MAGENTO COMMERCE (ON-PREMISES) SUBSCRIPTION AGREEMENT

This Magento Commerce (On-premises) Agreement (this "Agreement") is agreed to between Magento, Inc. ("Magento"), and the Licensee (as defined in the Order Form) by executing this Agreement or by otherwise indicating assent to these terms or this Agreement. If Licensee does not agree with all of these terms and conditions, Licensee shall not install, copy or otherwise use the Software. The parties hereby agree as follows:

1.   DEFINITIONS

"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 possession of the power to direct or cause the direction of the management and policies of that party through direct or indirect: (a) majority ownership; or (b) ownership sufficient to be deemed a controlling interest. An entity shall be deemed an affiliate for only so long as such Control exists.

"Agreement" has the meaning set forth above and includes any other governing agreement (whether written or click through) that references this Agreement, any applicable Order Forms, and other terms and conditions incorporated by reference.

"Analytics Data" means the data Licensee collects, processes or stores using a data analytics service (e.g., New Relic, Google Analytics) concerning the characteristics and activities of Visitors (defined below).

"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.

"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 Effective Date, and otherwise on an anniversary of the Effective Date.

"End User" means any individual or entity that directly or indirectly through another user initiates Transactions through any Licensee Site(s).

"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 User, (b) any taxes Licensee collects from End Users as part of any Transaction, and (c) any financing charges and interest for installments charged to the End Users.

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

"IP Rights" means (a) all rights under all copyright laws of the United States and all other countries for the full terms thereof (or all rights accruing by virtue of copyright treaties and conventions), including, but not limited to, all renewals, extensions, reversions or restorations of copyrights now or hereafter provided by law and all rights to make applications for and obtain copyright registrations; (b) all rights to and under inventions, discoveries, designs, technology and art and all other patentable and non-patentable subject matter and all applications for and the right to make applications for patents in the United States and all other countries, all patents that issue therefrom and all reissues, extensions, renewals, divisions and continuations (including continuations-in-part) thereof, for the full term; (c) all information protected by trade secret law; and (d) all intellectual property rights other than trademarks, service marks and domain names under the laws of any jurisdiction.

"Magento Software" shall mean Magento's commerce software currently marketed as the "Magento Commerce (On-premises)" software as described on the Magento website (www.magento.com or such subsequent website designated by Magento), provided primarily in source code, including related documentation, and all Updates thereof furnished to Licensee as part of Support Services. Magento Software does not include the Open Source Software.

"Modifications" shall mean any modification, supplement, enhancement, addition or derivative work of the Software developed by Licensee (or any third party on behalf of Licensee), including without limitation, any software related to the configuration, integration, implementation, or localizations to the external layer of the Software.

"Open Source Software" shall mean the software 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.

"Order Form" shall mean Magento's order form pursuant to which Licensee orders Magento products and services, which describes, among other things, the term of the Subscription and applicable fees.

"Personal Information" or "Personal Data" shall mean data by which a Visitor may be personally identified, including such Visitor's name, postal address, e-mail address, telephone number and any other information Licensee collects, including that which is defined as personal or personally identifiable information under applicable Privacy and Data Security Laws.

"Privacy and Data Security Laws" means all domestic and international privacy and data protection laws, rules, regulations, best practices and regulatory guidance relating to privacy, data security, cybersecurity and Personal Information.

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

"Software" shall mean the Magento Software and the Open Source Software, including related documentation, and all Updates thereof furnished to Licensee as part of Support Services.

"Subscription" means the purchase by Licensee of a Magento Commerce (On-premises) subscription, including, among other things, a license to use the Magento Software.

"Transaction" means any order placed by an End User through any Site(s) by whatever means that is accepted and/or processed, (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 End User makes or the Licensee receives any payment for such order.

"Transaction Data" shall mean anonymized and tokenized transaction records or other information created or derived from Licensee's transaction processing undertaken pursuant to this Agreement. Transaction Data shall not be deemed to constitute confidential information of Licensee even if such transaction data was derived from confidential information disclosed by Licensee.

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

"Updates" means any update, upgrade, release or other adaptation or modification of the Magento Software, including any updated documentation, that Magento may provide to Licensee from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Magento Software. For the avoidance of doubt, Updates do not include any new version of the Magento Software that Magento may from time to time introduce and market generally as a distinct licensed product (as may be indicated by Magento's designation of a new version number), and which Magento may make available to Licensee at an additional cost under a separate written agreement.

"Visitors" means and refers to visitors to Licensee's Sites.

2.   LICENSE AND SUPPORT SUBSCRIPTION

2.1   <u>Magento Software License Grant</u>. Subject to Licensee's payment of the annual subscription fee set forth on the Order Form (the "Subscription Fee") and Licensee's compliance with the terms and conditions of this Agreement, including the restrictions in Section 4, Magento hereby grants Licensee during the Subscription Term a non-exclusive, non-transferable, non-assignable, non-sublicensable (except as set forth herein), personal, revocable and limited worldwide license to reproduce, install, use and create derivative works of the Magento Software, as set forth in the applicable Order Form, in accordance with the technical documentation of the Magento Software and for the sole purpose of running Licensee's Sites. Magento shall deliver or otherwise make the Magento Software available to Licensee on the agreed upon delivery date, provided Magento has received the applicable Subscription Fee payment from Licensee in full.

2.2   <u>Support Services</u>. Subject to Licensee's payment of the applicable fees and Licensee's compliance with this Agreement, Magento shall provide to Licensee the Support Services ("Support Services") as described in the Magento Commerce (On-premises) Support Services Terms attached hereto ("Support Services Terms").

2.3   <u>Use of Magento Community Edition</u>. As an express condition of the licenses granted by Magento hereunder, Licensee shall not use the Magento Community Edition during the Term.

2.4 <u>Modifications by Licensee</u>. Magento also grants Licensee the right to create Modifications to the Software. Licensee may contribute the IP Rights in any of those Modifications back to Magento. Licensee may contact Magento for more information regarding contributions of derivative works rights to Magento. Regardless of whether Licensee contributes such IP Rights to Magento, Licensee hereby grants to Magento, a non-exclusive, royalty-free, transferable, perpetual, irrevocable, (irrespective of the expiration or termination of this Agreement) worldwide, fully paid-up license (with rights to sublicense through multiple tiers of sublicensees) in such IP Rights to reproduce, create derivative works of, modify, use, distribute, perform, display, make, have made, sell, offer to sell, import and otherwise exploit any Modifications. To the extent that the foregoing license is not enforceable, Licensee hereby irrevocably waives and agrees to never assert such IP Rights, or any other right in such Modifications, against Magento or its direct or indirect sublicensees.

2.5 <u>Third Party Access</u>. Subject to the terms and conditions of this Agreement, Licensee may permit a third party to access the Magento Software solely in connection with the development or operation of Licensee's Sites; provided, that (i) the third party is bound by a valid and enforceable written agreement with Licensee, at least as protective of Magento as this Agreement, to access and use the Magento Software solely as needed to provide the contracted services to Licensee in connection with the applicable Sites; (ii) such third party has agreed to the terms of Section 2.4 or substantially similar language granting Licensee or Magento the same rights to any Modifications made by such third party; and (iii) Licensee shall be responsible for all acts and omissions by such third party as if they were Licensee's acts and omissions. Upon Magento's request, Licensee will provide Magento a list of such third parties.

2.6 <u>Government Licensees</u>. The Magento Software licensed under this Agreement is "commercial computer software" as that term is defined in the Federal Acquisition Regulation ("FAR") at FAR 2.101, and is comprised of commercial computer software and commercial computer software documentation (collectively, the "Commercial Software"). If the Commercial Software is licensed or acquired by or on behalf of a civilian agency of the U.S. Government, the U.S. Government's rights to use, modify, reproduce, release, perform, display, or disclose the Commercial Software are as set forth in this Agreement, consistent with 48 C.F.R. 12.212 (Computer Software) of the FAR and any successor regulation. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government's 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. 227.7202-1 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. 227.7202-1 through 227.7202-4, in a case of contradiction between this Government Licensees 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 Licensees clause will prevail.

2.7 <u>Analytics Data</u>.

2.7.1 <u>Grant of Access to Analytics Data</u>. Licensee shall do at least one of the following with respect to Analytics Data:

(a) add Magento as a sub-account to Licensee's Google Analytics account; or

(b) add Magento to Licensee's master New Relic, Inc. ("New Relic") account for any new or existing New Relic extension installed in the Magento Software by Licensee.

2.7.2 Magento may from time to time specify other Analytics Data services or analytics products, software or technologies that perform the same or similar functions as Google Analytics and New Relic. Notwithstanding Section 8.1, Licensee shall comply with any such new data analytics requirements as directed by Magento.

2.7.3 Data License. Licensee hereby grants Magento a non-exclusive, worldwide, irrevocable, perpetual, royalty-free right and license to use all data (including Analytics Data and any unique account identifiers) provided to Magento by Licensee, or at Licensee's direction, for the purposes of (i) providing Support Services and other services to Licensee; (ii) improving the Magento Software; (iii) performing analyses related to the Magento Software and Licensee's use of the Magento Software. The foregoing license includes the right for Magento to develop and publish or otherwise make available broadly applicable insights regarding aggregated data from multiple Magento Software licensees, but only when the Analytics Data has been aggregated or de-identified so that such insights cannot reasonably be used to identify Licensee's Visitors.

3. PRIVACY AND DATA SECURITY

3.1 Licensee represents, warrants, and covenants that:

(a) all sharing of Analytics Data, Transaction Data or any other information, including Personal Information, with Magento is done in compliance with all applicable Privacy and Data Security Laws;

(b) if it maintains a Site, it places a conspicuous notice thereon instructing Visitors how to express choices with respect to the use of Personal Information for marketing or analytic purposes;

(c) it provides notice to its Visitors in Licensee's consumer facing privacy notice as well as elsewhere on the Site that Analytics Data and Transaction Data will be collected from Visitors to Licensee's Sites and shared with Magento;

(d) Visitors are provided with a link to the relevant privacy notice of any third party with which Analytics Data may be shared;

(e) the choices it provides Visitors for the collection and sharing of Personal Information or any other data are in compliance with applicable Privacy and Data Security Laws and cover sharing of Personal Information under this agreement with Magento;

(f) all collection and sharing of Personal Information is done in accordance with the Visitor's expressed choices;

(g) all sharing of data with Magento is in compliance with any and all applicable global cross-border transfer and data localization provisions of any Privacy and Data Security Laws;

(h) it shall not share health information, financial information, or information about children or minors with Magento; and

(i) Licensee has reasonable measures in place to ensure that health information, financial information, and information of children or minors is not shared with Magento.

4. RESTRICTIONS AND OWNERSHIP

4.1 <u>Restrictions</u>. Except as expressly authorized herein, Licensee shall not:

4.1.1 distribute, sublicense, disclose, market, rent, lease, resell, offer remote computing services, networking, or batch processing, transfer the Magento Software to any third party, or permit any person or entity to have access to the Magento Software by means of time sharing, remote computing services, networking, batch processing, service bureau or a time sharing arrangement; or

4.1.2 provide, use, or allow others to use, the Magento Software, including any source code, for the benefit of third parties.

4.2 <u>No License to Magento Marks</u>. No license, right or interest in any Magento trademarks, trade names or service marks is granted hereunder.

4.3 <u>Domain Restrictions</u>. Licensee shall not use the Magento Software on more than five (5) Unique Domains. Licensee shall notify Magento immediately upon the launch of each Unique Domain.

4.4 <u>Ownership of Magento Software</u>. As between Magento and Licensee, Magento owns all right, title and interest in and to (a) all copies of the Magento Software (including all Updates thereto), and (b) all IP Rights related to or embodied in each of the foregoing, whether such rights are registered or unregistered and wherever in the world those rights may exist. There are no implied licenses to IP Rights in this Agreement. All rights not granted hereunder are expressly reserved by Magento.

4.5 <u>Open Source Software.</u> Licensee acknowledges that the Software includes various open source software, including the 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.

5. FEES AND PAYMENT

5.1 <u>Subscription Fee</u>. Licensee shall pay Magento a non-refundable and non-cancellable Subscription Fee in consideration for the Magento Software licenses granted under the Agreement. Such Subscription Fee shall be payable in accordance with the terms of the Order Form and this Agreement.

5.2　Gross Merchandise Value, Average Order Value, and Subscription Fee adjustments. Licensee acknowledges and agrees that the Subscription Fees specified in the Order Form are based on the GMV Threshold and AOV Threshold provided by Licensee prior or on the Effective Date and that the Subscription Fees may be subject to adjustments into higher Subscription Fee tiers, if the actual GMV is higher than the GMV Threshold for any Contract Year during the Term. If the Licensee's actual GMV for any given Contract Year is higher than the GMV Threshold as specified on the Order Form, the Subscription Fees will be adjusted to the respective higher applicable Subscription Fee tier by increasing the Subscription Fee by the percentage set forth in the applicable row and line of the Subscription Fee Adjustment Table in the Order Form for the full then-current Contract Year (for the avoidance of doubt, the then-current Contract Year is the Contract Year immediately following the Contract Year during which the GMV was higher than the GMV Threshold as specified on the Order Form.) No downward adjustments to lower Subscription Fee tiers will be made under the Agreement, independent of the actual GMV. In addition, Magento has the right to increase the Subscription Fees by no more than five percent (5%) once during each Contract Year, beginning with the first anniversary of the Effective Date. Each such adjustment, if any, is effective for the full duration of the Contract Year for which such adjustment was executed and the adjusted Subscription Fee becomes the Subscription Fee under the Agreement.

5.3　Provision of GMV and AOV information. Licensee shall provide Magento written certification of Licensee's then-current GMV and AOV (a) no later than within ten (10) days after the last day of each and every Contract Year and (b) upon receipt of written request by Magento during any Contract Year.

5.4　Audit Rights. In addition to Licensee's obligation set forth in Section 3, Magento reserves the right, no more than once per Contract Year and for a period of two (2) years after each Contract Year, to audit Licensee's use of the Magento Services and Software and for the purpose of verifying any payments due under this Agreement for the preceding year, including, for the avoidance of doubt, any financial records related to GMV and AOV on its own or through an auditor selected by Magento (the "Auditor") during normal business hours and with reasonable but not less than fifteen (15) days' written notice. All information and materials made available to or otherwise obtained by the Auditor in connection with such audit shall be deemed Licensee's confidential information. If the audit shows that payments made by Licensee are deficient, Magento may adjust the Subscription Fees in accordance with Section 5.2.

5.5　Invoice Terms. The Order Form constitutes a pro forma invoice and the Licensee's signature on the Order Form constitutes Licensee's express authorization and commitment to pay the amounts set forth in the Order Form and the Agreement. Amounts payable by Licensee are due regardless of issuance of additional courtesy invoices or the parties' execution of an additional Order Form.

5.6　Payment Terms. Licensee shall pay Magento in full for the Initial Term the Subscription Fee as set forth on the Order Form. Overdue payments will bear interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed under applicable law. 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 upon or with respect to the transactions and payments under this Agreement. All fees payable by Licensee are exclusive of Indirect Taxes. Magento may charge and Licensee will pay applicable Indirect Taxes that Magento is legally obligated or allowed to collect from Licensee. Licensee will provide such information to Magento as reasonably required to determine whether Magento is obligated to collect Indirect Taxes from Licensee. Magento will not collect, and Licensee will not pay, any Indirect Tax for which Licensee 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 Licensee 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.

6.　CONFIDENTIALITY

6.1　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 terms of this Agreement, the Order Form, financial terms and the Software, and all 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 (other than documentation and information intended for distribution to third parties).

6.2 <u>Protection of Confidential Information</u>. 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 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 6. In addition, the Receiving Party will be allowed to 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.

6.3 <u>Exclusions</u>. The obligations of this Section 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.

7. INDEMNIFICATION

7.1 <u>Indemnification by Magento</u>. Subject to the exclusions in Section 7.4, Magento shall indemnify, defend and hold harmless Licensee from and against any and all liabilities, losses, costs, expenses, settlement amounts, and damages (including reasonable attorneys' fees) incurred by Licensee arising out of any suit or proceeding by a third party (other than an Affiliate of a Licensee) arising from allegations that the Magento Software, or any use of the Magento Software in accordance with this Agreement (including the documentation), infringes any United States patent or copyright.

7.2 <u>Indemnification by Licensee</u>. Licensee shall indemnify, defend and hold harmless Magento from and against any and all liabilities, losses, costs, expenses, settlement amounts, and damages (including reasonable attorneys' fees) incurred by Magento arising out of any suit or proceeding by a third party arising from Licensee's use of the Software or Licensee's breach of any representation, warranty, covenant or obligation of Licensee under this Agreement, including, for the avoidance of doubt, any breach of Section 3.

7.3 <u>Indemnification Procedure</u>. Each party shall promptly notify the other party in writing of any action for which such party believes it is entitled to be indemnified pursuant to Section 7.1 or Section 7.2, as applicable. The party seeking indemnification (the "Indemnitee") shall cooperate with the other party (the "Indemnitor") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such action and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this Section 7.3 will not relieve the Indemnitor of its obligations under this Section 7 except to the extent that the Indemnitor can demonstrate that it has been prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

7.4 <u>Exclusions</u>. Magento shall have no liability or obligation to indemnify the Licensee under this Section 7 to the extent the alleged infringement is based on (a) the Open Source Software or any other third party software; (b) Modifications and any other modifications or derivative works of the Magento Software developed by anyone other than Magento; (c) a combination of the Magento Software with the Open Source Software or any software, product or service not provided by Magento; (d) use of the Magento Software in any manner for which there is not a current and paid up subscription for both a Magento Software license and for Support Services; (e) use of the Magento Software other than in accordance with this Agreement or the documentation; (f) use of an older version of the Magento Software if a more recent version of the Magento Software would have avoided the infringement; (g) Licensee's failure to implement any Updates or other modifications or replacements of the Magento Software made available to Licensee by Magento or as directed by Magento; (h) Magento's compliance with any designs, materials, specifications or instructions provided by Licensee; (i) indirect infringement or any enhanced damages caused by willful infringement;

(j) Licensee's violation of any third party privacy rights under any Privacy and Data Security Laws; or (k) any actions or losses for which Licensee is obligated to indemnify Magento pursuant to Section 2.

7.5   Replacement. In the event that a court holds that the Magento Software, or if Magento believes a court may hold that the Magento Software infringes any United States patent or copyright, Magento shall in its sole discretion, do one of the following: (a) obtain for Licensee the right to continue using the Magento Software; (b) replace or modify the Magento Software so that it becomes non-infringing while providing substantially equivalent performance; or (c) accept return of the Magento Software, terminate this Agreement, and refund Licensee a pro rata amount of the prepaid but unused Subscription fees paid to Magento based on the percentage of the remaining Subscription Term.

7.6   Entire Liability. THIS SECTION 7 STATES MAGENTO'S ENTIRE LIABILITY AND LICENSEE'S EXCLUSIVE REMEDY FOR ANY ACTUAL OR ALLEGED INFRINGEMENT CLAIMS RELATED TO THE SOFTWARE. LICENSEE HEREBY EXPRESSLY WAIVES ANY OTHER LIABILITIES OR OBLIGATIONS OF MAGENTO WITH RESPECT THERETO.

8.   DEFAULT AND TERMINATION

8.1   Term. The Term of each subscription, including any Renewal Terms, shall be specified on the applicable Order Form. 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 Licensee 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. The Subscription Fees for each individual Renewal Term will be the fees set forth for the Subscription on the Magento fee schedule in effect as of the first day of respective Renewal Term.

8.2   Default. An event of default shall be deemed to occur if: (a) Licensee breaches Section 2 (License and Support Subscription), Section 3 (Privacy and Data Security), Section 4 (Restrictions and Ownership), or Section 6 (Confidentiality); (b) Licensee fails to pay amounts due pursuant to an Order Form; or (c) 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.

8.3   Notice of Default. 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 any or all Subscriptions granted hereunder to the Software by written notice to the defaulting party (except for the license granted by Licensee to Magento in Section 2.5 (Modifications by Licensee)).

8.4   Effect of Default. Within thirty (30) days after termination of this Agreement or expiration of any Term not followed by a Renewal Term, Licensee shall certify in writing to Magento that Licensee has ceased use of the Magento Software and that all copies or embodiments thereof (including related documentation) in any form, including partial copies within modified versions, have been destroyed.

8.5   Termination by Magento. Magento may terminate this Agreement on thirty (30) days' prior written notice to Licensee in the event Magento discontinues general commercial production, maintenance or support of the Magento Software.

8.6   Survival. This Section 8.6 and the following Sections shall survive any termination or expiration of this Agreement: Section 1 (Definitions), Section 3 (Audit Rights), Section 2.5 (Modifications by Licensee), Section 2.7.3 (Data License), Section 3 (Privacy and Data Security), Section 4 (Restrictions and Ownership), Section 5.4 (Audit Rights), Section 6 (Confidentiality), Section 7 (Indemnification), Section 8.4 (Effect of Default), Section 9.2 (Disclaimer of All Other Warranties), Section 10 (Limitation of Liability), Section 12 (Notices), Section 13 (Assignment), Section 15 (Entire Agreement), and Section 16 (General).

9.   WARRANTY

9.1   Warranty for Software. Magento warrants for a single period of ninety (90) days commencing upon the execution of the initial Order Form that the Magento Software, as delivered, will substantially perform in accordance with the specifications contained in the documentation provided with the Magento Software. In the event that the Magento Software fails to comply with the foregoing warranty, Licensee shall send written notice to Magento prior to the expiration of the warranty period and such notice will describe in reasonable detail the nature of the breach of the foregoing warranty. In the event that the Magento Software does not, in all material respects, perform the functions

therein described, Magento will undertake commercially reasonable efforts to correct any reported error in accordance with the Support Services Terms, which shall be Magento's entire liability and Licensee's exclusive remedy for breach of this warranty.

9.2 <u>DISCLAIMER OF ALL OTHER WARRANTIES</u>. THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 10 ARE THE ONLY WARRANTIES MADE BY MAGENTO WITH RESPECT TO THE SOFTWARE PROVIDED BY MAGENTO. EXCEPT AS PROVIDED IN THIS SECTION 9, ALL SOFTWARE PROVIDED HEREUNDER IS PROVIDED "AS IS." MAGENTO MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, 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. 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.

10. LIMITATION OF LIABILITY

10.1 UNDER NO CIRCUMSTANCES WILL MAGENTO BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES OR COSTS (INCLUDING ATTORNEY'S FEES) RESULTING FROM ANY CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT; OR FOR ANY LOSS OF REVENUE; LOSS OF ACTUAL OR ANTICIPATED PROFITS OR SAVINGS; LOSS OF BUSINESS; LOSS OF GOODWILL OR REPUTATION; LOSS OF, DAMAGE TO, BREACH OF, OR CORRUPTION OF DATA; BREACH OF SECURITY; OR COSTS OF COVER, EVEN IF MAGENTO WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE. THE FOREGOING SHALL NOT APPLY TO SUBSCRIPTION FEES PAYABLE TO MAGENTO.

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

10.2 <u>APPLICABILITY</u>. THE LIMITATIONS SET FORTH IN THIS SECTION 10 (LIMITATION OF LIABILITY) (A) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (B) ARE AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND SHALL APPLY EVEN IF AN EXCLUSIVE OR LIMITED REMEDY STATED HEREIN FAILS OF ITS ESSENTIAL PURPOSE, AND (C) SHALL APPLY REGARDLESS OF THE NATURE OF THE CLAIM OR ACTION, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, NEGLIGENCE OR OTHER THEORY OF LIABILITY.

11. CONTENT LICENSES

Subject to the terms and conditions hereof, Licensee hereby grants to Magento during the Term a non-exclusive license to use, reproduce, distribute, and publicly display (in digital or analog formats) the name, logo and website of Licensee, only as necessary to promote the Magento Software in a manner consistent with this Agreement.

12. 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 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 Legal Counsel.

13. ASSIGNMENT

Magento may assign this Agreement, or transfer any right or delegate any duty hereunder, without the consent of Licensee. Licensee 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. Any purported assignment, delegation or transfer in violation of this Section 13 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.

14. EXPORT AND IMPORT RESTRICTIONS

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

15. ENTIRE AGREEMENT

The Agreement, including any applicable Order Form, is the complete and exclusive agreement between the parties, which supersedes all proposals or prior agreements, oral or written agreement, and all other communications between the parties relating to the subject matter hereof.

16. GENERAL

This Agreement 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 Los Angeles 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 is excluded in its entirety. 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. Magento may modify this Agreement prior to any renewal of this Agreement, with such modifications to take effect upon such renewal. 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. Subsequent to the execution and delivery of this Agreement, and without any additional consideration, each party shall execute and deliver any further legal instruments and perform any acts that are or may become reasonably necessary to effectuate the purposes of this Agreement.

MAGENTO COMMERCE (ON-PREMISES) SUPPORT SERVICE TERMS

Subject to the terms and conditions of the Agreement, and Licensee's payment of the applicable fees for support services as set forth in the Order Form, Magento shall provide to Licensee the Support Services as set forth herein. Unless otherwise defined herein, all capitalized terms will have the meanings set forth in the Agreement.

1. **"SUPPORT SERVICES" CONSISTS OF:**

1.1. Magento will support Releases and Minor Releases of the Software for two (2) years from the availability date of each applicable Major and Minor Releases. For purposes of support obligations, Magento defines its software version scheme as Major.Minor.Patch releases (e.g. 2.1.7 is Magento Major Version 2, Minor Release 1, Patch Release 7). Magento will provide support to applicable Major and Minor releases of the software based on the following lifecycle schedule.

Release	Release Date	End of Support Date
Enterprise Edition 1.9	July 2010	July 2012[2]
Enterprise Edition 1.10	February 2011	February 2013[2]
Enterprise Edition 1.11	August 2011	August 2013[2]
Enterprise Edition 1.12	April 2012	April 2014[2]
Enterprise Edition 1.13	October 2013	June 2020[1]
Enterprise Edition 1.14	June 2014	June 2020[1]
Enterprise Edition 2.0	November 2015	March 2018
Enterprise Edition 2.1	June 2016	June 2019
Magento Commerce 2.2	September 2017	December 2019[3]

[1] Requires a renewal of the Magento license through the stated date.

[2] Security patches will continue to be provided and made available by Magento through June 2020.

[3] The End of Software Support date for Magento Commerce 2.2 has been extended to December 2019 to coincide with the End of Support date for PHP 7.1

1.2. 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 currently located at magento.com and its related sites as may be updated by Magento from time to time (collectively, the "Site") (see specifically, http://magento.com/resources/system-requirements). Magento supports the Software and any integrations provided by Magento as part of the Software to the applications listed in the System Requirements. If an issue is encountered when using technologies that are not listed in the System Requirements, and if Magento can reproduce the Software issue using technologies that are listed in the System Requirements, then Magento will provide support. Nonetheless, Magento cannot ensure that the Software issues will be fixed when the Software is used with technologies not listed in the System Requirements.

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

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

1.5. 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

2.1. Magento shall have no obligation to support (i) Software not operated on a supported hardware/operating system platform specified in the release notes for the Software; (ii) altered or modified Software; (iii) Software accessed on unlicensed Domains; (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.

2.2. Support Services does not include:

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

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

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

4. Support or assistance for the applications listed in the System Requirements themselves.

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

3. SUBCONTRACTORS

Magento reserves the right to subcontract any or all of the work to be performed under these Support Services 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 Site or at its toll-free Support telephone number.

6. RESPONSE (ACKNOWLEDGEMENT) TIMES

Magento or its authorized reseller or referral partner 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 Order Form), following receipt of a Software problem properly submitted by Licensee:

	Gold	*Platinum*
Customer Web Portal –		
-Electronic Case Submission	✓	✓
-Case (Ticket) Management		

Phone Support/ Response (Acknowledgement) Priority 1	4 Hours response 24x7x365	2 Hours response 24x7x365
Web Case Support/ Response (Acknowledgement) Priority 1	4 Hours response 24x7x365	2 Hours response 24x7x365
Web Case Support/ Response (Acknowledgement) Priority 2 – 4	24 Hours, Monday – Friday (PST)	4 Hours, Monday – Friday (PST)

7. PROBLEM PRIORITY

Upon receipt of a properly submitted Software problem, as specified on the Site, Support Services shall be prioritized in accordance with the guidelines below:

7.1.   Priority 1 ("P1") - A P1 is a catastrophic production problem within the Software that severely impacts the Licensee's Site, or because of which Licensee's Site 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 24x7x365, with appropriate escalation to senior management, to provide a resolution for any P1 problem as soon as is commercially reasonable.

7.2.   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 efforts during its normal hours of operation, 24 hours a day, (Monday - Friday) to provide a resolution for any P2 problem as soon as is commercially reasonable.

7.3.   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, 24 hours a day, (Monday - Friday) to provide a resolution for any P3 problem in time for the next minor release of the Software.

7.4.   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 interruption. Magento will use efforts during its normal hours of operation, 24 hours a day, (Monday - Friday) to provide a resolution for any P4 problem in time for the next major release of the Software.

7.5.   Enhancement Request ("ER") - An ER is a recommendation for future product enhancement or modification to add official support and documentation for an unsupported or undocumented feature, or features that do not exist in the Software. Magento will take ERs into consideration in the product management process, but has no obligation to deliver enhancements based on any ER.

8. RESPONSE TIMES

Magento will provide Support Services and any Updates to Licensee during the periods identified in the Order Form and the default and termination shall be governed by Section 8 of the Subscription Agreement. Licensee's obligation of payment of moneys due under these Support Services Terms shall survive termination of these Support Services Terms or the Subscription Agreement. Licensee acknowledges and agrees that Magento shall have the right to terminate the provision of Support Services upon nonpayment of any fees due to Magento.

LAST UPDATED: October 26, 2017