MAGENTO COMMERCE SUBSCRIPTION AGREEMENT

This Magento Commerce Subscription Agreement (together with any Order Forms, Policies, Exhibits and any terms and conditions incorporated herein by reference, this "Agreement") is made and entered into by and between Magento and the Customer, each, a "Party" or collectively the "Parties." In consideration of the mutual promises exchanged herein, the Parties agree as follows:

1.   DEFINITIONS.

1.1   <u>Order Form Definitions</u>. The following terms are defined in the Order Form: (1) Effective Date; (2) Magento; (3) Customer; and (4) Service Configuration Items.

Definitions. Defined terms used in this Agreement with initial letters capitalized have the meanings given below:

1.2   "Acceptable Use Policy" means the policy currently available at magento.com/legal/terms (or its successor location), as it may be updated by Magento from time to time.

1.3   "Account" means any Magento account(s) for the Services opened by Customer pursuant to an Order Form, including all data and software that Customer stores on such an account.

1.4   "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 (more than 50%); 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.

1.5   "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.

1.6   "Community Edition" means the free, open-source community edition software licensed under the OSL 3.0 and available at: https://www.magentocommerce.com/download and other locations.

1.7   "Content" means software (including machine images), data, text, audio, video, images or other content.

1.8   "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.

1.9   "Copyleft Software" means software available for use, modification and distribution that is licensed under terms that require user of such software to make its modifications to the open source software or any software that such user "combines" with the open source software freely available to others in source code form.

1.10   "Customer Content" means Content that Customer or any End User (a) runs on the Services, (b) causes to interface with the Services, or (c) uploads to the Services under Customer's Account or otherwise transfers, processes, uses or stores in connection with Customer's Account.

1.11   "Customer Contributions" means Content that Customer posts or otherwise submits to developer forums, sample code repositories, public data repositories, community-focused areas of the Magento Site, any other part of the Magento site, or directly to Magento through any means that allows third parties to make available software, products, or data.

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

1.13   "Documentation" means the user guides and admin guides for the Services and the Software located at magento.com/help/documentation (and any successor or related locations designated by Magento), as such user guides and admin guides may be updated by Magento from time to time.

1.14   "End User" means any individual or entity that directly or indirectly through another user: (a) accesses or uses Customer Content; (b) visitors to the Sites; or (c) otherwise accesses or uses the Services under an Account.

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

1.16   "Hosting Services" means certain cloud infrastructure services that Magento and Customer use to host Content.

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

1.18   "Intellectual Property 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, trade dress and domain names under the laws of any jurisdiction.

1.19   "Location" means the production region where the Customer Content will be hosted, as identified in the Order Form.

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

1.21   "Magento Content" means the Content of the Software or any other Content owned by Magento that is made available to Customer through use of the Services in accordance with the terms of this Agreement and used by the Customer according to the Documentation, including application programming interfaces; software libraries; command line tools; templates, and other related technology that is owned by Magento. Content does not include the Services or Third-Party Content.

1.22   "Magento Contributor Agreement" means the contributor agreement located at https://magento.com/legaldocuments/mca (and any successor or related locations designated by Magento), as may be updated by Magento from time to time.

1.23   "Magento Marks" means any trademarks, service marks, service or trade names, logos, and other designations of Magento and its Affiliates that Magento may make available to Customer in connection with this Agreement.

1.24   "Magento Site" means magento.com (and any successor or related locations designated by Magento), as may be updated by Magento from time to time.

1.25   "Magento Network" means Magento's data center facilities, servers, networking equipment, and host software systems (e.g., virtual firewalls) that are within Magento's control and are used to provide the Services.

1.26   "Modifications" shall mean any modification, supplement, enhancement, addition or derivative work based on or related to the Software or any other Content used with the Services 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 Services. For clarity, any Content loaded to the Service other than the Software will be considered Modifications.

1.27   "Notice" means any notice provided in accordance with Section 13.9.

1.28   "Order Form" is the order form to this agreement that set forth the applicable fees, Effective Date and other terms and conditions applicable to Customer's use of the Services.

1.29   "Policies" means the Acceptable Use Policy, Privacy Policy, the Terms of Use, the Service Terms, the Trademark Policy, all restrictions described in the Magento Content and on the Magento Site, and any other policy or terms referenced in or incorporated into this Agreement, but does not include whitepapers or other marketing materials referenced on the Magento Site.

1.30   "Privacy Policy" means the privacy policy currently referenced at magento.com/legal/terms (and any successor or related locations designated by Magento), as may be updated by Magento from time to time.

1.31   "Production Instance" means an instance of the Software that is used to generate Online Revenue or is exposed to the public Internet for use by End Users.

1.32   "Service Level Agreement" means all service level agreements that Magento offers with respect to the services, currently referenced at magento.com/legal/terms (and any successor or related locations designated by Magento), as may be updated by Magento from time to time.

1.33   "Software" means the Magento 2 Commerce software described at https://magento.com/products/magento-commerce that is developed and owned by Magento, and provided to Customer in source code format subject to the terms of this Agreement.

1.34   "Terms of Service" means the rights and restrictions located at magento.com/legal/terms (and any successor or related locations designated by Magento), as may be updated by Magento from time to time.

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

1.36   "Services" means the provision of Magento Content through the Hosting Services as a software-as-a-service, as ordered by the Customer on the Order Form. Services do not include the Third-Party Content or Customer Content.

1.37   "Suggestions" means all suggested improvements to the Services or the Software that Customer provides to Magento.

1.38   "Term" means any Initial Term or Renewal Term under the Agreement.

1.39   "Termination Date" means the Effective Date of termination or expiration provided, in the case of a termination, in accordance with Section 7.1 in a Notice from the terminating Party to the other.

1.40   "Terms of Use" means the terms of use located at magento.com/legal/terms (and any successor or related locations designated by Magento), as may be updated by Magento from time to time.

1.41   "Third-Party Application" means any custom modules, extensions, themes or add-ons developed by the Customer or any others, and extensions developed and offered by third parties whether obtained through the Magento Marketplace or other distribution sources.

1.42   "Third-Party Content" means Content of a third party made available on the Magento Marketplace or on developer forums, sample code repositories, public data repositories, community-focused areas of the Magento Site, any other part of the Magento site that allows third parties to make available software, products, or data, or any other third-party materials or content that is not the Customer Content or Magento Content.

1.43   "Third-Party Services" means any third-party products and/or services that are combined and/or provided with the Services or Software under the Agreement. Magento has the right to change providers or vendors of Third-Party Services without giving notice to Customer or requiring Customer's consent.

1.44   "Third-Party Web Service" means (i) any and all web services made available by third parties (other than Magento, and/or any of its affiliated companies) that are accessible through or enabled by the Cloud Service, and (ii) any and all application programming interfaces, web service definition files, and other materials made available by or on

behalf of such third party web service providers to facilitate the access to and use of such web services. Any Third-Party Web Services are not part of the Cloud Service.

1.45 "Trademark Policy" means the guidelines and trademark license located at magento.com/legal/terms (and any successor or related locations designated by Magento), as may be updated by Magento from time to time.

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

1.47 "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.

2. USE OF THE SERVICES.

2.1 <u>Services</u>. Customer may use the Services in accordance with this Agreement. Any Customer Affiliate may use the Services under its own Magento Enterprise Account(s) under the terms of this Agreement by executing an addendum to this Agreement with Magento, as mutually agreed by Magento and the Customer Affiliate.

2.2 <u>Third-Party Content</u>. Third-Party Content may be used by Customer at Customer's election. Third-Party Content may be governed by separate terms and conditions, which may include other fees and charges. Customer hereby agrees to comply with any terms and conditions governing the use of Third-Party Content. The Services may only be used with Third-Party Content that is directly dependent or used with the Software, including any custom modules, themes, or extensions. Any Third-Party Content that is not dependent or used with the Software may not be used with the Services without Magento's prior written consent, and may result in Customer's obligation to pay additional fees.

3. CHANGES.

3.1 <u>To Third-Party Services</u>. Magento may change or discontinue any of the Third-Party Services or change or remove functionality of any or all of the Third-Party Services from time to time by providing at least twelve (12) months prior Notice to Customer if Magento decides to discontinue a Third-Party Service or functionality of a Third-Party Service that it makes generally available to its customers. However, Magento will not be obligated to provide such Notice if the discontinuation is necessary to address an emergency or threat to the security or integrity of Magento, respond to claims, litigation, or loss of license rights related to third-party Intellectual Property Rights, if the provider or vendor of the respective Third-Party Service stops offering or providing such Third-Party Services to Magento, or comply with the law or requests of a government entity. Any change or discontinuation of any Third-Party Services shall not have any material adverse effect on the Services provided to Customer under this Agreement.

3.2 <u>To Third-Party Content</u>. Magento does not control the provision of the Third-Party Content and Customer acknowledges that the availability of any given Third-Party Content is subject to the terms and conditions of the provider of such Third-Party Content.

3.3 <u>Privacy</u>. Customer may specify the Locations in which Customer Content will be stored. Customer consents to the storage of Customer Content in, and transfer of Customer Content into, the Locations Customer selects. Magento will not (a) disclose Customer Content to any government or third party, or (b) move Customer Content from the Locations selected by Customer, or (c) access or use Customer Content; except as necessary to maintain the Services

or to provide the Services to Customer and any End Users, or as necessary to comply with the law or an order of a governmental or regulatory body, or in accordance with, or as expressly set forth in, the Policies and this Agreement.

4. Customer Responsibilities.

4.1 <u>Accounts</u>. Customer is responsible for all activities 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 and End Users), and (b) Magento and its Affiliates are not responsible for unauthorized access to the Customer's Account.

4.2 <u>Content</u>. Customer will ensure that Customer Content, Customer Contributions or Customer/End Users' use of Customer Content, Customer Contributions or the Services will not violate any of the Policies or any applicable law. Customer is solely responsible for the development, content, operation, maintenance, and use of Customer Content and Customer Contributions. For example, Customer is solely responsible for: (a) the technical operation and security of Customer Content; (b) any claims relating to Customer Content or Customer Contributions; and (c) properly handling and processing notices that are sent to Customer (or any Customer Affiliate) regarding Customer Content or Customer Contributions, such as by any person claiming that Customer Content or Customer Contributions violate such person's rights, including notices pursuant to the Digital Millennium Copyright Act.

4.3 <u>Security</u>. Magento will implement commercially reasonable and appropriate measures in its delivery of the Services (as determined by Magento) designed to help Customer secure Customer Content against accidental or unlawful loss, access or disclosure. Unless otherwise specified by Magento, Customer is responsible for (a) properly configuring and using the Services in a manner that will provide appropriate security and protection of its Account (b) providing appropriate security, protection, and backup of Customer Content, which may include use of encryption technology to protect Customer Content from unauthorized access, and routine archiving of Customer Content; and (c) applying necessary security patches to the software as and when supplied by Magento.

4.4 <u>Credentials</u>. 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 on behalf of Customer.

4.5 <u>End Users</u>. Customer is responsible for End Users' use of Customer Content and the Services. Customer will ensure that all End Users comply with Customer's obligations under this Agreement and that the terms of its agreement with each End User are not inconsistent with this Agreement. If Customer becomes aware of any violation of its obligations under this Agreement by an End User, Customer will immediately suspend access to Customer Content and the Services by such End User, person or entity. Magento does not provide any support or services to End Users unless Magento has a separate agreement with Customer or an End User obligating Magento to provide support or services. Customer is responsible for providing customer service (if any) to End Users.

4.6 <u>Third-Party Applications, Third-Party Web Services, and Modifications</u>. Customer is solely responsible for the installation and deployment of any Third-Party Applications, Third-Party Web Services, Modification, custom modules, themes, integrations or other add-ons (collectively, "Customization"). This includes any negative affect on the Cloud Service arising from the use or inability to use any Customization. Customer acknowledges that Customizations may affect the performance the Site(s), and may result in Downtime. It is the responsibility of the Customer and the Customer's System Integrator to address any performance, Availability, or functional issues caused by Customization. Customer acknowledges that performance issues with Customization may affect the performance of the Site(s) and may require increased server capacity or Surge Capacity resulting in increased fees.

4.7 <u>Upgrades and Patches</u>. Magento may provide Upgrades and Patches to the Software as part of this agreement. It is the Customer's sole responsibility to apply Upgrades and Patches. Customer acknowledges that application of Upgrades and Patches may be important to ensure the performance and the security of the Site(s).

5. FEES AND PAYMENT.

5.1 Subscription Fees. Customer shall pay the subscription fees specified on the first page of the Order Form ("Subscription Fees"). The Subscription Fee specified in the Order Form is based on certain service configuration items (the "Service Configuration Items") listed 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)-(c) of this Section and Section 5.2. In addition, the Subscription Fee may be subject to adjustments as set forth in the Order Form and the Agreement.

(a) Gross Merchandise Value, Average Order Value, and Subscription Fee adjustments. Customer acknowledges and agrees that the Subscription Fees specified in the Order Form are based on the GMV Threshold and AOV Threshold provided by Customer 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 Customer'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. Customer acknowledges and agrees that (a) Magento has the right to access the 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. 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.

(b) Location and Unique Domains. The Contract Fees are based on the production Location where the Customer Content will be hosted, as specified on the first page of the Order Form. Customer shall not use the Services with more than the Unique Domains specified on the Order Form.

(c) Baseline Server Configuration. The performance of the Services is dependent on whether Customer has purchased sufficient computer processing resources. Consistent with Magento's agreement with the Hosting Service, these resources are measured in units of virtual central processing units (each a, "Virtual CPU"). Customer has made an estimate of the amount of Virtual CPUs it will need to be available for use by the Customer's Account, as specified on the Order Form (the "Baseline Server Configuration"). Notwithstanding anything to the contrary, Customer agrees and acknowledges that Magento shall have no liability for any degradation in the functionality of the Services that is attributable to an insufficient Baseline Server Configuration or Surge Capacity.

5.2 Overage Fees. Customer shall pay additional fees as set forth on the Order Form and in this Section 5.2 (the "Overage Fees") in the event that its use of the Services exceeds any of the metrics specified in the Order Form and further described in subsections (a) and (b) of this Section.

(a) Compute Capacity. Subject to the availability of processing resources provided by the Hosting Service, at the Customer's request or when Magento determines there are insufficient processing resources to support the demands of the Customer's Sites at Magento's sole discretion (each a "Surge Event"), Magento may increase the amount of Virtual CPUs dedicated to the Production Instance of the Customer's Account ("Surge Capacity"). The occurrence of each Surge Event may result in the Customer's Account operating at the increased Surge Capacity for a minimum of five (5) days. Even a momentary Surge Event may result in the usage of the

Customer's Surge Capacity. The Surge Capacity will be calculated as the number of Virtual CPUs in the server configuration(s) used during the Surge Event multiplied by the number days that such Surge Events lasts ("CPU Days"). A higher amount of Virtual CPUs used during any given Surge Event will consume a greater amount of the Customer's Surge Capacity. If Customer exceeds the amount of Surge Capacity defined in the Order Form during any given twelve month period, Customer's agrees to pay additional overage fees as set forth on the Order Form. The Customer's Surge Capacity will reset at the beginning of each anniversary of the Effective Date.

(b) <u>CDN Usage</u>. Subject to the availability of processing resources provided by the Hosting Service, Customer may be entitled to a certain amount of bandwidth (measured in Gbytes delivered from CDN caches) for content delivery and streaming delivery ("CDN Usage") specified in the Order Form. Customer agrees that other fees and charges will apply to additional CDN Usage.

5.3   <u>Changes to Specifications</u>. Customer may change its Locations, increase or decrease its Unique Domains, Baseline Server Configuration, Storage Capacity or other specifications with thirty (30) days written Notice, subject to mutual agreement by the Parties and the payment of any applicable additional fees. Any change to the Surge Capacity or CDN Usage thresholds (i) will not change any Overage Fees that have already been incurred, or (ii) otherwise apply retroactively or prior to any mutually agreed upon effective date for such changes.

5.4   <u>On-Boarding Fees</u>. Customer shall pay Magento a one-time on-boarding fee 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. The accounting period specified on the Order Form (the "Accounting Period") shall apply to payment of the Subscription Fees. Magento will invoice Customer at the end of each Accounting Period in advance for use of the Services during the then-following Accounting Period. Fees associated with overages, Location changes, new Services, changes requested by Customer or other fees shall be invoiced and payable on a monthly basis. Except for any Disputed Amounts, Customer will pay Magento all invoiced amounts within thirty (30) days of the date of the invoice. 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, (a) suspend Customer's or any End User's right to access or use any portion or all of the Services immediately upon Notice to Customer, and (b) terminate this Agreement pursuant to Section 7.2(b).

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 upon or 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 reserves the right to, no more than once per Contract Year and for a period of up to two (2) years after each Contract Year, audit Customer's use of the Magento Services and Software at Magento's own expense during normal business hours for the purpose of verifying any payments due under this Agreement and

assessing the Service Fees, the GMV and AOV. Such audit can be performed by Magento or through an auditor selected by Magento during normal business hours of Customer and with reasonable but not less than fifteen (15) days' written notice. In addition, Magento also reserves the right to include means within the Magento Services and Software to audit or limit Customer's use of the Magento Services Software consistent with the terms and conditions of this Agreement. 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 Service Fees in accordance with Section 5.1(a).

6. TEMPORARY SUSPENSION.

6.1   Generally. 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) after thirty (30) day's Notice to Customer in case of (c) below or (ii) (without Notice to Customer in case of (a) or (b) below, if Magento reasonably determines:

(a)   Customer's or an End User's use of the Services (i) poses a risk to the Services or any third party, (ii) risks adversely impacting Magento's systems, the Services or the systems or Content of any other Magento customer, or (iii) risks subjecting Magento or its Affiliates to liability; or

(b)   Customer or any End User is not in compliance with the Acceptable Use Policy, Terms of Service or Section 9 of this Agreement; or

(c)   Customer has any outstanding unpaid Service Fees or Overage Fees.

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 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 the Service Level Agreements for any period of suspension.

7. TERM; TERMINATION.

7.1   Term. The term of the Agreement shall commence on the Effective Date and expire after the term set forth in the Item Description on the first page of this 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. The Service Fees for each individual Renewal Term will be the fees set forth on the Magento fee schedule for the Services in effect as of the first day of respective Renewal Term.

7.2   Termination for Cause.

(i)   By Either Party. Either party may terminate this Agreement for cause if the other party is in material breach of this Agreement and the material breach remains uncured by the breaching Party after a period of thirty (30) days from receipt of Notice by the other Party.

(ii) By Magento. Magento may also terminate this Agreement effective immediately if (a) there is an act or omission by Customer or any End User that gives Magento the right to suspend under Section 6 and that remains uncured thirty (30) days after Magento has provided Notice to Customer of such act or omission; or (b) if necessary to comply with applicable laws and regulations, court orders, or requests of governmental entities.

7.3   Effect of Termination.

(a) Generally. Upon the Termination Date:

(i)   except as provided in Section 7.3(b), all of Customer's rights under this Agreement immediately terminate;

(ii)   Customer remains responsible for all fees and charges Customer has incurred through the date of termination; and

(iii) Customer will immediately return or, if instructed by Magento, destroy all Magento Content in Customer's possession; and

(iv)   Sections 4, 5, 8, 7.3, 9.4(a), 9.4(b), 9.6, 9.7, 10, 11, 12 and 13 will continue to apply in accordance with their terms and survive termination of this Agreement.

(b) Post-Termination. During 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 at the rates under Section 5. *For the avoidance of doubt*, the Parties agree that access to the Production Instance in the Customer's Account will terminate on the Termination Date, but the Customer Content may be available for up to thirty (30) days after the Termination Date.

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 terms of this Agreement, the Order Form, 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).

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 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 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.

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   Customer 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.

9.2   Customer Contributions. Customer Contributions will be governed by the terms of the Magento Contributor Agreement.

9.3   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 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 Service and Customer Contributions.

9.4   Software and Services. Subject to the terms and conditions of this Agreement, Magento grants to Customer a limited, personal, revocable, non-exclusive, non-sublicensable, non-transferrable license to: (a) access and use the Services; (b) use internally and reproduce the Software for creating Sites on the Services; (c) create Modifications to the Software (strictly in accordance with Section 9.4(b)); and (d) use the Magento Marks strictly in accordance with the Trademark Policy, and solely has approved by Magento from time to time (the "License"). Some Magento Content may be provided to Customer under a separate license, which will be identified to Customer in the notice file or on the download page, in which case that license will govern Customer's use of that Magento Content.

(a) Restrictions. Customer shall not (and shall ensure that its employees, contractors and other third parties do not): (a) exploit the License 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 Services or Software for the benefit of third parties; (c) modify, alter, tamper with, repair, or otherwise create derivative works of any Content included in the Services (except as required in exercising the license granted in Section 9.4); (d) reverse engineer, disassemble, or decompile the Services or apply any other process or procedure to derive the source code of any software included in the Services that is not the Software; (e) access, use or develop the Services or Software 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 and 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) fail to adhere to the Trademark Policy or Magento's instructions in the use of the Magento Marks; (i) misrepresent or embellish the relationship between Magento and Customer (including by expressing or implying that Magento supports, sponsors, endorses, or contributes to Customer or Customer's business endeavors); (j) imply any relationship or affiliation between Magento and Customer except as expressly permitted by this Agreement; (k) use any software, program, script or other technology in conjunction with the Software or Services that could grant, impose or purport to impose a requirement or condition on the use of the Software or Services or part thereof that: (i) requires the disclosure or distribution of the Software or Services in source code form; (ii) requires Software or Services to be licensed for the purpose of making modifications or derivative works; (iii) requires the Software, Services or any derivatives to be redistributable at

no charge; and (iv) grants to third parties any rights or immunities under Magento's proprietary and other rights in the Software or any portion thereof.

(b) Modifications. As an express condition of this Agreement and the licenses granted by Magento hereunder: (i) in the course of creating Modifications or using the Services, Software, any Magento Content, or any other Content used with the Services or Software, Customer shall not use, host, support or assist in the use of the Community Edition; (ii) in the course of creating Modifications, Customer shall not use any Copyleft Software. Customer on behalf of itself and its Affiliates 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) 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, Customer hereby irrevocably waives and agrees to never assert any right in such Modifications, against Magento or its direct or indirect sublicensees. All Modifications created by Customer form a part of the Software licensed by Magento to Customer under Section 9.4.

(c) Contractors. Subject to the terms and conditions of this Agreement, Customer may permit third party contractors to access the Software and Services solely in connection with the development or operation of the Customer's Sites; 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, to access and use the Software and Services solely as needed to provide the contracted services to Customer in connection with the applicable Sites; (ii) such third party has agreed to the terms of Section 9.4(b) or substantially similar language granting Customer or Magento the same rights to any Modifications made by such third party; and (iii) Customer shall be responsible for all acts and omissions by such third party as if they were Customer's acts and omissions

9.5   Suggestions and usage of data. If Customer elects to provide any Suggestions to Magento or its Affiliates, Magento and its Affiliates will be entitled to use the Suggestions without restriction. Customer hereby irrevocably assigns to Magento all right, title, and interest in and to the Suggestions. Customer hereby grants Magento a non-exclusive, worldwide, irrevocable, perpetual, royalty-free right and license to use all data (including, but not limited to Customer Content and Customer Contributions) provided to Magento by Customer or End Users for the purposes of (i) providing Support Services and other services to Customer; and (ii) improving the Services and Software. The foregoing license includes the right for Magento to develop and publish or otherwise make available applicable insights regarding anonymized and aggregated data from multiple Magento Service and Software licensees, but only to the extent such data has been aggregated and/or anonymized so that such insights cannot reasonably be used to identify Customer and Customer's End Users.

9.6   Reservation of Rights. Magento reserves all rights not expressly granted to Customer under this Section 9. Customer shall have no right to the Software, Service or any Intellectual Property Rights or technology of Magento or any third party, whether by implication, estoppel, or otherwise. Magento owns, and will own, all right, title and interest in and to the Software and Services (including Modifications thereto, whoever made by). Customer hereby agrees to take all reasonable actions to allow and assist Magento to perfect its ownership rights therein. To the extent Customer or any of its Affiliates receive any right, title or interest in or to any Software, Services, or any Intellectual Property Rights in any of the foregoing, Customer hereby assigns, and Customer shall cause its Affiliates to assign, to Customer all such right, title and interest.

9.7   Third Party Content. Customer acknowledges that the Services and Software may use or be compatible with various Third Party Content, which is governed by the applicable license terms thereof. The Third-Party Content provided under such license agreements is subject to the provisions of such license agreements and not this Agreement, except as expressly provided herein, and Customer shall comply with all of the additional terms and conditions. Notwithstanding anything else in this Agreement, Magento makes no representation, warranty or covenant with respect to, and provides no indemnity for, any Third Party Content.

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 third-party claim concerning: (a) Customer's or any End User's use of the Services in a manner not authorized by this Agreement; (b) alleged infringement or misappropriation of any third party's patent, copyright, or trade secret by Customer Content or Customer Contributions, or by the use, development, design, production, advertising or marketing of Customer Content or Customer Contributions; or (c) 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, 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 any claims arising out of or related 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 any Third-Party Content or open source software) where the combination is the basis of the claim and 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 other open source software; (v) indirect infringement or any enhanced damages caused by willful infringement; (vi) Customer's violation of any applicable law or third party rights; or (v) any actions or losses for which Customer is obligated to indemnify Magento pursuant to Section 9.1. 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 shall 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 (c) terminate this Agreement, and refund Customer a pro rata amount of the prepaid but unused Subscription Fees paid to Magento based on the percentage of the remaining Term.

10.3 <u>Process</u>. Each party's obligations under this Section 10 are subject to the party entitled to indemnification protection: (i) giving such party prompt written notice of any such claim in such detail as the other party may reasonably request; (ii) providing the other party with reasonable assistance in defending such claims, at the other party's expense; (iii) allowing the other party to have sole control of the defense or settlement of any claim under this Section 9; and (iv) not entering into any settlement or compromise of a claim without the indemnifying party's prior written consent.

10.4 <u>Entire Liability</u>. THIS SECTION 10 STATES MAGENTO'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR ANY ACTUAL OR ALLEGED INFRINGEMENT CLAIMS RELATED TO THE SOFTWARE OR SERVICES. CUSTOMER HEREBY EXPRESSLY WAIVES ANY OTHER LIABILITIES OR OBLIGATIONS OF MAGENTO WITH RESPECT THERETO.

11. WARRANTY DISCLAIMERS.

THE SERVICES AND SOFTWARE ARE PROVIDED "AS IS." EXCEPT TO THE EXTENT PROHIBITED BY LAW, MAGENTO, ITS AFFILIATES AND ITS LICENSORS MAKE NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE SERVICES, AND DISCLAIM ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES (A) OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, (B) ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE, (C) THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE, OR FREE OF HARMFUL COMPONENTS, AND (D) THAT ANY CONTENT, INCLUDING CUSTOMER CONTENT OR THIRD-PARTY CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED.

12.   LIMITATIONS OF LIABILITY.

12.1   <u>Disclaimers</u>.

(a)   NEITHER PARTY NOR ANY OF THEIR AFFILIATES OR LICENSORS WILL BE LIABLE TO THE OTHER PARTY UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, FOR ANY (A) INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, (B) LOSS OF PROFITS, REVENUES, CUSTOMERS, OPPORTUNITIES, OR GOODWILL, (C) UNAVAILABILITY OF ANY OR ALL OF THE SERVICES, (D) INVESTMENTS, EXPENDITURES OR COMMITMENTS BY CUSTOMER RELATED TO USE OF OR ACCESS TO THE SERVICES, (E) COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SUBSTITUTE SERVICES, (F) UNAUTHORIZED ACCESS TO CUSTOMER CONTENT, OR ANY COMPROMISE, ALTERATION OR LOSS OF CUSTOMER CONTENT, (G) COST OF REPLACEMENT OR RESTORATION OF ANY LOST OR ALTERED CUSTOMER CONTENT, OR (H) ACTS OR OMISSIONS ATTRIBUTABLE TO HOSTING SERVICES OR THE PROVISION OF ANY THIRD-PARTY CONTENT.

(b)   CUSTOMER ACKNOWLEDGES THAT MAGENTO DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM PORTIONS OF THE INTERNET OR THROUGH EQUIPMENT CONTROLLED BY THIRD PARTIES (SUCH AS THE HOSTING SERVICE), AND THAT, AT TIMES, SUCH DATA FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF OBLIGATIONS, EQUIPMENT OR DATA PROVIDED OR CONTROLLED BY THIRD PARTIES (SUCH AS ANY PROVIDERS OF THIRD-PARTY CONTENT), THE ACTIONS OR INACTIONS OF WHICH CAN IMPAIR OR DISRUPT CONNECTIONS TO THE INTERNET OR THE SERVICES (OR PORTIONS THEREOF) AND THE INTENDED FLOW OF DATA. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET OR THE SERVICES (OR PORTIONS THEREOF). ALTHOUGH, MAGENTO AGREES TO USE COMMERCIALLY REASONABLE EFFORTS TO, AMONG OTHER THINGS, COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS AND USE COMMERCIALLY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS NECESSARY AND APPROPRIATE TO MINIMIZE, REMEDY AND AVOID SUCH EVENTS, MAGENTO CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. IT IS CUSTOMER'S RESPONSIBILITY TO ENSURE THAT THE INFORMATION TRANSMITTED AND RECEIVED BY CUSTOMER, ITS REPRESENTATIVES, AND ITS CUSTOMERS COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS. ACCORDINGLY, MAGENTO DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS AND SHALL NOT BE LIABLE FOR THE INADVERTENT DISCLOSURE, TRANSMISSION, FLOW, CORRUPTION OR ERASURE OF DATA AND CONTENT USED, ACCESSED, UPLOADED, INTERFACED WITH, TRANSMITTED, RECEIVED OR STORED ON THE MAGENTO NETWORKS OR THROUGH THE SERVICES, AND CUSTOMER ACCEPTS SUCH DISCLAIMER WITHOUT LIABILITY TO MAGENTO. CUSTOMER FURTHER ACKNOWLEDGES THAT FROM TIME TO TIME, THE SERVICES MAY BE INACCESSIBLE OR INOPERABLE FOR CAUSES BEYOND MAGENTO'S REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION FORCE MAJEURE EVENTS, SCHEDULED MAINTENANCE AND/OR EMERGENCY MAINTENANCE.

(c)   WITHOUT LIMITING THE FOREGOING, CUSTOMER IS SOLELY RESPONSIBLE FOR ANY NEGATIVE AFFECT ON THE CLOUD SERVICE ARISING FROM THE USE OR INABILITY TO USE ANY MODIFICATIONS. CUSTOMER ACKNOWLEDGES THAT MODIFICATIONS MAY AFFECT THE PERFORMANCE OR THE AVAILABILITY OF THE SITE(S). IT IS THE RESPONSIBILITY OF THE CUSTOMER AND THE CUSTOMER'S SYSTEM INTEGRATOR TO ADDRESS ANY PERFORMANCE, AVAILABILITY, OR FUNCTIONAL ISSUES CAUSED BY THIRD PARTY WEB SERVICES

12.2   <u>Damages Cap</u>. THE AGGREGATE LIABILITY UNDER THIS AGREEMENT OF EITHER PARTY AND ANY OF THEIR RESPECTIVE AFFILIATES OR LICENSORS WILL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER TO MAGENTO UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE LIABILITY DURING THE 12 MONTHS BEFORE THE LIABILITY AROSE; PROVIDED, HOWEVER THAT NOTHING IN THIS SECTION 12 WILL LIMIT CUSTOMER'S OBLIGATION TO PAY MAGENTO FOR CUSTOMER'S USE OF THE SERVICES PURSUANT TO SECTION 4, OR ANY OTHER PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.

13. MISCELLANEOUS.

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

13.2 <u>Counterparts; Facsimile</u>. This Agreement may be 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 Order Form, the Policies 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, any acceptance of any other agreement Customer or any of its employees acting on behalf of Customer). 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 inconsistent with the terms contained in any Policy, the terms contained in this document will control, except that the Service Terms will control over this document. 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 this Order Form or any Exhibit, the terms and conditions of the Agreement should control to the extent of the conflict, unless the Parties agree to expressly override this Agreement by referencing this Section 13.3.

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

13.6 <u>Import and Export Compliance</u>. In connection with this Agreement, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. Customer is solely responsible for compliance with applicable laws related to the manner in which Customer chooses to use the Services, including (i) Customer's transfer and processing of Customer Content, (ii) the provision of Customer Content to End Users, and (iii) specifying the Location in which any of the foregoing occur.

13.7   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.

13.8   Publicity. Except as permitted by Section 8.3, 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 Services. Customer agrees that the contents of this Agreement are not publicly known and will not be disclosed by Customer.

13.9   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, 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").

13.10   No Third-Party Beneficiaries. Except as set forth in Section 10.1, this Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to this Agreement.

13.11   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.

13.12   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.

LAST UPDATED: May 19, 2017