

eBay Enterprise Magento Extensions End User License Agreement

This End User License Agreement ("**Agreement**") is made as of the date the extension is downloaded from the Magento Connect website (the "**Effective Date**") by and between GSI Commerce Solutions, Inc., an eBay Enterprise company ("**eBay Enterprise**"), a Pennsylvania corporation having its principal place of business at 935 1st Avenue, King of Prussia, PA 19406 USA and the Licensee executing this Agreement ("**Licensee**").

WHEREAS, eBay Enterprise along with its affiliates owned or controlled by GSI Commerce, Inc. (each, an "**eBay Enterprise Company**") offer various e-commerce and marketing technology and services to its clients, including, among other things, e-commerce website platform services, order management and payment processing services, fulfillment and customer call center services, various marketing technology platform services (including display advertising, affiliate marketing, email and text messaging, attribution and database solutions), and account management and marketing agency services (together, the "**Enterprise Services**").

WHEREAS, eBay Enterprise desires to grant Licensee a limited license to use the applicable Magento Connect integration extension (including the associated documentation, the "**Extension**") in connection with Licensee's purchase and use of the corresponding Enterprise Services pursuant to an executed services agreement between Licensee and the applicable eBay Enterprise Company ("**Service Agreement**").

The parties agree as follows:

TERMS AND CONDITIONS

1. License

- 1.1. Subject to Licensee's payment for the applicable Enterprise Services pursuant to a Service Agreement and Licensee's compliance with other terms and conditions of a Service Agreement and this Agreement, eBay Enterprise hereby grants Licensee a non-transferable, non-assignable, non-sublicensable, worldwide license to use the Extension, solely for internal purposes, in accordance with the Extension's technical documentation and solely during the term of a Service Agreement.
- 1.2. Licensee shall implement reasonable controls to ensure that it does not use the Extension except as permitted hereunder. eBay Enterprise reserves the right to audit Licensee's use of the Extension during normal business hours and with reasonable notice and to include means within the Extension to limit Licensee's use of the Extension to the use permitted hereunder.
- 1.3. eBay Enterprise shall provide the Extension to Licensee, including the associated technical documentation, for use by Licensee in accordance with this Agreement.
- 1.4. eBay Enterprise may modify the terms of this Agreement at any time upon notice to Licensee, which notice shall be deemed given thirty (30) days following the

posting of the modified agreement on the applicable Magento website or other website where the Extension is made available. Continued use of the Extension shall be deemed Licensee's consent and agreement with the modified agreement.

2. License Exclusions and Restrictions

2.1. Except as expressly authorized herein, Licensee shall not:

- a. use or deploy the Extension in any manner except in connection with its purchase and use of the Enterprise Services pursuant to a Service Agreement;
- b. make modifications to the Extension except as necessary to integrate the Extension with Licensee's implementation of the Magento website;
- c. distribute, sublicense, disclose, market, rent, lease, or offer remote computing services, networking, batch processing or transfer of, the Extension to any third party, or permit any person or entity to have access to the Extension by means of a time sharing, remote computing services, networking, batch processing, service bureau or time sharing arrangement; and
- d. export the Extension in violation of U.S. Department of Commerce export administration regulations.

2.2. The Extension, including the associated source code and documentation is the Confidential Information of eBay Enterprise. Licensee will protect the Confidential Information of eBay Enterprise from misappropriation and unauthorized use or disclosure, and at a minimum, will take precautions at least as great as those taken to protect its own confidential information of a similar nature. Licensee will use such Confidential Information solely for the purposes for which it has been disclosed and shall not disclose the Confidential Information to any third party and only to its employees and consultants that have a need to know for purposes of installing the Extension. "**Confidential Information**" means, in addition to the Extension, all nonpublic information relating to eBay Enterprise or its affiliates that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential.

2.3. No license, right or interest in any eBay Enterprise or any other eBay Enterprise Company trademark, trade name or service mark is granted hereunder.

3. Fees

The Extension is made available to Licensee at no additional charge, subject to Licensee's timely payment for the Enterprise Services and compliance with a Service Agreement and this Agreement.

4. Title and Protection

4.1. eBay Enterprise (or its third party providers) retains title to all portions of the

Extension and any copies thereof. The Extension contains valuable proprietary information, and Licensee shall not disclose the Extension to anyone other than those of its employees or consultants under written nondisclosure obligations at least as restrictive as those contained in this Agreement, having a need to know for purposes consistent with this Agreement. Licensee shall be responsible for the compliance of such employees or consultants. Licensee shall affix, to each full or partial copy of the Extension made by Licensee, all copyright and proprietary information notices as were affixed to the original. The obligations set forth in this Section shall survive termination of this Agreement.

- 4.2 Any modifications to the Extension made by Licensee shall be considered derivative works of the Extension and property of eBay Enterprise, provided that Licensee shall have a royalty free license to use such derivative works consistent with the license grant in this Agreement for use solely in connection with the Extension during the term of this Agreement.
- 4.3. If the Extension is acquired by or on behalf of a unit or agency of the U.S. Government (the “**Government**”), the Government agrees that such Product is “commercial computer software” or “commercial computer software documentation” and that, absent a written agreement to the contrary, the Government’s rights with respect to such Product are limited by the terms of this Agreement, pursuant to applicable FAR and/or DFARS and successor regulations.

5. Patent and Copyright Indemnity

For such time as Licensee is receiving Services pursuant to a Service Agreement, eBay Enterprise shall indemnify and defend Licensee against any claims that the Extension (as provided by eBay Enterprise) infringes any United States patent or copyright; provided that eBay Enterprise is given prompt notice of such claim and is given information, reasonable assistance and sole authority to defend or settle the claim. In the defense or settlement of the claim, eBay Enterprise shall obtain for Licensee the right to continue using the Extension, replace or modify the Extension so that it becomes non-infringing while giving equivalent performance or, if eBay Enterprise determines that such remedies are not reasonably available, remove the infringing portion of the Extension. eBay Enterprise shall have no liability if the alleged infringement is based on (i) a modification of the Extension by anyone other than, or a combination of the Extension with any product or service not provided by, eBay Enterprise; (ii) use of the Extension other than in accordance with the documentation of this Agreement; or (iii) use of the Extension not in connection with the Enterprise Services. This Section 5 states eBay Enterprise's entire liability and Licensee's exclusive remedy for infringement.

6. Default and Termination

- 6.1. An event of default shall be deemed to occur if: (i) Licensee fails to perform any of its obligations under this Agreement or is otherwise in breach of this Agreement or a Service Agreement.
- 6.2. If an event of default occurs, the non-defaulting party, in addition to any other rights available to it under the law, may terminate this Agreement and all licenses granted hereunder by written notice to the defaulting party. Remedies

shall be cumulative and there shall be no obligation to exercise a particular remedy.

6.3. This Agreement and all licenses granted herein shall automatically terminate upon the termination or expiration of the applicable Service Agreement.

6.4. Within thirty (30) days after termination of this Agreement, Licensee shall certify in writing to eBay Enterprise that Licensee has ceased use of the Extension and that all copies of the Extension in any form, including partial copies, have been destroyed.

7. Warranty

7.1. Warranty. Provided that Licensee has executed a Service Agreement, eBay Enterprise warrants for a single period of ninety (90) days commencing upon eBay Enterprise's electronic delivery of the Extension to Licensee that the Extension will in all material respects perform the functions described in the specifications contained in the documentation provided with the Extension. eBay Enterprise will use commercially reasonable efforts to undertake to correct any reported and verifiable error, which shall be eBay Enterprise's entire liability and Licensee's exclusive remedy for errors. eBay Enterprise does not warrant that the Extension will meet Licensee's requirements, that the Extension will operate in the combinations which Licensee may select for use, that the operation of the Extension will be uninterrupted or error-free, or that all error conditions will be corrected. EXCEPT AS PROVIDED IN THIS SECTION ALL SOFTWARE PROVIDED HEREUNDER IS PROVIDED "AS IS".

7.2. DISCLAIMER. THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 7 ARE THE ONLY WARRANTIES MADE BY EBAY ENTERPRISE WITH RESPECT TO THE EXTENSION PROVIDED BY EBAY ENTERPRISE. EBAY ENTERPRISE MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR ARISING BY CUSTOM OR TRADE USAGE, AND, SPECIFICALLY, MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. EBAY ENTERPRISE'S EXPRESS WARRANTIES SHALL NOT BE ENLARGED, DIMINISHED OR AFFECTED BY, AND NO OBLIGATION OR LIABILITY SHALL ARISE OUT OF, EBAY ENTERPRISE RENDERING TECHNICAL OR OTHER ADVICE OR SERVICE IN CONNECTION WITH THE EXTENSION.

8. Limitation of Liability

8.1. LIABILITY EXCLUSIONS. NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT EITHER PARTY'S LIABILITY FOR BREACH OF THE LICENSES OR RELATED RESTRICTIONS CONTAINED HEREIN OR ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW. SAVE FOR THE FOREGOING, NEITHER PARTY ACCEPTS AND EACH PARTY HEREBY EXCLUDES ANY LIABILITY FOR LOSS OF OR DAMAGE TO TANGIBLE PROPERTY OTHER THAN THAT CAUSED BY ITS NEGLIGENCE AND HEREBY EXCLUDES ANY OTHER LIABILITY FOR NEGLIGENCE ARISING PURSUANT TO THE TERMS OF THIS AGREEMENT. UNDER NO

CIRCUMSTANCES WILL EITHER PARTY BE LIABLE FOR: LOSS OF REVENUE; LOSS OF ACTUAL OR ANTICIPATED PROFITS; LOSS OF CONTRACTS; LOSS OF THE USE OF MONEY; LOSS OF ANTICIPATED SAVINGS; LOSS OF BUSINESS; LOSS OF OPPORTUNITY; LOSS OF GOODWILL; LOSS OF REPUTATION; LOSS OF, DAMAGE TO OR CORRUPTION OF DATA; OR CONSEQUENTIAL OR INDIRECT LOSS OR SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES (INCLUDING, FOR THE AVOIDANCE OF DOUBT, WHERE SUCH LOSS OR DAMAGE IS ALSO OF A CATEGORY OF LOSS OR DAMAGE ALREADY LISTED), WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS OF LICENSEE, EBAY ENTERPRISE OR ANY THIRD PARTY ARISING OUT OF ANY BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY CONDITIONS OR OTHER TERM, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, OTHER LIABILITY IN TORT, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, OR OTHERWISE.

8.2. LIABILITY CAP. NOTWITHSTANDING THE FORM (E.G.CONTRACT, TORT, OR OTHERWISE) IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT, IN NO EVENT WILL EBAY ENTERPRISE OR ITS AFFILIATES OR SUPPLIERS BE LIABLE FOR DAMAGES, RESTITUTION OR LOSSES, THAT EXCEED, IN THE AGGREGATE, FOR EACH RESPECTIVE BREACH OR SERIES OF RELATED BREACHES, THE LESSER OF \$5,000 OR THE AMOUNT OF FEES PAID BY LICENSEE FOR THE EXTENSION LICENSE IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE ON WHICH THE EVENT GIVING RISE TO SUCH DAMAGES OR LOSSES OCCURRED.

9. Support Services

No support services are provided under this Agreement. Any support services provided to Licensee will be provided pursuant to a Service Agreement through the applicable eBay Enterprise Company.

10. Marketing Activities

The parties agree to undertake the marketing activities set forth in Schedule A (Marketing Activities).

11. Notices

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 first page of this Agreement, or such other address as either party may indicate by at least ten (10) days prior written notice to the other party. Notices to eBay Enterprise shall be sent to the attention of the General Counsel.

12. Assignment

Licensee may not assign this Agreement without the prior written consent of eBay

Enterprise; provided that such consent shall not be required for assignment to a purchaser of all or substantially all of the assets or equity securities of Licensee who undertakes in writing to be bound by all the terms and conditions of this Agreement, or to a permitted assignee of the Service Agreement. Any prohibited assignment shall be null and void.

13. Entire Agreement

This Agreement is the complete and exclusive agreement between the parties, which supersedes all proposals or prior agreements, oral or written, including any other online (click-through) agreement which Licensee may have accepted in conjunction with the downloading of the Extension, and all other communications between the parties relating to the subject matter hereof. No purchase order, other ordering document or any hand written or typewritten text or email which purports to modify or supplement the printed text hereof or any executed agreement with any eBay Enterprise Company other than eBay Enterprise shall add to or vary the terms thereof. Except as contained in a writing signed by both parties, all such proposed variations or additions are objected to and shall have no force or effect.

14. General

This Agreement is made in and shall be governed by the laws of the State of New York, excluding choice of law principles. All proceedings shall be conducted in English. Venue for all proceedings shall be the state and federal courts located in New York, New York, provided that eBay Enterprise may seek injunctive relief in any court of competent jurisdiction. The United Nations Convention for the International Sale of Goods shall not apply. The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement. Except for Licensee's license restrictions herein, neither party shall be liable for any failure to perform due to causes beyond its reasonable control. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision. The failure by a party to exercise any right hereunder shall not operate as a waiver of such party's right to exercise such right or any other right in the future. This Agreement may be amended only by a written document executed by a duly authorized representative of each of the parties. The parties agree to receive electronic documents and accept electronic signatures (information attached or logically associated with such document and clicked or otherwise adopted with an intent to sign) including in counterparts which shall be valid substitutes for paper-based documents and signatures, and the legal validity of a transaction will not be denied on the ground that it is not in writing.

SCHEDULE A

EBAY ENTERPRISE EXTENSION RELATED MARKETING ACTIVITIES

These Marketing Activities are referenced in and incorporated into the End User License Agreement between (the "Agreement") eBay Enterprise and Licensee.

- 1. Press Releases.** Licensee agrees to permit eBay Enterprise to issue a press releases at (i) contract execution announcing the selection of the Extension(s), and (ii) at launch of Enterprise Services. Licensee will have the right to approve the release in advance, but such approval will not be unreasonably delayed or withheld.
- 2. Use of Licensee Logo.** eBay Enterprise shall be permitted to include Licensee's logo on eBay Enterprise's website (including its social media pages) as well as in connection with the Magento Connect website and in printed marketing material.
- 3. Case Study.** eBay Enterprise may issue a case study based on Licensee's use of the Extension and the Enterprise Services. Licensee's site may be showcased on eBay Enterprise's website.
- 4. Reference.** Licensee's employees shall make themselves available to be a reference for the Extension and will provide quotations about how the Extension has contributed to the success of their site or product.
- 5. Other.** Additional joint marketing activities may be developed based upon mutual agreement.