

MAGENTO COMMERCE SOFTWARE LICENSE AGREEMENT

This Magento Commerce Software License Agreement, together with any Order Forms and any terms and conditions expressly incorporated herein by reference, (the "Agreement") is made and entered into by and between X.commerce, Inc. d/b/a Magento, Inc. ("Magento") and the Customer (as defined below), each, a "Party" or collectively the "Parties." By clicking "agree" (if available), executing an Order Form (as defined below), or otherwise executing this Agreement, Customer agrees to be bound by the terms of this Agreement. If Customer does not agree with (or cannot comply with) all of the terms of the Agreement, Customer shall not install, copy or otherwise use the Software. In consideration of the mutual promises exchanged herein, the Parties agree as follows:

1. DEFINITIONS.

1.1 "Affiliate" of a Party means an entity or person that directly or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such Party, where "Control" means (a) possession of the power to direct or cause the direction of the management and policies of that Party, whether through voting securities, by contract or otherwise; or (b) ownership of or voting rights over at least 50% of the outstanding voting or equity of the Party. An entity shall be deemed an affiliate for only so long as such Control exists.

1.2 "Average Order Value" or "AOV" means the quotient of (a) the GMV for any given Contract Year; and (b) the number of Transactions during the same Contract Year.

1.3 "Content" means owned, controlled or otherwise licensed: (a) technology, including, but not limited to, any features functionality, or other application program interface; (b) content or information, including any text, graphics, photographs, images, video, audio and/or other data or information; (c) specifications, data, databases, processes, systems, methods of operation, concepts, software, software libraries, code, templates, command line tools, user interfaces, protocols, formats, techniques, algorithms, methods, devices, procedures, functionalities or other technology or similar item; (d) promotional and advertising materials, price comparisons and other pricing information, product descriptions and similar data and information; (e) email content, addresses and similar information; (f) URLs, now or at any time during the Term; (g) any adaptations, derivative work, modifications, custom modules, extensions, themes, applications and add-ons of the information and materials described above; and (h) all Intellectual Property Rights embodied in any of the foregoing.

1.4 "Contract Year" means any period of one (1) year used for the calculation of the GMV and AOV during any Term of the Agreement beginning, for the Initial Term, on the Term start date specified in the Order Form, and otherwise on an anniversary thereof.

1.5 "Copyleft Software" means software, content, materials, and/or works of authorship licensed under terms that (a) grant, impose, or purport to impose a requirement or condition on the software or other technology combined or otherwise used or distributed therewith; (b) require or purport to require that software or other technology combined or otherwise used or distributed therewith be made available in source code form; (c) requires or purports to require that software or technology combined or otherwise used or distributed therewith be licensed for the purpose of making modifications or derivative works; (d) requires or purports to require that software or any other technology combined or otherwise used or distributed therewith be redistributable at no charge; or (e) may grant or purport to grant to third parties any rights or immunities under Magento's proprietary rights in the Software or any portion thereof.

1.6 "Customer" means the subscribing entity set forth in an Order Form, who through its authorized personnel, uses or otherwise accesses the Software pursuant to the terms of this Agreement.

1.7 "Customer Content" means any Content provided by or on behalf of Customer, or by its End Users, to, or to interface with, the Software.

1.8 "Disputed Amounts" means amounts disputed by Customer in a Notice and in good faith as billing errors.

1.9 "Documentation" means the Magento developer or administrator documentation and/or Magento merchant guides for, and provided with, the Software, and as may be updated by Magento from time to time.

1.10 "End User" means any individual or entity of any kind that directly or indirectly through another user: visits, accesses or uses the Sites.

1.11 "Gross Merchandise Value" or "GMV" means the total value of all Transactions processed through a Site during any given Contract Year, excluding (a) any shipping, handling and customs costs charged to End Users; (b) any taxes Customer collects from End Users as part of any Transaction; and (c) any financing charges and interest for installments charged to End Users.

1.12 "Indirect Taxes" means applicable taxes and duties, including, without limitation, VAT, GST, excise taxes, sales and transactions taxes, and gross tax receipts.

1.13 "Intellectual Property Rights" means (a) any and all now known or hereafter known tangible and intangible: (i) rights associated with works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask-works; (ii) trademark, trade dress and trade name

rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms and other industrial property rights; and (v) other intellectual and industrial property rights of every kind and nature throughout the universe, however designated, whether arising by operation of law, contract, license, or otherwise; and (b) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof or hereafter in force regarding any of the foregoing and under the laws of any jurisdiction.

1.14 "Losses" means any claims, damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees).

1.15 "Magento Content" means any Content that is made available to Customer by or on behalf of Magento in accordance with the terms of this Agreement, including the Software.

1.16 "Magento Open Source" means the ecommerce platform software developed and owned, in whole or in part by Magento and licensed under an Open Source Initiative (OSI) approved license, including but not limited to software available at: <https://magento.com/tech-resources/download> (or its successor locations), and as may be updated by Magento from time to time.

1.17 "Modifications" means any derivative work based on the Software, including modifications, supplements, enhancements or additions thereof or thereto, that are developed by Customer or its Affiliates (or any third party on behalf of any of the foregoing), including without limitation, any software related to the configuration, integration, implementation, or localizations of the Software.

1.18 "Notice" means any notice provided in accordance with Section 12.8.

1.19 "Open Source Software" means the software included in or with the Software that is (a) listed or otherwise identified as open source software in the Software or documentation by links or otherwise, as may be amended by Magento from time to time; or (b) also published or made available to the public by a third-party licensor for use and distribution on a royalty-free basis.

1.20 "Order Form" is an order form pursuant to this Agreement (and may include any electronically submitted order form) that sets forth the applicable fees, the Term start date and end dates, and other terms and conditions applicable to Customer's use of the Software and Support Services.

1.21 "Site" means any website, other related mobile websites, services, tools and other applications owned and operated by Customer using the Software, subject to the limit on authorized Unique Domains as set forth in the applicable Order Form.

1.22 "Software" means the Magento Commerce software that is developed and owned by Magento, in whole or in part, and made available to Customer hereunder, and subject to the terms of this Agreement.

1.23 "Support Services" means Magento's standard support services for the Software, as set forth in Exhibit A.

1.24 "Term" means any Initial Term or Renewal Term, both as defined under Section 6.1 under the Agreement.

1.25 "Transaction" means any order placed by an End User, by whatever means, that is accepted and/or processed by the Software, (a) even if such order is later subject to a refund, return, chargeback or any other reversal, voluntary or involuntary; and (b) regardless of whether Customer receives any payment for such order.

1.26 "Unique Domain" shall mean any unique combination of (a) a top-level domain (TLD); (b) a second level domain (SLD); and (c) country or geographic region identifiers supported through subdomains, country code top-level domains (ccTLD's) or subfolders. By way of example, in the domain name "uk.magento.co.uk/uk", "uk." is the subdomain, "magento" is the SLD, ".co.uk" is the TLD and "/uk" is the subfolder. For clarity, only subdomains, subfolder and ccTLDs used to identify countries or geographic regions shall be considered part of a unique domain.

2. SOFTWARE LICENSE.

- A. Subject to the terms and conditions of this Agreement (including Customer's compliance with the applicable Documentation) and payment of the applicable Subscription Fees (as defined below), Magento grants Customer a limited, personal, revocable, non-exclusive, non-transferrable, non-sublicensable license to install, reproduce and use internally the Software, as provided to Customer in source code format, and create and use Modifications of the Software, in both cases for the sole purpose of creating and running Customer's Sites. The Software may include Open Source Software. Magento shall make the Software available to Customer on the agreed upon delivery date, provided Magento has received the applicable Subscription Fees in full.
- B. Restrictions. Customer shall not (and shall ensure that its employees, contractors and other third parties do not): (a) exploit the licenses set forth in Section 2A above for any purpose other than creating and maintaining the Sites used for promoting, selling or providing the Customer's products and services to End Users; (b) provide, use, or allow others to use, the Software for the benefit of third parties; (c) reverse engineer, disassemble, decompile or apply any other process or procedure to derive the source code of any closed source software included (if any); (d) access, use or develop the Software in a way intended to avoid incurring fees or exceeding usage limits or quotas; (e) sell, offer to sell, distribute, disclose,

sublicense or otherwise make available the Software in a manner that is not authorized under this Agreement; (f) assert or authorize, assist, or encourage any third party to assert, any claim of infringement of Intellectual Property Rights regarding the Software; (g) use any Copyleft Software in connection with the Software; (h) use, host, support or assist in the use of Magento Open Source in combination with the Software; (i) imply any relationship or affiliation between Magento and Customer except as expressly permitted by this Agreement; (j) use the Software for the purpose of building similar or competitive product or service; or (k) use or permit the use of any tools in order to probe, scan or attempt to penetrate or benchmark the Software with the exception of tools necessary to validate the performance or security of the Customer's Site(s).

- (i) Customer (on behalf of itself and its Affiliates) hereby irrevocably waives and agrees to never assert any right in such Modifications, against Magento and its Affiliates or its direct or indirect sublicensees.

2.2 Early Adopter Programs. From time to time, Magento may invite Customer to try pre-release and/or beta features, functionalities, or modules of the Software or other Magento services that are made available to Customer to use and evaluate ("Early Adopter Programs"). While completely optional, if Customer agrees to participate, Customer: (a) agrees to use and test under the applicable Early Adopter Program and to provide Feedback (as defined in Section 8.5); and (b) acknowledges that such features are for evaluation purposes only and not for production use, not considered part of the Software under the Agreement, not supported, are provided "as is" with no warranties of any kind, and may be subject to additional terms. Any such trial period will expire upon the date that a version of the feature becomes generally available or Magento elects to discontinue an Early Adopter Program. Magento may discontinue Early Adopter Programs at any time in our sole discretion and may never make them generally available.

2.3 Patches, Updates and Upgrades. Magento may provide Customer with patches, updates or upgrades to the Software as part of the provision of Support Services.

2.4 Government Customers. Software licensed under this Agreement is "commercial computer software" as that term is defined in the Federal Acquisition Regulation ("FAR") at FAR 2.101, and is comprised of commercial computer software and commercial computer software documentation (collectively, the "Commercial Software"). If the Commercial Software is licensed or acquired by or on behalf of a civilian agency of the U.S. Government, the U.S. Government's rights to use, modify, reproduce, release, perform, display or disclose the Commercial Software are as set forth in this Agreement, consistent with 48 C.F.R. 12.212 (Computer Software) of the FAR and any successor regulation. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government's right to use, modify, reproduce, release, perform, display, or disclose the Commercial Software are as set forth in this Agreement, consistent with 48 C.F.R. 227.7201-1 through 227.7202-4 of the DOD FAR Supplement ("DFARS") and any successor regulation. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7201-1 through 227.7202-4, in a case of contradiction between this Government Customers clause and any other FAR, DFARS, or other clause or provisions that address Government rights in the Commercial Software that may be included in any other agreement under which the Commercial Software is licensed or acquired, this Government Customers clause will prevail.

3. CUSTOMER RESPONSIBILITIES.

3.1 Conduct. Customer is solely responsible for the development, content, operation, maintenance, and use of Customer Content, including but not limited to: (a) any claims relating to Customer Content, including claimed violations of applicable law; (b) properly handling and processing notices that are sent to Customer (or any Customer Affiliate) regarding Customer Content, such as by any person claiming that Customer Content violates such person's rights, including notices pursuant to the Digital Millennium Copyright Act; (c) providing appropriate security for and protection of Customer Content, which may include use of encryption technology to protect Customer Content from unauthorized access; and (d) applying necessary security patches to the Software when supplied by Magento. Furthermore, Customer shall (e) not use the Software on more than five (5) Unique Domains and shall notify Magento immediately on the launch of each Unique Domain; and (f) protect the privacy and legal rights of all visitors to Customer's Sites ("Visitors") and End Users and provide and maintain a legally adequate privacy notice to Visitors and End Users that addresses, without limitation: (i) the permitted access and use of information, including personal data, and the limited purposes for which such information may be used; and (ii) the sharing of such information, including that information specified in Section 4.2, with providers such as Magento, for the purposes specified in this Agreement.

3.2 The Customer will be the seller of record and will be responsible for independently establishing the selling price with respect to the merchandise sold or furnished through the Software or any other means. Customer is responsible for ensuring that the offer, advertising, sale, shipment and delivery and/or use of all merchandise and services in all applicable countries complies with all applicable laws. Customer is responsible for providing customer service (if any) to End Users.

3.3 Export and Import Restrictions. Software and its Documentation that are licensed under this Agreement may be subject to the U.S. Export Administration Act (50 USC 2401-2420) and the Export Administration Regulations (EAR) (15 CFR 768-799) promulgated thereunder; the U.S. Arms Export Control Act (22 USC 2751-2779) and the International Traffic in Arms Regulations (ITAR) (22 CFR 120-130) promulgated thereunder; the Regulations of the Office of Foreign Assets Control of the U.S. Treasury Department (31 CFR 500-599); and export or import restrictions of any other jurisdiction as may apply to the export or import of such software and computer software documentation. Customer shall comply with any and all such applicable import and export laws and regulations, including any applicable restrictions relating to sanctioned countries and denied parties. Customer

represents that it (and its Affiliates and employees) is not named on any U.S. government list of persons or entities prohibited from receiving exports and Customer shall not permit End Users to access or use the Software in violation of any U.S. export embargo, prohibition or restriction.

4. MAGENTO RESPONSIBILITIES.

4.1 Privacy. Magento will not access, use or disclose Customer Content; except as necessary to maintain and provide the Software and Support Services to Customer, or as necessary to comply with the law or an order of a governmental or regulatory body, or as expressly set forth in this Agreement. Magento agrees to comply with the data processing obligations set forth in the Magento Data Processing Agreement, at www.magento.com/legal/terms (or its successor location), the terms of which are incorporated herein by reference.

4.2 Analytics. Customer grants Magento a non-exclusive, worldwide, irrevocable, perpetual, royalty-free right and license to use all Customer data that Magento may obtain through: (a) accessing the Sites; (b) providing and supporting the Software; and (c) accessing analytics data and any unique account identifiers provided to Magento by Customer for the purposes of: (i) providing Support Services or other services to Customer; (ii) improving the Software, Support Services or Magento services; (iii) performing analyses related to the Software and Customer's use of the Software; and (iv) monitoring the performance and use of the Software. The foregoing license includes the right for Magento to develop and publish or otherwise make available broadly applicable insights regarding aggregated data but only when the data has been aggregated or de-identified so that such insights cannot reasonably be used to identify Customer or End Users. Examples of Magento's use of such aggregated data include, but are not limited to, statistics aggregated across all of Magento's customers on metrics such as the size of data sets, the number of users, revenue, number of transactions, and growth rates, as well as to analyze trends and improve product functionality, and for marketing, research, and benchmarking purposes.

4.3 Magento may subcontract or otherwise outsource any part of its obligations hereunder in its sole discretion and Magento will remain solely responsible for the performance of any such subcontractor.

5. FEES AND PAYMENT.

5.1 Subscription Fees. Customer shall pay the subscription fees ("Subscription Fees") based on certain service configuration items (the "Service Configuration Items") as specified in the Order Form. Customer hereby authorizes Magento, if applicable, to charge its credit card or other payment instrument (or issue an ACH transaction) for Subscription Fees, and any applicable Taxes in arrears or at time of order, as the case may be, and all in accordance with the payment schedule set forth in the Order Form.

- (a) Gross Merchandise Value, Average Order Value, and Subscription Fee Adjustments. Customer acknowledges and agrees that the Subscription Fees specified in the Order Form are based on the GMV threshold and AOV threshold provided by Customer, and are as set forth on the Order Form and that the Subscription Fees may be subject to adjustments into higher Subscription Fee tiers if the actual GMV is higher than the GMV threshold. If the Customer's actual GMV for any given Contract Year is higher than the GMV threshold, the Subscription Fees for the subsequent full Contract Year will be adjusted accordingly with then-current pricing. No downward adjustments to lower Subscription Fee tiers will be made under the Agreement, regardless of the actual GMV. In addition, Magento has the right to increase the Subscription Fees by no more than five percent (5%) once during each Contract Year, beginning with the first anniversary of the Term. Each such adjustment, if any, is effective for the full duration of the Contract Year for which such adjustment was executed and the adjusted Subscription Fee becomes the Subscription Fee under the Agreement.

5.2 Changes to Specifications. Without limiting anything in this Section 5, Customer may change any of its Service Configuration Items as set forth in the Order Form, with thirty (30) days written Notice, subject to mutual agreement by the Parties and the payment of additional fees (if applicable) and which will be made in accordance with the payment terms in this Section 5.

5.3 On-Boarding Fees. Customer shall pay Magento a one-time on-boarding fee if applicable, in the amount set forth on the Order Form ("On-Boarding Fees").

5.4 Payment Terms. All fees payable by Customer to Magento are non-refundable and non-cancellable and are subject to the payment schedule as set forth in the Order Form. All amounts payable by Customer under this Agreement will be paid to Magento without setoff or counterclaim and without deduction or withholding, provided that Disputed Amounts will be handled as set forth below. Magento may elect to charge Customer interest at the rate of one point five percent (1.5%) per month (or the highest rate permitted by law, if less) on all late payments.

5.5 Disputed Amounts. For any Disputed Amounts, Customer will provide Notice to Magento, including the basis for the dispute (including any supporting documentation), and the parties will meet within thirty (30) days of the date of the Notice to resolve the dispute. If the parties fail to resolve the dispute within such thirty (30) day period, Magento may terminate this Agreement immediately pursuant to Section 6.2.

5.6 Taxes. Each Party will be responsible, as required under applicable law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that Party with respect to the transactions and payments under this Agreement. All fees payable by Customer are exclusive of Indirect Taxes. Magento may charge and Customer will pay applicable Indirect Taxes

that Magento is legally obligated or allowed to collect from Customer. Customer will provide such information to Magento as reasonably required to determine whether Magento is obligated to collect Indirect Taxes from Customer. Magento will not collect, and Customer will not pay, any Indirect Tax for which Customer furnishes Magento a properly completed exemption certificate or a direct payment permit certificate for which Magento may claim an available exemption from such Indirect Tax. All payments made by Customer to Magento under this Agreement will be made free and clear of any withholding or deduction for taxes. If any such taxes (for example, international withholding taxes) are required to be withheld on any payment, Customer will pay such additional amounts as are necessary so that the net amount received by Magento is equal to the amount then due and payable under this Agreement.

5.7 Audit Rights. Magento may include means within the Software to audit or limit Customer's usage of the Software to ensure such usage is consistent with the terms of this Agreement and to determine Customer's AOV and GMV. Without limiting the foregoing, Magento reserves the right, no more than once per Contract Year and for a period of up to two (2) years after each Contract Year, and in all cases with reasonable (but not less than fifteen (15) days' prior written notice), to audit Customer's use of the Software at Magento's own expense during normal business hours for the purpose of verifying compliance with and/or any payments due under this Agreement and assessing the Subscription Fees, the GMV and AOV. Such audit can be performed by Magento or through an auditor selected by Magento. All information and materials made available or otherwise obtained in connection with such audit shall be deemed Customer's confidential information. If the audit shows that payments made by Customer are deficient and/or the actual GMV is higher than the GMV threshold and/or the actual AOV is lower than the AOV threshold, Magento may adjust the Subscription Fees in accordance with Section 5.1(a).

6. TERM; TERMINATION.

6.1 Term. The term of the Agreement shall commence on the execution of this Agreement and expire after the Term set forth in in the Order Form (the "Initial Term"). On expiration of each Term, this Agreement shall automatically renew for additional period(s) for the same duration as the Initial Term (each a "Renewal Term"), unless either Customer or Magento provides the other Party with Notice of non-renewal at least thirty (30) days prior to the expiration of the Initial Term or the Renewal Term, as applicable. Any Notice of termination of this Agreement by either Party to the other must set forth a termination date ("Termination Date"). The Subscription Fees for each individual Renewal Term will be the fees set forth on the Magento Subscription Fee schedule then in effect as of the first day of the applicable Renewal Term.

6.2 Termination. Either Party may terminate this Agreement for cause upon thirty (30) days' prior written notice if the other Party is in material breach of this Agreement and the material breach remains uncured at the expiration of the thirty (30) day period.

6.3 Effect of Termination.

(a) Upon the Termination Date:

- (i) All of Customer's licenses under this Agreement immediately terminate and Customer shall cease all use of the Software;
- (ii) Within thirty (30) days thereafter, Customer shall certify in writing to Magento that Customer has ceased use of the Software and that all copies or embodiments thereof (including related Documentation) in any form, including partial copies within modified versions, have been destroyed;
- (iii) Customer remains responsible for all fees and charges Customer has incurred through the Termination Date; and
- (iv) Customer will immediately return or, if instructed by Magento, destroy all Magento Content in Customer's possession; and
- (v) Sections 2.1(b) 3, 4.1, 4.2, 5, 6.3, 7, 8.1, 8.5, 9, 10(c), 11 and 12 will continue to apply in accordance with their terms and survive termination of this Agreement.

7. CONFIDENTIALITY.

7.1 Confidential Information. Each Party acknowledges that, as a result of this Agreement, it may gain access to certain Confidential Information of the other Party. "Confidential Information" means the Order Form(s), and all materials, documentation and information, including, but not limited to, techniques, algorithms and processes and technical, business and marketing information, designated or marked by the Party disclosing such documentation and information orally, visually or in writing (the "Disclosing Party") as "proprietary" or "confidential" or the like, or that the other Party (the "Receiving Party") knows to be confidential, or should reasonably consider to be confidential under the circumstances of its disclosure, supplied by the Disclosing Party to the Receiving Party in connection with this Agreement.

7.2 Protection of Confidential Information. During the Term and for a period of five (5) years thereafter, each Receiving Party agrees (a) to hold the Disclosing Party's Confidential Information in strict confidence, using the same degree of (but no less than reasonable) care and protection that it exercises with its own Confidential Information of a similar nature; (b) not to directly or indirectly disclose or otherwise make available any Confidential Information of the Disclosing Party to a third party; and (c) not to copy or use Disclosing Party's Confidential Information for any purpose other than as necessary to fulfill Receiving Party's obligations or exercise its rights under this Agreement. Each Party will disclose the other Party's Confidential Information only to its employees and authorized contractors with a need to know in order to fulfill such Party's obligations hereunder and who have been informed of and have agreed to abide by the provisions of this Section 7. In addition, the Receiving Party may disclose Confidential Information

of the Disclosing Party to the extent that such disclosure is approved in writing by the Disclosing Party or is required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

7.3 Exclusions. The obligations of this Section 7 will not apply to Confidential Information if such information: (a) is publicly available prior to or at the time of disclosure, or later becomes publicly available through no act of the Receiving Party; or (b) was, prior to disclosure hereunder, rightfully known to the Receiving Party (other than in connection with this Agreement) without confidentiality restriction.

8. PROPRIETARY RIGHTS.

8.1 Ownership. Except as specifically set forth herein, each Party shall retain all Intellectual Property rights in such Party's respective Content. As between Customer and Magento, Customer (or Customer's licensors) own all right, title, and interest in and to Customer Content. Except as provided in this Agreement, Magento obtains no rights under this Agreement from Customer (or Customer's licensors) to Customer Content. Customer shall have no ownership right to the Magento Content or any Intellectual Property Rights or technology of Magento or any third party, whether by implication, estoppel, or otherwise. Magento (and its licensors) owns, and will own, all right, title and interest in and to the Magento Content. Customer hereby agrees to take all reasonable actions to allow and assist Magento to perfect its ownership rights therein. Magento reserves all rights not expressly granted to Customer under this Agreement. To the extent Customer or any of its Affiliates receive any right, title or interest in or to any Magento Content, or any Intellectual Property Rights in any of the foregoing, Customer hereby assigns, and Customer shall cause its Affiliates to assign, to Magento all such right, title and interest.

8.2 References to Customer. Unless Customer requests otherwise by providing Notice to Magento, Magento may use Customer's trade names, trademarks, service marks, logos, domain names and other distinctive brand features ("Customer Marks") in presentations, marketing materials, customer lists, financial reports, and website listings (including links to Customer's website) for the purpose of advertising or publicizing Customer's use of the Software. Any such usage of Customer Marks shall be in accordance with Customer's trademark guidelines, as provided to Magento in writing.

8.3 Contractors. Subject to the terms and conditions of this Agreement, Customer may permit authorized third parties to access the Software provided, that (a) the third party is bound by a valid and enforceable written agreement with Customer, at least as protective of Magento as this Agreement, including without limitation Section 2, solely as needed to provide the contracted services to Customer in connection with the Software hereunder; and (b) Customer shall be responsible for all acts and omissions by such third party as if they were Customer's acts and omissions.

8.4 Open Source Software. Customer acknowledges that the Software may include Open Source Software, which is governed by the applicable license terms thereof. The Open Source Software provided under such license agreements is subject to the provisions of such license agreements and not this Agreement, except as expressly provided herein.

8.5 Feedback. If Customer elects to provide any suggestions, requests for changes, comments or other feedback to Magento or its Affiliates regarding its products or services ("Feedback"), Magento and its Affiliates will be entitled to use and commercially exploit the Feedback without restriction and with no obligation to Customer.

9. INDEMNIFICATION.

9.1 By Customer. Customer will defend, indemnify, and hold harmless Magento, its Affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any Losses arising out of or relating to any third-party claim arising from Customer's use of the Software or Customer's breach of any representation, warranty, covenant, or obligation of Customer under this Agreement, including, for avoidance of doubt, any breach of Section 3.

9.2 By Magento. Magento will defend, indemnify, and hold harmless Customer against claims brought against Customer by any third party alleging that Customer's use of the Software in accordance with the terms and conditions of the Agreement, constitutes a direct infringement or misappropriation of a third party's patent, copyright, trademark, or trade secret. Magento will pay damages finally awarded against Customer (or the amount of any settlement Magento enters into) with respect to such claims. Magento's indemnity obligation in this Section shall not extend to the extent any claims arise out of or relate to (i) a modification of the Software by any party other than Magento without Magento's prior written consent; (ii) a combination of the Software, or any part thereof, with the Open Source Software or any other third party software, product or service where the combination is the basis of the claim or the claim could not have been asserted but for such combination; (iii) use of other than the most current version of the Software that has been provided to Customer, if infringement could have been avoided by use of such current version; (iv) third party content or any Open Source Software; (v) indirect infringement or any enhanced damages caused by willful infringement; (vi) Customer's violation of any applicable law or third party rights; or (vii) any actions or losses for which Customer is obligated to indemnify Magento pursuant to Section 9.1; (viii) use of the Software in any manner for which there is not a current and paid up license for the Software and Support Services; (ix) use of the Software other than in accordance with this Agreement or Documentation; (x) Customer's failure to implement any updates or other modifications or replacements of the

Software made available to Customer by Magento or as directed by Magento; (xi) Magento's compliance with any designs, materials, specifications or instructions provided by Customer. In the event that a court holds that the Software, or if Magento believes a court may hold that the Software infringes any third party Intellectual Property Right, Magento may in its sole discretion, do one of the following: (a) obtain for Customer the right to continue using the Software; (b) replace or modify the Software so that it becomes non-infringing while providing substantially equivalent performance; or in the event Magento determines in its sole discretion that (a) and (b) are not commercially reasonable options (c) accept return of the Software and terminate this Agreement, and refund Customer a pro rata amount of the prepaid but unused Subscription Fees paid to Magento based on the percentage of the remaining Term.

9.3 Process. Each Party's obligations under this Section 9 are subject to the Party seeking indemnification ("Indemnitee"): (i) giving the other Party ("Indemnitor") prompt written notice of any such claim in such detail as the Indemnitor may reasonably request; (ii) providing the Indemnitor with reasonable assistance in defending such claims, at the Indemnitor's expense; (iii) allowing the Indemnitor to have sole control of the defense or settlement of any claim under this Section 9; and (iv) not entering into any settlement or compromise of a claim without the Indemnitor's prior written consent.

9.4 Entire Liability. THIS SECTION 9 STATES MAGENTO'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR ANY ACTUAL OR ALLEGED INFRINGEMENT CLAIMS RELATED TO THE SOFTWARE.

10. WARRANTY AND DISCLAIMERS.

(a) Magento warrants for a single period of ninety (90) days commencing upon the execution of the initial Order Form that the Software, as delivered, will substantially perform in accordance with the specifications contained in the Documentation provided with the Software. In the event that the Software fails to comply with the foregoing warranty, Customer shall send written notice to Magento prior to the expiration of the warranty period and such notice will describe in reasonable detail the nature of the nonconformance. Magento will undertake commercially reasonable efforts to correct such nonconformance. The foregoing states Magento's sole and exclusive obligation and Customer's sole and exclusive remedy for a breach of the warranty set forth in this Section 10 (a).

(b) Magento warrants that it has the legal authority to grant the licenses set forth in this Agreement. Magento further warrants that to the best of its knowledge, the Software as initially delivered to Customer is free of viruses, "Trojan horses", worms and other harmful components, provided however, that Customer's sole and exclusive remedy for Magento's breach of the foregoing warranty is that Magento will use commercially reasonable efforts to correct the nonconformance.

(c) EXCEPT AS SET FORTH IN SECTION 10 (a)-(b), THE SOFTWARE IS PROVIDED "AS IS." EXCEPT TO THE EXTENT PROHIBITED BY LAW, MAGENTO, ITS AFFILIATES AND ITS LICENSORS MAKE NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE SOFTWARE, AND DISCLAIM ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES (A) OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON- INFRINGEMENT, OR QUIET ENJOYMENT, (B) ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE, AND (C) THAT THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

11. LIMITATIONS OF LIABILITY.

11.1 Consequential Damages Disclaimer. UNDER NO CIRCUMSTANCES WILL MAGENTO BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES OR COSTS (INCLUDING ATTORNEY'S FEES) RESULTING FROM ANY CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT; OR FOR ANY LOSS OF REVENUE; LOSS OF ACTUAL OR ANTICIPATED PROFITS OR SAVINGS; LOSS OF BUSINESS; LOSS OF GOODWILL OR REPUTATION; LOSS OF, DAMAGE TO, BREACH OF, OR CORRUPTION OF DATA; BREACH OF SECURITY; OR COSTS OF COVER, EVEN IF MAGENTO WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE.

11.2 Liability Cap. NOTWITHSTANDING THE FORM (E.G., CONTRACT, TORT, OR OTHERWISE) IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT, IN NO EVENT WILL MAGENTO OR ITS AFFILIATES BE LIABLE FOR CUMULATIVE, AGGREGATE DAMAGES, EXPENSES, COSTS, LITIGATION DEFENSE COSTS, FEES, LIABILITIES, SUITS, CLAIMS, RESTITUTION SETTLEMENTS OR LOSSES, THAT EXCEED, IN THE AGGREGATE, THE AMOUNT OF FEES PAID BY CUSTOMER IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE OF THE FIRST EVENT GIVING RISE TO THE ACTION. THIS LIABILITY CAP IS CUMULATIVE, WITH ALL PAYMENTS BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF TWO OR MORE CLAIMS OR SUITS, WHETHER RELATED OR NOT, WILL NOT ENLARGE THIS LIMIT.

11.2 APPLICABILITY. THE LIMITATIONS SET FORTH IN THIS SECTION 11 (LIMITATION OF LIABILITY) (A) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (B) ARE AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND SHALL APPLY EVEN IF AN EXCLUSIVE OR LIMITED REMEDY STATED HEREIN

FAILS OF ITS ESSENTIAL PURPOSE, AND (C) SHALL APPLY REGARDLESS OF THE NATURE OF THE CLAIM OR ACTION, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, NEGLIGENCE OR OTHER THEORY OF LIABILITY.

12. MISCELLANEOUS.

12.1 Assignment. Magento may assign this Agreement, or transfer any right or delegate any duty hereunder. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, by operation of law or otherwise, without Magento's prior written consent, not to be unreasonably withheld. Any purported assignment, delegation or transfer in violation of this Section 12.1 shall be null and void. This Agreement is binding on and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

12.2 Counterparts; Facsimile. This Agreement may be executed by click agreement acceptance (where available) or executed by facsimile or by electronic signature in a format approved by Magento, and in counterparts, each of which (including signature pages) will be deemed an original, but all of which together will constitute one and the same instrument.

12.3 Entire Agreement. This Agreement includes the Magento Data Processing Agreement and Order Form(s), and is the entire agreement between Customer and Magento regarding the subject matter of this Agreement. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between Customer and Magento, whether written or verbal, regarding the subject matter of this Agreement. Magento will not be bound by any term, condition or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) including for example, any term, condition or other provision (a) submitted by Customer in any order, receipt, acceptance, confirmation, correspondence or other document; (b) related to any online registration, response to any request for bid, request for proposal, request for information, or other questionnaire; or (c) related to any invoicing process that Customer submits or requires Magento to complete. If the terms of this document are in conflict or inconsistent with terms expressly incorporated herein by reference, the terms contained in this document will control, except that the Magento Data Processing Agreement will control over this document insofar as applicable to personal data processing obligations. No modification or amendment of any portion of this Agreement will be effective unless in writing and signed by the parties to this Agreement. If there is a conflict between the Agreement and the terms and conditions of the Order Form, the terms and conditions of the Agreement shall control to the extent of the conflict, unless the Parties agree to expressly override in the Order Form.

12.4 Force Majeure. Except for payment obligations, neither Party will be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond its reasonable control, including acts of God, labor disputes or other industrial disturbances, electrical or power outage, utilities or telecommunications failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

12.5 Governing Law; Venue. The laws of the State of California, without reference to conflict of law rules, govern this Agreement and any dispute of any sort that might arise between the parties. Any dispute relating in any way to the Software or this Agreement will only be adjudicated in a state or federal court located in Los Angeles County, California. Each Party consents to exclusive jurisdiction and venue in these courts. Notwithstanding the foregoing, either Party may seek injunctive relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of such Party's, its Affiliates' or any third party's Intellectual Property Rights or other proprietary rights. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

12.6 Independent Contractors; Non-Exclusive Rights. Magento and Customer are independent contractors, and this Agreement will not be construed to create a partnership, joint venture, agency, or employment relationship. Neither Party, or any of their respective Affiliates, is an agent of the other for any purpose or has the authority to bind the other.

12.7 Publicity. Except as permitted by Section 8.2, to the extent required by applicable law, or as mutually agreed by the Parties, neither Party will issue any press release or make any other public communication with respect to this Agreement or Customer's use of the Software.

12.8 Notice. All notices shall be in writing and sent by first class mail or overnight mail (or courier), transmitted by facsimile (if confirmed by such mailing), or email (if receipt is confirmed), to the addresses indicated on the Order Form, or such other address as either Party may indicate by at least ten (10) days' prior written notice to the other Party (each, a "Notice").

12.9 No Waivers. The failure by either Party to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit such Party's right to enforce such provision at a later time. All waivers by a Party must be provided in a Notice to be effective.

12.10 Severability. If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement but the rest of the Agreement will remain in full force and effect.

EXHIBIT A

MAGENTO COMMERCE SOFTWARE SUPPORT SERVICES TERMS AND CONDITIONS (“SUPPORT TERMS”)

Subject to the terms and conditions of the Agreement, and Customer’s payment of the applicable fees for Support Services as set forth in the Order Form, Magento shall provide to Customer the Support Services as set forth herein.

1. SUPPORT COMMITMENT

1.1 Definitions.

"Incident" means an unexpected failure or degradation in the Software which is reported to Magento by Customer.

"Enhancement Request" means a recommendation for future product enhancement or modification to add official support and documentation for an unsupported or undocumented feature, or features that do not exist in the Software.

"Priority 1" ("P1") - A P1 is a catastrophic production Incident within the Software that severely impacts the Customer's Site, or because of which Customer's Site is down or not functioning, or that results in a loss of production data and no work around exists. P1 Incidents must be reported on Magento's toll-free support telephone number in order to expedite resolution. Magento will use continuous efforts, with appropriate escalation to senior management, to provide a resolution for any P1 Incident as soon as is commercially reasonable.

"Priority 2" ("P2") - A P2 is an Incident within the Software where the Customer's system is functioning but in a reduced capacity, or the problem is causing significant impact to portions of the Customer's business operations and productivity, or the Software is exposed to potential loss or interruption of service. Incidents existing in a non-production environment that would otherwise qualify as a P1 if they were in a production environment, qualify as P2. Magento will use reasonable efforts during its normal hours of operation to provide a resolution for any P2 Incident as soon as is commercially reasonable.

"Priority 3" ("P3") - A P3 is a medium-to-low impact Incident that involves partial and/or non-critical loss of functionality, or that impairs some operations but allows Customer's operations to continue to function. Incidents for which there is limited or no loss or functionality or impact to Customer's operation and for which there is an easy work-around qualify as P3. Magento will use reasonable efforts during its normal hours of operation to provide a resolution for any P3 Incident in time for the next Minor release (as defined below) of the Software.

"Priority 4" ("P4") - A P4 is a general usage question or issue that may be cosmetic in nature or documentation related, and may include issues Magento deems to be Enhancement Requests, but the Software works without interruption. Magento will use efforts during its normal hours of operation to provide a resolution for any P4 Incident. Magento will take Enhancement Requests into consideration in the product management process, but has no obligation to deliver enhancements based on any Enhancement Request.

1.2 Customer Obligations.

Customer is responsible for the prompt installation of all patches, updates, and upgrades to the Software, as provided by Magento. Customer shall provide commercially reasonable cooperation and full information to Magento with respect to the furnishing of Support Services. Customer shall designate one or more support contacts that are authorized to engage Support Services. If Customer has purchased the license from a Magento-authorized reseller, Customer shall contact their Magento-authorized reseller for assistance.

1.3 Magento Obligations.

Magento will use commercially reasonable efforts to respond to Incidents as set forth below:

	<i>Gold</i>	<i>Platinum</i>
<i>Web Portal –</i>		
<i>-Electronic Case Submission</i>	✓	✓
<i>-Case (Ticket) Management</i>		
<i>Phone Support/ Response (Acknowledgement) Priority 1</i>	4 Hours response 24x7x365	2 Hours response 24x7x365
<i>Web Case Support/ Response (Acknowledgement) Priority 1</i>	4 Hours response 24x7x365	2 Hours response 24x7x365
<i>Web Case Support/ Response (Acknowledgement) Priority 2 – 4</i>	24 Hours, Monday – Friday (PST)	4 Hours, Monday – Friday (PST)

*Magento’s toll-free Support telephone line is reserved for Priority 1 Incidents only. Customer may also submit a support ticket online, for all Incident Priority levels. For all Incidents submitted online, Incident receipt will be confirmed via Magento’s Customer Help Center ticketing system. Upon receipt of a properly submitted Incident, Support Services shall be prioritized in accordance with the Priority levels set forth above.

1.4 Magento will support the Software from the release date of each applicable Major and Minor release as set forth in the Magento Software Lifecycle Policy at www.magento.com/legal/terms or such successor URL, and as may be updated by Magento from time to time. For purposes of support obligations, Magento defines its software version scheme as Major.Minor.Patch releases (e.g. 2.1.7 is Magento Major Version 2, Minor Release 1, Patch Release 7). Furthermore, Magento will provide the following:

1.4.1 Advice regarding the downloading, installation and configuration of the Software (including patches, updates and/or upgrades provided by Magento, but excluding for the avoidance of doubt any Modifications to the Software), when used by Customer on systems that meet the Software's "System Requirements" specified at <http://devdocs.magento.com/system-requirements.html>) or such successor URL, and as may be updated by Magento from time to time. Magento supports the Software and any integrations provided by Magento as part of the Software to the applications listed in the System Requirements. If an issue is encountered when using technologies that are not listed in

the System Requirements, and if Magento can reproduce the Software issue using technologies that are listed in the System Requirements, then Magento will provide support. Nonetheless, Magento cannot ensure that the Software issues will be fixed when the Software is used with technologies not listed in the System Requirements.

1.4.2 Facilities for bug tracking, escalation of problems for priority attention, and access to community-supported FAQs relating to the Software.

1.4.3 Assistance with troubleshooting to diagnose and fix errors in the Software.

1.4.4 Access to Magento Documentation relating to the Software, including authorization to make copies of that Documentation for internal use as specified in the Agreement.

1.5 Support Services do not include:

1.5.1 Assistance in the development or debugging of Customer's system, including the operating system and support tools.

1.5.2 Information and assistance on technical issues related to the installation, administration, and use of enabling technologies such as databases, computer networks, and communications.

1.5.3 Assistance with the installation and configuration of hardware including, but not limited to, computers, hard disks, networks, and printers.

1.5.4 Support or assistance on a stand-alone basis for the individual applications listed in the System Requirements.

1.5.5 Technical support, phone support, or updates to non-Magento products or third party enabling technologies not licensed under the Agreement.

1.5.6 Support for: (i) Software not operated on a supported hardware/operating system platform specified in the release notes for the Software; (ii) altered or modified Software; (iii) Software accessed on unlicensed Unique Domains; (iv) problems caused by Customer's negligence, misuse, or hardware malfunction; or (v) use of the Software inconsistent with Magento's instructions. Magento is not responsible for hardware changes necessitated by changes to the Software.

2. SUBCONTRACTORS

Magento reserves the right to subcontract any or all of the work to be performed under these Support Terms, and Magento retains responsibility for any work so subcontracted.

3. MISCELLANEOUS

Magento will provide Support Services to Customer during the periods identified in the Order Form and shall be governed by these Support Terms and the Agreement. Customer's obligation of payment of monies due under these Support Terms shall survive termination of these Support Terms or the Agreement. Customer acknowledges and agrees that Magento shall have the right to terminate the provision of Support Services upon nonpayment of any fees due to Magento.

Last Updated: May 25, 2018