

WEB SITE HOSTING 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

Host will provide the hosting services (the "Services") mentioned in the website www.ecommercesoftwaresolutionsonline.com. Hosting services will be provided according to the terms described in Exhibit B ("Service Level Agreement").

2. Price and Payment

User will pay Host for Hosting Services according to the terms mentioned in the website www.ecommercesoftware resolutionsonline.com. User will pay (a) hosting fees in advance, (b) fees for other goods or services as invoiced, and (c) any security deposit as set forth in any attachment to this agreement. Host may change the prices charged for the services upon forty-five (45) days written notice to User, but such increases shall not exceed ten percent (10%) of the rate currently being charged at that time.

3. Term and Termination

A. Hosting Services will commence on the Effective Date of this Agreement and will extend for a period of 1 Year and will automatically renew from year to year thereafter, unless earlier terminated as provided herein. User may terminate this Agreement without cause upon at least thirty (30) days written notice to Host. Host may terminate this Agreement without cause upon at least sixty (60) days written notice to User. Either party may terminate this agreement upon written notice for material breach, provided, however, that the terminating party has given the other party at least fourteen (14) days written notice of and the opportunity to cure the breach. Termination for breach will not alter or affect the terminating party's right to exercise any other remedies for breach.

B. If User's account is suspended due to lack of payment, User will pay the then current reinstatement fee, in addition to all other charges then due and payable, prior to restoration of the Services.

4. Customer Service

Host will provide to User reasonable amounts of consultation via telephone and/or electronic mail in the use of the system, but will not assist with any services that are not maintained or controlled by Host.

5. User's Warranties and Obligations

A. User is responsible for providing all equipment and/or software necessary to access the hardware and systems provided by Host. User agrees to adhere to Host's Acceptable Use Policy, a copy of which is attached hereto and marked as "Exhibit C" and is available online at www.ecommercesoftware resolutionsonline.com/aup. The Acceptable Use Policy may be modified from time to time in Host's sole discretion. User's continued use of the Services after the effective date of such modified Acceptable Use Policy will constitute User's acceptance of the modified terms. Failure by User to adhere to the Acceptable Use Policy or any modifications thereto will constitute a material breach of this agreement.

B. User hereby warrants to Host, and agrees that during the term of this Agreement it will ensure that (a) User is the owner or valid licensee of all data and/or content it will upload in conjunction with the Services (the "Content"), and that User has secured all necessary licenses, consents, permissions, waivers and releases for the use of the Content and each element thereof, including without limitation, all trademarks, logos, names and likenesses contained therein, without any obligation by Host to pay any fees, residuals, guild payments or other compensation of any kind to any person; (b) User's use, publication and display of the Content will not infringe any copyright, patent, trademark, trade secret or other proprietary or intellectual property right of any person, or constitute a defamation, invasion of privacy or violation of any right of publicity or any other right of any person, including, without limitation, any contractual, statutory or common law right or any "moral right" or similar right however denominated; (c) User will comply with all applicable laws, rules and regulations regarding the Content and will use the services only for lawful purposes; (d) User has used its best efforts to ensure that the Content is and will at all times remain free of all computer viruses, worms, Trojan horses and other type of malicious code.

C. User will cooperate fully with Host in connection with Host's performance of the Services. User will immediately notify Host of any change in User's mailing address, telephone, e-mail or other contact information.

6. Ownership of Intellectual Property

A. User hereby grants to Host a non-exclusive, royalty-free, worldwide right and license during the term of this Agreement to do the following to the extent necessary in the performance of Services: (a) digitize, convert, install, upload, select, order, arrange, compile, combine, synchronize, use, reproduce, store, process, retrieve, transmit, distribute, publish, publicly

display, publicly perform and hyperlink the Content; and (b) make archival or back-up copies of the Content. Except for the rights expressly granted herein, Host does not acquire any right, title or interest in or to the Content, all of which will remain solely with User.

B. Any feedback, data, answers, questions, comments, suggestions, ideas or the like that User sends to Host relating to the Services will be treated as being non-confidential and non-proprietary. Host may use, disclose or publish any ideas, concepts, know-how or techniques contained in such information for any lawful purpose.

C. Host's trademarks, trade names, service marks, logos, other names and marks, and related product and service names, design marks and slogans are the sole and exclusive property of Host. User will not use any of the foregoing in any advertising, publicity or in any other commercial manner without the prior written consent of Host. Host will maintain and control ownership of all Internet protocol numbers and addresses that may be assigned by Host to User. Host may, in its sole discretion, change or remove any and all such Internet protocol numbers and addresses.

D. Host hereby grants to User a non-exclusive, non-transferable, royalty-free license, for the term of this Agreement, to use the provided technology solely for the purpose of accessing and using the Services. User may not use the provided technology for any purpose other than accessing and using the Services. Except for the rights expressly granted herein, this Agreement does not transfer from Host to User any right, title or interest in and to the provided technology, and all right, title and interest thereto will remain solely with Host. User will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from any of the provided technology.

7. Warranty and Disclaimer

Host warrants the Services will be performed in a workmanlike manner, and in conformity with generally prevailing industry standards. User must report any material deficiencies in the Services to Host in writing within ninety (90) days of User's discovery of the deficiency. User's exclusive remedy for the breach of the above warranty will be the re-performance of the defective services within a commercially reasonable time, or any service credit set forth in any attachments to this agreement. 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. HOST EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES.

8. Limitation of Liability

Neither party will be liable to the other for special, indirect or consequential damages incurred or suffered by the other arising as a result of or related to the Hosting Services, whether in contract, tort or otherwise, even if the other has been advised of the possibility of such loss or damages.

9. Indemnification of Host

User will indemnify and hold Host harmless against any claims incurred by Host arising out of or in conjunction with User's breach of this Agreement, as well as all reasonable costs, expenses and attorneys' fees incurred therein. Host's total liability under this Agreement with respect to the Services, regardless of cause or theory of recovery, will not exceed the total amount of fees paid by User to Host during the six (6) month period prior to the date the claim arises.

10. Confidential Information

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

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

C. These obligations of confidentiality will extend for a period of one (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.

11. Relation of Parties

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

12. 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 within six (6) months immediately prior to the alleged violation.

13. Non-assignment

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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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. EXHIBIT A: Plan Details, Pricing and Payment

The details of hosting plan, cost and features is given at <http://ecommercesoftwareresolutionsonline.com>

EXHIBIT B: SERVICE LEVEL AGREEMENT

This Service Level Agreement ("Agreement") sets forth the details regarding the level of service and technical support that apply when your account is in good financial standing.

1. Downtime

A. For purposes of this Agreement, a Unit of Downtime is one period of at least twenty (24) hours during which access to your website are unavailable because of problems with hardware or system software. Downtime does not include (i) problems caused by factors outside of our reasonable control, (ii) problems resulting from any actions or inactions by you or any third party, (iii) problems resulting from your equipment and/or third party equipment not within our sole control, or (iv) network unavailability during scheduled maintenance of our network and/or web servers.

B. In any calendar month, we guarantee that Downtime will not exceed four (4) Units of Downtime excluding, however, regularly scheduled maintenance. Any regularly scheduled maintenance will be performed during the hours of 10:00 p.m and 12: 00 pm IST. We work to ensure the functioning of all web servers through continuous monitoring by our staff.

C. If Downtime exceeds four (4) Units of Downtime in any calendar month, we will, upon your written request, credit your account (a "Downtime Credit") in an amount equal to the pro-rata price for one (1) day of service, for each instance of Downtime as that term is defined herein.

D. To receive Downtime Credit, you must request such credit by sending an email to info@ecommercesoftwareresolutionsonline.com within seven (7) days after the occurrence of Downtime. The aggregate maximum number of Downtime Credits to be issued for any and all instances of Downtime occurring in a single calendar month will not exceed seven (7). Downtime Credits will be applied upon issue of the first invoice following the request for Downtime Credit, unless the Downtime occurs in your final month of service. In such case, a refund for the dollar value of the Downtime Credit will be mailed to you within thirty (30) days of the expiration of your service agreement.

2. Technical Support

A. A member of our technical support help desk staff will be available to assist you with problems and questions regarding the hosting services. We will supply telephone and/or email support to you regarding the hosting services 24 hours a day, seven days a week.

B. You may contact our technical support help desk via email at info@ecommercesoftwareresolutionsonline.com, or by telephone at +919842226200. We may, from time to time, develop additional methods for you to contact the help desk, and will make information regarding such methods available at our website.

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

EXHIBIT C

WEB HOSTING ACCEPTABLE USE POLICY

This Acceptable Use Policy sets forth guidelines relating to the types of content that you may upload to the web servers under your agreement with eCommerce Software Solutions Online for web hosting services (the "Services"). eCommerce Software Solutions Online may remove any materials that, in its sole discretion, may be illegal, may subject it to liability, or which may violate this Acceptable Use Policy. eCommerce Software Solutions Online will cooperate with legal authorities in the investigation of any suspected or alleged crime or civil wrong arising from any use of the Services. Your violation of this Acceptable Use Policy may result in the suspension or termination of either your access to the Services and/or your account or other actions as detailed in the Web Hosting Agreement.

1. Acceptable Use

The following constitute violations of this Acceptable Use Policy:

- A. Using the Services to transmit or post any material that contains or contains links to nudity, pornography, adult content, sex, or extreme violence.
- B. Using the Services to transmit or post any material that, intentionally or unintentionally, violates any applicable local, state, national or international law, or any rules or regulations promulgated thereunder.
- C. Using the Services to harm, or attempt to harm, minors in any way.
- D. Using the Services to transmit or post any material that harasses, threatens or encourages bodily harm or destruction of property.
- E. Using the Services to make fraudulent misrepresentations or offers including but not limited to offers relating to "pyramid schemes" and "Ponzi schemes."
- F. Using the Services to access, or to attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of eCommerce Software Solutions Online or another entity's computer software or hardware, electronic communications system or telecommunications system, whether or not the intrusion results in the corruption or loss of data.
- G. Using the Services to transmit or post any material that infringes any copyright, trademark, patent, trade secret or other proprietary rights of any third party, including, but not limited to, the unauthorized copying and/or distribution of copyrighted material, the digitization and distribution of photographs from magazines, books, music, video or other copyrighted sources, and the unauthorized transmittal of copyrighted software.
- H. Using the Services to collect, or attempt to collect, personal information about third parties without their knowledge or consent.
- I. Reselling the Services without the prior written authorization of eCommerce Software Solutions Online.
- J. Using the Services for any activity that adversely affects the ability of other people or systems to use the Services or the Internet. This includes but is not limited to "denial of service" (DoS) attacks against another network host or individual user. Interference with or disruption of other network users, network services or network equipment is prohibited.

2. Reporting of Violations of This Acceptable Use Policy

eCommerce Software Solutions Online requests that anyone who believes that there has been a violation of this Acceptable Use Policy to immediately send an email detailing such violation to info@ecommercesoftwareonline.com.

3. Revisions to This Acceptable Use Policy

eCommerce Software Solutions Online may revise, amend or modify this Acceptable Use Policy at any time and in any manner.