclaimer, then the warranty is made for a period of thirty (30) days from the date that it is deemed to have been made, and your **sole and exclusive remedy** for a breach of the warranty is a refund of fees paid for the Services covered by the warranty. You represent that you have not relied on any representation or warranty other than those stated in these Services Terms.

**9.5 Indemnification.** You agree that if a third party asserts a legal claim against Chargify or any of its officers, members, managers, employees, staff, personnel, agents, licensors or suppliers (the "Chargify Defendants") arising from your violation of these Services Terms or any Order, including your breach of a representation or warranty, or if your customer or end user asserts a legal claim against any of the Chargify Defendants on any basis other than Chargify's gross negligence or misconduct, you will pay all reasonable costs of defending the claim, including reasonable attorney fees, and any damages awarded to the third party or paid to the third party by Chargify as a reasonable settlement. You agree that Chargify may control the defense of the claim at its option, or may require you to defend the claim directly. If Chargify elects to control the defense of the claim, you will reimburse Chargify for its reasonable defense costs and expenses as incurred.

**9.6 Limitation of Liability.** In the event you have a legal claim against Chargify or any of its officers, members, managers, employees, staff, personnel, or agents, suppliers or licensors (the "Chargify Defendants"), you agree that the maximum total amount of money you can recover from any or all of them cannot exceed the amount of fees you have paid or that are payable for Service for the six (6)

**months prior to the date the claim arose, unless the legal claim is based on a Chargify Defendant's intentional misconduct or is for personal injury or death resulting from the negligence, recklessness or intentional misconduct of a Chargify Defendant. In addition, you agree that in no event are you entitled to recover any lost revenue, lost profits, damages for lost data, or any indirect or consequential loss or damages of any kind.**

**9.7 General.** You acknowledge that Chargify has set its fees and entered into the Order in reliance on the limitations of remedies and liability stated in these Terms, and that these limitations reflect an agreed allocation of risk between you and Chargify. The limitations stated in this Section shall apply to any liability arising from any cause of action whatsoever, whether in contract, tort, commercial code, strict liability or otherwise, **even if a limited remedy fails of its essential purpose.** If these limitations as written are not permitted by applicable law, they shall apply to the extent permitted by applicable law.

## **10. GENERAL TERMS**

**10.1 Rights in Technology/Intellectual Property.** You may not copy any part of the Services or mirror the Services on any site or system, except that you may download and print copies of Documentation for the Services as reasonably necessary for your permitted use of the Services, provided that you use the Documentation in the exact form published, retain all branding and proprietary notices, and do not transfer the Documentation to any other person. You may not reverse engineer or attempt to discover any underlying algorithm or method embodied by the Services or Chargify's other technology except to the extent applicable law permits such activity notwithstanding this limitation, and then on thirty (30) days advance written notice to Chargify. You may not disclose to any third party any benchmarking or other test or evaluation you conduct on the Services. You may not use the Chargify Services or API's for the purpose of creating a competing technology. Except for rights expressly granted in this Agreement, Chargify retains all right, title and interest in and to its Services, technology, and information and all related intellectual property rights. No rights in Intellectual Property may arise by implication or estoppel.

**10.2 Feedback.** You hereby license to Chargify any feedback or suggestions that you may provide regarding the Services or Chargify's other existing or proposed products or services on a perpetual, irrevocable, royalty free, worldwide, unconditional, fully sublicenseable and transferable basis, including the right to make, have made, use, sell, offer to sell, import, copy, display, perform, modify, distribute in modified or unmodified form, and commercialize any intellectual property, without accounting to you. You agree that you will not assert, or authorize, assist, or encourage any third party to assert, against Chargify or any of its affiliates, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding the Service or any our other products or services that you use.

**10.3 Confidential Information.** Any non-public information that you learn about Chargify or its Services as part of the relationship contemplated by these Services Terms is Chargify's Confidential Information. Your Data and your Personal Data are your Confidential Information. Each of you and Chargify agree not to use or disclose the other's Confidential Information except for the purpose of providing or using the Services, as applicable, or to exercise legal rights in connection with an Order. Each of you and Chargify agree to use reasonable care to protect the confidentiality of the other's Confidential Information and to return or destroy the other's Confidential Information on request, except as necessary for reasonable and customary business record-keeping purposes. Each of you and Chargify is responsible for a breach



of this Section by any person to whom it has disclosed the other's Confidential Information. Notwithstanding the foregoing, Chargify may disclose your Confidential Information in response to a subpoena or request from law enforcement.

**10.4 Governing Law.** The Order and these Services Terms are governed by and should be interpreted under the laws of the State of Texas, and the United States of America, as applicable, without giving effect to any conflicts of law principles that would require the application of the law of a different jurisdiction. The parties expressly and irrevocably disclaim and waive the application of the United Nations Convention on Contracts for the International Sale of Good and the Uniform Computer Information Act.

**10.5 Notices.** Your notices must be submitted via ticket on the customer portal, and copied by electronic mail to [support@chargify.com](mailto:support@chargify.com). Chargify's notices to you must be given to your primary account contact at the email address in the Chargify portal. If you send a notice of breach of the Agreement, a legal disputes, a legal claim, or other legal matter, you must copy your notice to [legalnotice@chargify.com](mailto:legalnotice@chargify.com), and must also send your notice via first class United States mail to Chargify's physical address appearing on its Site on the day the notice is transmitted electronically. Chargify's legal notices to you must be copied via first class United States mail to your physical notice address, or if your physical address is outside of the United States, via a reputable and established international priority mail service on the date the notice is transmitted electronically. Notices are deemed given, received and effective as of the time transmitted by electronic mail, or if that time does not fall on a business day, as of the beginning of the first business day following the time transmitted. Notices must be given in the English language. A party may change its address for notice by giving notice in the manner stated in this Section.

**10.6 Arbitration.** Except for certain requests for injunctive relief as described below, each of you and Chargify agree that any dispute related to the Services, an Order or these Services Terms shall be submitted to binding arbitration in San Antonio, Texas. The arbitration shall be conducted by one arbitrator in accordance with the commercial arbitration rules of the American Arbitration Association ("AAA"). The arbitration will be conducted in person unless each of party agrees to a telephonic or written submissions procedure. The arbitrator shall issue a reasoned award with findings of fact and conclusions of law and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. Either party may bring an action in any court of competent jurisdiction to compel arbitration under this Agreement, or to enforce or vacate an arbitration award. **Each party waives any right to a trial by jury, and agrees that disputes will be resolved through arbitration. No claim subject to this provision may be brought as a class or collective action, nor may you assert such a claim as a member of a class or collective action that is brought by another claimant.** Each party agrees not bring a claim related to the Services or the subject matter of an Order or these Services Terms more than two years after the time that the claim accrued. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

**10.7 Informal Dispute Resolution.** Each party agrees that it will not file a lawsuit or other legal action in connection with the Services, any Order, or these Services Terms, unless it has first given the other party written notice of the dispute, and attempted to resolve the dispute through good faith negotiation.

**10.8 Injunctive Relief.** Notwithstanding anything in this Agreement to the contrary, this Agreement does not prohibit, condition or delay a party's right to seek injunctive relief in any court of competent

jurisdiction to address the other party's infringement or misappropriation of its intellectual property, or the other party's breach of its confidentiality obligations under this Agreement.

**10.9 Export Compliance.** The Services may be subject to export laws and regulations of the United States and other jurisdictions. You may not permit users to access or use the Services in a U.S.-embargoed country or in violation of any U.S. export law or regulation, or in a manner that causes Chargify to be in violation of U.S. export laws, even if the use is permitted the laws applicable to you or your user or customer. Each party represents that it is not on any restricted persons list maintained by the U.S., Canada, or any member of the European Union.

**10.10 Anti-Corruption.** Each party represents that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from the other's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If either party learns of any violation of the above restriction, it will promptly notify the other party.

**10.11 Force Majeure.** Except for your payment obligations, neither party is in violation of the Agreement if the failure to perform is due to an event beyond that party's reasonable control, such as a significant failure of the power grid or Internet, denial of service attacks, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other acts or events for which precautions are not generally taken in the industry.

**10.12 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Orders), without the other party's consent to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**10.13 Publicity.** You agree that Chargify may identify you as its customer, using your company name and logo, on its website where it identifies its customers generally, and Chargify agrees that you may identify it as your service provider on your website using the Chargify name and logo. In addition, You will consider Chargify's requests to participate in the development of product whitepapers, testimonials for Web publication, and other like materials for publication. You may not issue press releases or any public announcements without Chargify's written consent. Each party may use the other party's trade or service marks in connection with approved activities, and otherwise with the other party's prior consent. Each party shall use the other's trademarks subject to the other party's reasonable trademark usage guidelines that are communicated to the party from time to time.

**10.14 Relationship of the Parties.** The parties are independent contractors. Neither party is the agent of the other, and neither party is authorized to make any representations, contract, or commitment on behalf of the other. The use of the words "partner" or "partnership" in this Agreement or otherwise refers only to a business relationship, and does not create or reflect any legal partnership, joint venture, or other fiduciary or other special relationship between the persons described as partners. The parties do not agree to any exclusivity in regards to the subject matter of this Agreement and each party is free

to contract with third parties, including competitors of the other party, for transactions of the type covered by this Agreement in any market, worldwide.

**10.15 Interpretations.** In calculating any period of time under this Agreement, the day of the act, event or default from which the designated period of time begins to run is not be included. The term “person” refers to any legal person, and may mean a natural person (individual), a legally created person (such as an entity, trustee, or executor), or an entity (such as a corporation, partnership, or limited liability company). The word “personnel” refers to a person’s employees and individual contractors who are under the person’s direct supervision. The word “affiliate” refers to an individual or entity that controls, is controlled by, or is under common control with the person referred to, where control means ownership of the majority of voting interests of an entity or the right to control the policies of the entity by means of a controlling number of seats on the entity’s governing body. The use of the word “including” should be read to mean “including, without limitation.” All references to monetary amounts mean United States Dollars. The term “parties,” either in lower- or upper-case form, refers to the signatories to this Agreement. For notice purposes, the words “business day,” “business hours,” or the like means Monday – Friday, 9:00 a.m. – 5:00 p.m., United States Central Time, excluding federal public holidays in the United States. A reference to “day” shall mean a calendar day, unless expressly designated as a “business” day. All software and other technology provided for your use is licensed and not sold; any references to a sale or purchase of software or other technology means the sale or purchase of a subscription service. Any requirement in this Agreement that a statement be written, in writing, or a like requirement is satisfied by an email or other digital form of writing unless expressly stated otherwise. Nouns stated in the singular imply the plural as indicated by the context, and pronouns that are gender specific refer to either gender. The Section captions in this Agreement are for convenience only; they are not part of this Agreement and may not be used to interpret the terms of this Agreement.

**10.16 Third-Party Beneficiaries.** There are no other third-party beneficiaries under this Agreement.

**10.17 Severability.** In the event one or more of the terms of this Agreement are adjudicated invalid, illegal, or unenforceable, the adjudicating body may either interpret this Agreement as if such terms had not been included, or may reform such terms to the limited extent necessary to make them valid, legal or enforceable, consistent with the economic and legal incentives underlying the Agreement.

**10.18 Changes to the Services.** You agree that your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Chargify regarding future functionality or features. You acknowledge that Chargify may modify or suspend any of its Services offerings at any time. If a modification or suspension materially and adversely affects your use of the Services, you may terminate the Agreement by giving written notice of the change no later than 30 days following the date of the change and receive a refund of any prepaid fees as your sole and exclusive remedy.

**10.19 General Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

**10.20 Representation by Individual Submitting the Order.** If the individual submitting the Order represents that: (i) if the individual submits the Order on his or her own behalf (including as a sole proprietor), the individual is old enough to enter into contracts and otherwise has the legal capacity to enter into contracts under applicable law; or (ii) if the individual submits the Order on behalf of a

company or other legal entity, the individual has the legal power and authority to bind that entity to the Order and these Service Terms.

**10.21 Changes to Online Service Terms.** Chargify may amend these Services Terms at any time in its sole discretion. Any amendment will become effective as to your Order on the first renewal of the Order that follows the publication of the amendment by at least thirty days. If the amendment materially and adversely impacts your use of the Services, you may terminate the Agreement by giving written notice no later than thirty (30) days following the date the amendment is published and receive a refund of prepaid fees as your sole and exclusive remedy.

**10.22 Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between you and Chargify regarding your use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of these Service Terms or an Order will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any preprinted term or condition stated in any business form is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order, (2) these Services Terms, and (3) the Documentation.

Your use of the Services, both during any free use period and your Order Term, is subject to all of the terms, conditions, and restrictions stated in your Order and these Service Terms, and any restrictions stated on a page on the Site that is part of your Order.

**11. DEFINITIONS.** These terms have the meanings stated:

**Documentation** means Chargify's user and administration guides, FAQ's, Whitepapers and other materials designed to explain the use of the Services, but not including any marketing materials or publicity.

**Order** means an order form prepared by Chargify that you have submitted and that Chargify has accepted that describes the features of the Chargify service plan you selected, and the related fees and Term.

**Personal Data** means information that can be used to identify an individual.

**Plan** means a Chargify bundle of Services included as part of a single offering described on the Chargify Site.

**Services** means Chargify's recurring billing services, communications tools, dashboard, portals, reporting tools, API's, and all related services and Support.

**Site** means [www.chargify.com](http://www.chargify.com), or any other website operated by Chargify for the purpose of offering or providing Services, including any subdomains.

**Support** means the use of the Documentation, and any live human support that is included with the Plan that you Purchase.

**Term** means the initial term and any renewal terms, collectively. **System Data** has the meaning given in Section 5 (*Your Data*).

**Your Data** has the meaning given Section 5 (*Your Data*).

*Chargify is a registered trademark of Chargify, LLC*