MAGENTO CUSTOMER AGREEMENT

This Magento Customer 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 access or use the Services and/or Software. In consideration of the mutual promises exchanged herein, the Parties agree as follows:

1. DEFINITIONS.

1.1   "Account" means any Magento account(s) for the Services opened by Customer pursuant to an Order Form.

1.2   "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.

1.3   "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.

1.4   "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.

1.5 "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.

1.6 "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 Services and/or Software or any portion thereof.

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

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

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

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

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

1.12 "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.

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

1.14 "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.

1.15 "Location(s)" means the production region where the Customer Content will be hosted, as identified in the Order Form.

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

1.17 "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 but not limited to, the Software.

1.18 "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.

1.19 "Maximum vCPU Day Entitlement" means the maximum number of virtual CPU Days that the Customer can consume in any Contract Year as specified on an applicable Order Form. If required, Customer can purchase additional vCPU Days to increase the entitlement.

1.20 "Modifications" means any derivative work based on the Software or the Services (as the case may be), 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 or Services. Modifications by Customer or a third party are not permitted unless otherwise set forth in the applicable Service Description.

1.21 "Notice" means any notice provided in accordance with Section 13.8.

1.22 "Open Source Software" means the software included in or with the Services or 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.

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

1.24 "Production Instance" means any instance that is (a) used to generate and/or process online revenue; or (ii) is exposed to the public internet for use by End Users.

1.25 "Site" means any website, other related mobile websites, services, tools and other applications owned and operated by Customer using the Software or Service, subject to the limit on authorized Store Views as set forth in the applicable Order Form. For clarity, a Site enables different catalogs, pricing, base currency, user accounts and separate carts as described in the Documentation.

1.26 "Service(s)" means the provision of certain cloud hosting services and Magento Content, including Software (as the case may be), all as more specifically described in one or more Service Descriptions, as indicated on an applicable Order Form. Services do not include Third-Party Content or Customer Content.

1.27 "Service Description(s)" means the description of each of the Services offered by Magento as set forth in Exhibit A.

1.28 "Software" means software that is developed and owned by Magento, in whole or in part, and made available to Customer hereunder or in conjunction with one or more Services if and as described in a Service Description, and subject to the terms of this Agreement.

1.29 "Store View" means a feature of the Software that enables changes to the theme, layout, design, language, localization, display currency, and display of products as described in the Documentation. For clarity, each Site uses at least one Store View.

1.30 "Support Services" means the support services Magento offers Customers with respect to the Software and/or Services, currently referenced as the Magento Support Services Terms and Conditions available at https://magento.com/legal/terms (and any successor locations), and as may be updated by Magento from time to time.

1.31 "Term" means any Initial Term or Renewal Term, both as defined under Section 7.1 under the Agreement.

1.32 "Third-Party Content" means Content owned by a third party (or its licensors) that is not Customer Content or Magento Content and includes, without limitation, any Content as may be made available on the Magento Marketplace or on Magento's developer and community repositories and forums.

1.33 "Third-Party Services" means any and all third party services (including associated APIs and web service definition files) that may be made available to Customer or its End Users through the Services.

1.34 "Transaction" means any order placed by an End User, by whatever means, that is accepted and/or processed by the Software or Services, (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 the Customer receives any payment for such order.

2. USE OF SOFTWARE AND SERVICES.

2.1 Software. 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, nonsublicensable 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 used for promoting, selling or providing the Customer's products and services to End Users. 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.

2.2 Services. Subject to the terms and conditions of this Agreement and payment of the applicable Subscription Fees (as defined below), Customer may access and use the Services in accordance with this Agreement and the applicable Service Description. Customer Affiliates may not use the Services under the terms of this Agreement, except as expressly provided for in an Order Form or by establishing separate Account(s).

2.3 Restrictions. Customer shall not (and shall ensure that its employees, contractors and other third parties do not): (a) exploit the Software or Services for any purpose other than as described in this Section 2; (b) provide, use, or allow others to use, the Software or Services for the benefit of third parties; (c) modify, alter, tamper with, repair, or otherwise create derivative works of any Magento Content included in the Services; (d) reverse engineer, disassemble, or decompile the Software or Services or apply any other process or procedure to derive the source code of the Software or any software included in or with the Services; (e) access, use or develop the Software or Services in a way intended to avoid incurring fees or exceeding usage limits or quotas; (f) sell, offer to sell, distribute, disclose, sublicense or otherwise make available the Software or Services in a manner that is not authorized under this Agreement; (g) assert or authorize, assist, or encourage any third party to assert, any claim of infringement of Intellectual Property Rights regarding the Software or Services; (h) imply any relationship or affiliation between Magento and Customer except as expressly permitted by this Agreement; (i) use any Copyleft Software in connection with Magento Content; (j) use, host, support or assist in the use of Magento Open Source in combination with the Software or Services; (k) use the Software or Services for the purpose of building a similar or competitive product or service; (l) use or permit the use of any tools in order to probe, scan or attempt to penetrate or benchmark the Software or Services with the exception of tools necessary to validate the performance or security of the Customer's Site(s) or (m) unless otherwise specified in an applicable Order Form, use the Software on more than fifteen (15) Store Views. Customer shall notify Magento immediately on the launch of each Store View. Customer (on behalf of itself and its Affiliates) hereby irrevocably waives and agrees to never assert any right in Modifications against Magento and its Affiliates or its direct or indirect sublicensees.

2.4 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 Services that are made available to Customer to use and evaluate ("Early Adopter Programs") during a trial period. 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 9.5); and (b) acknowledges that such features are for evaluation purposes only and not for production use, not considered part of the Software or Service 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.

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

2.6 Government Customers. Software licensed under this Agreement (as applicable) 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 Customer Content.

(a) Customer is solely responsible for the development, content, operation, maintenance, and use of Customer Content including but not limited to responsibility for: (i) any claims relating to Customer Content, including claimed violations of applicable law; and (ii) 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 violate such person's rights, including notices pursuant to the Digital Millennium Copyright Act.

(b) Customer is solely responsible for providing appropriate security for and protection of Customer Content, which may include (i) use of encryption technology to protect Customer Content from unauthorized access; and (ii) applying necessary security patches to the Software when supplied by Magento.

(c) Customer shall specify the Locations in which Customer Content, provided to, or to interface with, the Services will be stored, where applicable. Customer consents to the storage of such Customer Content in, and transfer of such Customer Content into, the Locations Customer selects.

3.2 Accounts. Customer is solely responsible for configuring and using the Services in a manner that will provide appropriate security and protection of its Account and for all activities of Customer, their Affiliates and third parties that occur under its Account, regardless of whether the activities are authorized by Customer or are undertaken by Customer, its employees or a third party (including without limitation contractors, agents, Affiliates and End Users). Account log-in credentials and private keys generated by the Services are for Customer's internal use only and Customer may not sell, transfer or sublicense them to any other entity or person, except that Customer may disclose its private key to its agents and subcontractors (including any of its Affiliates who are acting as an agent or subcontractor of Customer) performing work with respect to the Services, Customer Content, or Modifications on behalf of Customer.

3.3 Conduct.

(a) Customer shall 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 4.3, with providers such as Magento, for the purposes specified in this Agreement.

(b) Customer shall not engage in any activity in conjunction with the Software or Services that: (i) knowingly violates a third party's terms of service; (ii) violates any applicable law or regulation (including without limitation privacy laws and laws relating to the transfer and processing of Customer Content); (iii) interferes with, disrupts, damages, harms, or accesses in an unauthorized manner the machines, hardware, devices, servers, network data, or other properties or services of any third party, including, but not limited to, Magento or Magento users; (iv) infringes on the intellectual property rights of others; or (v) violates Magento's Acceptable Use Policy, located at www.magento.com/legal/terms (or its successor location), and as may be updated by Magento from time to time. Without limiting the foregoing, Magento may remove or disable access to content without prior notice in connection with illegal content, where the content may disrupt or threaten the Services, pursuant to the Digital Millennium Copyright Act or as required to comply with law or any judicial or regulatory or other governmental order or request. In the event that we remove content without prior notice, Magento will provide prompt notice following such removal to you unless prohibited by law.

3.4 As applicable, 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 Services or 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.

3.5 Export and Import Restrictions. Software and its Documentation (as applicable) 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 or Service in violation of any U.S. export embargo, prohibition or restriction.

3.6 Third-Party Content, Third-Party Services, and Modifications. Customer may, at its option, decide to utilize Third-Party Content and Third-Party Services, which are governed by separate agreement(s) as between such third parties and Customer and not this Agreement. Magento makes no representation, warranty or covenant with respect to, and provides no indemnity for, any Third-Party Content or Third-Party Services. Customer is solely responsible for the installation and deployment of any Third-Party Content, Third-Party Services, and/or if applicable to the Service, Modifications (collectively, "Customization"). This includes any possible negative effect on the Services arising from the use or inability to use any Customization. Customer acknowledges that Customizations may affect the Site(s)' performance and may result in downtime and/or require increased server or surge capacity which may incur additional fees. It is the responsibility of the Customer to address any performance, availability, or functional issues caused by any Customization.

3.7 Customer shall maintain at all times the appropriate level of PCI certification as set forth in the PCI Data Security Standards and Payment application Data Security Standards issued by the PCI Security Standards Council, or any successor compliance certificates, including, without limitation, PCI DSS (PCI Data Security Standard) v. 3.2.1 as any such standards may be amended, updated, or revised. Customer shall ensure that the Services and Software do not store, transmit, process or tangentially process any cardholder data of any kind.

3.8 Customer understands and agrees that Magento is not acting on Customer's behalf as a Business Associate or subcontractor (as defined below): (a) the Services may not be used to store, maintain, process or transmit sensitive personal information, including but not limited to financial information, country identifications numbers (such as social insurance, social security, driver's license or passport numbers), or protected health information ("PHI"); and (b) the Services will not be used in any manner that would require Magento or the Service to be compliant with the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented ("HIPAA"). The terms "Business Associate", "subcontractor", "protected health information" or "PHI" shall have the meanings described in HIPAA.

3.9 To the extent applicable to the Services, Customer understands that the performance of the Services is dependent on whether Customer has licensed sufficient computer processing resources, including but not limited to the Maximum vCPU Day Entitlement, as specified on the Order Form. If required, Customer may provision increases to the Maximum vCPU Day Entitlement at pre-negotiated pricing as specified on the Order Form. Customer agrees and acknowledges that Magento shall have no liability for any degradation in the functionality of the Services that is attributable to insufficient computer processing resources being provisioned.

4. MAGENTO RESPONSIBILITIES.

4.1 Privacy. Magento will not: (a) move Customer Content from the Locations selected by Customer; or (b) access, use or disclose Customer Content; except as necessary to maintain and provide the Software, Services 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, either as set forth in an Exhibit hereto or available at www.magento.com/legal/terms (or its successor location), the terms of which are incorporated herein by reference.

4.2 Security. In its delivery of the Services, Magento implements commercially reasonable and appropriate measures (as determined by Magento) designed to help Customer secure Customer Content against accidental or unlawful loss, access or disclosure. Furthermore, Magento shall comply with its Security, Privacy and Architecture Guide made available at www.magento.com/legal/terms (or its successor location) and as may be updated from time to time by Magento.

4.3 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 or Services; and (c) accessing data from third parties regarding Customer's use of Third-Party Services or Third-Party Content (including analytics data and any unique account identifiers) (d) 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 Services, Software and Support Services; (iii) performing analyses related to the Software and Customer's use of the Services and Software (if applicable); and (iv) monitoring the performance and use of the Services and 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.

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

4.5 Where applicable, based on the observed load on the Production Instance, Magento may, but is not obligated to, take reasonable action to maintain the Site(s) performance by proactively increasing server capacity during periods of increased end-user demand.

5. FEES AND PAYMENT.

5.1 <u>Subscription Fees</u>. Customer shall pay the subscription fees ("Subscription Fees") based on certain service configuration items (the "Service Configuration Items") as specified in the Order Form. Changes to the Service Configuration Items requested by Customer may result in changes to the Subscription Fees as set forth in the Order Form, subsections (a)-(b) hereunder, and/or Section 5.2. Customer hereby authorizes Magento, if applicable, to charge its credit card or other payment instrument (or issue an ACH transaction) for Subscription Fees, Overage Fees and/or any upgrades to the Services ordered, 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) <u>Gross Merchandise Value, Average Order Value, and Subscription Fee Adjustments</u>. Customer acknowledges and agrees that the Subscription Fees specified in the Order Form are based on the GMV and AOV thresholds provided by Customer, and are as set forth on the Order Form and further 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. Customer acknowledges and agrees that Magento has the right to access relevant data stored on the Services and Account to assess and calculate GMV and AOV based on Customer's use of the Services across all Sites; and (b) Customer shall not interfere in any way with Magento's right, access, and/or assessment and calculation of such data. 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.

   (b) <u>Location and Store Views</u>. The Subscription Fees are based on the production Location where the Customer Content will be hosted, as specified on the Order Form. Customer shall not use the Services with more than the number of Store Views specified on the Order Form.

5.2 <u>Overage Fees</u>. Customer shall pay additional fees as set forth on the Order Form in the event that its use of the Services exceeds any of the metrics specified in the Order Form (the "Overage Fees"). Any such Overage Fees will be reflected in an invoice and subject to the payment terms of this Section 5.

5.3 <u>Changes to Specifications</u>. 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) which will be made in accordance with the payment terms in this Section 5.

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

5.5 <u>Payment Terms</u>. 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.

5.6 <u>Disputed Amounts</u>. 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, at its option, terminate this Agreement immediately pursuant to Section 7.2 or suspend or restrict provision of or access to the Services and Software (as applicable).

5.7 <u>Taxes</u>. 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.

5.8 <u>Audit Rights</u>. Magento may include means within the Services and Software to audit or limit Customer's usage of the Services and 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 Services and 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. TEMPORARY SUSPENSION.

6.1 Magento may temporarily suspend Customer's or any End User's right to access or use any portion of or all of the Services immediately (i) without Notice to Customer in case of (a) below, or (ii) after thirty (30) days' Notice to Customer and failure by Customer to cure in case of (b) or (c) below, if Magento reasonably determines:

(a) Customer's or an End User's use of the Services poses a material risk, adverse impact, or liability to the Services, a third party, Magento systems, Magento or its Affiliates, or the Content of any other Magento customer, or

(b) Customer or any End User is not in compliance with Sections 2, 3, 9 or any licenses granted in applicable Service Description(s); or

(c) Customer has any outstanding unpaid Subscription Fees or Overage Fees that are not Disputed Amounts.

Magento will use commercially reasonable efforts to restore Customer's rights to use and access those portions of the Services or Accounts that gave rise to the suspension promptly after Customer has resolved the problem giving rise to the suspension.

6.2 Effect of Suspension. If Magento suspends Customer's or End User's right to access or use any portion of the Services:

(a) Customer remains responsible for all fees and charges Customer incurs during the period of suspension; and

(b) Customer will not be entitled to any service credits under Support Services for any period of suspension.

7. TERM; TERMINATION.

7.1 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.

7.2 Termination. Without limiting Section 6, 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.

7.3 Effect of Termination.

(a) Upon the Termination Date:

(i)   except as provided in Section 7.3(b), all of Customer's licenses under this Agreement immediately terminate and Customer shall cease all use of the Services and Software;
(ii)   Customer remains responsible for all fees and charges Customer has incurred through the Termination Date; and
(iii)   Customer will immediately return or, if instructed by Magento, destroy all Magento Content in Customer's possession; and
(iv)   Sections 2.1(b) 3, 4.1-4.3, 5, 7.3, 8, 9.1, 9.5, 10, 11(b)-(c), 12 and 13 will continue to apply in accordance with their terms and survive termination of this Agreement.

(b) Post-Termination. Within thirty (30) days of the Termination Date, 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. Customer's access to the Production Instance in Customer's Account will terminate on the Termination Date, however for the thirty (30) days following the Termination Date, Magento will (a) not take action to remove any Customer Content as a result of the termination; and (b) will allow Customer to retrieve any remaining Customer Content from the Services; unless (i) prohibited by law or the order of a governmental or regulatory body or it could subject Magento or its Affiliates to liability; or (ii) Customer has not paid all amounts due under this Agreement, other than Disputed Amounts. For any use of the Services after the Termination Date, the terms of this Agreement will apply and Customer will pay the applicable fees as set forth under Section 5 and the Order Form.

8. CONFIDENTIALITY.

8.1 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.

8.2 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 8. 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.

8.3 Exclusions. The obligations of this Section 8 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.

9. PROPRIETARY RIGHTS.

9.1 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.

9.2 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 and/or Service. Any such usage of Customer Marks shall be in accordance with Customer's trademark guidelines, as provided to Magento in writing.

9.3 Contractors. Subject to the terms and conditions of this Agreement, Customer may permit authorized third parties to access the Services and Software (as applicable) provided, that (i) 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 and any licenses and restrictions contained in the applicable Service Description(s), solely as needed to provide the contracted services to Customer in connection with the Services and Software hereunder; and (ii) Customer shall be responsible for all acts and omissions by such third party as if they were Customer's acts and omissions.

9.4 Open Source Software. Customer acknowledges that the Services and 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.

9.5 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.

10. INDEMNIFICATION.

10.1 <u>By Customer</u>. 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 claim concerning: (a) Customer's or any End User's use of the Services or Software in a manner not authorized by this Agreement or as described in the Documentation; (b) 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; (c) alleged infringement or misappropriation of any third party's patent, copyright, trademark or trade secret by Customer Content or Modifications (if any), or by the use, development, design, production, advertising or marketing of such Customer Content or Modifications (if any); or (d) a dispute between Customer and any End User, or any third party.

10.2 <u>By Magento</u>. Magento will defend, indemnify, and hold harmless Customer and its Affiliates against claims brought against Customer by any third party alleging that Customer's use of the Magento Content 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 Magento Content by any party other than Magento without Magento's prior written consent; (ii) a combination of the Magento Content, or any part thereof, with hardware or software (including, without limitation, any Third-Party Content or Open Source Software) 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 Magento Content 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) Customer's indirect infringement or any enhanced damages caused by Customer's willful infringement; (vi) Customer's violation of any applicable law or third party rights; (vii) any actions or losses for which Customer is obligated to indemnify Magento pursuant to Section 10.1; (vii) use of Magento Content in any manner for which there is not a current and paid up subscription or license for the Magento Content and Support Services; (viii) use of the Magento Content other than in accordance with this Agreement and Documentation; (ix) 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; or (x) Magento's compliance with any designs, materials, specifications or instructions provided by Customer. In the event that a court holds that the Magento Content, or if Magento believes a court may hold that the Magento Content 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 Magento Content; (b) replace or modify the Magento Content 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) terminate this Agreement, accept return of any Software provided to Customer 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.

10.3 <u>Process</u>. Each Party's obligations under this Section 10 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 10; and (iv) not entering into any settlement or compromise of a claim without the Indemnitor's prior written consent.

10.4 <u>Entire Liability</u>. THIS SECTION 10 STATES MAGENTO'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY ACTUAL OR ALLEGED INFRINGEMENT CLAIMS RELATED TO THE SOFTWARE OR SERVICES.

11. WARRANTY AND DISCLAIMERS.

(a) <u>Limited Warranty and Remedy for Services</u>. Magento warrants that the Services, as paid for by and delivered to Customer, will substantially conform to the applicable Documentation during the Term. Customer must notify Magento of a claim under this warranty within 30 days of the date on which the condition giving rise to the claim first appeared. To the extent permitted by law, Customer's sole and exclusive remedy and Magento's sole liability under or in connection with this warranty will be for Magento to undertake commercially reasonable efforts to correct the condition.

(b) <u>Limited Warranty and Remedies for Software</u>. Magento warrants that the Software, as paid for and delivered, will substantially conform to the applicable Documentation for 90 days following the execution of the initial Order Form that the Software. Customer must make these warranty claims, describing in reasonable detail the condition giving rise to the claim to Magento within this 90-day period. To the extent permitted by law, Customer's sole and exclusive remedy and Magento's sole liability under or in connection with this warranty will be for Magento to undertake commercially reasonable efforts to correct the condition.

(C) <u>IMPLIED WARRANTIES</u>. TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, MAGENTO PROVIDES THE SOFTWARE AND SERVICES ON AN "AS-IS" BASIS. MAGENTO, ITS AFFILIATES, AND THIRD-PARTY PROVIDERS DISCLAIM AND MAKE NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING REPRESENTATIONS, GUARANTEES OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ACCURACY. CUSTOMER ACKNOWLEDGES THAT (A) NEITHER MAGENTO, ITS AFFILIATES NOR ITS THIRD PARTY PROVIDERS CONTROLS CUSTOMER EQUIPMENT OR THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES (INCLUDING

THE INTERNET); (B) THE SOFTWARE AND SERVICES MAY BE SUBJECT TO LIMITATIONS, INTERRUPTIONS, DELAYS, CANCELLATIONS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE COMMUNICATIONS FACILITIES (INCLUDING SEARCH ENGINES AND SOCIAL MEDIA CHANNELS); AND (C) IT IS FULLY RESPONSIBLE TO INSTALL APPROPRIATE SECURITY UPDATES AND PATCHES. MAGENTO, ITS AFFILIATES, AND ITS THIRD PARTY PROVIDERS ARE NOT RESPONSIBLE FOR ANY INTERRUPTIONS, DELAYS, CANCELLATIONS, DELIVERY FAILURES, DATA LOSS, CONTENT CORRUPTION, PACKET LOSS, OR OTHER DAMAGE RESULTING FROM THESE PROBLEMS.

12. LIMITATION OF LIABILITY.

(A) NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, MORAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES; LOSS OF PROFITS; LOSS OF REPUTATION, USE, OR REVENUE; LOSS OR CORRUPTION OF DATA; OR INTERRUPTION OF BUSINESS.

(B) THE MAXIMUM AGGREGATE LIABILITY OF EACH PARTY FOR EACH AND ALL CLAIMS (INDIVIDUALLY AND TOGETHER) UNDER OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER IS LIMITED TO AN AMOUNT EQUAL TO THE AGGREGATE OF THE FEES PAYABLE BY CUSTOMER UNDER THIS AGREEMENT DURING THE 12 MONTHS BEFORE THE INITIAL CLAIM.

(C) SECTIONS 12 (A) AND 12 (B) (LIMITATION OF LIABILITY):

    (I)   APPLY REGARDLESS OF THE FORM OR SOURCE OF CLAIM OR LOSS, WHETHER THE CLAIM OR LOSS WAS FORESEEABLE, AND WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE CLAIM OR LOSS; AND

    (II)   DO NOT APPLY IN ANY BREACH OF SECTION 3 (CUSTOMER RESPONSIBILITIES), SECTION 8 (CONFIDENTIALITY), CUSTOMER'S USE OF THE SOFTWARE OR SERVICES BEYOND THE SCOPE OF ANY LICENSE OR SUBSCRIPTION GRANTED UNDER THIS AGREEMENT, OR CUSTOMER'S FAILURE TO PAY ANY AMOUNTS OWING TO MAGENTO UNDER THIS AGREEMENT.

13. MISCELLANEOUS.

13.1 <u>Assignment</u>. 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 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.

13.2 <u>Counterparts; Facsimile</u>. 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.

13.3 <u>Entire Agreement</u>. 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.

13.4 <u>Force Majeure</u>. 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.

13.5 <u>Governing Law, Venue</u>. This Agreement is governed by and construed under the laws of the state of California, without regard to any conflict of law rules or principles, and excluding the application of the United Nations Convention on Contracts for the International Sale of Goods. The Parties irrevocably submit to the exclusive jurisdiction of the courts of competent jurisdiction in the County of Santa Clara, state of California, provided however,

Magento will have the right to pursue claims against Customer in any other jurisdiction worldwide to enforce its rights under this Agreement or to enforce its intellectual property rights.

13.6 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.

13.7 Publicity. Except as permitted by Section 9.2, 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 or Services.

13.8 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").

13.9 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.

13.10 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.

Service Description - Magento Commerce Pro

Magento Commerce Pro Service Description: A hosted platform-as-a-service environment and managed services for delivering eCommerce capabilities based on the Magento Commerce Software. This offering includes: a license for the Magento Commerce Software source code, deployment tools, web application firewall (WAF), transactional email delivery, image optimization, a dedicated production environment, content delivery network (CDN), denial-of-service (DDOS) capacity, Magento Business Intelligence Essentials, and application performance monitoring and profiling solutions.

In the event Customer subscribes to Magento Commerce Pro:

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, Customer's subscription to the Magento Commerce Pro Services includes a limited, personal, revocable, non-exclusive, non-transferrable, non-sublicensable license to use internally and reproduce the Magento Commerce Software, provided to Customer in source code format, and create and use Modifications, in both cases solely for the purpose of creating and running Sites on the Services. (For clarity, Customer cannot host any Production Instance outside of the Services provided by Magento, including any Production Instances on Customer-owned environments or any third-party hosting providers). The Magento Commerce Software may include Open Source Software.

B. <u>Restrictions</u>. Customer shall not (and shall ensure that its employees, contractors and other third parties do not): (a) exploit the licenses set forth in Section A 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 Magento Commerce 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 Magento Commerce 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 Magento Commerce 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 Magento Commerce 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 Magento Commerce Software; or (i) develop any Modifications to the Software or Services to interface or process cardholder data of any kind. (For clarity, Customer will use payment gateway integrations where cardholder data is sent directly to the payment gateway and is not sent to payment gateway via the Services).

(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.

C. Customer understands that the Services are intended to host the Software and Modifications. The Services cannot be used to host third-party applications or agents (hosting monitoring agents, content management systems, or security software).

Service Description - Magento Commerce Starter

Magento Commerce Starter Service Description: A hosted platform-as-a-service environment and managed services for delivering eCommerce capabilities based on the Magento Commerce Software. This offering includes: a license for the Magento Commerce Software source code, deployment tools, web application firewall (WAF), transactional email delivery, image optimization, a shared production environment, content delivery network (CDN), denial-of-service (DDOS) capacity, Magento Business Intelligence Essentials, and application performance monitoring and profiling solutions.

In the event Customer subscribes to Magento Commerce Starter:

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, Customer's subscription to the Magento Commerce Starter Services includes a limited, personal, revocable, non-exclusive, non-transferrable, non-sublicensable license to use internally and reproduce the Magento Commerce Software, provided to Customer in source code format, and create and use Modifications, in both cases solely for the purpose of creating and running Sites on the Services. (For clarity, Customer cannot host any Production Instance outside of the Services provided by Magento, including any Production Instances on Customer-owned environments or any third-party hosting providers). The Magento Commerce Software may include Open Source Software.

B. <u>Restrictions</u>. Customer shall not (and shall ensure that its employees, contractors and other third parties do not): (a) exploit the licenses set forth in Section A 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 Magento Commerce 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 Magento Commerce 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 Magento Commerce 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 Magento Commerce 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 Magento Commerce Software; or (i) develop any Modifications to the Software or Services to interface or process cardholder data of any kind. (For clarity, Customer will use payment gateway integrations where cardholder data is sent directly to the payment gateway and is not sent to payment gateway via the Services).

(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.

C. Customer understands that the Services are intended to host the Software and Modifications. The Services cannot be used to host third-party applications or agents (hosting monitoring agents, content management systems, or security software).

Service Description - Magento Order Management

Magento Order Management Service Description: A hosted eCommerce inventory software-as-a-service platform that includes features to enable Customer order management (both online and in store). These features include: distributed order management and tracking, omnichannel fulfillment, and customer service capabilities.

In the event Customer subscribes to Magento Order Management:

A.   For purposes of Magento Order Management, the definition of "GMV" shall additionally include Transactions occurring in Customer's physical retail stores or via any other sales channels (including, but not limited to: telephone orders and other eCommerce channels), and processed through the Service.

B.   Data Interchanges. Unless otherwise agreed upon by the Parties in writing, all applicable information transmitted by and between the Parties shall be communicated electronically using Magento's standard API guides and encryption requirements. To the extent Magento agrees to use other technologies for any such communications, the Parties will utilize middleware acceptable to both Parties, provided however, such middleware must conform to Magento's standard API Documentation. All costs incurred in the integration, testing, and transmission of such communications will be the responsibility of the Customer.

Service Description - Magento Business Intelligence

Magento Business Intelligence Service Description: A full-stack, software-as-a-service business intelligence platform that incudes, but is not limited to, the following capabilities: data extraction, data warehousing, data analysis, and data visualization.

In the event Customer subscribes to Magento Business Intelligence:

A. For purposes of Magento Business Intelligence, the definition of "GMV" shall include Transactions for any Sites or any other eCommerce channels that occur during the Contract Year. For clarity, any Transactions loaded from previous years or from sales channels that are not Sites or other eCommerce channels shall not contribute to GMV.

Service Description - Magento Shipping

Magento Shipping Service Description: A hosted platform that includes a multi-carrier shipping and fulfillment solution combining intelligent automation capabilities, access to global carrier networks and integration into other Magento Services.

In the event Customer subscribes to Magento Shipping:

A.   For purposes of Magento Shipping, the following definitions will apply:
   1. "Carrier" means a Third-Party Service providing freight/delivery services available to Customer via Magento Shipping.
   2. "Third-Party Offering" means any third-party service or resource that is available to Customer via Magento Shipping including, without limitation, Carriers, insurance providers, and US Customs Services.
   3. "Dangerous Goods" means goods which fall within the classifications listed in the IATA Dangerous Goods Regulations.
   4. "Offline Carrier" a Carrier which does not have a direct API quoting connection to Magento Shipping.
   5. "Shipment" means a contract for the carriage of one of more items of freight entered into between Customer and a Carrier using Magento Shipping.

B. Restrictions. Customer may not: (1) exceed the maximum number of API quoting calls to Carriers per calendar year applicable to customer (which is ten times the number of included shipments under the Service Configuration Items in the Order Form); or (2) consistently initiate API quoting calls to Carriers with excessively large payload sizes resulting in API execution times that exceed 5 seconds in duration.

C. Carriers and Third-Party Offerings
   1. Customer acknowledges and agrees that: (i) Magento is not a freight/delivery service provider nor is Magento Shipping is an element of a carrier shipping service; (ii) Magento not involved in any part of the shipping process but is acting merely as a software and service provider to facilitate communication between Customer and Third Party Offerings; (iii) each shipment is subject to the terms of the relevant Carrier ("Carrier Terms"); and (iv) Customer has its own contractual relationship with the Carrier and the Carrier is not a sub-contractor of Magento. By entering into a Shipment, Customer agrees that it has read and understood the relevant Carrier Terms and agrees to be bound and abide by them.

   2. For the purposes of Magento Shipping, Services (as defined in the Magento Customer Agreement) do not include Third-Party Offerings, and Magento does not make any warranty as to results from, or performance of Third-Party Offerings.

   3. WITHOUT LIMITING THE FOREGOING, NEITHER MAGENTO, NOR ANY OF ITS AFFILIATES, THEIR RESPECTIVE SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES OR LICENSORS (COLLECTIVELY, THE "MAGENTO PARTIES") SHALL BE SUBJECT TO ANY DAMAGES OR BE LIABLE, DIRECTLY OR INDIRECTLY, TO CUSTOMER, ANY USER OR ANY OTHER PERSON, FOR ANY ERROR OCCURRING AS PART OF THE SHIPPING PROCESS, WHETHER MADE BY A THIRD-PARTY OFFERING OR SOME OTHER PERSON, INCLUDING, WITHOUT LIMITATION, FOR ANY DELAYED SHIPMENT, LOST SHIPMENT, MISTAKEN SHIPMENT OR DAMAGED SHIPMENT. ACCORDINGLY, CUSTOMER HEREBY SHALL NOT BRING ANY CLAIM AGAINST, AND HEREBY FULLY RELEASES, EACH OF THE MAGENTO PARTIES FROM ANY AND ALL CLAIMS, ACTIONS, SUITS, DEMANDS AND OTHER LIABILITY RELATED TO AN ACT OR OMISSION OF ANY THIRD-PARTY OFFERING ENGAGED AS A RESULT OF CUSTOMER'S OR A USER'S USE OF MAGENTO SHIPPING.

   4. Any Customer Content transferred by Magento to the Carrier for purposes of Magento Providing Services under the Agreement is on Customer's behalf and subject to the terms of the Customer's agreement with the Carrier. Once Customer Content is transferred by Magento to a Carrier through Magento Shipping, Magento will have no liability or obligation to Customer with respect to any Customer Content transferred through Magento Shipping to the Carrier. Customer acknowledges that the Carrier is not a service provider of Magento and does not process Customer Content for, or on behalf of, Magento.

D. Dangerous Goods. Customer will comply with the relevant Carrier's restrictions in relation to any Shipments of Dangerous Goods.