

Master Service Agreement

PLEASE READ THIS MASTER SERVICE AGREEMENT ("AGREEMENT") CAREFULLY BEFORE REGISTERING FOR ANY PRINTFECTION SERVICES VIA THE INTERNET OR AN APPLICABLE SALES ORDER.

Printfection, LLC ("Printfection", "we" or "us") owns and/or has a right to license the products and applications demonstrated on and accessed through the printfection.com domain or affiliated sites linked to printfection.com (the "Web Sites") consisting of a promotional item design, ordering, printing, inventory management, fulfillment and analytics system (collectively the "Printfection Services"). By registering to use the Printfection Services you, your company, and any associates of your company (collectively the "Customer" or "you") agree to be bound by the terms of this Agreement, as well as the [Privacy Policy](#) ("PP"), [Terms of Use](#) ("TOU"), and [Printfection Stores Terms & Conditions](#) ("Stores Terms"), which together with any Sales Order you may sign comprises a binding and enforceable agreement. In the event of any conflict between the terms of this Agreement and any Exhibit, document incorporated by reference, or other terms and conditions, the terms of this Agreement will govern and control.

1. Definitions

"Virtual Items" means those items such as apparel, hard goods, paper products and other items customized with your designs or logos that are represented through the Printfection Web Sites and available for you to order and/or fulfill through the Printfection Services. Printfection allows you to store your designs within the Printfection Services, but Printfection may remove such designs at any time in its sole discretion.

"Physical Items" means (i) purchased Virtual Items or (ii) other items selected by you and/or delivered by you to be stored and/or fulfilled by Printfection or its vendors upon your request of the Printfection Services. These Physical Items will be represented within the Printfection Services as Virtual Items.

"Fulfillment Services" means those Printfection Services whereby Printfection manages the storage and shipment of your Physical Items, at your cost, directly to any supported location. Printfection uses authorized third parties for the fulfillment and shipment of all Physical Items.

"Printing Services" means those Printfection Services whereby Printfection manages the application of Customer Supplied Content and the Physical Items either directly or through Printfection agents, affiliates, or authorized third parties.

2. License for Printfection Services

Printfection grants you a revocable, non-transferable, non-sublicensable, non-exclusive license to access and use the Printfection Services for their intended purposes only during the Term (as defined in Section 10). Subject to the other terms and conditions of this Agreement, Printfection will provide Customer with access to the Printfection Services that you wish to utilize through the Internet. No rights, licenses, or other intellectual property is to be conveyed to you and you shall be obligated to follow the Rules & Policies in Section 3 during your use of the Printfection Services.

3. Rules & Policies

3.1 Prohibited Uses. Under the license granted in Section 2 above, you may only use the Printfection Services as expressly permitted herein. Without limiting the foregoing, you may not use the Printfection Services for any of the following:

- 3.1.1 any use that interferes with a third party's ability to use or enjoy the Printfection Services;
- 3.1.2 any use of the Printfection Services that threatens, harasses or intimidates any other user of the Printfection Services or any third party;
- 3.1.3 impersonating another individual or entity; falsely state or otherwise misrepresent your affiliation with a person or entity;
- 3.1.4 violate any applicable local, state, national, or international law, or any regulations having the force of law;
- 3.1.5 solicit personal information from anyone under the age of 18, or send invitations to use the Printfection Services to individuals under the age of 18;
- 3.1.6 any use of use of spiders, robots or any other device or process to monitor the activity on or copy pages from the Printfection Services;
- 3.1.7 reverse engineering, decompiling or disassembling any software or other technology used in conjunction with the Printfection Services;
- 3.1.8 collecting or attempting to collect any electronic information concerning any Customers or other users of the Printfection Services, such as e-mail addresses or other personal information;
- 3.1.9 interfering or disrupting the Printfection Services by using viruses, spyware, or any other programs or technology designed to disrupt or damage any software or hardware;
- 3.1.10 use of any meta tags, search terms, key terms, or keywords which contain Printfection's name, trademarks, or the unauthorized use of any name or trademarks of any other person or entity;
- 3.1.11 any use or action that directly or indirectly assists or encourages any third party to engage in the above mentioned prohibited uses or otherwise violate this Agreement;
- 3.1.12 advertise or offer to sell or buy any goods or services for any business purpose that is not specifically authorized;
- 3.1.13 further or promote any criminal activity or enterprise; or
- 3.1.14 upload or submit any content that (i) infringes or violates any intellectual property or other proprietary rights of any party; (ii) you do not have a right to upload or submit under any law or under contractual or fiduciary relationships; (iii) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (iv) poses or creates a privacy or security risk to any person; (v) is unlawful, harmful, threatening, abusive, harassing, tortious, excessively violent, defamatory, vulgar, obscene, pornographic, libelous, invasive of another's privacy, hateful racially, or ethnically or otherwise objectionable; or (vii) in our sole judgment is objectionable or which restricts or inhibits any other person from using or enjoying the Printfection Services, or which may expose Printfection or its Users to any harm or liability of any type.

3.2 Privacy Policy. In the course of offering the Printfection Services, Printfection collects certain personal and non-personal information from individuals who visit Printfection Web Sites ("Visitors"), companies or individuals who use the Printfection Services ("Customers"), and individuals who redeem or are sent promotional items through the redemption and fulfillment services ("Recipients") (collectively, Visitors, Customers and Recipients are referred to herein as "Users"). By entering into this Agreement, you agree to Printfection's collection, use and disclosure of personal information in accordance with the [Printfection Privacy Policy](#).

3.3 Sending Printfection Physical Items.

- 3.3.1 If you send us Physical Items for the Fulfillment Services, you shall not send any live animals, chemicals, explosives, hazardous materials, illegal drugs, illegal items, or any other items that may be considered harmful, illegal, or a violation of applicable laws, regulations or policies of common carriers (e.g. USPS, UPS, and Fedex) (collectively, "Disallowed Items"). See our Disallowed Items help article for a current list of [disallowed goods](#). If you send us Disallowed Items we have the right to refuse delivery, dispose of, or destroy such Disallowed Items with no liability to you or any third party. Further if you send us any items that are dangerous or hazardous to our facilities or equipment,

such as flammable or lithium battery operated items, we reserve the right to refuse delivery, dispose or or destroy such items without prior notice to you and without liability.

3.3.2 If you send or deliver us Physical Items for the Fulfillment Services, Printfection will not be liable for any (i) third party claims as a result of Shipping the items on your behalf, (ii) claims of damage or injury to the Physical Items on or after arrival at Printfection authorized facilities, or (iii) claims, issues, or actions resulting from the quality of such items. If you require Physical Items ordered through Printfection Services to be integrated with, combined or incorporated with items you deliver to Printfection for Fulfillment Services, Printfection will confirm the quality of such items received by Printfection by any third party on your behalf; however, Printfection will not guarantee the quality of any pieces delivered to us or the quality of any Printed Items, whether printed by Printfection or a third party, that are combined with and stored and/or delivered with such third party items. Once items are combined with Physical Items you deliver to us in connection with Fulfillment Services, Printfection disclaims responsibility regarding the quality of all Physical Items combined or commingled with the items delivered by you.

3.4 Ownership and Risk of Loss. Between you and Printfection; you are, and will remain at all times, the sole owner of your Physical Items. You bear all risk of loss of your Physical Items. Notwithstanding the foregoing, if your Physical Items are lost, stolen, destroyed, damaged, or unaccounted for solely due to the grossly negligent or willful acts of Printfection or any of its personnel ("Lost Items"), you shall promptly deliver to Printfection a statement addressing the Lost Items, the grossly negligent or willful acts of Printfection that led to the Lost Items, and a reasonable statement of the replacement cost of such Lost Items. If Printfection agrees with your statements, it will promptly, at its sole discretion, replace your Lost Items or pay you the reasonable replacement cost for such items. If you ship your items to Printfection, Printfection does not take ownership of such items. Printfection will only have custodial duties for your items.

3.5 Intellectual Property Infringement. Printfection in its sole discretion may limit or prevent access to the Printfection Services by you or your employees or agents in connection with any alleged or actual infringement of any intellectual property rights of others.

4. Virtual and Physical Items Rules and License

4.1 Customer Supplied Content. To create Virtual Items or Physical Items, Printfection allows you to upload, email, or share via link images, graphics, text, or other content (collectively, "Customer Supplied Content") to the Printfection Services.

4.2 Licensing Customer Supplied Content to Printfection. You hereby grant to Printfection, its affiliates, vendors, agents and authorized third parties (in connection with the Printfection Services) a royalty-free, worldwide, transferable, sublicensable, non-exclusive, right and license to use your Customer Supplied Content, in all media existing now or created in the future, as Printfection deems necessary to (i) allow Printfection to satisfy its obligations to you in connection with this Agreement and/or pursuant to the Printfection Services and (ii) enable Printfection to market and promote the Printfection Services in any and all media including on the Web Sites. You retain any and all rights in and to the Customer Supplied Content including, but not limited to any copyright or trademark rights.

4.3 Prohibited Content. You may not provide, by any means, any Customer Supplied Content that is:

- 4.3.1 generally offensive or inappropriate as determined by Printfection in its sole discretion;
- 4.3.2 obscene or pornographic;
- 4.3.3 libelous, slanderous or otherwise defamatory;
- 4.3.4 designed or intended to harass, threaten, or intimidate others;
- 4.3.5 in violation of any applicable, rule, law regulation or ordinance;
- 4.3.6 exploits the images or likeness of minors;
- 4.3.7 infringing on any right of a third party including, but not limited to any rights relating to trademarks, copyrights, trade secret, trade dress, patent, right of publicity, or right of privacy.

4.4 Monitoring Content. Printfection may, in its sole and exclusive discretion, determine whether any Customer Supplied Content complies with this Section 4 and is appropriate for use with the Printfection Services; provided that Printfection does not have any obligation to monitor any submitted Customer Supplied Content.

5. Intellectual Property Rights

All intellectual property rights and all other rights, title and interest in and to the Printfection Services shall remain the exclusive property of Printfection, its affiliates, agents, subcontractors, and/or its licensors. Such rights include, but are not limited to, any and all trademark rights including rights to the mark Printfection®; all copyrights in and to the Printfection Services, and any proprietary rights used in providing the Printfection Services, including, but not limited to computer software and hardware interfaces. You do not acquire any right, title or interest in or to the above mentioned rights through your use of the Printfection Services under this Agreement or otherwise. Nothing created under this Agreement is a joint work. For the sake of clarification this provision shall include any customization of the Printfection Services.

6. Data Ownership

All customer information and data processed through the Printfection Services will become the property of Printfection and Printfection shall grant you access to the data processed through the Printfection Services during the term of this Agreement. Printfection hereby agrees that it will not sell, license, rent or otherwise share any information collected through Printfection Services with any third party except as necessary in the performance of its obligations under this Agreement and as set forth in the Privacy Policy. You acknowledge that Printfection may use Recipient information for the purposes of growing Printfection's Services, conducting marketing activities and analysis, and statistical analysis on an aggregated and anonymous basis.

7. Printfection Services

7.1 Printing Services. As a part of the Printfection Services, you may choose to order Physical Items containing Customer Supplied Content. Customer acknowledges and understands that Printfection engages with third party suppliers and printers to provide such goods and Customers have the option of shipping such printed Physical Items to a location of their choosing or utilizing Printfection's Fulfillment Services. Such Physical Items ordered through the Printfection Services are shown as Virtual Items in the Printfection Services along with pricing for the Physical Items when ordered as a part of the Printing Services. For the sake of clarification, Customer's ownership of such Physical Items occur upon delivery of the items to (i) the Recipient's address or (ii) Printfection's fulfillment center as a part of Fulfillment Services, as indicated in your Virtual Items inventory within the Printfection Services.

7.1.1 Upon ordering Physical Items the Printfection Services will show estimated arrival dates. Such arrival dates are estimates and not guarantees that those dates will be met. If an estimated arrival date is not going to be met Printfection or Printfection's shipping provider will use reasonable efforts to communicate the amended estimated arrival date.

7.1.2 Physical Items are ordered with Customer's approval of the Virtual Items through the Printfection Services. Customer agrees that approval of a Virtual Item(s) is consent for Printfection to print the items as approved. Such approval and order within the Printfection Services is an agreement by the Customer to accept the items as approved and in the quantities listed.

7.1.3 Printfection, at its sole discretion may offer or require physical printed samples for an order. Printfection may not be able to provide a physical sample in some cases. Such physical samples may have sample charges associated with

them. Samples are provided on an “as-is” “where-is” basis and Printfection cannot guarantee that the sample meets the exact specifications that Customer wishes to order as a Physical Item.

7.1.4 By utilizing Printfection’s Printing Services and ordering Physical Items, Customer agrees there may be up to a 3% error rate on Physical Items within the order, including but not limited to misprints, missing items, additional items, wrong sizes, or other errors. Customer acknowledges and agrees that it may not be entitled to any compensation, credit or adjustment on its order as a result of these errors.

7.1.5 For Physical Items shipped directly to Customer, you shall have fourteen (14) days from the date of delivery to you to inspect your items for defects. For items shipped to our fulfillment center under the Fulfillment Services inspections cannot be made on-site at any of our locations. Inspections must be performed by shipping your Physical Items to a location of your choice. You shall have thirty (30) days from the date the Physical Items are received into the Printfection fulfillment center to re-ship such items to Customer’s desired location for inspection of items for defects. Customer will be responsible and liable for all shipping charges from and back to the fulfillment centers. Within 30 days Customer may reject any Physical Items that fail to conform with the Virtual Items or other requirements when ordered. Customer shall notify Printfection by email of such rejection within such 30 day period, and Printfection shall be provided a reasonable opportunity to inspect and verify any claimed defects underlying such rejection. Customer acknowledges that it may not be compensated for rejections of Physical Items that are equal to or less than 3% of the ordered items.

7.2 Fulfillment Services. As a part of the Printfection Services, Customers may choose to have their own Physical Items or the Physical Items ordered through Printfection’s Printing Services shipped to Printfection’s storage and fulfillment center. Physical Items then may be later fulfilled to the Customer directly or to Recipients. Should Customer elect to use the Fulfillment Services, additional charges will be incurred. The Fulfillment Services include storing Customer’s Physical Items on Customer’s behalf, packaging such Physical Items for shipment to Customer or Customer’s Recipients, and Shipping the Physical Items to Customer or Customer’s Recipients. The Fulfillment Services can be accessed and managed through the Printfection Services.

7.2.1 Customer understands and agrees that during storage of Physical Items there may be attrition of those Physical Items. Printfection will endeavor to notify customer of any changes to their inventory due to attrition, but is not required to do so. However, in the event any Customer experiences the loss, misplacement, or breakage or other attrition over 2% of the Customer’s inventory, in total, for the trailing 12 months, such loss will prompt notification to Customer by Printfection. In such event, Printfection may, at its sole discretion, (i) refund the Customer for the cost of the item(s), (2) re-print the missing item(s), or (iii) issue a coupon for use on a future order.

7.2.2 Printfection provides insurance over its fulfillment center(s) with coverage up to \$2,000,000 for all inventory stored on behalf of Customers. However, because Customer is responsible and liable for all Physical Items at fulfillment centers, Printfection requires that Customers secure insurance for their Physical Items stored at any fulfillment center. Printfection’s insurance, if applicable, is secondary to Customer’s insurance as Customer owns all Physical Items within the fulfillment center(s). Failure to have insurance for your Physical Items may result in no coverage available to you in the event of loss.

7.2.3 In performance of the Fulfillment Services and unless otherwise specified within the Printfection Services, Printfection may choose to package any order in any manner in its sole discretion. This may include but is not limited to: using filler, cushioning and packaging within non-descript boxes and poly bags or using Printfection-branded packaging.

7.2.4 Force Majeure: in the event of weather, fire, strikes, acts of god, or other unforeseen and uncontrollable events Printfection cannot guarantee the performance of the Printfection Services, including that all requested fulfillment orders will be shipped to comply with Customer’s desired arrival date. If there is a delay in shipping due to such events Printfection we will endeavor to notify Customer as quickly as possible.

7.2.5 Upon Termination or expiration of this Agreement we will provide you with at least 10 days notice in which you may provide a shipping address to have your remaining Physical Items shipped to, at the then-current cost of Printfection’s Fulfillment Services (the “Notice Period”). If the Notice Period expires and you have not directed us to ship your Physical Items through the Printfection Services, your Physical Items will be considered abandoned and we may dispose of, donate, or destroy your Physical Items in our sole discretion.

7.2.6 Notwithstanding any other provision of this Agreement, in the event that the Customer decides to no longer retain

the Physical Items stored by Printfection (hereinafter referred to as "Unwanted Physical Items"), Customer may request Printfection to dispose of the Unwanted Physical Items by submitting a written request via email to support@printfection.com. If Printfection agrees, the method of disposal (including, without limitation, destruction or donation) shall be at Printfection's sole discretion without any obligation to notify the Customer of the method chosen or the details thereof unless otherwise agreed to in writing. Furthermore, should Printfection opt for donation, the choice of recipient organization(s) for such Unwanted Physical Items shall be solely determined by Printfection without any input, objection, or recourse from the Customer. The Customer hereby releases Printfection from any and all claims, liabilities, or damages that may arise in connection with the disposal, destruction, or donation of Unwanted Physical Items.

7.2.7 Customer must place an order for inbound or outbound shipment of each stock keeping unit ("SKU") of Customer's Physical Items at Printfection's storage and fulfillment center in a rolling twenty-four (24) month period. If there are no inbound or outbound shipments of a SKU of Customer's Physical Items at Printfection's storage and fulfillment center for the prior twenty-four (24) months ("Stale Item"), Printfection will notify Customer of such Stale Item. Customer must place an order for outbound shipment of the Stale Item or provide written authorization for drop shipment of the Stale Item for donation within thirty (30) days of such notification. If Customer does not place an order for such outbound shipment or drop shipment for donation of the Stale Item, or request that Printfection dispose of the Stale Item as an Unwanted Physical Item in accordance with Section 7.2.6, within thirty (30) days of such notification by Printfection, Customer expressly authorizes Printfection to dispose of, donate, or destroy Customer's Stale Item in Printfection's sole discretion with no further liability to Customer.

7.3 Shipping. As a part of the Printfection Services, including both Printing Services and Fulfillment Services, shipping of Physical Items will occur.

7.3.1 Customer is responsible for all shipping costs associated with Physical Items ordered through Printfection Services. The Printfection Services use industry standard third parties in connection with all shipping services and only give estimated arrival times for all orders. Printfection is not responsible for lost, damaged, or missing shipments due to acts of god, weather, third party disruptions, or other shipping issues not caused as a result of Printfection's gross negligence or defects in Printfection Services.

7.3.2 Printfection is not responsible for abandoned, undeliverable, or returned packages due to third party errors, wrong addresses or being declined by Customer or the Recipient.

7.3.3 Printfection will do its best to provide all supporting documentation and, when possible, pre-pay for customs fees. However, every shipping carrier, method and country has different rules and regulations and may require additional documentation or may require the Recipient to pay customs fees. As a part of the services Printfection will provide reasonable support to Customers and Recipients during these processes but may not be able to fully remedy the issue. Customer shall be ultimately responsible for all taxes, fees, duties, and other charges associated with the delivery of all Physical Items, whether to a Customer directed address or a Recipient's address.

7.3.4 Printfection will use commercially reasonable efforts to ship to every country permitted by United States law and regulations, but due to certain rules and regulations, and costs associated with delivery, Printfection will not be able to ship to every country worldwide.

7.3.5 Printfection has the sole right to choose the shipping carrier and shipping method and will charge Customer for all shipping fees and expenses. Printfection does not have and disclaims any responsibility for providing the lowest cost carrier or shipper for any order.

7.3.6 Printfection shall have sole discretion to re-ship merchandise to your recipients due to lost packages, wrong size or other reasons. Printfection is not responsible for covering the cost of the re-shipment or the re-shipped items, or for the costs of any lost items.

7.3.7 In such cases where a recipient of your Physical Items wishes to return such item Printfection is not responsible for asking or ensuring the recipient returns the item. Such returns of Physical Items should be returned to you at your desired office location.

7.4 API Access.

7.4.1 In order to use and access the API for the Printfection Services you must obtain API credentials (a "Token") from Printfection. You may not share your Token with any third party, except when authorized by you and in accordance with this Agreement, giving a third party access to your account you, and any of your authorized agents shall keep such Token and all Login information secure, and shall use the Token as your sole means of accessing the API. Any authorized third parties accessing a Customer's account using their API key shall also be bound to this Agreement, and you shall ensure such parties are aware of the terms and provisions herein.

7.4.2 Subject to this Agreement, including the restrictions set forth in Section 5, Printfection grants to Customer a non-exclusive, non-transferable, non-sublicensable, worldwide, revocable right and license during the Term (as defined in Section 10) to: (a) use and make calls to the API to develop, implement and distribute applications solely for use by Customer in connection with the Printfection Services; (b) use, reproduce, distribute, and transmit data to the extent necessary to format and display it through the applications; and (c) use and display marks only to identify that the data originates from the Printfection Services.

7.4.3 Customer's software application, web site, product or service that Customer creates or accesses utilizing Printfection's API shall not substantially replicate any products or services offered by Printfection, including, without limitation, functionality or platforms where Printfection offers its own client or function.

7.4.4 Disclosure to Platform Applications. If you use any third-party applications in connection with using the Printfection API, those applications may access and share certain information about you with others. Examples of this include but are not limited to your campaigns, items, item images, designs, orders, order tracking and recipient information. You may opt-out of the sharing of some or all of your information by removing your API from the third-party application. Printfection does not screen or approve these third-party applications and cannot control how such applications use any personally identifiable information that they may be obtained in connection with Printfection. Printfection is not responsible and does not control these third party applications. In addition, these applications may require you to agree with their own privacy policies, terms of service, or other policies, which may give them additional rights or impose additional obligations on you. Please make sure to review these terms and policies carefully before giving your API key to any third-party applications. If you suspect abuse or misuse of information by a third-party applications, you are responsible for reporting such abuse to such third parties in accordance with the terms of the application. Notwithstanding the foregoing, you also agree to report the abuse to Printfection.

8. Representations and Warranties

8.1 Representations and Warranties of the Parties. The parties represent and warrant to each other that: (i) they have the full power and authority to enter into and perform the obligations in this Agreement, (ii) the execution and performance of their obligations under this Agreement do not constitute a breach of or conflict with any other agreement or arrangement by which either party is bound, and (iii) this Agreement is a legal, valid and binding obligation of the party entering into this Agreement, enforceable in accordance with its terms and conditions.

8.2 Customer Representations and Warranties. You represent and warrant to Printfection that: (i) your use of the Printfection Services will not infringe the copyright, trademark, patent, trade secret, right of privacy, right of publicity or any other legal right of any third party and will comply with all applicable laws, rules, and regulations, (ii) you are the true owner of the Customer Supplied Content and that the content is free from any and all liens, encumbrances, or any other restrictions on your right to display or use the content, and that there are to the best of your knowledge no pending or threatened claims, demands or litigation concerning any of the Customer Supplied Content, (iii) Printfection will not be required to make any payments such as licensing fees or royalties to any third party in connection with the Customer Supplied Content, (iv) the Customer Supplied Content does not violate Section 4.3 of this Agreement, (v) you own any Physical Items you send to us and it is free of all liens, and no liens will be placed upon your Physical items due to your acts or omissions (vi) any delivery of data or Customer's client

information or Recipient information by you to Printfection is approved by such party and Printfection is an authorized third party beneficiary to receive such information from you in connection with the Printfection Services, and (vii) your use of the Printfection API whether to submit data or information to Printfection or to distribute data or information from Printfection will not breach, violate or infringe the rights of any third party.

8.3 PRINTFECTION PROVIDES THE PRINTFECTION SERVICES ON AN “AS IS” AND “AS AVAILABLE” BASIS. PRINTFECTION DOES NOT REPRESENT OR WARRANT THAT THE PRINTFECTION SERVICES, INCLUDING THE VIRTUAL ITEMS OR PHYSICAL ITEMS, OR THEIR USE: (i) WILL BE UNINTERRUPTED, (ii) WILL BE FREE OF INACCURACIES OR ERRORS, (iii) WILL MEET YOUR REQUIREMENTS. EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THESE TERMS, OUR PRODUCTS AND SERVICES, INCLUDING ALL MATERIALS INCORPORATED THEREIN, ARE PROVIDED “AS IS” AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, PRINTFECTION, ITS DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, REPRESENTATIVES AND AFFILIATES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, ACCURACY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. CERTAIN APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. NO STATEMENT OF PRINTFECTION OR ANY OF ITS DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, REPRESENTATIVES AND AFFILIATES SHALL CREATE ANY WARRANTY OTHER THAN THOSE EXPRESSLY CONTAINED IN THESE TERMS.

THE PHYSICAL ITEMS RECEIVED BY CUSTOMER AND RECIPIENTS CONTAIN NO WARRANTY AND PRINTFECTION IS NOT LIABILITY FOR ANY DEFECTIVE ITEMS, AND DISCLAIMS ANY LIABILITY TO ANY HARM CAUSED BY SUCH ITEMS WHETHER DEFECTIVE OR NOT. ALL ITEMS ARE PROVIDED ON AN “AS IS” AND “WHERE IS” BASIS WITHOUT ANY WARRANTIES OF ANY KIND.

9. Indemnification and Limitation of Liability

9.1 You will indemnify and hold Printfection and its employees, representatives, agents, affiliates, directors, officers, managers, and members (the “Indemnified Parties”) harmless from any damages, losses, costs, claims, threatened claims, demands, reasonable expenses (including attorneys’ fees), and liabilities (a “Loss”) arising from any breach or any allegation of any breach of any term, covenant, warranty, or obligation of this Agreement, the Privacy Policy, or any Terms of Use by Customer, or any Customer affiliate or agent, or any use of the Printfection Services that violates or infringes the rights of any third party in connection with any Customer Supplied Content or other information provided by Customer. If you are required to indemnify Printfection, Printfection will have the right to control the defense, settlement, and resolution of any Claim at your sole expense. You may not settle or otherwise resolve any Claim without Printfection’s prior express written consent.

9.2 EXCLUSION OF DAMAGES. PRINTFECTION WILL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES (INCLUDING DAMAGES RELATING TO LOST PROFITS, LOST DATA OR LOSS OF GOODWILL) ARISING OUT OF, RELATING TO OR CONNECTED WITH THE USE OF PRINTFECTION SERVICES, BASED ON ANY CAUSE OF ACTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.3 LIMITATION OF LIABILITY. IN NO EVENT WILL THE LIABILITY OF PRINTFECTION IN CONNECTION WITH THIS AGREEMENT OR THE PRINTFECTION SERVICES EXCEED THE AMOUNTS PAID BY YOU TO PRINTFECTION DURING THE SIX MONTHS IMMEDIATELY PRECEDING THE ACTS GIVING RISE TO SUCH LIABILITY.

10. Term and Termination

10.1 Term. This Agreement shall continue in full force and effect as long as you continue to subscribe to the Printfection Services unless terminated in accordance with this Section 10 ("Term").

10.2 Termination. Printfection may suspend or terminate your use of the Printfection Services or any portion, aspect or feature of the Printfection Services, for any reason, or no reason, at any time, in its sole and absolute discretion. Either party may terminate this Agreement upon thirty (30) days' written notice if the other party materially breaches any of the terms of this Agreement (including Customer's failure to pay Subscription or other fees when due) and the breaching party fails to cure such breach within such thirty (30) day period. Termination of this Agreement shall not relieve you of your responsibility to pay for any previously ordered Physical Items or the cost of shipping of Physical Items post termination, or other obligations owed to Printfection under this Agreement.

If either party shall be adjudicated a bankrupt, institute voluntary proceedings for Bankruptcy protection, make a general assignment for the benefit of its creditors, apply for or consent to the appointment of a Recipient for it or its property, or admit in writing its inability to pay its debts as they become due, the other party may immediately terminate this Agreement by written notice. Any such termination shall not relieve either party from any accrued obligations hereunder.

11. Payment and Taxes

11.1 Payment. Fees payable to Printfection are provided within the Printfection Services and based upon your Subscription, Virtual Items, Printing Services, Fulfillment Services and shipping choices. All payments shall be due upon receipt of invoice or electronic notification in the Printfection Services and payable at time of purchase via credit card unless approved for credit terms. Should you be approved for credit terms all payments are due within 30 days of the date of the invoice. A late fee may be charged on overdue amounts at a rate of eighteen percent per annum (18%), or the maximum permitted by law, and late fees shall be applied monthly on all outstanding balances commencing with the date payment was due. Printfection reserves the right to charge and you agree to pay any credit card processing fee on credit card orders up to 3%. All costs incurred for collection of amounts due (including, but not limited to, attorney fees) and any bank charges shall be paid by you. No Physical Items shall be shipped until payment is received or credit terms are approved. If under credit terms you are consistently past due Printfection, in its sole discretion, may withhold Physical Items until your account is brought current. If you are past due on any subscription payment or invoice for 60 days, Printfection may dispose of, donate, or destroy all Physical Items with no liability to you or your customers or Recipients.

11.2 Upgrades & Downgrades. Customer may, at Customer's option, choose to alter Customer's subscription through the Printfection Services or a revised Sales Order. Customer agrees that upon altering such subscription to the Printfection Services it will continue to be bound by this Agreement and only the amount and features of the subscription shall change. Such subscription alterations may include, but are not limited to, upgrade or downgrade to features and functionality, fulfillment services, and available Virtual and Physical Items.

11.3 Taxes. The fees and all other amounts due under this Agreement are exclusive of all taxes, duties, and assessments, including without limitation all sales, withholding, VAT, excise, ad valorem, and use taxes (collectively, the "Taxes"). Customer shall be solely responsible for and shall pay directly, any and all Taxes relating to its use of the Printfection Services, the production, delivery, or fulfillment of any Physical Items. Customer shall indemnify, defend and hold Printfection harmless from and against any claims, demands, liens, liabilities, or other obligations or causes of actions arising from Customer's use of the Printfection Services and any applicable Taxes arising from such use except for those taxes based on Printfection's income.

12. Confidentiality

“Confidential Information” means all information, regardless of the form in which it is communicated or maintained (whether or not prepared by the disclosing party) (the “Discloser”) that contains or otherwise reflects information concerning Discloser and/or its affiliates that is provided by or on behalf of Discloser in the course of services offered and provided under this Agreement. Confidential Information does not include any information that (a) becomes generally available to the public other than as result of a disclosure by recipient or any of its agents, (b) is subsequently lawfully disclosed to the recipient by a third party other than by any means in violation of this Agreement or any other duty owed to Discloser, (c) was rightfully in recipient’s possession free of any obligation of confidence at the time of disclosure to recipient, or (d) was or is independently developed by recipient. Except as permitted by this Agreement, neither party will (a) make any use of the other party’s Confidential Information; (b) acquire any right in the other party’s Confidential Information; (c) disclose any of the other party’s Confidential Information to a third party; or (d) refuse to promptly return or destroy the other party’s Confidential Information upon request. Further, either party may disclose the other party’s Confidential Information to the extent required by law or by order of a court or governmental agency after providing notice to the other party, and providing such party with the opportunity to seek a protective order. The parties may issue mutually approved press releases announcing the consummation of this Agreement and the parties may disclose the existence of this Agreement and the parties’ relationship in their respective marketing materials, financial reports, presentations, web site materials, customer lists and other media, but Customer shall submit any such disclosure to Printfection for approval prior to any disclosure and in no event may either party disclose the financial or other terms of this Agreement. The covenants set forth in this section will apply upon commencement of this Agreement to any Confidential Information disclosed to the receiving party, including Confidential Information disclosed during the course of negotiation of this Agreement; and will continue after termination of this Agreement.

13. Notice

All notices required or permitted to be given under this Agreement will be in writing and delivered to the other party by any of the following methods: (i) U.S. mail, (ii) overnight courier, (iii) electronic mail or (iv) if notice is given by Printfection, by a posting on the Printfection Services. If you give notice to Printfection, you must use the following address: 3700 Quebec St, Unit 100-136, Denver, CO 80207. If Printfection provides notice to you, Printfection will use the contact information provided by you to Printfection. All notices will be deemed received as follows: (i) if by delivery by U.S. mail, seven (7) business days after dispatch, (ii) if by overnight courier, on the date receipt is confirmed by such courier service, or (iii) if by electronic mail, 24 hours after the message was sent, if no “system error” or other notice of non-delivery is generated. If applicable law requires that a given communication be “in writing,” you agree that email communication will satisfy this requirement.

14. Choice of Law and Dispute Resolution

This Agreement, and any exhibits, attachments, or agreements incorporated by reference in this Agreement shall be governed by laws of the State of Colorado, without regard to its conflicts of laws principles. Any legal action, suit or proceeding arising out of or relating to this Agreement or the breach thereof shall be instituted in a federal or state court of competent jurisdiction in the State of Colorado, County of Denver and each party hereby consents and submits to the personal jurisdiction of such court, waives any objection to venue in such court and consents to service of process by registered or certified mail, return receipt requested, at the address to which notices to such party shall be sent pursuant to this Agreement.

15. General

15.1 Entire Agreement. This Agreement, all of the policies and other agreements mentioned herein, which are each hereby incorporated herein by reference, contain the entire understanding of the parties regarding its subject matter, and supersedes all prior and contemporaneous agreements and understandings between the parties regarding its subject matter.

15.2 No Waiver. No failure or delay by a party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.

15.3 Severability. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision of this Agreement, all of which will remain in full force and effect.

15.4 Assignment. This Agreement will be binding upon each party hereto and its successors and permitted assigns. Except in the case of an acquisition for all, or substantially all, of a party's assets this Agreement cannot be assigned or transferred by you without the prior written consent of Printfection.

15.5 Modification of the Service. Printfection reserves the right to add, delete and/or modify any of the terms and conditions contained in this Agreement, at any time and in its sole discretion, by posting a change notice or a new agreement on the Printfection Web Sites. For certain changes to this Agreement, Printfection, may at its option, notify you by email at the email address in our then-current records. If any modification is unacceptable to you, your only recourse is to discontinue the use of our Printfection Services. Your continued use of the Printfection Services following the posting of a change notice or new Agreement on the services will constitute affirmative and binding acceptance by you of the changes.

15.6 Third-Party Services. Printfection may, in its absolute discretion use third parties to provide the Printfection Services or any component thereof. These third party independent contractors and vendors are not related to Printfection and Printfection does not exercise any control or supervision over such contractors and vendors or the services that they provide. You agree that Printfection will not be liable to you in any way for Printfection's use of such third party independent contractors and vendors. In some cases, you may choose to work with these third parties directly. You understand that Printfection is not associated with those third parties, and that such third parties may have their own terms of use and other policies which govern your use of their services.

15.7 Survival. Accrued payment obligations, this section 15 and sections 5, 6, 8, 9, 10, 11, 12, and 14 will survive any expiration or termination of this Agreement. Upon expiration or termination of this Agreement, Printfection may delete any Customer Supplied Content or other materials relating to your use of the Printfection Services on Printfection's servers or otherwise in its possession and Printfection will have no liability to you or any third party for doing so.

15.8 Attorneys' Fees. In the event legal action is made necessary to enforce any provision of this Agreement, the prevailing party shall be paid by the other all reasonable attorneys' fees for such action, together with all costs and expenses incurred pursuant to such legal action.