

# WEB SITE DEVELOPMENT AGREEMENT

IMPORTANT! BE SURE TO CAREFULLY READ AND UNDERSTAND ALL OF THE RIGHTS AND RESTRICTIONS SET FORTH IN THIS AGREEMENT. YOU WILL BE ASKED TO REVIEW AND EITHER ACCEPT OR NOT ACCEPT THE TERMS OF THE AGREEMENT. YOU ARE NOT AUTHORIZED TO USE OUR SERVICES, SOLUTIONS, SOFTWARE OR DESIGN UNLESS AND UNTIL YOU ACCEPT THE TERMS OF THIS AGREEMENT.

This is a binding legal agreement between you and eCommerce Software Solutions Online. If you do not agree to the terms of this Agreement, do not use or attempt to use the solutions, software, services or design from eCommerce Software Solutions..

By checking below box, you agree to the terms of this agreement

THIS AGREEMENT ("Agreement") is entered between eCommerce Software Solutions Online ("Developer", "Consultant", "Designer", "We", "Us" or "Host"), with its principal place of business located at 16/777 Toms Park, Cochin, Kerala, 683542 and who uses Custom Magento Development & Integration services offered by the Developer("Client", "You" or "User"), with its principal place of business located at any where in the world who buy any products or services from the Consultant and shall be effective as of the date on which Client purchase any product or service from the Consultant (the "Effective Date").

In order to become a user of any eCommerce Software Solutions Online's products and/or services, Client must agree to the terms and conditions mentioned below. Your agreement to these terms will be indicated to us by sending to us an application, or duly completed confirmation (if requested) on commencement of reseller activities or by using any of eCommerce Software Solutions Online's products and/or services, which ever occurs first.

## RECITALS

WHEREAS, Consultant is engaged in the business of providing Online store development, software products, extensions & template development, software integration services, software installation, software development, IT maintenance of web site, software or hardware, testing, bug fixing, design, web services, interactive information, communication and server management, Domain Name Registration, Web site hosting, Web site design, Software application or product development, Server Maintenance, Email and Secure Web Page services, shipping services, online payment, seo, data entry, back office jobs or any other services to be provided by eCommerce Software Solutions Online to Client from time to time, as well as any services provided by us under any reseller agreement (Services and individually Service)

WHEREAS, Client has acquired a license to use and modify the software known as Magentocommerce by Varien and related extensions and graphic and software design provided by different companies (the "Software"),

WHEREAS, Client wishes to utilize the services of Developer in connection with the customization of the software pursuant to certain specifications, and for client's sole and exclusive use.

NOW, THEREFORE, Developer and Client agree as follows:

### 1. Scope of Services

Developer agrees to design and implement a web site for Client in accordance with the specifications set forth in "Exhibit A" (the "Statement of Work").

### 2. Price and Payment Terms

Client will pay Developer for the Development Services according to the terms and time frames for completion set forth in "Exhibit A".

### **3. Term and Termination**

Unless terminated as provided herein, this Agreement will extend to and terminate upon completion of the Development Services. Client may terminate this Agreement without cause upon thirty (30) days written notice. In the event of termination without cause, Client agrees to pay Developer for all Development Services performed up to the date of termination. Either party may terminate this agreement for material breach, provided, however, that the terminating party has given the other party at least twenty-one (21) days written notice of and the opportunity to cure the breach. Termination for breach will not preclude the terminating party from exercising any other remedies for breach.

### **4. Ownership of Intellectual Property**

Magentoocommerce and Varien who owns the software has terms and conditions regarding the license, ownership and IP rights for Magento platform. Please refer their website [www.magentoocommerce.com](http://www.magentoocommerce.com) for details regarding license, terms of use, ownership and IP. It is the responsibility of the client to comply with the terms and conditions of the respective owners of the software, hardware and design. Developer won't be responsible for any legal violation done by the client.

Similarly TYPO3 ( [www.typo3.org](http://www.typo3.org) and [www.typo3.com](http://www.typo3.com) ) , Wordpress ( [www.wordpress.org](http://www.wordpress.org) ), Drupal ( [www.drupal.org](http://www.drupal.org) ) , Google analytics & Google base( [www.google.com](http://www.google.com) ), Twitter ( [www.twitter.com](http://www.twitter.com) ) are owned by respective companies. Visit their websites for details regarding terms of use, license, ownership and IP. It is the responsibility of the client to comply the terms and condition of the respective owners of the software, hardware and design. Developer won't be responsible for any legal violation done by the client in using any design, software or hardware Client hereby grants to Developer a non-exclusive license in the Software for the sole purpose of allowing Developer to perform its obligations under this Agreement and for no other purpose.

### **Background Technology**

Developer is the owner, licensee or sub licensee of various pre-existing development tools, routines, subroutines and/or other programs, data and materials that Developer may use or implement in the development of the website ("Background Technology"). The Background Technology includes but is not limited to those items listed attached hereto and made a part of this Agreement. Developer retains all right, title and interest in and to the Background Technology, and hereby grants Client a non-exclusive license to use the Background Technology only to the extent necessary to use the web site. Client is not authorized to sell or license any Background Technology or rights thereto to any other person or firm

### **5. Confidential Information**

A. All information relating to Client that is known to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by Developer and will not be disclosed or used by Developer except to the extent that such disclosure or use is reasonably necessary to the performance of the Development Services.

B. All information relating to Developer that is known to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by Client and will not be disclosed or used by Client except to the extent that such disclosure or use is reasonably necessary to the performance of Client's duties and obligations under this Agreement.

C. These obligations of confidentiality will extend for a period of 1 year after the termination of this agreement, but will not apply with respect to information that is independently developed by the parties, lawfully becomes a part of the public domain, or of which the parties gained knowledge or possession free of any confidentiality obligation.

### **6. Warranty and Disclaimer**

Developer warrants that the Development Services will be provided in a workmanlike manner, and in conformity with generally prevailing industry standards. THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY

OR FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE ON OR PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT.

## **7. Limitation of Remedies**

Client's sole and exclusive remedy for any claim against Developer with respect to the quality of the Development Services will be the correction by Developer of any material defects or deficiencies therein, of which Client notifies Developer in writing within ninety (90) days after the completion of that portion of the Development Services. In the absence of any such notice, the Development Services will be deemed satisfactory to and accepted by Client.

## **8. Limitation of Liability**

In no event will Developer be liable for any loss of profit or revenue by Client, or for any other consequential, incidental, indirect or economic damages incurred or suffered by Client arising as a result of or related to the Development Services, whether in contract, tort or otherwise, even if Client has advised of the possibility of such loss or damages. Client further agrees that the total liability of the Developer for all claims of any kind arising as a result of or related to this Agreement, or to any act or omission of Developer, whether in contract, tort or otherwise, will not exceed an amount equal to the amount actually paid by Client to Developer for the Development Services during the twelve (12) month period preceding the date the claim arises. Client will indemnify and hold Developer harmless against any claims by third parties, including all costs, expenses and attorneys' fees incurred by Developer therein, arising out of or in conjunction with Client's performance under or breach of this Agreement. Client warrants and represents that it is the rightful owner or licensee of all content that it may provide to Developer for implementation on the web site. Client will indemnify and hold Developer harmless against any claims for infringement of intellectual property, including but not limited to infringement of any copyright, trademark, patent or trade secret made against Developer by any third party.

## **9. Relation of Parties**

The performance by Developer of its duties and obligations under this Agreement will be that of an independent contractor, and nothing herein will create or imply an agency relationship between Developer and Client, nor will this Agreement be deemed to constitute a joint venture or partnership between the parties.

## **10. Employee Solicitation/Hiring**

During the period of this agreement and for twelve (12) months thereafter, neither party will directly or indirectly solicit or offer employment to or hire any employee, former employee, subcontractor, or former subcontractor of the other. The terms "former employee" and "former subcontractor" will include only those employees or subcontractors of either party who were employed or utilized by that party on the Effective Date of this Agreement.

## **11. Non-assignment**

Client permits the Developer to subcontract any part of the Work to an independent contractor. Neither party will assign this Agreement, in whole or in part, without the prior written consent of the other party. This Agreement will inure to the benefit of, and be binding upon the parties hereto, together with their respective legal representatives, successors, and assigns, as permitted herein.

## **12. Arbitration**

Any dispute arising under this Agreement will be subject to binding arbitration by a single Arbitrator, in accordance with its relevant industry rules, if any. The parties agree that this Agreement will be governed by and construed and interpreted in accordance with the laws of the State of Kerala, India. The arbitration will be held in Kerala, India. The Arbitrator will have the authority to grant injunctive relief and specific performance to enforce the terms of this Agreement. Judgment on any award rendered by the Arbitrator may be entered in any Court of competent jurisdiction.

### **13. Attorneys' Fees**

If any litigation or arbitration is necessary to enforce the terms of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.

### **14. Severability**

If any term of this Agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.

### **15. Force Majeure**

Neither party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by events or circumstances beyond the delayed party's reasonable control.

### **16. No Waiver**

The waiver by any party of any breach of covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing, and signed by the party waiving its rights. This Agreement may be modified only by a written instrument executed by authorized representatives of the parties hereto.

### **17. Entire Agreement**

This Agreement together with any attachments referred to herein constitute the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, negotiations, representations or communications relating to the subject matter. Both parties acknowledge that they have not been induced to enter into this Agreement by any representations or promises not specifically stated herein. By clicking the "I accept" button below, you agree to the terms of this Agreement

### **EXHIBIT A: STATEMENT OF WORK**

Please read the Magento Design Services details given in our website <http://ecommercesoftwareonline.com> for the detailed statement of work, price and delivery schedule. Before buying Magento Software related customization service from eCommerce Software Solutions Online; client should read and agree to the service terms and conditions of eCommerce Software Solutions Online. By clicking the "I accept" button below, you agree to the terms of this Agreement

### **EXHIBIT B: LICENSE AGREEMENT**

License is granted to Client for a period of one year. This term will renew automatically for an additional one year upon expiration of the effective term, unless either party provides written notice to the other of its intent not to renew no less than thirty (30) days before expiration of the effective term. Payment of an additional fee of \$ 0 will be payable on renewal.

### **License**

Developer will retain ownership of all proprietary rights to the intellectual property attached hereto developed pursuant to this Agreement, including certain rights, if any, that Developer has pursuant to a license from another party. Upon full payment of the fees set forth in this Agreement, Developer will grant to Client a non-exclusive license to use the intellectual property for the web site. Client is not authorized to sell or license the intellectual property or rights thereto to any other person or firm.

### **Background Technology**

Developer is the owner, licensee or sublicensee of various pre-existing development tools, routines, subroutines and/or other programs, data and materials that Developer may use or implement in the development of the web site ("Background Technology"). The Background Technology includes but is not limited to those items listed attached hereto and made a part of this Agreement. Developer retains all right, title and interest in and to the Background Technology, and hereby grants Client a non-exclusive license to use the Background Technology only to the extent necessary to use the web site. Client is not authorized to sell or license any Background Technology or rights thereto to any other person or firm.

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