

MAGENTO SERVICES TERMS AND CONDITIONS

IMPORTANT – CAREFULLY READ ALL THE TERMS AND CONDITIONS OF THESE MAGENTO, INC. (“MAGENTO”) CONSULTING TERMS (“TERMS”). BY AGREEING TO A STATEMENT OF WORK (“SOW”) INCORPORATING THESE TERMS, YOU (“CLIENT”) ARE INDICATING THAT YOU HAVE READ, UNDERSTOOD AND ACCEPT THESE TERMS WITH MAGENTO, AND THAT YOU AGREE TO BE BOUND BY THEM. THESE TERMS AND EACH SOW ARE THE “AGREEMENT.”

1. PROVISION OF SERVICES.

1.1. Services and Deliverables. Magento (or its third-party service provider) will provide to Client the services (“Services”) and/or materials (“Deliverables”) as described on each SOW that references these Terms. Unless otherwise set forth in a SOW, Deliverables are deemed accepted upon delivery by Magento.

1.2. Change Requests. Either party may request changes to the Services in accordance with a mutually agreed change request which sets forth details regarding the requested change and any applicable adjustment to fees and schedule (“Change Request”), however Magento is not required to perform any Services described in the Change Request unless both parties agree to it in writing.

1.3. Personnel. The selection, assignment or replacement of personnel to perform the Services is at Magento’s sole discretion and Magento reserves the right to replace any such personnel at any time with different personnel with equivalent skills. If at any time Client is dissatisfied with the material performance of any assigned personnel, Client shall promptly report such dissatisfaction to Magento in writing and may request a replacement. Magento shall use reasonable efforts to replace such personnel (which shall be subject to staffing availability).

1.4. Delays. If any Services, in whole or in part, cannot be provided by Magento on a timely basis for reasons caused by Client (including, without limitation, Client’s failure to provide necessary information, access or equipment or Client’s rescheduling requests), (i) Client will be charged for such delays unless the assigned personnel can be redeployed elsewhere, and (ii) any timeframes for performance set forth in the SOW shall be extended on a day for day basis for the duration of the delay.

2. FEES AND EXPENSES.

2.1. Fees and Expenses. Client will pay Magento for the Services as set forth in the SOW (“Fees”). Client will be responsible for all taxes resulting from the performance of the Services other than taxes on Magento’s income. Magento will invoice Client for expenses incurred as a result of performing Services if so agreed in the SOW.

2.2. Payment of Fees and Expenses. The fees, charges and/or expenses invoiced in accordance with this Section 2 shall be payable by Client within thirty (30) days of the date of each invoice unless different payment terms are set forth in the SOW. If any Fees remain unpaid following ten (10) days’ written notice of delinquency to Client, Magento shall have the right to (i) suspend performance of the Services until all such Fees are paid in full, and/or (ii) collect interest on such unpaid Fees at the rate of 1.5% per month or the maximum rate permitted by law, whichever is lower; provided, however, that the provisions of (i) and (ii) shall not apply to any Fees which are subject to a good faith dispute if Client is actively working with Magento to resolve such dispute.

3. CONFIDENTIALITY AND LICENSE RIGHTS.

3.1. Confidentiality.

3.1.1 Confidential Information. “Confidential Information” means any information which is disclosed by a party (“Discloser”) in connection with this Agreement, directly or indirectly, in writing, orally or by drawings or inspection of equipment or software, to the other party (“Recipient”) or any of its employees or agents and that is designated or

marked as “confidential” or “proprietary” at the time of disclosure or that, based on the circumstances surrounding the disclosure, the Recipient knows or reasonably should know is considered confidential. The restrictions on disclosure set forth in this Section shall not apply to Confidential Information which: (a) becomes publicly known without breach of this Agreement; (b) the Recipient can show by written records was rightfully in its possession prior to the disclosure by the Discloser or becomes rightfully known to the Recipient without confidential or proprietary restriction from a source other than the Discloser; (c) is approved for disclosure without the restriction in a written document which is signed by a duly authorized officer of the Discloser; or (d) is independently developed by the Recipient prior to the Effective Date.

3.1.2 Obligations. Recipient may use Discloser’s Confidential Information solely for the purpose of exercising its rights and performing its obligations under this Agreement. Recipient agrees to take the same care with the Discloser’s Confidential Information as it does with its own information of a similar nature, but in no event with less than a reasonable degree of care. Recipient shall limit access to the Confidential Information to those persons having a need to know such information in order to exercise Recipient’s rights and obligations under this Agreement. Recipient may disclose Confidential Information: (a) insofar as disclosure is reasonably necessary to carry out and effectuate the terms of this Agreement; (b) insofar as the Recipient is required by law or legal proceedings to disclose such Confidential Information provided that the Recipient provides the Discloser with prompt written notice of such requirement to enable the Discloser to seek a protective order; (c) insofar as disclosure is necessary to be made to the Recipient’s independent accountants for tax or audit purposes; and (d) insofar as the parties may mutually agree in writing upon language to be contained in one or more press releases. In addition, neither party will disclose to any third party the terms of this Agreement without the prior written consent of the other party, provided, however, that each party may disclose the existence of this agreement or the existence of a business relationship with the other party.

3.2 License Rights. Magento hereby grants to Client a non-exclusive, worldwide, perpetual license to use the Deliverables solely for Client’s internal business purposes. Client shall have no right to sublicense the Deliverables or to disclose the Deliverables to third parties except in connection with Client’s use of the Deliverables for Client’s internal business purposes. Client and its suppliers own and maintain any and all right, title and interest in and to Client’s Confidential Information and any other Client information provided by Client to Magento. Magento owns all right, title and interest in and to the Deliverables; provided however, that Magento will not reuse or distribute in any manner any portions of the Deliverables that incorporate Client’s Confidential Information. Client agrees that it has all necessary license rights required for Magento to perform the Services.

4. WARRANTIES.

4.1. Magento Warranties. Magento represents and warrants that the Services provided hereunder shall be provided in a professional and workmanlike manner. In the event of a breach of this warranty, Magento shall re-perform the applicable Services within a reasonable time provided that Client notifies Magento within fifteen (15) days following the date of completion of the Services. The foregoing shall be Client’s sole and exclusive remedy, and Magento’s sole and exclusive obligation, for a breach of the warranty set forth in this Section 4.1.

4.2. Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED FOR IN SECTION 4.1, THERE ARE NO WARRANTIES WITH RESPECT TO THE SERVICES OR THE DELIVERABLES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT.

5. TERM & TERMINATION.

This Agreement shall commence on the Effective Date set forth in the SOW and shall continue in full force and effect thereafter unless and until terminated in accordance with the provisions of this Agreement or until completion of the Services described in the SOW. Either party may terminate this Agreement for the other party’s material breach that is not cured within thirty (30) days of the date of notice of the breach. Unless otherwise set forth in the SOW, in the event of any termination of this Agreement, Client agrees to pay Magento, within fifteen (15) days from date of termination, for all Services

performed, whether invoiced or work in process, up to the effective date of termination. Sections 3, 4.2, 6, 7 and 8 shall survive termination or expiration of this Agreement for any reason.

6. LIMITATION OF LIABILITY.

6.1. Disclaimer of Consequential Damages. NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.2. Liability Cap. IN NO EVENT SHALL MAGENTO'S LIABILITY FOR ANY REASON AND UPON ANY CAUSE OF ACTION WHATSOEVER EXCEED THE FEES PAID BY CLIENT TO MAGENTO IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES SET FORTH IN THIS AGREEMENT FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

7. NON-SOLICITATION.

During the term of this Agreement and for one (1) year thereafter, Client shall not solicit nor attempt to solicit the services for employment or otherwise grant employment to any employee of Magento without the prior written consent of Magento. The foregoing shall not be deemed to include responses to general solicitations of employment (whether through advertisements, recruiting firms or other means) not specifically directed toward Magento employees.

8. GENERAL.

Neither party shall be liable for delay in performance hereunder due to causes beyond its control, including but not limited to acts of God, fires, strikes, acts of war, or intervention by governmental authority. Client may not assign this Agreement without the prior written consent of Magento, which consent will not be unreasonably withheld or delayed. Magento is acting in performance of this Agreement as an independent contractor. Any notices or communication under this Agreement shall be in writing and shall be hand delivered or sent by registered mail return receipt requested at the address set forth in the SOW, or such other address as either party may in the future specify to the other party. This Agreement will be governed by the laws of the State of California. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement must be brought in the courts in Santa Clara County, California. A failure of either party to exercise any right provided for herein, shall not be deemed to be a waiver of any right hereunder. These Terms and each SOW set forth the entire understanding of the parties as to the subject matter therein and may not be modified except in a writing executed by both parties. Any preprinted terms on Client's purchase order or similar ordering or other document, any previous proposal, letters of intent, memorandum of understanding or similar documents are hereby rejected. In the event of a conflict between this Agreement and the SOW, the terms of such SOW shall control only to the extent of such conflict and only with respect to the Services provided pursuant to such SOW. In the event any one or more of the provisions of this Agreement or any SOW is invalid or otherwise unenforceable, the enforceability of remaining provisions shall be unimpaired.

Effective as of August 01, 2017.