

MAGENTO™ ENTERPRISE EDITION END USER LICENSE AGREEMENT

This End User License Agreement (“**Agreement**”) is entered into by and between X.commerce, Inc. through its Magento division (“**Magento**”), and the Licensee executing the Magento Order Form (defined below). The parties agree as follows:

TERMS AND CONDITIONS

1. **License**

- 1.1. Subject to Licensee’s payment of the applicable fees and to Licensee’s compliance with other terms and conditions of this Agreement, Magento grants Licensee a non-transferable, non-assignable, non-sublicensable, worldwide license to copy the Software for the purpose of installing and using it on a computer and solely for internal purposes, in accordance with the Software’s technical documentation and solely during the periods and on the maximum number of Designated Servers specified in one or more applicable Magento or Magento-authorized reseller ordering schedules (the “**Magento Order Form**”) executed with Licensee.
- 1.2. In the event that Licensee’s actual number of Servers of a particular Software license exceeds the licensed number of Designated Servers on such license, Licensee shall promptly provide Magento with written notice and pay Magento the fees required to license such additional Server(s) in accordance with the commercial terms set out in the Magento Order Form.
- 1.3. Licensee shall implement reasonable controls to ensure that it does not exceed the maximum number of licensed Servers of the Software. Magento reserves the right to audit Licensee’s use of the Software during normal business hours and with reasonable notice and to include means within the Software to limit Licensee’s use of the Software to the licensed number of Servers.
- 1.4. Magento shall provide to Licensee an initial copy of the Software, including the associated technical documentation, for use by Licensee in accordance with this Agreement. Subject to Sections 1.1-1.3 above, Licensee is authorized to make a reasonable number of non-Server copies of the Software, e.g., onto a local pc, as it requires for purpose of exercising its rights under this Agreement.
- 1.5. Licensee is authorized to use the Software on a single substitute or backup Server on a temporary basis without charge any time a Designated Server is inoperative due to a malfunction beyond the control of Licensee. Licensee may transfer the Software on a permanent basis to a single replacement Server without charge. Licensee agrees to provide Magento with written notice, including the Server type and operating system, of any such transfer to a backup or replacement Server within five (5) days thereafter.
- 1.6. Licensee acknowledges that portions of the Software are also freely available to the public under Magento’s open source version of the Software, known as Magento Community Edition, subject to certain conditions, with limited warranties and other limited assurances, and without service or support. As an express condition for the license granted hereunder, Licensee agrees that any use during the term of this Agreement of such open source versions of the Software, whether in a Production Server Instance or a Non-Production Server Instance, shall be deemed use of the Software for purposes of the calculation of fees payable under the Agreement.
- 1.7. Magento also grants Licensee the right to modify and create derivative works of the Software. Licensee may contribute the rights in any of those derivative works back to Magento. Licensee may contact Magento for more information regarding contributions of derivative works rights to Magento. Regardless of whether Licensee contributes such derivative works rights to Magento, Licensee hereby grants Magento a perpetual and irrevocable (irrespective of the expiration or

termination of this Agreement), nonexclusive, transferable, worldwide, and royalty-free license to reproduce, create derivative works of, distribute, perform, and display any derivative works of the Software developed by or for Licensee, and to use, make, have made, sell, offer to sell, import, export, and otherwise exploit any product based on any such derivative works.

2. License Exclusions

- 2.1. Except as expressly authorized herein, Licensee shall not:
- a. use or deploy the Software on any Server in excess of the number of Designated Servers specified in the applicable Magento Order Form;
 - b. distribute, sublicense, disclose, market, rent, lease, or offer remote computing services, networking, batch processing or transfer of, the Software to any third party, or permit any person or entity to have access to the Software by means of a time sharing, remote computing services, networking, batch processing, service bureau or time sharing arrangement;
 - c. export the Software in violation of U.S. Department of Commerce export administration regulations.
- 2.2. No license, right or interest in any Magento trademark, trade name or service mark is granted hereunder.

3. Fees and Payment Terms

Licensee agrees to the fees and payment terms that are described in each Magento Order Form executed by Licensee.

4. Title and Protection

- 4.1. Magento (or its third party providers) retains title to all portions of the Software and other Proprietary Materials and any copies thereof. The Proprietary Materials contain valuable proprietary information, and Licensee shall not disclose them to anyone other than those of its employees or consultants under written nondisclosure obligations at least as restrictive as those contained in this Agreement, having a need to know for purposes consistent with this Agreement. Licensee shall be responsible for the compliance of such employees or consultants. Licensee shall affix, to each full or partial copy of the Software made by Licensee, all copyright and proprietary information notices as were affixed to the original. The obligations set forth in this Section shall survive termination of this Agreement.
- 4.2. Licensee acknowledges that the Software includes certain open source software which is governed by the applicable license terms thereof. A list of such open source software, as amended from time to time, including the links applicable to such open source software is specified in the product software bundled within the Software, and the Software is subject to the provisions of such license agreements, and in the event of any contradiction between the provisions of this Agreement and the provisions of such applicable license agreement, the provisions of the applicable open source license agreement shall prevail solely with respect to such open source software products.
- 4.3. If the Software is acquired by or on behalf of a unit or agency of the U.S. Government (the "**Government**"), the Government agrees that such Product is "commercial computer software" or "commercial computer software documentation" and that, absent a written agreement to the contrary, the Government's rights with

respect thereto are limited by the terms of this Agreement, pursuant to applicable FAR and/or DFARS and successor regulations.

5. Patent and Copyright Indemnity

Subject to the limitations in Section 8, for such time as Licensee is entitled to receive Support Services (as defined below), Magento shall indemnify and defend Licensee against any claims made by a third party that Licensee's reproduction of the Software (which, for the purposes of this Section 5, means the Software as delivered by Magento, excluding the open source software programs described in Section 4.2) as permitted in this Agreement directly infringes such third party's United States patent or copyright, provided that Licensee complies with the requirements of this Section. Licensee will (a) provide Magento prompt written notice of any claim that the Software infringes any intellectual property rights, (b) provide Magento with all information and assistance requested of it with respect to any such claim, and (c) offer Magento sole and complete authority to defend and/or settle any and all such claims.

In the event that a court holds that the Software, or if Magento believes a court may hold that the Software, infringes the intellectual property rights of any third party, Magento may (but is not obligated to), in its sole discretion, do any of the following: obtain for Licensee the right to continue using the Software, replace or modify the Software so that it becomes non-infringing while providing substantially equivalent performance or, accept return of the Software, terminate this Agreement, and refund Licensee an amount equal to the license fees paid to Magento multiplied by the percentage of the term of the license for the Software that Licensee did not enjoy due to the early termination by Magento.

Magento shall have no liability or obligation under this Agreement to the extent the alleged infringement is based on (i) a modification or derivative work of the Software developed by anyone other than Magento; (ii), a combination of the Software with any product or service not provided by Magento; (ii) use of the Software with one or more Servers not listed in a Magento Order Form; (iii) use of the Software other than in accordance with this Agreement or the documentation; (iv) indirect or willful infringement; or (v) any open source code, as described in Section 4.2.

This Section 5 states Magento's entire liability and Licensee's exclusive remedy for any infringement related to the Software.

6. Default and Termination

- 6.1. An event of default shall be deemed to occur if: (i) Licensee fails to perform any of its obligations under the Sections entitled "License Exclusions" or "Title and Protection"; (ii) Licensee fails to pay amounts due pursuant to its agreement to the fees and payment terms in Section 3 of this Agreement within seven (7) days of the relevant due date; or (iii) either party fails to perform any other material obligation under this Agreement and such failure remains uncured for more than thirty (30) days after receipt of written notice thereof.
- 6.2. If an event of default occurs, the non-defaulting party, in addition to any other rights available to it under the law, may terminate this Agreement and all licenses granted hereunder by written notice to the defaulting party.
- 6.3. Within thirty (30) days after termination of the Software license or this Agreement or expiration of the license term as specified in the Magento Order Form, Licensee shall certify in writing to Magento that Licensee has ceased use of any and all Proprietary Materials and that all copies or embodiments thereof in any form, including partial copies within modified versions, have been destroyed.

7. Warranty

- 7.1. Warranty for Software. Magento warrants for a single period of ninety (90) days commencing upon Magento's electronic delivery of the Software to Licensee that

the Software, as delivered, will in all material respects perform the functions described in the specifications contained in the documentation provided with the Software. In the event that the Software does not, in all material respects, perform the functions therein described, Magento or its authorized reseller will undertake to correct any reported error in accordance with the Support Services Terms and Conditions set forth below in Section 9, which shall be Magento's entire liability and Licensee's exclusive remedy for breach of this warranty. Magento does not warrant that the Software will meet Licensee's requirements, that the Software will operate in the combinations which Licensee may select for use, that the operation of the Software will be uninterrupted or error-free, or that all error conditions will be corrected. EXCEPT AS PROVIDED IN THIS SECTION ALL SOFTWARE PROVIDED HEREUNDER IS PROVIDED "AS IS".

- 7.2. DISCLAIMER. THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 7 ARE THE ONLY WARRANTIES MADE BY MAGENTO WITH RESPECT TO THE SOFTWARE PROVIDED BY MAGENTO. MAGENTO MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR ARISING BY CUSTOM OR TRADE USAGE, AND, SPECIFICALLY, MAKES NO WARRANTY OF TITLE, NON-INFRINGEMENT, ACCURACY, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. MAGENTO'S EXPRESS WARRANTIES SHALL NOT BE ENLARGED, DIMINISHED OR AFFECTED BY, AND NO OBLIGATION OR LIABILITY SHALL ARISE OUT OF, MAGENTO RENDERING TECHNICAL OR OTHER ADVICE OR SERVICE IN CONNECTION WITH THE SOFTWARE.

8. Limitation of Liability

- 8.1. LIABILITY EXCLUSIONS. UNDER NO CIRCUMSTANCES WILL MAGENTO BE LIABLE FOR: LOSS OF REVENUE; LOSS OF ACTUAL OR ANTICIPATED PROFITS; LOSS OF CONTRACTS; LOSS OF THE USE OF MONEY; LOSS OF ANTICIPATED SAVINGS; LOSS OF BUSINESS; LOSS OF OPPORTUNITY; LOSS OF GOODWILL; LOSS OF REPUTATION; LOSS OF, DAMAGE TO OR CORRUPTION OF DATA; OR CONSEQUENTIAL OR INDIRECT LOSS OR SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES (INCLUDING, FOR THE AVOIDANCE OF DOUBT, WHERE SUCH LOSS OR DAMAGE IS ALSO OF A CATEGORY OF LOSS OR DAMAGE ALREADY LISTED), WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS OF LICENSEE, MAGENTO OR ANY THIRD PARTY ARISING OUT OF ANY BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY CONDITIONS OR OTHER TERM, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, OTHER LIABILITY IN TORT, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, OR OTHERWISE.
- 8.2. LIABILITY CAP. NOTWITHSTANDING THE FORM (E.G., CONTRACT, TORT, OR OTHERWISE) IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT, IN NO EVENT (INCLUDING WITH RESPECT TO OBLIGATIONS ARISING UNDER SECTION 5) WILL MAGENTO OR ITS SUPPLIERS BE LIABLE FOR DAMAGES, EXPENSES, COSTS, LIABILITIES, SUITS, CLAIMS, RESTITUTION OR LOSSES, THAT EXCEED, IN THE AGGREGATE, THE AMOUNT OF FEES PAID BY LICENSEE FOR THE SOFTWARE LICENSE IN THE FIRST TWELVE (12) MONTH PERIOD AFTER THE EFFECTIVE DATE.

9. Support Services Terms and Conditions

For the periods specified in the Magento Order Form, Magento or its authorized reseller will provide support services and Updates for the Software as described in Magento's standard Support Services Terms and Conditions, which follow. Magento will have no obligation to provide support for any modifications or derivative works of the Software developed by anyone other than Magento.

10. Customer References

Licensee hereby grants Magento the right to display Licensee's logos as part of Magento's customer lists and other related marketing materials. The parties shall cooperate to undertake mutually-agreed joint marketing activities.

11. Notices

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, to the addresses indicated on the Magento Order Form, or such other address as either party may indicate by at least ten (10) days prior written notice to the other party. Notices to Magento shall be sent to the Contracts Administration Department.

12. Assignment

Licensee may not assign this Agreement without the prior written consent of Magento; provided that such consent shall not be required for assignment to a purchaser of all or substantially all of the assets or equity securities of Licensee who undertakes in writing to be bound by all the terms and conditions of this Agreement. Any prohibited assignment shall be null and void.

13. Entire Agreement

Along with Magento's standard Support Services Terms and Conditions, which follow, and the Magento Order Form, this Agreement is the complete and exclusive agreement between the parties, which supersedes all proposals or prior agreements, oral or written, including any online (click-through) agreement which Licensee may have accepted in conjunction with the downloading of the Software, and all other communications between the parties relating to the subject matter hereof. No purchase order, other ordering document or any hand written or typewritten text which purports to modify or supplement the printed text hereof or Magento Order Form shall add to or vary the terms thereof and Magento hereby rejects same. Except as contained in a writing signed by both parties, all such proposed variations or additions are objected to and shall have no force or effect.

14. General

This Agreement is made in and shall be governed by the laws of the State of California, without giving effect to any principles that provide for the application of the law of another jurisdiction. All proceedings shall be conducted in English. Venue for all proceedings shall be Santa Clara County, California, provided that Magento may seek injunctive relief in any court of competent jurisdiction. The United Nations Convention for the International Sale of Goods shall not apply. The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement. Except for Licensee's obligation to pay Magento, neither party shall be liable for any failure to perform due to causes beyond its reasonable control. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision. The failure by a party to exercise any right hereunder shall not operate as a waiver of such party's right to exercise such right or any other right in the future. This Agreement may be amended only by a written document executed by a duly authorized representative of each of the parties. The parties agree to receive electronic documents and accept electronic signatures (information attached or logically associated with such document and clicked or otherwise adopted with an intent to sign) including in counterparts which shall be valid substitutes for paper-based documents and signatures, and the legal validity of a transaction will not be denied on the ground that it is not in writing.

15. Definitions

"Designated Server" shall mean the Server specified in a Magento Order Form with respect to a particular Software license. Such Server may be that of a third-party under nondisclosure obligations that will host the Software for the benefit of Licensee.

“Modifications” means any code developed by Licensee or any third party, including without limitation, configuration, integrations, implementations, or localizations to the external layer of the core, baseline Software product. The term “Modifications” excludes Updates.

“Proprietary Material” means pre-existing products, methods, processes, ideas, concepts, materials, tools and methodologies or other intellectual property that are proprietary to Magento. Magento owns and will retain or, as applicable, is hereby assigned, all right, title and interest in and to Proprietary Material, in perpetuity and throughout the universe.

“Confidential Information” is limited to information that is disclosed by one party (“Disclosing Party”) to the other (“Receiving Party”) and either identified as “Confidential” or of a nature that could reasonably be construed to be confidential or proprietary. Confidential Information shall in any event include proprietary technical and business information provided by a party orally or in writing including but not limited to: (a) patent and patent applications; (b) techniques, sketches, drawing, works of authorship, models, inventions, processes, equipment, algorithms, demonstrations, mock-ups, software programs, software source comments, and formulae related to current, future and/or proposed products and services, including information concerning software code, research, development, design details and specifications; and (c) financial information, procurement and/or purchasing requirements, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising data, and marketing plans.

“Server” means each physical or virtual server from which a single instance of the Software is accessed and used either for production purposes (“Production Server Instance”) or for non-production purposes, such as development, testing, training and other non-operational business transactions (“Non-Production Server Instance”). For example, if one server contains two (2) instances of the Software, i.e., one Production Server Instance and one Non-Production Server Instance, then a Server license is required for each of such instances; development in-house and by third-party consultants requires licenses for two Non-Production Server Instances.

“Software” means Magento’s proprietary e-commerce software solution known as the Magento™ Enterprise Edition, provided solely in source code, including associated technical documentation, and all Updates thereof furnished to Licensee as part of Support Services. Except as otherwise specified herein, the term Software includes certain open source software programs described in Section 4.2. “Software” does not include any Modifications.

“Updates” means all published revisions and corrections to the printed documentation and corrections and new releases of the Software which are generally made available to Magento’s supported customers at no additional cost or for media and handling charges only. Updates shall not include any options or future products which Magento sells separately.

SUPPORT SERVICES TERMS AND CONDITIONS

Unless otherwise defined herein, all capitalized terms will have the meanings set forth in the Agreement.

1. **“Support Services” consists of:**
 - a. Advice regarding the downloading, installation and configuration of the Software (including Updates provided by Magento, but excluding for the avoidance of doubt any Modifications to the Software), when used by Licensee on systems that meet the Software’s “System Requirements” specified on Magento’s website at www.magentocommerce.com/system-requirements.
 - b. Facilities for bug tracking, escalation of problems for priority attention, and access to community-supported FAQs and Forums relating to the Software.
 - c. Assistance with troubleshooting to diagnose and fix errors in the Software.
 - d. Access to Magento documentation relating to the Software, including authorization to make copies of that documentation for internal use as specified in the Agreement.
2. **Exclusions from Support Services.** Magento shall have no obligation to support (i) versions of the Software other than the then-current and immediately previous releases, which are 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 Servers; (iv) problems caused by Licensee’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. Support Services does not include:
 - a. Assistance in the development or debugging of Licensee’s system, including the operating system and support tools.
 - b. Information and assistance on technical issues related to the installation, administration, and use of enabling technologies such as databases, computer networks, and communications.
 - c. Assistance with the installation and configuration of hardware including, but not limited to computers, hard disks, networks, and printers.
3. **Subcontractors.** Magento or its authorized resellers reserve 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.
4. **Licensee Responsibilities.** Licensee shall provide commercially reasonable cooperation and full information to Magento or its authorized resellers with respect to the furnishing of Support Services under this Agreement.
5. **Support Contacts.** Licensee shall designate one or more support contacts that are authorized to submit Software problems. If Licensee has purchased the license from a Magento-authorized reseller, Licensee shall contact that party for assistance. If Licensee has purchased the license directly from Magento, Licensee may contact Magento on the www.magentocommerce.com website or at its toll-free Support telephone number.
6. **Problem Priority.** Upon receipt of a properly submitted Software problem, as specified on Magento’s website at www.magentocommerce.com, Magento or its authorized reseller shall prioritize it in accordance with the guidelines below:
 - a. Priority 1 (P1) – A P1 is a catastrophic production problem within the Software that severely impacts the Licensee’s Production Server Instance, or because of which Licensee’s Production Server Instance is down or not functioning, or that results in a

loss of production data and no work around exists. P1 problems must be reported on Magento's toll-free support telephone number in order to expedite resolution. Magento will use continuous efforts during its normal hours of operation, with appropriate escalation to senior management, to provide a resolution for any P1 problem as soon as is commercially reasonable.

- b. Priority 2 (P2) – A P2 is a problem within the Software where the Licensee's system is functioning but in a reduced capacity, or the Problem is causing significant impact to portions of the Licensee's business operations and productivity, or the Software is exposed to potential loss or interruption of service. Problems existing in a non-production environment that would otherwise qualify as a P1 if they were in a production system qualify as P2. Magento will use reasonable efforts during its normal hours of operation to provide a resolution for any P2 problem as soon as is commercially reasonable.
- c. Priority 3 (P3) – A P3 is a medium-to-low impact problem that involves partial and/or non-critical loss of functionality, or that impairs some operations but allows Licensee's operations to continue to function. Problems for which there is limited or no loss or functionality or impact to Licensee'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 problem in time for the next minor release of the Software.
- d. Priority 4 (P4) – A P4 is for a general usage question or issue that may be cosmetic in nature or documentation related, but the Software works without normal hours of operation to provide a resolution for any P4 problem in time for the next major release of the Software.
- e. Enhancement Request (ER) – An ER is a recommendation for future product enhancement or modification to add official support and documentation for unsupported or undocumented feature, or features that do not exist in the Software. Magento will take ERs into consideration in the product management process, but has no obligation to deliver enhancements based on any ER.

7. **Response Times.** Magento or its authorized reseller shall exercise commercially reasonable efforts to meet the response times specified below for Gold Support (unless Licensee has upgraded to Platinum Support, as provided in the Magento Order Form), following receipt of a Software problem properly submitted by Licensee:

WEB Ticket Submission	24 x 7 x 365
WEB Ticket Response Time*	24 business hours
North American Telephone Support Hours	M-F 08:00 - 17:00 (PT)
European Telephone Support Hours	M-F 08:30 - 17:30 (CET)
Telephone Response Time P1 Issues*	4 business hours
Response Time P2-P4 Issues*	24 business hours
*From initial contact	

WEB Ticket Submission	24 x 7 x 365
WEB Ticket Response Time*	24 business hours
Telephone Support Hours	24 hours
Telephone Response Time P1 Issues*	Up to 2 hours
Response Time P2-P4 Issues*	4 business hours
*From initial contact	

8. **Prohibited Use.** As a condition of Licensee's use of the Forums, Licensee will not use (and will prohibit its customers from using) the Forums (i) to violate any applicable law, statute, ordinance or regulation; (ii) to disseminate content that is harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, or otherwise objectionable; (iii) to disseminate any software viruses or any other computer code, files or programs that may interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (iv) to infringe the intellectual property rights or proprietary rights, or rights of publicity or privacy, of any third party; or (v) use the Forums for any purpose other than their intended use.
9. **Term and Termination.** Magento will provide Support Services and any Updates to Licensee during the periods identified in the Magento Order Form, subject to Licensee's payment of the applicable fees. In the event Licensee fails to pay such fees to Magento or in the event Licensee materially breaches the Support Services provisions and does not cure such breach within thirty (30) days of its receipt of Magento's notice of same, Magento may suspend or cancel Support Services.
10. **General.** Magento shall not be liable for any failure or delay in performance under these Support Terms due to causes beyond its reasonable control. Any illegal or unenforceable provision shall be severed from these Support Terms. Licensee agrees that any information received pursuant to these Support Terms shall be deemed to be subject to the non-disclosure obligations set forth in the License Agreement. Licensee's obligation of payment of moneys due under these Support Terms shall survive termination of these Support Terms or the License Agreement. These Support Terms state the entire agreement regarding provision of Support Services to Licensee and may be amended only by a written amendment set forth on a separate document executed by authorized representatives of both parties.