

## **MAGENTRIX CORPORATION SOFTWARE SUBSCRIPTION AGREEMENT**

THIS SOFTWARE CANNOT BE DEPLOYED OR ACCESSED UNLESS YOU, THE “SUBSCRIBER”, ACCEPT THE TERMS AND CONDITIONS OF THIS SOFTWARE SUBSCRIPTION AGREEMENT (“AGREEMENT”) BY CLICKING THE “ACCEPT” ICON BELOW. PLEASE READ THIS AGREEMENT CAREFULLY BEFORE ACCEPTING IT. IF, UPON REVIEW, YOU CHOOSE NOT TO ACCEPT THE TERMS AND CONDITIONS AS SET FORTH HEREIN, DO NOT ACCESS THIS SOFTWARE AND CONTACT MAGENTRIX CORPORATION (“MAGENTRIX”) FOR A FULL REFUND OF ANY PRE-PAID FEES.

PLEASE NOTE THAT BY AGREEING TO THESE TERMS AND CONDITIONS, YOU ALSO AGREE TO ENSURE THAT ANY PERSON ENTITLED TO USE THE SOFTWARE, SUCH AS YOUR EMPLOYEES AND/OR CONSULTANTS, WILL ALSO ABIDE BY THE TERMS OF THIS LICENSE AGREEMENT, AND YOU WILL INDEMNIFY MAGENTRIX CORPORATION AGAINST ANY BREACH OF THIS AGREEMENT BY SAID EMPLOYEES AND/OR CONSULTANTS. MAGENTRIX AND SUBSCRIBER ARE EACH REFERRED TO HEREIN AS A “PARTY” AND COLLECTIVELY THE “PARTIES” TO THIS AGREEMENT

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### **1 DEFINITIONS.**

**1.1 “Beta Features”** means the new features of the Software developed by Magentrix and specifically marked as “Beta Features”.

**1.2 “Beta Trial”** shall have the meaning set forth in Section 11.1.

**1.3 “Confidential Information”** of a Party means any information in a tangible form that is disclosed by that Party pursuant to this Agreement and that (a) is identified “Confidential,” “Proprietary” or in some other manner to indicate its confidential nature; or (b) would reasonably be considered to be confidential. This Agreement and its contents shall also be considered Confidential Information.

**1.4 “Data Protection Laws”** means any law, rule, regulation, decree, statute, or other enactment, order, mandate or resolution, applicable to Magentrix or Subscriber, relating to data security, data protection and/or privacy, including without limitation, the Canadian Personal Information Protection and Electronic Documents Act (“PIPEDA”), the US Health Insurance Portability and Accountability Act (“HIPAA”), the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to processing of personal data and the free movement of that data (“GDPR”), and any implementing, derivative or related legislation, rule, regulation, and regulatory guidance, as amended, extended, repealed and replaced, or re-enacted.

**1.5 “Data Subject”** is a natural person who can be identified, directly or indirectly, in particular by referencing an identifier such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.

**1.6 “Documentation”** means any standard Magentrix documentation distributed by Magentrix as a part of the Software.

**1.7 “Initial Term”** shall have the meaning set forth in Section 9.1.

**1.8 “Malicious Code”** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

**1.9 “Order Form”** means the Subscriber’s purchase order for the Products, as accepted by Magentrix or one of its authorized Resellers.

**1.10 “Personal Data”** means any information relating to a Data Subject.

**1.11 “Personal Data Breach”** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data, whether transmitted, stored, or otherwise Processed.

**1.12 “Products”** shall have the meaning set forth in Section 2.1.

**1.13 “Proprietary Rights”** means all rights to the Software, Documentation, and Magentrix’ Confidential Information, including, but not limited to, patents, copyrights, trademarks, trade names, trade secrets, or rights to apply for any of the same, irrespective of whether such rights arise under Canadian, U.S., or international laws.

**1.14 “Processing”** means any operation or set of operations that is performed on Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, or otherwise making available, alignment or combination, restriction, erasure, or destruction. “Process” and “Processed” will have a corresponding meaning.

**1.15 “Renewal Term”** shall have the meaning set forth in Section 9.1.

**1.16 “Reseller”** means any reseller authorized by Magentrix to provide Products or Standard Technical Support to Subscriber.

**1.17 “Software”** means the computer programs (including but not limited to web-based applications) referenced in the Order Form.

**1.18 “Standard Technical Support”** shall have the meaning set forth in Section 4.2.

**1.19 “Subscriber Application”** means any applications or program code created by Subscriber using the Products.

**1.20 “Subscriber Data”** means any electronic data provided by Subscriber to Magentrix.

**1.21 “Subscriber End User(s)”** means customer(s) of Subscriber authorized to use the Subscriber Application.

**1.22 “Subscription”** shall have the meaning set forth in Section 2.1.

**1.23 “Subscription Fees”** means the fees payable by Subscriber for the Subscription.

**1.24 “Term”** means collectively, the Initial Term and any Renewal Term.

**1.25 “Transfer”** means to disclose or otherwise make the Personal Data available to a third party (including to any affiliate or sub-processor of Magentrix), either by physical movement of the Personal Data to such third party or by enabling access to the Personal Data by other means.

**1.26 “User”** means each person who is authorized by Subscriber to access or use the Products, directly or indirectly.

**1.27 “Website”** means [www.magentrix.com](http://www.magentrix.com).

## **2 GRANT OF LICENSE.**

### **2.1 License.**

Subject to the terms and conditions of this Agreement, Magentrix Corporation agrees to provide Subscriber the subscription services as described in the Subscriber’s Order Form (“Subscription”). Magentrix grants to Subscriber as part of the Subscription, a non-exclusive, nontransferable right to use Magentrix Software (the “Software, together with applicable Documentation and the accompanying media, if any, (collectively, the “Products”)), to create Subscriber Applications for use by Subscriber End Users. Subject to the terms of this Agreement, Subscriber may allow its employees and independent consultants to use the Products to create Subscriber Applications solely for the benefit of Subscriber; provided, however, Subscriber remains responsible for any breach of this Agreement. Any other use of the Products by the Subscriber or any other person, business, corporation, government organization or any other entity is strictly forbidden and is a violation of this Agreement.

### **2.2 Restriction on Use.**

Use of the Product shall be only by Users and only for Subscriber’s own internal business operations (not for the benefit of any other person or entity) for the duration of the Term, provided that Subscriber has and continues to pay the applicable Subscription Fees. Access to the Products is only for the maximum number of authorized Users for whom Subscriber has paid the Subscription Fees. All Subscription Fees paid for the Products are nonrefundable. Subscriber

may only exceed the number of ordered Users if Subscriber increases the number of Users for which it is authorized pursuant to a new Order Form and pays additional Subscription Fees. Other than as expressly authorized in this Section 2 or as expressly permitted by applicable law, Subscriber may not: (a) copy the Software or any portion thereof; (b) use the Software to store or transmit Malicious Code, or infringing, tortious or otherwise unlawful materials; or (c) interfere with the business or operations of Magentrix.

### **2.3 Delivery of the Products.**

The Products shall be accessed by the Subscriber through the Website.

### **2.4 Audit Rights.**

Magentrix may, at any time, audit Subscriber's use of the Products by accessing the Products through the Magentrix servers to ensure compliance with the terms of this Agreement. Unless specifically authorized in writing in advance by Magentrix, Subscriber may not rent, lease or timeshare the Products or provide subscription services for the Products or permit others to do so.

### **2.5 Documentation.**

Magentrix hereby grants to Subscriber a non-exclusive, non-transferable, non-sub-licensable, internal use only license to use the Documentation solely for the purposes of utilizing the licenses granted in Section 2.1 above.

## **3 PRICES AND PAYMENTS.**

### **3.1 Prices.**

Pricing for the Products shall be as set forth in the Subscriber's Order Form.

### **3.2 Automatic Renewal.**

Unless terminated as by Subscriber as provided in Section 9.1, this Agreement shall renew automatically on a yearly basis, and the Subscriber shall be invoiced for the upcoming Renewal Term.

### **3.3 Payment.**

All payments (including fees for additional Software, support, training, taxes, etc.) shall be due within 30 days of the date of an invoice from Magentrix or one of its authorized Resellers.

### **3.4 Pricing Changes.**

Magentrix shall have the right to change the Subscription Fees and prices for the Products each year on the anniversary of this Agreement. Magentrix shall provide notice of any such price change to Subscriber ninety (90) days prior to the said anniversary date.

### **3.5 Taxes.**

All Subscriber Fees are exclusive of any export, withholding, federal, state and local taxes and duties other than taxes based on Magentrix' net income. If Magentrix pays any such taxes or duties, Magentrix shall itemize such amounts in an invoice to Subscriber and Subscriber shall

reimburse Magentrix for such taxes and duties; except that Subscriber shall not be required to make any such reimbursement if it provides an appropriate and valid tax exemption certificate to Magentrix prior to accessing the Software.

### **3.6 Late Payments.**

All amounts that are not paid by Subscriber by the date required by this Agreement shall be subject to a late charge equal to the lesser of one and one-half percent (1.5%) per month and the maximum allowed by applicable law. In the event that any payment due under this Agreement is overdue, Magentrix reserves the right to suspend the rights granted under this Agreement until such delinquency is corrected.

### **3.7 No Refunds.**

Upon termination of this Agreement for any reason, Subscriber shall not be entitled to a refund of any prepaid or other fees.

## **4 SUPPORT AND TRAINING.**

### **4.1 Product Support Services.**

Magentrix or its authorized Reseller shall provide Standard Technical Support services to Subscriber during the Term, in accordance with the terms of this Agreement.

### **4.2 Standard Technical Support.**

Standard Technical Support shall be as set forth in Schedule A below, and may be amended from time to time by Magentrix. Any such amendment shall be effective as of the date it is posted on the Website.

### **4.3 Updates and Upgrades.**

Magentrix may from time to time conduct updates and upgrades to the Software, which may temporarily affect the use of the Software. To the extent that the use of the Software will be affected during such Magentrix updates and upgrades, Magentrix will provide prior notice of such updates and upgrades to Subscriber and will, to the extent possible, be conducted outside of regular business hours.

### **4.4 Enhanced Support.**

Enhanced support offerings and services ("Premium Support") are available as set forth in Schedule B for additional cost.

## **5 PROPRIETARY RIGHTS AND PROTECTION THEREOF.**

### **5.1 Acknowledgment.**

The Software is licensed as a subscription, not sold, by Magentrix to Subscriber, and nothing in this Agreement will be interpreted or construed as a sale or purchase of the Software. Magentrix and Subscriber acknowledge and agree that, as between Magentrix and Subscriber, Magentrix owns and will own all rights, title, and interest, including all intellectual property rights therein

and thereto, in and to the Software and Documentation, and no title to the Proprietary Rights is transferred to Subscriber. The use by Subscriber of the Proprietary Rights is authorized only for the purposes set forth herein and, upon termination of this Agreement for any reason, such authorization will cease. Subscriber will not have any rights in or to the Software except as expressly granted in this Agreement. Magentrix reserves to itself all rights to the Software not expressly granted to Subscriber under this Agreement.

## **5.2 No Other Rights.**

Subscriber may not, directly or through any person or entity, in any form or manner, decompile, reverse engineer, disassemble or otherwise attempt to derive source code or object code from the Software, except as explicitly permitted under this Agreement or expressly permitted by applicable law.

## **5.3 Proprietary Notices.**

Subscriber will ensure that all copies or partial copies of the Software will display copyright and other proprietary notices to protect Magentrix' underlying ownership rights in the same manner that Magentrix displays such notices in the Software or in any manner reasonably requested by Magentrix. Subscriber will not, nor will it permit others to, remove, alter, cover, or obscure any such notices from any component of the Software or Documentation.

## **5.4 Subscriber Data.**

Magentrix acknowledges that all Subscriber Data belongs to Subscriber and that other than specifically provided herein, Magentrix acquires no rights, title or interest thereto. Magentrix shall maintain commercially reasonable safeguards for the protection and security of Subscriber Data. Other than as specifically permitted by Subscriber in writing, Magentrix shall not: (a) modify the Subscriber Data; (b) disclose the Subscriber Data unless compelled by law; or (c) access the Subscriber Data.

## **5.5 New Applications Created by Subscriber**

To the extent that Subscriber creates Subscriber Applications using the Products, Subscriber authorizes Magentrix to host, copy, transmit, display such Subscriber Applications, to the extent necessary pursuant to this Agreement. Subject to the foregoing, Magentrix acquires no right, title or interest in or to such Subscriber Applications, including any proprietary rights therein. Furthermore, Subscriber is solely responsible for the Subscriber Applications and shall indemnify and hold Magentrix harmless from any claims arising from any use of the Subscriber Applications.

## **5.6 Comments and Suggestions**

Should Subscriber provide Magentrix with comments or suggestions for the modification, correction, improvement or enhancement of the Documents or services related thereto, Subscriber grants to Magentrix a non-exclusive, irrevocable, worldwide, royalty-free license, with the right to sublicense, the rights to use and disclose such comments and suggestions in any manner Magentrix chooses, without reference to the source.

# **6 CONFIDENTIALITY.**



### **6.1 Nondisclosure.**

Each Party shall treat as confidential all Confidential Information of the other Party, shall not use such Confidential Information except as set forth in this Agreement, and shall use best efforts not to disclose such Confidential Information to any third party. Without limiting the foregoing, each of the Parties shall use at least the same degree of care that it uses to prevent the disclosure of its own Confidential Information of like importance to prevent the disclosure of Confidential Information disclosed to it by the other Party under this Agreement. Each Party shall promptly notify the other Party of any actual or suspected misuse or unauthorized disclosure of the other Party's Confidential Information.

### **6.2 Exceptions.**

Notwithstanding Section 6.1, neither Party shall have liability to the other with regard to any Confidential Information of the other that the receiving Party can prove: (a) was in the public domain at the time it was disclosed or has since entered the public domain through no fault of the receiving Party; (b) was known to the receiving Party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (c) is disclosed with the prior written approval of the disclosing Party; (d) was independently developed by the receiving Party without any use of the Confidential Information, as demonstrated by files created at the time of such independent development; or (e) becomes known to the receiving Party, without restriction, from a source other than the disclosing Party without breach of this Agreement by the receiving Party and otherwise not in violation of the disclosing Party's rights.

### **6.3 Return of Confidential Information.**

Upon expiration or termination of this Agreement, each Party shall return all Confidential Information received from the other Party.

### **6.4 Remedies.**

Any breach of the restrictions contained in this Section 6 is a breach of this Agreement that may cause irreparable harm to the non-breaching Party for which monetary damages would be inadequate. Any such breach shall entitle the non-breaching Party to injunctive relief in addition to all other legal remedies available at equity or at law.

## **7 INDEMNIFICATION.**

### **7.1 Indemnification by Magentrix.**

Magentrix agrees, at its own expense, to defend, or at its option to settle, any claim or action brought against Subscriber on the issue of infringement of any copyright, trade secret, or U.S., or Canadian patent by the Software used or distributed within the terms of this Agreement, and to indemnify Subscriber against any and all damages and costs, including legal fees, that a court awards against Subscriber under any such claim or action; provided that Subscriber provides Magentrix with (a) prompt written notice of such claim or action, (b) sole control and authority over the defense or settlement of such claim or action and (c) proper and full information and reasonable assistance to defend and settle any such claim or action.

## **7.2 Injunctions.**

In the event that use of the Software is, or in Magentrix' sole opinion is likely to be, enjoined due to the type of infringement described in Section 7.1, Magentrix, at its option and expense, may either (a) modify the Software so that they become non-infringing, (b) replace the Software with functionally equivalent non-infringing Software reasonably acceptable to Subscriber or, if the foregoing alternatives are not reasonably available to Magentrix, (c) terminate this Agreement and accept return of the Software and refund a prorated portion of the Subscription Fee.

## **7.3 Exceptions.**

Notwithstanding the provisions of Sections 7.1 and 7.2, Magentrix will have no liability to the extent that any such claim would have been avoided but for use of the Software with any other products not provided by Magentrix.

## **7.4 Limitation.**

THE FOREGOING PROVISIONS OF THIS SECTION 7 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF MAGENTRIX AND THE SOLE AND EXCLUSIVE REMEDY OF SUBSCRIBER WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADE SECRETS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY RIGHTS BY THE SOFTWARE OR ITS REPRODUCTION, DISTRIBUTION OR USE.

# **8 WARRANTIES.**

## **8.1 Limited Warranty.**

During the Term, Magentrix warrants that the Products will operate in substantial conformance with the then-current Magentrix published Documentation under normal use. Notwithstanding the previous sentence, Magentrix does not warrant that: (a) Products will be free from defects; (b) Products will satisfy all of Subscriber's requirements; (c) Products will operate without interruption or error. Magentrix shall use reasonable efforts to remedy any significant Product non-conformance reported to Magentrix that Magentrix can reasonably identify and confirm. Magentrix or its representative will repair or replace any such non-conforming or defective Product. This paragraph sets forth Subscriber's sole and exclusive remedy and Magentrix' entire liability for any breach of warranty or other duty related to the Products. Any unauthorized Product modification, tampering with the Products, Product use inconsistent with the accompanying Documentation, or related breach of this Agreement shall void the aforementioned warranty. EXCEPT AS EXPLICITLY SET FORTH HEREIN AND TO THE EXTENT ALLOWED BY LAW, THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCTS. MAGENTRIX DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE OR THAT OPERATION OF THE SOFTWARE WILL BE SECURE OR UNINTERRUPTED. MAGENTRIX EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON SUBSCRIBER APPLICATIONS THAT ARE BASED UPON OR CREATED THROUGH USE



OF THE SOFTWARE.

## **8.2 Subscriber-Hosted Environment.**

Subscriber is not authorized to host the Products in its own environment and must use the Products through the Website provided by Magentrix with a fully configured Software. Subscriber understands and agrees that, any changes made by Subscriber, without Magentrix' written consent, to the administrative settings of the underlying operating system, servers, or third party libraries included in the Software will void any warranty provided by Magentrix hereunder and will automatically make Subscriber ineligible for Standard Technical Support.

## **9 TERM AND TERMINATION.**

### **9.1 Term.**

This Agreement shall be effective as of the Effective Date and remain in effect for the duration of the initial term indicated on the Order Form (the "Initial Term"). Thereafter, this Agreement shall renew automatically for additional twelve month periods (each a "Renewal Term"), unless either party provides written notice of their intent to terminate the Agreement, no later than sixty (60) days prior to the end of the then-current term.

### **9.2 Termination for Cause.**

In the event of breach of this Agreement by either Party, the non-defaulting Party may give written notice of such default to the defaulting Party. If the non-defaulting Party gives such notice and the default is not cured within a 30-day period following receipt of the notice by the defaulting Party, then this Agreement shall automatically terminate. Notwithstanding the foregoing, if Subscriber breaches the provisions of Sections 2, 5, or 6 and such breach is not curable, then Magentrix shall be entitled to terminate this Agreement effective immediately upon delivery of written notice to Subscriber.

### **9.3 Effect of Termination.**

Upon termination by either Party, all of Subscriber's rights and licenses with respect to the Software shall terminate. Subscriber shall cease using the Products, and shall destroy or return to Magentrix copies of the Products, if any, in its possession, and certify in writing that all copies thereof, including backup copies, if any were authorized, have been destroyed.

Furthermore, all copies of Magentrix Confidential Information in Subscriber's possession at the time of termination or expiration of this Agreement shall, at Magentrix' option, be promptly destroyed or returned to Magentrix.

### **9.4 Survival.**

The provisions of Sections 1, 3.5, 5, 6, 9.3, 10, 11.3 and 12 and all payment obligations shall survive the expiration or termination of this Agreement for any reason. All other rights and obligations of the Parties shall cease upon termination of this Agreement.

## **10 LIMITATION OF LIABILITY.**

EXCEPT FOR LIABILITY RESULTING FROM A PARTY'S FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR A BREACH OF SECTIONS 2.2, 5 or 6, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOSS OF DATA, LOST PROFITS OR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE OR STRICT LIABILITY), ARISING OUT OF THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL MAGENTRIX'S LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED THE TOTAL SUBSCRIPTIONS FEES RECEIVED BY MAGENTRIX FROM SUBSCRIBER HEREUNDER IN THE PREVIOUS TWELVE MONTHS FROM THE DATE OF THE CLAIM. SUBSCRIBER ACKNOWLEDGES AND AGREES THAT THE AMOUNTS PAYABLE HEREUNDER BY SUBSCRIBER ARE BASED IN PART UPON THESE LIMITATIONS, AND FURTHER AGREES THAT THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## **11 Beta Features.**

### **11.1 Beta Trial**

Subscriber may choose to participate in testing of the Beta Features in their live environment and under normal operating conditions as further set forth herein (the "Beta Trial"). Subscriber will subject the Beta feature to normal workload and cooperate in the identification, isolation, documentation and reporting of any and all problems encountered. If Subscriber encounters a significant problem with or deficiency with a Beta Feature, it shall report the same to Magentrix personnel as soon as practicable. Magentrix may contact Subscriber during normal business hours by telephone or e-mail and Subscriber agrees to completely and accurately respond to questions and surveys regarding the performance of the Beta Features. Subscriber acknowledges and agrees that Magentrix is under no obligation to incorporate into the Beta Features or the Software, any changes, suggestions, or comments made by Subscriber; Subscriber further waives any and all proprietary right or interest in any such changes, suggestions, or comments communicated by Subscriber to Magentrix and assigns to Magentrix any and all rights therein.

### **11.2 Beta Features.**

Subscriber acknowledges that the Beta Features are test versions of certain features of the Software which have not been released for commercial use, that some Beta Features may be disabled or otherwise fail to function properly, that any Beta Features as a whole may fail to function in accordance with its specifications and that the specifications of all Beta Features are subject to change and may be different from the specifications of the final version of the product. Magentrix makes no warranties or representations concerning the pricing or future availability, if any, of the Beta Features.

### **11.3 Limitation of Liability With Respect to Beta Features**

Without limiting the generality of the Limitation of Liability Section set forth above, Magentrix

shall have no liability to Subscriber or any other party, whether in contract, tort, or negligence, for any claim, loss, or damage, including but not limited to lost profits or systems interruption or damage, business interruption, equipment damage, or for any indirect, special, incidental, or consequential damages of any kind or nature whatsoever arising out of or in connection with Subscriber's use of or inability to use the Beta Features. Without limiting the foregoing, Subscriber agrees that neither Magentrix shall have no liability for errors or omissions in the output of the Beta Features, whether such errors or omissions are caused by errors or inaccuracies in the conversion of data as inputs to the Beta Features, in the processing of such data by the Beta Feature or other the Software, in the display of such data, or otherwise. For damage, in any way arising out of or related to the Beta Features, Magentrix' maximum liability shall not exceed one hundred dollars.

## 12 PRIVACY AND DATA PROTECTION

**12.1 Scope of Process.** Magentrix shall only Process or Transfer Personal Data as authorized by Subscriber and as necessary to perform services pursuant to this Agreement.

**12.2 General Obligations.** Magentrix, in its capacity as a processor or sub-processor of Personal Data, will:

- a. Process or Transfer the Personal Data only on written instructions from Subscriber, unless required to do so pursuant to laws or regulations to which Magentrix is subject. In such case, to the extent legally possible, Magentrix will inform Subscriber of the necessity of such Processing or Transfer;
- b. restrict access to Personal Data to those authorized persons who need such information to provide services pursuant to this Agreement. Magentrix will ensure such authorized persons are obligated to maintain the confidentiality of any Personal Data;
- c. implement, using all measures required in accordance with good industry practice, technical and organizational measures to ensure the security of the Personal Data Processed by Magentrix. Such measures shall also be in compliance with all applicable Data Protection Laws;
- d. not engage another entity to Process the Personal Data unless approved in writing by Subscriber. Where Magentrix engages a third party for carrying out specific Processing activities, the same data protection obligations as are applicable to Magentrix will be imposed on that other processor by way of contract or other legal act, in particular providing sufficient guarantees to implement appropriate technical and organizational measures in such manner that the Processing will meet the requirements set forth herein. Where that other processor fails to fulfill data its protection obligations, Magentrix will remain fully liable to the Subscriber for the performance of that other processor's obligations;
- e. taking into account the nature of the Processing, insofar as possible, implement and maintain appropriate technical and organizational measures needed to enable Subscriber to respond to requests from Data Subjects to access, correct, transmit, limit Processing or delete any relevant Personal Data held by Magentrix.

- f. retain Personal Data received from Subscriber only for so long as may be required in connection with Magentrix' performance pursuant to this Agreement or otherwise required under applicable law.
- g. at the choice of Subscriber, without undue delay, delete or return all the Personal Data to Subscriber after the end of the provision of services relating to Processing, and delete existing copies unless European Union or any Member State law requires storage of Personal Data;

**12.3 Audit.** Once per calendar year, upon request, Magentrix shall make available to Subscriber all information necessary, and allow for and contribute to audits, including inspections, conducted by Subscriber or another auditor mandated by Subscriber, to demonstrate compliance with applicable Data Protection Laws. For clarity, such audits or inspections are limited to Magentrix' Processing Personal Data only, not any other aspect of Magentrix' business or information systems. Subscriber will provide Magentrix with written notice at least sixty (60) days in advance of such audit or inspection. Such written notice will specify the things, people, places or documents to be made available. Such written notice, and anything produced in response thereto (including any derivative work products), will be considered Confidential Information and, notwithstanding anything to the contrary in this Agreement, will remain Confidential Information in perpetuity or the longest time allowable by applicable law after termination of this Agreement. Such materials and derivative work product produced in response to Subscriber's request will not be disclosed to anyone without the prior written permission of Magentrix unless such disclosure required by applicable law. If disclosure is required by applicable law, Subscriber will give Magentrix prompt written notice of that requirement and an opportunity to obtain protective order to prohibit or restrict such disclosure except to the extent such notice prohibited by applicable law or order court or governmental agency. Subscriber will make every effort to cooperate with Magentrix to schedule audits or inspections at times that are convenient to Magentrix. Subscriber acknowledges and agrees that it will be solely responsible for all costs incurred in relation to such additional audits or inspections.

**12.4 Cooperation with Subscriber.** At Subscriber's cost, Magentrix shall assist Subscriber in connection with Subscriber's requests related to data security, Personal Data Breach, data protection impact assessments, and shall engage in consultation with supervisory authorities for the fulfillment of Subscriber's obligation to respond to requests pursuant to applicable Data Protection Laws (including Articles 32 to 36 of the GDPR, taking into account the nature of Processing and the information available to Magentrix).

**12.5 Cooperation with Supervisory Authority.** Upon request issued by supervisory authority for records regarding Personal Data, Magentrix shall, at Subscriber's cost, cooperate to provide the supervisory authority with records related to Processing activities performed on Subscriber's behalf, including information on the categories of Personal Data Processed and the purposes of the Processing, the use of Magentrix with respect to such Processing, any data disclosures or transfers to third parties and general description of technical and organizational measures to protect the security of such data.

**12.6 Breach Notification.** Upon becoming aware of Personal Data Breach, Magentrix will

notify Subscriber without undue delay the nature of the breach; the number and categories of Data Subjects and Personal Data affected; and the name and contact details for the relevant contact person at Magentrix' office.

**12.7 Transfer of Personal Data; Appointment.** Subscriber authorizes Magentrix to transfer, store or Process Personal Data in Canada or any other country in which Magentrix maintain facilities. Subscriber appoints Magentrix to perform any such transfer of Personal Data to any such country and to store and Process Personal Data in order to provide the services pursuant to this Agreement. Magentrix will conduct all such activity in compliance with this Agreement, all applicable laws and Subscriber instructions.

**12.8 Assistance With Third Party Claims.** Where Subscriber faces an actual or potential claim arising out of or related to violation of any Data Protection Laws (e.g., Article 82 of the GDPR) concerning the services, Magentrix will promptly provide all materials and information requested by Subscriber that is relevant to the defense of such claim and the underlying circumstances concerning the claim.

## **13 MISCELLANEOUS.**

### **13.1 Assignment.**

Subscriber may not assign or transfer, by operation of law or otherwise, any of its rights under this Agreement to any third party without Magentrix' prior written consent; any attempted assignment or transfer in violation of the foregoing will be void.

### **13.2 Waivers.**

All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

### **13.3 Marketing Activities.**

Subscriber agrees that Magentrix, may with the expressed written consent of the Subscriber, from time to time identify Subscriber (with its name, logo and/or trademark) as a Magentrix Subscriber on its Website, sales and marketing materials or press releases.

### **13.4 Governing Law.**

This Agreement will be governed by the laws of the Province of Ontario, Canada, without regard to its conflicts of law provisions. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement must be brought exclusively in the courts of Ontario and each Party irrevocably submits to the exclusive personal jurisdiction and venue of any such court in any such action or proceeding. This Agreement will be written and construed in the English language.

### **13.5 Notices.**

Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or

confirmed facsimile, or 48 hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the Party to be notified at such Party's address or facsimile number as set forth in the Order Form, or as subsequently modified by written notice.

### **13.6 Severability.**

If any provision of this Agreement is adjudicated to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

### **13.7 Independent Contractor.**

Neither Party (nor any agent or employee of that Party) is the representative of the other Party for any purpose, and neither Party has the power or authority as agent, employee or in any other capacity, to represent, act for, bind or otherwise create or assume any obligation on behalf of the other Party for any purpose whatsoever.

### **13.8 Export.**

Subscriber will comply with all applicable export and import control laws and regulations of the United States, Canada and the foreign jurisdiction, if any, in which the Subscription is used.

### **13.9 Force Majeure.**

Except for Subscriber's obligations to pay Magentrix hereunder, neither Party shall be liable to the other Party for any failure or delay in performance caused by reasons beyond its reasonable control, including any Internet or electronic communication failures.

### **13.10 Amendment.**

This Agreement may be amended only by a written document signed by both Parties. The terms on any purchase order or similar document submitted by Subscriber to Magentrix will have no effect.

### **13.11 Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral.



## **SCHEDULE A**

### **MAGENTRIX STANDARD TECHNICAL SUPPORT**

We make sure your purchased service is available 24 hours a day, 7 days a week with the exception of:

- Planned down time, which a notification will be sent out at least 24 hours prior to the down time. Downtimes are usually scheduled at overnight during the weekend.
- Any unavailability caused by circumstances beyond our reasonable control such as acts of god, acts of government, floods, fire, earthquakes, civil unrest, acts of terror, Internet service provider failures or delays, or denial of service attacks.

Magentrix Standard Support Includes (included in Professional and Enterprise Editions):

- On-line Help Desk (access to knowledge base and help ticket requests)
- Email Support
- Response Time to an incident is:
  - Up to 4 business hours (9am – 5pm EST)
  - During non-business hours, critical issues will be responded to within a maximum of 12 hours.
- Resolution Time is dependent on the nature of the problem
- Critical bug fixes will be applied as soon as they become available
- Non-Critical bugs and features are deployed as part of quarterly updates

**Note:** Support is provided solely to the entity or organization purchasing Magentrix Services.

**SCHEDULE B****MAGENTRIX PREMIUM SUPPORT****Magentrix Premium Support Includes:**

- Everything included in Magentrix Standard Support
- Priority One-On-One Phone Support
- Live Remote Support
- Response Time to an incident is:
  - Up to 1 business hour (9am – 5pm EST)
  - During non-business hours, critical issues will be responded to within a maximum of 6 hours.

**Note:** Support is provided solely to Entity or Organization purchasing Magentrix Services.