

SOFTWARE UPGRADE TO NEWER MAGENTO VERSION 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 will perform the up gradation to newer Magento version available in www.magentocommerce.com. Please refer Exhibit A also which is given below

2. Price and Payment Terms

Client will pay Developer for the Work at the price and on the terms set forth in the website of www.ecommercesoftwaresolutionsonline.com. Please refer Exhibit A given below for details. The price set forth in this

Agreement does not include taxes. If Developer is required to pay any federal, state, or local taxes based on the services provided under this Agreement, these will be separately billed to client. Developer will not be liable for any interest or penalties incurred due to late payment or nonpayment of these taxes by Client, but instead Client will be fully responsible for payment of said interest and penalties.

3. Term and Termination

Unless terminated as provided herein, this Agreement will extend to and terminate upon completion of Developer's Work as provided herein. 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 of Developer's Work 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 alter or affect the terminating party's right to exercise any other remedy for breach.

4. Ownership of Intellectual Property

Magento and Varien who owns the software has terms and condition regarding the license, ownership and IP rights for Magento. Please refer their website www.magentocommerce.com 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.

Similarly TYPO3 (www.typo3.org and www.typo3.com) , Wordpress (www.wordpress.org), Drupal (www.drupal.org) , Google analytics & Google base(www.google.com), Twitter (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 and design. Developer won't be responsible for any legal violation done by the client in using any design, software or hardware To the extent that Developer has received payment of compensation as provided in this Agreement, Developer's Work will be deemed a "commissioned work" and "work made for hire" 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 Developer's Work.

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 as to the Work

Developer warrants the Work will be performed in a workmanlike manner, and in conformity with generally prevailing industry standards. Client must report any material deficiencies in Developer's Work to Developer in writing within ninety (90) days of Client's receipt of the Work. Client's exclusive remedy for the breach of the above warranty will be the re-performance of Developer's Work within a commercially reasonable time. 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. DEVELOPER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES.

7. Representation and Warranty as to License Rights

Client warrants and represents that it is authorized to use and modify or permit Developer to modify the Software as provided herein.

8. Limitation of Liability, Indemnification

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 performance of Developer's Work, whether in contract, tort, or otherwise, even if the other has been advised of the possibility of such loss or damages. Client will indemnify and hold Developer harmless against any claims incurred by Developer arising out of or in conjunction with Client's breach of this Agreement, as well as all reasonable costs, expenses and attorneys' fees incurred therein. Developer's total liability under this Agreement with respect to the Work, regardless of cause or theory of recovery, will not exceed the total amount of fees paid by Client to Developer. Client shall indemnify and hold Consultant harmless against any claims by third parties, including all costs, expenses and attorneys' fees incurred by Consultant therein, arising out of or in conjunction with Client's performance under or breach of this Agreement.

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 in this Agreement 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 within six (6) months immediately prior to the alleged violation.

11. Non-assignment

Client hereby 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. If Client sells its business to another person or firm, such consent will not be unreasonably withheld. 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. Waiver and Modification

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, constitutes 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: STATEMENT OF WORK

Please read the Magento Installation service details given in our website www.ecommercesoftwaresolutionsonline.com for the detailed statement of work. Before buying any service from eCommerce Software Solutions Online client should read and agree to the service terms and conditions.

Terms and Conditions

- This service cover version upgrade Only
- If support or service in addition to the upgrade is provided (this includes configuration of any kind) will be charged @33 USD/Hr
- We do not install on Windows and MAC servers

System Requirements

- Supported Operating Systems: Linux, FreeBSD
- Supported Web Servers: Apache 1.3.x, 2.0.x and 2.2.x

PHP Compatibility requirements:

- 5.2.0 and above

- Required extensions: PDO_MySQL, simplexml, mcrypt, hash, GD, DOM, iconv
- PHP Safe_mode must be off
- Memory limit 32M or more

MySQL database requirements:

- 4.1.20 or newer
- InnoDB storage engine

Note:For latest System Requirements, PHP Compatibility requirements, MySQL database requirements etc please refer www.magentocommerce.com

This product has some important conditions

- Our company shall not be held responsible for any errors which could occur during upgrade
- We shall not take any responsibility in case of data loss in case of you having other tables in the database you want us to install Magento on, etc
- We shall not be held responsible for any serious problems such as store function failure, performance or safety failure
- You are responsible for taking and keeping back up of your database and your entire Magento folder prior to upgrade

Some of our potential clients may find these terms and condition as extreme. Please note that during upgrades there can be potential issues because of various reasons such as code issues in the newer versions of Magento, Server issues, lack of security in the hardware or software, unforeseeable issues, problems etc

As a company supporting your e-commerce solution; we can't be held responsible for errors which are beyond our control or attention. But as of now we have 100% success in our Magento Up gradation service.

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