Terms of service.

By agreeing to (or issuing a purchase order in relation to) a Services quote, order form or other ordering document or Services-related agreement with Commerce Layer or one of its channel partners (each an "Order Form") or otherwise registering for, accessing or using the Services, Customer unconditionally accepts and agrees to all of the terms of this Agreement. By entering into this agreement on behalf of a company or other legal entity, Customer represents that it has the authority to bind such entity and its affiliates to the terms of this Agreement, and, accordingly, the term "Customer" shall refer to such entity and its affiliates. If Customer does not have such authority, or Customer does not agree to all of the terms of this Agreement, Customer may not use the Services. Please note that we may modify this Agreement as further described in the amendments section below, so you should make sure to check this page from time to time. This Agreement includes any Order Forms and as well as any policies or exhibits linked to or referenced herein.

1 — Services and support

1.1

Commerce Layer, Inc. ("Commerce Layer") provides its headless ecommerce platform that can be used by the Customer to sell their products on online channels and associated software and services (collectively "Service(s)") to you ("Customer") pursuant to these Terms of Service (the "Agreement"). Subject to the terms of this Agreement, Commerce Layer will use commercially reasonable efforts to provide Customer a) the Services solely for Customer's internal business operations in accordance with the terms, limitations and restrictions of each Order Form, and b) reasonable support services in accordance with Commerce Layer's standard practices. Capitalized terms not defined herein shall be given the meaning set forth in the applicable Order Form. With respect to any Software (in any form) that is provided to Customer, Commerce Layer hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use such Software solely internally in connection with the Services and for no other purpose. All Software is Confidential Information of Commerce Layer and subject to the terms of Section 3.

1.2

As part of the registration process, Customer will identify an administrative user name and password for Customer's Commerce Layer account. Commerce Layer reserves the right to refuse registration of, or cancel passwords it deems inappropriate. Commerce Layer reserves the right to change or modify portions of this Agreement at any time. If Commerce Layer does so, it will post the changes on this page and will indicate at the top of this page the date this Agreement was last revised. Commerce Layer will also notify Customer, either through the Services user

interface, in an email notification or through other reasonable means. Any such changes will become effective no earlier than fourteen (14) days after being posted, except that changes addressing new functions of the Services or changes made for legal reasons may become effective immediately. Customer's continued use of the Service after the date any such changes become effective constitutes acceptance of the new Agreement.

1.3

From time to time, Customer may be invited to try certain services at no charge for a free trial or evaluation period or if such services are not generally available to customers (collectively, "Evaluation Services"). Evaluation Services will be designated as beta, pilot, evaluation, trial, limited release or the like. Evaluation Services are for Customer's internal evaluation purposes only and not for production use, are not considered "Services" under this Agreement, are not supported, are provided "as is" without warranty of any kind, and may be subject to additional terms. Unless otherwise stated, any Evaluation Services trial period will expire 60 days from the trial start date. Commerce Layer may discontinue Evaluation Services at any time in its sole discretion and may never make them generally available. Commerce Layer will have no liability for any harm or damage arising out of or in connection with any Evaluation Services.

2 — Restrictions and responsibilities

2.1

Customer will only use the Services as expressly permitted herein, and subject to any terms or restrictions in the applicable Order Form (including, without limitation, any capacity or user limits). Customer further agrees that it will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software (including agent software), documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Commerce Layer or authorized within the Services); use (or disclose) the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; use or access the Services to develop a product or service that is competitive with the Services or engage in competitive analysis or benchmarking; remove any proprietary notices or labels; or modify, adapt or hack the Services, or otherwise attempt to gain unauthorized access to the Service or its related systems or networks.

2.2

Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Commerce Layer's standard published policies and codes of conduct then in effect and all applicable laws and regulations (including, without limitation, those relevant to privacy, marketing, spam, intellectual property and the like). Customer further represents, covenants, and warrants that it is solely responsible for all products and services it makes available to end users through the Services, and Commerce Layer shall not be responsible for any disputes between Customer and any of Customer's users or end customer in connection with

such end customer's purchase of any products or services made available by Customer through use of the Services. Although Commerce Layer has no obligation to monitor Customer's use of the Services, Commerce Layer may do so and may prohibit any use of the Services (or disable content or data) it believes may be (or alleged to be) in violation of the foregoing or any other term of this Agreement.

2.3

Customer may not transmit to or use with the Service: (i) any special categories of personal information (as defined under Art. 9 of the General Data Protection Regulation) to Commerce Layer, (ii) any patient, medical or other protected or regulated health information, (iii) any government IDs, social security numbers or similar information, or (iv) any nonpublic personal information (as defined under the Gramm-Leach-Bliley Act). To the extent Customer uses the Service (and any third party integrations with the Service) to contact or market to individuals, Customer represents, covenants, and warrants that Customer will only do so with prior consent of the individual.

2.4

The Services may provide, or third parties may provide, links or other access to third party sites, services, content and resources (collectively, "Third Party Services"). Commerce Layer has no control over any such Third Party Services and Commerce Layer is not responsible for and does not endorse any such Third Party Services. Customer further acknowledges and agrees that (i) any dealings Customer has with any Third Party Services are solely between Customer and the relevant third party, and (ii) Commerce Layer will not be, directly or indirectly, responsible or liable for, and Customer hereby agrees to hold Commerce Layer harmless from and against, any damages, harm, liabilities, losses or expenses in any way arising from or relating to any such Third Party Services or Customer's use thereof.

2.5

Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

3 — Confidentiality, security, proprietary rights

3.1

Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party).

Proprietary Information of Commerce Layer includes all Software and other non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes Customer Data (as defined below). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person (except employees and contractors involved in the Services who are bound by consistent terms) any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document a) is or becomes generally available to the public, or b) was in its possession or known by it prior to receipt from the Disclosing Party, or c) was rightfully disclosed to it without restriction by a third party, or d) was independently developed without use of any Proprietary Information of the Disclosing Party or e) is required to be disclosed by law.

3.2

Commerce Layer will maintain a security program materially in accordance with industry standards that is designed to (i) ensure the security and integrity of Customer data uploaded to the Service by Customer or collected by Commerce Layer in the provision of the Service ("Customer Data"); (ii) protect against threats or hazards to the security or integrity of Customer Data; and (iii) prevent unauthorized access to Customer Data. In furtherance of the foregoing, Commerce Layer will maintain reasonable administrative, physical and technical safeguards to protect the security of Customer Data, including measures for preventing access, use, modification or disclosure of Customer Data by Commerce Layer personnel except a) to provide and maintain the Service and prevent or address service or technical problems, The b) as required by applicable law, or c) as Customer expressly permits in writing or under this Agreement.

3.3

Customer shall retain all ownerships rights, title and interest in and to all Customer Data and all other Customer technology and intellectual property rights. Commerce Layer shall own and retain all right, title and interest in and to a) the Services and all improvements, enhancements or modifications thereto, b) any software, applications, inventions or other technology developed in connection with Service or support, and c) all intellectual property rights related to any of the foregoing. If Customer provides any suggestions or comments for enhancements or functionality or other feedback to Commerce Layer with respect to the Service, Software or any of Commerce Layer's other technology, products or services, Commerce Layer will have the full, free and unencumbered right to use and otherwise fully exploit the same in connection with its business. No rights or licenses are granted except as expressly set forth herein.

3.4

Notwithstanding anything to the contrary, Commerce Layer shall have the right collect and analyze data and information relating to the use and performance of various aspects of the Services and related technologies, and Commerce Layer will be free (during and after the term hereof) to (i) use such information and data to provide, improve and enhance the Services and

other Commerce Layer offerings, and (ii) otherwise use and disclose such data solely in aggregate or other de-identified form in connection with its business.

4 — Payment of Fees

4.1

Customer will pay Commerce Layer (or its channel partner, if applicable) the then applicable fees for the Services as described in the relevant Order Form (or in the Service itself, as applicable) in accordance with the terms therein (the "Fees"). All Fees are non-cancelable and non-refundable regardless of any early termination of this Agreement. If Customer's use of the Services exceeds any applicable limits set forth on the Order Form or Service (e.g., user limits or limits on copies of client-side agent software) or otherwise requires the payment of additional fees (per the terms of this Agreement or Service), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Commerce Layer reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the initial Service term (as described in the Order Form or when Customer registers for the Service; the "Service Term") or thencurrent renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). Customer hereby authorizes Commerce Layer to bill Customer's payment instrument in advance on a periodic basis in accordance with the terms of the applicable payment plan until Customer terminates this Agreement. If Customer believes that Commerce Layer has billed Customer incorrectly, Customer must contact Commerce Layer no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Commerce Layer's customer support department.

4.2

Commerce Layer may also choose to bill through an invoice, in which case, full payment for invoices issued must be received by Commerce Layer thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Commerce Layer's net income.

5 — Termination

5.1

Subject to earlier termination as provided below, this Agreement is for the Service Term, and shall be automatically renewed for additional periods of the same duration as the Service Term (collectively, the "Term"), unless either party requests termination at least forty-five (45) days prior to the end of the then-current term.

5.2

In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or immediately upon notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement and such breach is not cured during the notice period. Commerce Layer may also reasonably suspend Customer's and/or any user's access to Services at any time in its reasonable discretion if it possesses a good faith belief that Customer's (or any of its users) use of the Service may be in violation of this Agreement or otherwise place Commerce Layer (or its customers or other interests) at risk of harm, damage, loss or liability. Upon termination, Customer's right to use the Services shall immediate terminate, all outstanding Fees due for the Services for the entire Services Term (regardless of any early termination) shall immediately become due and payable, Customer shall return (or at Commerce Layer's option destroy) all Software, and each party shall return to the other all Proprietary Information. Sections 2, 3, 4, 5, 6 and 8-10 shall survive expiration or termination of this Agreement.

6 — Indemnification

Customer will hold harmless and indemnify Commerce Layer from all damages, settlements, attorneys' fees and expenses related to any third party claim arising from or in connection with (i) Customer's breach of this Agreement or (ii) Customer's use of the Service, including any claims related to products and services made available by Customer using the Service.

7 — Warranty disclaimers

Commerce layer does not warrant that the services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the services. Except as expressly set forth in this section, the services are provided "as is" and commerce layer disclaims all warranties, express or implied, including, but not limited to, a) error or interruption of use or for loss or inaccuracy or corruption of data or cost of procurement of substitute goods, services or technology or loss of business, b) the reliability of any tax documents based on information submitted by the customer, and c) implied warranties of merchantability and fitness for a particular purpose and noninfringement.

8 — Limitation of liability

Notwithstanding anything to the contrary, except for breach of sections 2 and 3, neither commerce layer nor its suppliers, officers, affiliates, representatives, contractors or employees shall be responsible or liable with respect to any subject matter of this agreement or terms and conditions related thereto under any contract, negligence, strict liability or other theory: a) for any indirect, exemplary, incidental, special or consequential damages; b) for any matter beyond such commerce layer's reasonable control; or c) any aggregate liability in excess of the fees paid and payable to commerce layer for the services under this agreement in the 12 months prior to the act that gave rise to the liability, in each case, whether or not such party has been advised of the possibility of such damages.

9 — Government Matters

Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

10 — Miscellaneous

Commerce Layer shall have the right to use Customer's name in a factual manner for marketing or promotional purposes on Commerce Layer's website and in other communication with existing or potential Commerce Layer customers. To decline Commerce Layer this right, Customer must email Commerce Layer (at the email address provided in the Service) stating that Customer does not wish to grant Commerce Layer this right. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable or transferable by either party without the other party's prior written consent, except that either party may assign this Agreement without consent to a successor to all or substantially all of such party's assets or business. Commerce Layer may use subcontractors in its performance of this Agreement; provided that Commerce Layer shall remain responsible for any such subcontractor's performance hereunder. Except to the extent the parties have mutually executed and delivered a separate written agreement covering the same Commerce Layer Services (a "Separate Signed Agreement"), this Agreement is 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 this Agreement. In the event of a conflict between the terms of this Agreement and the terms of a Separate Signed Agreement, the terms of the Separate Signed Agreement shall supersede and control. However, any different or additional terms of any purchase order, confirmation, or similar pre-printed form will have no force or effect. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Commerce Layer in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions. Any claim, action or proceeding arising from or relating to this Agreement

may only be brought in the state or federal courts located in Santa Clara County, California and each party hereby consents to the exclusive jurisdiction thereof.

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