

## END USER LICENSE AGREEMENT

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**IMPORTANT: Please read this EndUser License Agreement (the “Agreement”) carefully before clicking the “I AGREE” button, downloading or using software product (the “Software”). By clicking the “I AGREE” button, downloading or using the Software, you are agreeing to be bound by the terms and conditions of this agreement. If you do not agree to the terms of this Agreement, do not click on the “I AGREE” button and do not download or use the software.**

This Agreement is an agreement between you, the legal or natural person who is being licensed to use the Software (the “Customer”), and Smart Engine International S.A., registered in Luxembourg with registration number: B 175 532 , RCS Luxembourg (“Smart Engine”). The Agreement applies to all software products you obtain from Smart Engine.

Unless you have a different license agreement signed by Smart Engine, your use of the Software indicates your acceptance of this Agreement and its terms.

### 1. LICENSE

1. License. Smart Engine hereby grants to the Customer a non-exclusive and non-transferable license to use the Software without the rights to sublicense and as further stipulated under this Agreement (the “License”). The Customer shall be entitled only to those rights with respect to the Software that are expressly granted under this Agreement.
2. Number of Installations. The Agreement entitles the Customer to use a single copy of the Software on a single production Magento installation, solely for personal or business use. A separate software license must be obtained for each production Magento installation.
3. Pre-conditions. The License rights shall take effect after (i) the License Fee or Subscription Fee, if the Software is provided on a subscription model, is received by Smart Engine and the respective Software is downloaded, but (ii) in case of free products – after the respective Software is downloaded. By receiving and opening the file package and/or using any Software product produced, licensed or sold by Smart Engine, the Customer agrees that this Agreement is a legally binding and valid contract and agrees to be bound by it. The Customer agrees to abide by the applicable intellectual property and other relevant laws and all of the terms and conditions of this Agreement.
4. Restrictions. One copy of the Software created or transferred pursuant to this Agreement is licensed, not sold, and the Customer receives no title to or ownership of any copy or of the Software itself. Furthermore, the Customer receives no rights to the Software other than those specifically granted in Clause 1 above. Without limiting the generality of the foregoing, the Customer shall not:

1. modify or create derivative works from the Software, except where it is done for personal use or business needs only and in respect of single production Magento installation;
  2. distribute or sublicense the Software;
  3. use the Software (or any part thereof) for service bureau, time-sharing, hosting or like purposes or in any other way allow third parties to exploit the Software (this paragraph shall not restrict the rights of the Customer to allow its customers to use the Software as part of the end product delivered by the Customer to its customers and where it is needed to access or use the end-product delivered by the Customer to its customers);
  4. reverse engineer, decompile, disassemble, or otherwise attempt to derive any of the Software's source code, except where it is done for personal use or business needs only and in respect of single production Magento installation;
  5. place the Software in whole or partially on a server so that its source code (except stylesheet (css/less), javascript and images) is accessible for viewing, copying or downloading via a public network such as the Internet, including, to place the Software in publicly accessible repositories (e.g. free Github account);
  6. assign, sell, sublicense, rent, lease or distribute the Software (or any portion thereof) in any other way to any third parties;
  7. modify, make error correction, translate, or create derivative works from the Software, incorporate the Software (or any portion thereof) into or with other software, always subject to additional License and License Fee for each production Magento installation;
  8. remove any Software identification, proprietary, copyright or other notices contained in the Software;
  9. install the same copy of the Software on more than one production Magento installation;
  10. sell or otherwise alienate any device on which the software is installed or stored as backup before deleting all copies of the Software;
  11. Use the Software on Magento edition other than it was specified during purchase.
5. Exceptions: The following exceptions to the restrictions listed above shall apply:
1. the Customer shall be entitled to add the Software and work with it via the Customer's version control system (SVN, GIT, or similar), except if it provides public access to the source code of the Software, other than stylesheet (css/less), javascript and images;

2. several copies of Magento installed on a respective number of different web servers, which are combined into a single load-balanced environment is considered to be a single installation;
3. in addition to a single production Magento installation, the Agreement allows installing the Software on a development and/or staging Magento environment.

## 2. FEES AND PAYMENTS

1. Fees. The Customer shall pay to Smart Engine license fee (the “License Fee”) or subscription fee (the “Subscription Fee”) for each License and for other services as indicated in the website <http://smartengine.solutions/smart-ads-en/> or agreed between the parties.
2. Payments. The License Fee shall be paid prior to the Software is downloaded. If the Software is provided on a subscription model, payment for the first subscription period shall be made prior to the Software is downloaded. Payments for any subsequent subscription periods, as indicated in respect to each license at <http://smartengine.solutions/smart-ads-en/>, shall be made not later than on the last day of every subscription period. Smart Engine is entitled to grant a grace period of 15 (fifteen) days on payment of Subscription Fee in case the Customer fails to make a timely payment. Such grace period cannot be provided for the payment for the first subscription period.
3. Any other payment by the Customer pursuant to this Agreement shall be due within 30 (thirty) days after the date of the respective invoice (including any penalties or payment of additional License Fee/Subscription Fee in case the Software is used for more than 1 (one) production Magento installation in breach of this Agreement).

## 3. COPYRIGHT RESTRICTIONS

The Software contains proprietary copyrighted material. It is prohibited for the Customer to create any derivative works or other works that are based upon or derived from the Software in whole or any part of it for commercial or non-commercial distribution purposes, without written permission from Smart Engine. Smart Engine retains all right, title, and interest in and to the Software, related documentations and upgrades. All rights not expressly granted by this Agreement are reserved for Smart Engine. The Customer recognizes that the Software and its components are protected by copyright and other laws.

## 4. CONFIDENTIALITY

1. Confidential Information. The Software and related documentation (including user manuals etc.) as well as any other information provided by Smart Engine and marked or designated as ‘confidential’ constitutes confidential proprietary information of Smart Engine (the “Confidential Information”). The Customer shall not be entitled to disclose, provide or otherwise make available such confidential information in any form to any third party without the prior written consent of Smart Engine, unless otherwise required under the applicable laws by the relevant authorities. The Customer shall protect the Confidential Information with the same degree of care it uses to

protect its own confidential information of similar nature and importance, but with no less than reasonable care.

2. Exceptions. The Confidential Information does not include information that (i) becomes known publicly, before or after disclosure, other than as a result of the Customer's improper action or inaction; or (ii) is approved for release in writing by Smart Engine.
3. Injunction. The Customer agrees that breach of Clause 1 would cause Smart Engine irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Smart Engine will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.
4. Termination & Return. With respect to each item of the Confidential Information, the obligations of this Clause 4 will terminate 10 (ten) years after the date of disclosure. Upon termination of this Agreement, Recipient shall return all copies of the Confidential Information to Smart Engine or certify, in writing, the destruction thereof.
5. Retention of Rights. This Agreement does not transfer ownership of the Confidential Information or grant a license thereto. Smart Engine will retain all right, title, and interest in and to all Confidential Information.

## 5. **WARRANTY**

1. Limited Warranty. To the extent permitted by applicable law, the Software is provided to the Customer "AS IS" without any warranty, either express or implied, that the Software usage will be uninterrupted and that all errors have been or can be eliminated from the Software or in respect of merchantability of fitness for a particular purpose. The sole liability of Smart Engine (and the exclusive remedy of the Customer) for any breach of this warranty shall be, in sole discretion of Smart Engine, to use commercially reasonable efforts to provide the Customer with an error correction or workaround which corrects the reported nonconformity, to provide the Software upgrades with corrected errors for the upcoming Software release or service pack or if Smart Engine determines such remedies to be impracticable within a reasonable period of time, to terminate the Agreement and refund License Fee or Subscription Fee for the last subscription period.
2. Warranty Exceptions. The limited warranty provided under Clause 1 shall not apply (and Smart Engine shall have no liability) to warranty claims arising out of or relating to:
  1. a modification of the Software made by anyone other than Smart Engine;
  2. use of the Software in combination with any operating system not authorized in the respective specifications or other documentation or with hardware or software specifically forbidden by the respective specifications or other documentation;
  3. defects in the Software due to accident, abuse or improper use by the Customer;  
or
  4. the Software provided on a no charge or non-commercial trial use basis, if any; or

5. the Software being incompatible with the Customer's other hardware or software etc.

## **6. LIABILITY LIMITATIONS**

1. In no event (including, without limitation, in the event of negligence) will Smart Engine, its employees, agents or distributors be liable for any consequential, incidental, indirect, special or punitive damages whatsoever (including, without limitation, damages for loss of profits, loss of use, business interruption, loss of information or data, or pecuniary loss), in connection with or arising out of or related to this Agreement, the Software or the use or inability to use the Software or the furnishing, performance or use of any other matters hereunder whether based upon contract, furnishing or any other theory including negligence. Smart Engine shall not be liable for any prosecution arising from use of the Software against law or for any illegal use.
2. The aggregate liability of Smart Engine under or in relation to this Agreement, without exceptions, is limited to the amount paid by the Customer to Smart Engine under this Agreement in respect of the respective Software. If Software is provided on a subscription model, the aggregate liability of Smart Engine under or in relation to this Agreement, without exceptions, is limited to the amount paid by the Customer to Smart Engine under this Agreement for the last 6 months of subscription, but in any event cannot exceed EUR 1,000.
3. The liabilities limited by this Clause *inter alia* apply: (a) to liability for negligence; (b) regardless of the form of action, whether in contract, tort, strict product liability, or otherwise; (c) even if Smart Engine is advised in advance of the possibility of the damages in question and even if such damages were foreseeable; and (d) even if the Customer's remedies fail of their essential purpose. If applicable law limits the application of the provisions of this Clause 6, the liability of Smart Engine will be limited to the maximum extent permissible. For the avoidance of doubt, the liability limits and other rights set forth in this Clause 6 apply likewise to affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives of Smart Engine.

## **7. CONSENT OF USE OF DATA**

1. The Customer hereby irrevocably and unconditionally agrees that Smart Engine is entitled to collect and use information gathered in any manner as part of the product support services provided to the Customer, if any, related to the Software. Smart Engine may also use this information to provide notices to the Customer which, in the sole opinion of Smart Engine, may be of use or interest to the Customer.
2. The Customer hereby grants Smart Engine a perpetual, irrevocable, worldwide license to use any Feedback the Customer communicates to Smart Engine, without compensation, without any obligation to report on such use, and without any other restriction. The rights of Smart Engine granted under this Clause 2 include, without limitation, the right to exploit the Feedback in any and every way, as well as the right

to grant sublicenses. No Feedback shall be considered as the Customer's confidential information. The "Feedback" refers to any suggestion or idea for modifying any of the products or services of Smart Engine, including without limitation all intellectual property rights in any such suggestion or idea.

3. Data gathered during technical support.
  1. Smart Engine does not collect any information which may be present on a particular store, including but not limited to personal or financial one, except an information directly related to the Customer's inquiries, namely: orders, clients, files, products and information about a server and store configuration, etc.
  2. Smart Engine may collect the information about an overall quantity of customers, orders, products in a particular store, if it is related to the Customer's inquiry.
  3. The data gathered during technical support is used for: (i) Enhancement of technical support of a particular Customer in case of future inquiries or other Customers who have encountered a similar issue; (ii) Analysis of technical problems aimed at improvement of the quality of the products by Smart Engine.
4. Smart Engine shall protect the information gathered from clients with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care.
5. Notwithstanding the foregoing, Smart Engine retains the right to collect and use at their own discretion any and all information obtained from the Customer or gathered on Customer's website or server in case of a doubt or evidence that one or more clauses of this Agreement have been breached.

## **8. SOFTWARE USE MONITORING**

1. As long as the Software is used by the Customer, Smart Engine shall be entitled to monitor the Customer's use of the Software.
2. If Smart Engine discovers unauthorized use, reproduction, distribution, or other exploitation of the Software, the Customer shall:
  1. pay to Smart Engine the License Fee for each such unauthorized use, reproduction, distribution, or other exploitation of the Software contradictory to this Agreement (for instance, if the Software is installed on more than 1 (one) production Magento installation, than the License Fee shall be paid for each such additional installation), or
  2. pay to Smart Engine three months Subscription Fee, if the Software is provided on a subscription model, for each such unauthorized use, reproduction, distribution, or other exploitation of the Software contradictory to this Agreement (for instance, if the Software is installed on more than 1 (one) production Magento installation or used by the Customer without payment of the

Subscription Fee, than three months Subscription Fee shall be paid for each such additional installation or use), and

3. pay a contractual penalty in the amount of EUR 1,000 for each breach for each such unauthorized use, reproduction, distribution, or other exploitation of the Software contradictory to this Agreement, and in case the Software is provided on a subscription model – a contractual penalty in the amount of EUR 1,300 and
4. indemnify Smart Engine in respect of any other costs or damages.

## **9. AMENDMENTS TO THIS AGREEMENT**

Smart Engine reserves the right, at its sole discretion, to modify or replace this Agreement at any time. If a revision is material, Smart Engine will provide at least 30 days' notice prior to any new terms taking effect. What constitutes a material change will be determined at sole discretion of Smart Engine. The continued use of the Software by the Customer after the changes have been published by Smart Engine will constitute the acceptance by the Customer of the changed terms.

## **10. TERMINATION**

1. Smart Engine may terminate this Agreement for any reason or no reason in its sole discretion. Any failure to comply with the terms and conditions of this Agreement will result in automatic and immediate termination of the License in which case the Customer shall immediately cease use of the Software and destroy all copies of the Software supplied under this Agreement. Such termination shall not oblige Smart Engine to return any amounts received from the Customer pursuant to the Agreement.
2. The Customer shall be entitled to terminate this Agreement at any point by destroying all copies of the Software. If the Software is provided on a subscription model, the Customer shall also unsubscribe from using the Software.
3. The financial obligations incurred by the Customer shall survive the expiration or termination of the License.

## **11. APPLICABLE LAW AND DISPUTE RESOLUTION**

1. This Agreement shall be governed by the laws of Luxembourg.
2. The parties shall resolve all disputes related to this Agreement by way of negotiations. In case any dispute is not resolved within 30 (thirty) days as of the initial notice, such dispute of any nature that may arise in relation to this Agreement shall be finally resolved by the courts of Luxembourg.

## **12. MISCELLANEOUS**

1. Notices. Notices to the Customer pursuant to this Agreement shall be sent to the addressees indicated by the Customer when purchasing the Software, to the registered addresses or to such others as the Customer may provide in writing. Notices to the Vendor pursuant to this Agreement shall be sent to the registered address: **Smart**

**Engine International S.A.**, 412 F, route d'Esch, 2086 Luxembourg or to such others as either party may provide in writing. Such notices will be deemed received at such addresses upon the earlier of (a) actual receipt or (b) delivery in person, by email with confirmation of receipt, or by certified mail return receipt requested.

2. Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labour disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control.
3. Assignment. The Customer may not assign this Agreement or any of its rights or obligations hereunder without the express written consent of Smart Engine. Except to the extent forbidden in this Clause 3, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.
4. Severability. To the extent permitted by the applicable laws, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfil its intended purpose to the maximum extent permitted by the applicable laws, and the remaining provisions of this Agreement will continue in full force and effect.
5. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
6. Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.

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