MARKETPLACE DEVELOPMENT TERMS

The following Marketplace Development Terms (the *Development Terms*) forms a part of the Marketplace Master Terms (the *Master Terms*) that together with any Additional Terms constitutes a binding agreement between the entity or individual with the necessary rights to make the Extension available on the Marketplace (*Developer* or *you*) and X.commerce, Inc. d/b/a Magento, Inc. (*Magento*). Capitalized terms are either defined where the text is bolded and in italics, in the last paragraph of the Master Terms or in a Partner Agreement that you may have agreed to. These Development Terms are available at https://magento.com/legal/terms/marketplace-development.

1. **Extension Ratings and Display**. The Marketplace will allow users to rate Extensions. Along with other factors, Extension ratings may be used to determine the placement of Extensions on the Marketplace with higher rated Extensions generally given better placement, subject to Magento's right to change placement at Magento's sole discretion. Magento reserves the right to display Extensions to users in a manner that will be determined at Magento's sole discretion.

2. **Acceptance Testing**. Magento shall have ninety (90) business days from receipt of the Extension hereunder to evaluate and accept or reject such Extension for distribution on the Marketplace (the *Acceptance Testing Period*). During the Acceptance Testing Period, Magento shall perform the technical review set forth in the next paragraph and, if the Extension passes such technical review, a review of the Extension's compliance with instructions from Magento. Magento shall notify Developer in writing or via e-mail within the Acceptance Testing Period whether Magento accepts or rejects the Extension. If Magento fails to accept or reject an Extension within the Acceptance Testing Period, such Extension shall be deemed rejected by Magento. Any acceptance of the Extension shall not prejudice Magento's rights or limit Developer's obligations and warranties under these Development Terms.

3. **Technical Review**. Developer is responsible for evaluating and testing the Extension and the technology, functionality, performance, security, and user interface before the Extension is eligible for technical review by Magento and, if accepted by Magento, distribution on the Marketplace. Upon submission of the Extension, Magento reserves the right (but has no obligation to you or any third party) to conduct any type of review of the Extension, including but not limited to, security testing, plagiarism review and evaluation of Developer's coding practices.

4. **Quality Control**. All Extensions may be subject to code review, audits, performance checks and other quality-control mechanisms. Developer agrees to perform full regression testing and upgrade if necessary its products and services upon any Magento update of product prior to any major, minor and patch release of the Magento Commerce Platform (it being understood that the versioning for a "major" release is denoted using whole numbers, such as Magento 2, while minor releases are denoted using decimals, such as Magento 2.1). At all times, Developer shall ensure that the products or services that it markets through Magento are kept up to date. In addition, within thirty (30) days of a major or minor Magento Commerce Platform release, Developer shall submit an updated version of the Extension for re-validation. Magento may terminate the Master Terms and all Additional Terms if Developer's products or services do not meet Magento's compatibility standards.

5. **Compatibility with Magento Commerce Platform**. Developer shall be responsible for the integration and shall ensure full compatibility of the Extension with the Magento Commerce Platform. Developer shall comply with all documentation and standards made available to Developer.

6. **Customer Service**. Developer shall be solely responsible for performing, in a manner consistent with good industry practice, all technical support and maintenance services requested or required by

Customers and end-user merchants of Developer's channels that are related to the Magento Commerce Platform and services. Developer will provide all direct communications and services to and from Customers with respect to all support services. Developer will use continuous efforts, with appropriate escalation to senior management, to provide a resolution for any problem as soon as is commercially reasonable, but no later than five (5) business days.

7. **Master Terms of Use**. Developer must include a terms of use, end user license agreement and privacy policy for each Extension in accordance with the Development Terms and the Master Terms (***Developer's Commercial Terms***). Developer must comply with Developer's Commercial Terms and Developer is liable for all claims related thereto. Magento is not a party to Developer's Commercial Terms, as Developer's Commercial Terms are between only Developer and the Customer that downloads the Extension. Accordingly, Developer, and not Magento, is responsible for the Extension, the content therein, and any warranties or claims that any party may have relating to the Extension. Developer agrees that Developer's Commercial Terms will not imply or state that Magento is responsible for anything related to Developer's Extension and Developer's Commercial Terms may not contradict the Master Terms, these Development Terms or any Additional Terms. Developer acknowledges that Magento is a third party beneficiary of Developer's Commercial Terms and Magento has the right to enforce Developer's Commercial Terms.

8. **Third-Party Service Providers**. Developer may use third party services from Third-Party Service Providers that Developer has contracted with to provide services. Developer shall be responsible for the services and fees for the Third-Party Service Providers pursuant to its separate agreements and Developer shall be responsible for integrating with the Third-Party Service Providers in accordance with the terms and conditions of a mutually agreed upon statement of work. Magento does not provide warranties, guaranties or indemnification regarding any Third-Party Service Providers or any of their products or services, regardless of whether Magento had involvement in Developer's introduction to such Third-Party Service Provider. Any exchange of data or other interaction between Developer and a Third-Party Service Provider or use of the products or services of a Third-Party Service Provider by Developer is solely between Developer and such Third-Party Service Provider.

9. **Payment Method**. All payments due to Developer pursuant to the Master Terms shall be made to a PayPal account designated in writing by Developer. You may be responsible for establishing and maintaining a commercial relationship with PayPal in order to receive any payments. The terms of any such relationship shall be between you and PayPal and such terms may be more restrictive or place limits on your operations. You should contact PayPal for more information regarding such terms. Throughout the Term, in order for Magento to deliver the services, Magento may engage Third-Party Service Providers to provide payment services and make payments to you via PayPal. You will not be required to make an election to utilize these Magento Third-Party Service Providers, or to enter into separate agreements. You acknowledge and agree that: (i) all amounts due Magento hereunder, or pursuant to any other services agreement entered into between you and Magento, will be deemed earned by Magento, as applicable, on the date the applicable services (or goods) are provided by or on behalf of Magento; and (ii) Magento has the express, continuing and immediate right to offset any and all amounts due Magento hereunder, or pursuant to any other services agreement entered into between you and Magento, against amounts payable to you as set forth herein. All payments made to Magento shall be in US Dollars (with no deductions for any fees) made to a bank account that Magento specifies in writing.

10. **Taxes**. Taxes, whether in the United States or any other country, now or hereafter imposed with respect to all amounts payable to Developer under the Master Terms (with the exception of income taxes or other taxes imposed upon Magento and measured by the gross or net income of Magento) shall be the responsibility of Developer and, if paid or required to be paid by Magento, the amount thereof shall be subtracted from the amounts payable to Developer. For any amounts payable to Magento,

Developer shall be responsible for any additional taxes, levies, imports, duties, charges, fees and withholdings that may be required to ensure that Magento receives the exact amount it is owed under the Master Terms.

11. **Books and Records**. Developer shall maintain at its principal place of business full, accurate, and complete books of account and records reflecting all activities and transactions subject to or covered by the Master Terms. Developer shall keep such books and records in at least sufficient detail as will permit the reports required under the Master Terms to be made and the fees and amounts payable hereunder by Developer to be determined. Magento will have the right, during normal business hours and upon at least ten (10) Business Days' prior notice, to have an independent audit firm selected by Magento inspect Developer's servers and premises and audit Developer's records relating to the administration of the Master Terms in order to verify that Developer has paid Magento the correct amounts owed under the Master Terms and otherwise complied with the terms of the Master Terms. If a discrepancy of more than ten-percent (10%) in the amount owed to Magento is discovered, Developer shall reimburse Magento for the full, reasonable cost of such an audit. The terms in this paragraph will not apply to Developers that have signed up to a Partner Agreement. Developers that do not have or no longer have an effective Partner Agreement will continue to be subject to this paragraph.

12. **Extension Ownership**. Magento acknowledges that between Magento and Developer, Developer owns all rights in the Extension. You agree that the Extension you submit to the Marketplace does not infringe any intellectual property right of any third party or any applicable law or regulation, and will not contain any material from a third party, unless you have permission from the rightful owner of the material or you are otherwise legally entitled to distribute the material. Magento may publish the Extension you submit through the Marketplace, but is not obligated to do so.

13. **Publishing the Extension to the Marketplace**. Developer authorizes Magento to publish the Extension on the Marketplace and grants to Magento a worldwide, non- exclusive, royalty-free, sublicenseable right during the Term to offer, offer to sell, sell, copy, reproduce, display, perform, transmit, distribute, create derivative works, commercialize and use the Extension for the purposes of making the Extension available on Marketplace (which includes use of Developer's font, color selections and logo).

14. **Allowing Customers to Use the Extension**. Developer authorizes Customers to use the Extensions and grants to Customers a worldwide, non-exclusive, right to use the Extension in accordance with the Developer's Commercial Terms. For clarity, any right granted to Customers during the Term shall not be affected by the termination of the Master Terms and Customers shall continue to have the right to use the Extension on the same terms. Developer also agrees to comply with terms and conditions set forth in the Adobe Commerce Developer Guide provided by Magento to Developer, which are incorporated here by reference.

15. **Magento's Use of the Extension**. To assist Developer and to allow Magento to operate a healthy Marketplace, Magento will also need to use the Extension and any associated External Services for internal testing development and training purposes. Developer hereby grants Magento, a worldwide, non-exclusive, royalty-free, sublicenseable right during the Term to develop and test the Extension and the External Services to support Magento's Marketplace operations. If Developer joins a "Technology Partner" or "Extension Builder" program (as detailed in the Partner Agreement), Magento shall also have a right to use such a copy of the Extension for Magento's own external business purposes within and outside the Marketplace (as if Magento is one of the Developer's standard customers) (Production Usage). Developer hereby grants Magento a non-exclusive, royalty-free, worldwide right to use the Extension and External Services for Production Usage and Developer will provide Magento with such Extension or External Service without charge. For any Production Usage of the Extension, Magento may agree to Partner's standard commercial terms and pay for any professional service fees if needed.

16. **Developer Representations**. You represent and warrant that you have all intellectual property rights, including all necessary patent, trademark, trade secret, copyright or other proprietary rights, in and to the Extension. If you use third-party materials, You represent and warrant that you have the right to distribute the third-party material in the Extension. You agree that you will not submit material to Marketplace that is copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including patent, privacy and publicity rights, unless you are the owner of such rights or have permission from their rightful owner to submit the material. Furthermore, Developer represents and warrants that its Developer Data and its activities on the Magento Commerce Platform shall not, in Magento's sole and reasonable discretion: (a) infringe any third party's rights, including copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; or (b) violate any law, statute, ordinance or regulation.

17. **Magento's Consultants**. Magento may use consultants and other contractors in connection with the performance of obligations and exercise of rights under this agreement. After the Term, Magento will not distribute your Extension, but may retain and use copies of the Extension for support of the Marketplace and Customers.

18. **License to Magento Commerce Platform**. Subject to the terms and conditions of the Master Terms, during the Term, Magento hereby grants to Developer a restricted, non-exclusive, personal, nontransferable, nonsublicensable, royalty-free, revocable right to use the Magento Commerce Platform that Magento provides to you (by providing you with credentials): (i) solely in a non-production capacity for the Developer's own internal evaluation, development and testing of the Magento Commerce Platform and its Extension and for no other business purpose, and (ii) in accordance with the documentation and instructions provided by Magento. The access and rights granted under this Section 18 are limited to one project with 3 development environments, each with 5 gigabytes of allocated storage capacity. Developers may request modifications to these limitations (e.g. additional projects, environments or storage), but any changes may be subject to service fees, as determined in Magento's sole discretion. Except as set forth in this paragraph, no other right or license of any kind is granted by Magento to Developer hereunder with respect to the Magento Commerce Platform. If Developer provides any suggestions, feedback or other information regarding the Magento Commerce Platform to Magento ("Feedback"), Magento shall be free to use, disclose, transfer or license such Feedback as Magento sees fit without any obligation of any kind to Developer. Magento may immediately suspend or revoke access to the Magento Commerce Platform if it determines, in its sole discretion, that doing so is necessary to comply with any applicable law or policy or if Developer has violated any exclusion, restriction, limitation or other aspect of the Master Terms.

19. **No Warranty for Magento Commerce Platform**. THE MAGENTO COMMERCE PLATFORM IS PROVIDED "AS IS" AND MAGENTO DISCLAIMS ALL WARRANTIES, REPRESENTATIONS AND INDEMNITIES, WHETHER EXPRESS OR IMPLIED, RELATING TO THE MAGENTO COMMERCE PLATFORM OR THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY, COMPLETENESS, FUNCTIONALITY, PERFORMANCE OR RESULTS OF USE THEREOF, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT OF THIRD PARTY RIGHTS, OR WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, MAGENTO AND ITS THIRD PARTY LICENSORS DO NOT WARRANT THAT: (A) THE MAGENTO COMMERCE PLATOFMR OR ITS CONTENT WILL BE AVAILABLE, SECURE, ACCURATE, ERROR-FREE OR UNINTERRUPTED; (B) THE MAGENTO COMMERCE PLATFORM MEETS OR WILL MEET DEVELOPER'S REQUIREMENTS; (C) DATA STORED ON THE MAGENTO COMMERCE PLATFORM WILL BE ACCURATE, AVAILABLE OR RELIABLE; (D) ERRORS OR DEFECTS WILL BE CORRECTED; (E) THE PRODUCTS, SERVICES OR THE SYSTEMS THAT MAKE THE MAGENTO COMMERCE PLATFORM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR

(F) THE MAGENTO COMMERCE PLATFORM WILL WORK WITH OTHER SOFTWARE OR HARDWARE COMPONENTS.

20. **No Support for Magento Commerce Platform**. Developer agrees that Magento has no obligation to provide any bug fixes, new releases, updates, maintenance or other technical support relating to the Magento Commerce Platform. In the event that Magento, in its sole discretion, provides an update to the Magento Commerce Platform, such update will be deemed part of the Magento Commerce Platform and will be subject to the terms and conditions of these Development Terms. Without limiting the foregoing, Magento will provide commercially reasonable technical support to Developer's sandbox environments, however such support will be limited to four (4) support tickets per month.

21. **Ownership**. Magento owns and shall retain all right, title and interest in the MAGENTO IP, including all intellectual property rights therein, including, without limitation, any enhancements, improvements, inventions, derivative works and other modifications created by or for Magento relating to the Magento Commerce Platform (but excluding Modifications and Partner Data). Other than the explicit rights granted herein, nothing in the Master Terms shall be construed or interpreted as granting to Developer any rights or licenses, including any rights of ownership or any other proprietary rights, in or to the Magento IP or any portion of any of the foregoing, including any intellectual property rights therein. If any right, title or interest arises or vests at any time in Developer to the Magento IP, Developer hereby assigns to Magento all such right, title and interest. To the extent any of the rights, title and interest in and to the Magento IP cannot be assigned by Developer to Magento, Developer hereby grants to Magento an exclusive, royalty-free, transferable, perpetual, irrevocable, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to practice and exploit fully such Magento IP (including all intellectual property rights that may subsist in such Magento IP). Developer shall do all acts and things (including the execution and delivery of patent, trademark, and copyright applications and instruments of assignment) at any time deemed by Magento to be necessary or desirable in order to effect the full assignment or license (if applicable) of the Magento IP to Magento. In order to give effect to the foregoing assignments and licenses, Developer hereby irrevocably designates and appoints Magento and its duly authorized officers and agents as Developer's agent and attorney-in-fact, to act for and on Developer's behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of any such letters, patent, copyright, trademark registrations and other analogous protection thereon with the same legal force and effect as if executed by Developer. Developer acknowledges that this power of attorney is coupled with an interest, in that Magento has an interest in Magento IP that is the subject of the power, and that as a result, in addition to any other consequences under law, this power is irrevocable and will survive Developer's incapacity or incompetence. Except as set forth herein, no right, title or interest in the Extension is transferred to Magento by means of the Master Terms; provided such Extension does not contain any Magento IP.

22. **Magento Commerce Platform Restrictions**. Developer shall not (and shall not allow any third party to), without the prior written consent of Magento: (a) copy all or any portion of the documentation relating to the Magento Commerce Platform (b) decompile, disassemble or otherwise reverse engineer the Magento Commerce Platform, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Magento Commerce Platform or any portion thereof; (c) distribute, disclose, market, rent, lease, assign, sublicense, pledge, encumber or otherwise transfer or make available the Magento Commerce Platform, in whole or in part, to any third party; (d) use the Magento Commerce Platform for production purposes or any other business purpose other than as set forth in Section 18; (e) use the Magento Commerce Platform for the purpose of hosting, developing or trailing any applications that are not a variant of, extension of or customization of the Magento Commerce software or undertake any performance testing or automated load testing; or (f) use Magento Commerce Platform with open source software in a manner that imposes or could impose any

other material limitation, restriction, or condition on Magento's right or ability to exploit the Magento Commerce software.

23. **Modifications**. Magento also grants Developer the right to create Modifications to the Magento Commerce Platform solely to exercise the license grants in Section 18 and for no other purpose. As an express condition of this right and the other licenses granted by Magento hereunder: (i) in the course of creating Modifications or using the Magento Commerce Platform, Developer shall not use, host, support or assist in the use of Magento Open Source (ii) in the course of creating Modifications, Developer shall not use any copyleft open source software code; and (iii) Developer hereby grants to Magento, a non-exclusive, royalty-free, transferable, perpetual, irrevocable (irrespective of the expiration or termination of the Master Terms) worldwide, fully paid-up license (with rights to sublicense through multiple tiers of sublicensees) to intellectual property rights in the Modifications to reproduce, creative derivative works of, modify, use, distribute, perform, display, make, have made, sell, offer to sell, import or otherwise exploit any Modifications. For clarity, the license in clause (iii) of the preceding sentence is intended to provide Magento with the freedom to operate and does not obligate Developer to deliver, transfer, or otherwise disclose the Modifications or any technology or materials related thereto to Magento. Subject to the foregoing, Developer shall own any Modifications. As an express condition of the rights granted hereunder, Developer irrevocably waives and agrees to never assert any intellectual property rights, or any other right in such Modifications, against Magento or its direct or indirect customers or sublicensees.

24. **Developer Data**. Developer agrees to permit Magento (on a non-exclusive worldwide basis), to access and store the Developer Data for the following limited purposes: (i) as necessary to provide the Magento Commerce Platform to Developer; (ii) to improve the Magento Commerce Platform; and (iii) to perform analyses related to the performance and use of the Magento Commerce Platform. The foregoing limited permissions shall extent to any Magento subsidiaries or affiliate entities, and to all employees or contractors performing work for Magento.

25. **Use of Magento Marks by Developer**. Subject to the terms and conditions of the Master Terms, and upon Developer's election to license the Extension and Documentation branded with the "Magento" plain word mark and Magento "Square Device" logo (the **Authorized Marks**), Magento grants to Developer, during the Term, a nonexclusive, non-transferable, revocable, royalty-free license (without the right to grant sublicenses except as expressly set forth in the Master Terms) to use and reproduce the Authorized Marks, solely in connection with marketing the Magento Commerce Platform and solely in accordance with the Master Terms. Developer acknowledges and agrees that the Authorized Marks belong to Magento and are a part of a group of many Magento trademarks and trade names (together with the Authorized Marks, the **Magento Mark**s). Magento grants no rights in the Magento Marks other than those expressly granted for the Authorized Marks in this paragraph. Developer acknowledges Magento's exclusive ownership of the Magento Marks. Developer agrees not to take any action inconsistent with Magento's ownership of the Magento Marks and to cooperate, at Magento's request and expense, in any action (including the conduct of legal proceedings), which Magento deems necessary or desirable to establish or preserve Magento's exclusive rights in and to the Magento Marks. Developer will not adopt, use, or attempt to register any trademarks or trade names that are confusingly similar to the Magento Marks or use the Magento Marks in such a way as to create combination marks with the Magento Marks. Upon Magento's request, Developer will provide Magento with samples of all Developer's materials that contain the Magento Marks prior to their public use, distribution, or display for Magento's quality assurance purposes and will obtain Magento's written approval before such use, distribution, or display. At Magento's request, Developer will modify or discontinue any use of the Magento Marks if Magento determines that such use does not comply with the Master Terms. Developer acknowledges and agrees that, except with respect to the limited trademark license granted to the Magento Marks herein, no licenses are granted by Magento to any other trademarks, service marks, or trade names owned by Magento or its Affiliates. The goodwill based on the use of any Magento Marks,

directly or indirectly, by Developer inures solely to the bene it of Magento and its Affiliates. The Magento Marks shall be the sole and exclusive property of Magento.

26. **Use of Developer Marks by Magento**. Subject to the terms and conditions of the Master Terms, Developer grants to Magento the limited, non-exclusive, non- transferable, sublicenseable right during the term of the Master Terms to use the trademarks, trade names, logos and other proprietary indicia owned or licensed by Developer associated with Developer or Developer's Extensions and External Services, as well as descriptions of Developer's Extensions and External Services, in marketing materials and communications and in connection with Marketplace or other Magento websites, applications or services for the purposes of marketing, selling, distributing or providing services related to Developer's Extensions or External Services.

27. **Privacy Rights of Customers**. You agree that if you use the Marketplace to distribute Extensions and make any External Services available to Customers, you will protect the privacy and legal rights of Customers. If the Customers provide you with, or your Extension or External Service accesses or uses, Customer names, passwords, or other login information or personal information, you must make the Customers aware that the information will be available to your Extension, and you must provide legally adequate privacy notice and protection for those Customers. Further, your Extension or External Service may only use that information for the limited purposes for which the Customer has given you permission to do so. If your Extension or External Service stores personal or sensitive information provided by Customers, it must do so securely and only for as long as it is needed. But if the Customer has opted into a separate agreement with you that allows you or your Extension or External Service to store or use personal or sensitive information directly related to your Extension (not including other products or applications) then the terms of that separate agreement will govern your use of such information. If the Customer provides your Extension with Magento information, your Extension may only use that information to access the user's Magento account when, and for the limited purposes for which, the Customer has given you permission to do so. If Magento assesses in its sole discretion that the receipt, processing, storage, usage or other handling of any personal information of Customers by you or the Extension requires amending the Master Terms or entering into additional agreements between you and Magento to protect the Customer's privacy rights, you agree to such amendment or agreement without undue delay.

28. **Prohibited Actions**. You agree that you will not engage in any activity with the Marketplace, including the development or publication of Extensions or other materials, that violates the Master Terms, or that: (a) knowingly violates a third party's terms of service; (b) violates any applicable laws or regulations; (c) interferes with, disrupts, damages, harms, or accesses in an unauthorized manner the machines, hardware, devices, servers, networks, data, or other properties or services of any third party including, but not limited to, Magento users, Magento or any network operator; (d) creates a spammy user experience, whether by posting repetitive content or misleading information about an application's purpose; (e) infringes on the intellectual property rights of others; (f) enables the unauthorized download of streaming content or media; (g) displays (via text, images, video, or other media) or links to: (i) illegal content; (ii) invasions of personal privacy or violations of the right of publicity; (iii) content that interferes with the functioning of any servers, networks, or services of other parties; (iv) promotions of hate or incitement of violence (v) violations of intellectual property rights, including patent, copyright, trademark, trade secret, or other proprietary right of any party, or (vi) pornography, obscenity, nudity, or sexual activity.

29. **Your Conduct**. You agree that you are solely responsible for (and that Magento has no responsibility to you or to any third party for) any Extensions you publish in the Marketplace and for the consequences of your actions (including any loss or damage which Magento or any third party may suffer) by doing so. You agree that you are solely responsible for (and that Magento has no responsibility to you or to any third party for) any breach of your obligations under the Master Terms, any applicable third party

contract or terms of service, or any applicable law or regulation, and for the consequences (including any loss or damage which Magento or any third party may suffer) of any such breach.

30. **Marketing Your Extension**. You will be responsible for uploading your Extensions to the Marketplace, providing required Extension information to users, and accurately disclosing the security permissions necessary for the Extension to function on user machines, hardware, or other devices. Extensions that are not properly uploaded will not be published in the Marketplace.

31. **Developer Indemnification**. Developer shall indemnify, defend and hold harmless Magento and its Affiliates, and each of Magento and its Affiliates' respective officers, directors, employees, agents, successors and assigns against all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, *Losses*) arising out of or resulting from any third party claim, suit, action or other proceeding related to or arising out of or resulting from: (a) Developer's breach of any representation, warranty, covenant or obligation under the Master Terms or any Additional Terms; (b) the gross negligence or intentional misconduct of Developer or Developer's employees or agents; or (c) Developer's Extension or any External Service infringing any third- party intellectual property right. Magento shall give prompt written notice to Developer of any third party claim for which Magento seeks indemnification under this paragraph; provided, however, that the failure of Magento to give timely notice hereunder will not affect any rights hereunder, except to the extent that Developer is materially prejudiced by such failure. So long as Developer employs counsel of recognized standing and reasonably acceptable to Magento which counsel pursues the applicable claim diligently and vigorously, Magento shall tender Developer, and Developer shall retain, the sole control over the defense of the indemnified claim and any negotiations for its settlement or compromise, including the right to employ counsel to defend any such proceeding, and to compromise, settle or otherwise dispose of the same, if Developer deems it advisable to do so, all at the expense of Developer; provided, that Developer shall not settle, or consent to any entry of judgment in, any proceeding without obtaining either: (i) an unconditional release of Magento (and, if applicable, its Affiliates and each of their respective officers, directors, employees and agents) from all liability with respect to all claims underlying such proceeding; or (ii) the prior written consent of Magento, which consent will not be unreasonably withheld or delayed. Magento shall reasonably cooperate with Developer in any such proceeding, at Developer's expense.

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