

**Magento Virtual Hosting Order Form**

<b>Client Company Name</b>	
<b>Address Line 1</b>	
<b>Address Line 2</b>	
<b>Address Line 3</b>	
<b>Town</b>	
<b>Postcode</b>	
<b>Country</b>	
<b>Company Registration Number</b> For Limited companies	
<b>VAT number</b> If you have one	
<b>Client Business Website</b>	
<b>Client Main Phone Number</b>	

**Magento Plan Selection**

Please select the 'button' in the right hand column corresponding to the plan you require

<b>Memory</b>	<b>Disk Space</b>	<b>Data Transfer</b>	<b>Fee</b>	<b>Selection</b>
256MB	5 GB	250 GB/month	£35 pm	
512MB	10GB	500 GB/month	£45 pm	
1GB	15GB	1000 GB/month	£65 pm	
2GB	20GB	2000 GB/month	£95 pm	

+VAT

Contract terms are month to month with 10 days notice prior to end of billing period required to cancel.

Xtraordinary may vary terms by giving 30 days notice.

Payment Frequency	Selection
<b>Monthly</b>	
<b>Quarterly</b>	
<b>Six-monthly</b> (3% discount applies)	
<b>Annually</b> (8% discount applies)	

### Payment Methods

Invoices will be sent on a monthly basis by email in pdf format to the accounts contact.

Please select the 'button' in the right hand column corresponding to your payment method

Payment Method	Selection
<b>UK Bank Standing Order</b> We will email you a Standing Order form for you to send to your bank	
<b>Recurring Credit Card Payment</b> <b>(Visa and Mastercard credit cards only, note we do not accept debit cards)</b> We will email you a link for you to submit card details securely online	
<b>Paypal Subscription</b> Please email us your paypal address and we will email you a link allowing you to set up a subscription	
<b>Cheque, BACS, Online Banking, Wire Payment or one-off Paypal payment</b> (Quarterly, 6 monthly or Annual Billing only) Discounts apply for pre-payment as follows: <ul style="list-style-type: none"> <li>• 6 month pre-paid: 3% discount</li> <li>• 12 months pre-paid: 8% discount</li> </ul> Note: pre-paid fees are not refundable and involve a minimum commitment term of the pre-paid period.	

## VAT

UK VAT (currently 17.5%) **does apply to:**

- All UK companies and individuals
- EU individuals
- EU businesses that do not supply a VAT number

UK VAT **does not apply to:**

- EU (non-UK) businesses that supply a valid VAT number
- companies and individuals outside the EU.

**Primary Contact**

Name	
Company Name	
Email	
Phone	
Mobile	

**Billing Contact**

Name	
Company Name	
Email	
Phone	
Mobile	

**Technical Contact**

Name	
Company Name	
Email	
Phone	
Mobile	

## Magento VPS Hosting – Service Overview

Magento runs in a Xen virtual private server environment. Each customer has their own instance of linux (ubuntu) and mysql with dedicated memory. CPU is reserved but burst permitted. The hosting environment is optimised for Magento based on Varien's recommendations. Customers have limited access to administer Magento but not root permissions.

## Service Includes

- magento installation in optimised environment
- magento connect
- restricted customer access to phpmyadmin mysql control panel for viewing magento database
- ftp access to magento directories for upload of images, content etc
- magento web administrator access
- smtp server for magento to send outbound emails
- 24/7 monitoring of magento home page - check page is served with correct response
- nightly backup image - retention of most recent nightly and one weekly - mountable access
- firewalling - access restricted to essential ports only
- server lock-down - only essential services and packages installed
- managed updates of linux (ubuntu), apache, mysql, php, awstats and smtp server
- awstats traffic analysis
- dedicated single IP, additional IPs available free for SSL certificates

## Optimisation

- MySQL optimised for Magento and available memory
- PHP XCache installed
- Magento's temporary file directory placed on an in-memory filesystem

## On request (no charge)

- magento version upgrade
- php version upgrade
- SSL certificate installation

### Restrictions

- one magento installation per VPS - although multiple shops may be run on the magento instance, hardware limitations permitting
- no root access
- php5 only
- 1 x mySQL database only
- no other applications - magento hosting only - but magento plugins permitted
- if the VPS or Magento slows or fails due to it be overloaded for lack of memory then the customer will need to upgrade to a plan with higher memory
- support limited to hosted environment not Magento code. Customers requiring support for Magento code will have to obtain community support from Magento discussion boards or purchase a support contract from Magento's authors Varien.

### Options (Additional Fees Apply)

- SSL Certificate purchase: 1 yr basic certificate £75+VAT
- .co.uk/org.uk Domain Registration £10 +VAT for two years
- .com/.net/.org Domain Registration £10 +VAT for one year
- Basic Email services. Up to 10 POP or IMAP mailboxes. £10 +VAT per month
- Advanced Zimbra Email services. £4 pm per mailbox. See separate Zimbra terms and conditions.

## Terms and Conditions

### 1. Definitions

Unless expressly stated otherwise the following definitions shall apply to the terms used in this Agreement:

**"Application Form"** means the form completed by the Client at time of request to purchase of services and submitted to Xtraordinary. This form may have been completed in either an on-line electronic format or on paper.

**"Confidential Information"** means all information passing from one party to the other party relating to the business of the disclosing party, including but not limited to trade secrets, drawings, know-how, techniques, source and object code, business and marketing plans and projections, arrangements and agreements with third parties, customer information and customer information proprietary to customers, formulae, suppliers, concepts not reduced to material form, designs, plans and models but excludes information:

(a) which is in or becomes part of the public domain other than through breach of this Agreement;

(b) which the receiving party can prove by contemporaneous written documentation was already known to it at the time of disclosure by the disclosing party or its representatives; or

(c) which the receiving party acquires from a third party entitled to disclose it;

**"Client Content"** means all the materials placed on the Servers;

**"Commencement Date"** is the date at which Xtraordinary commences to first provide hosting services for the Client (or upon the expiry of any free trial period)

**"Computer Virus"** means any programmes or data incorporated into software or data that disrupts the proper operation of a computer hardware system or the associated software;

**"Downtime"** means any period during which the hosting service is unavailable due to failure of Xtraordinary's systems or loss of all Internet connectivity to the Servers.

**"Hosting Services"** means those services provided to the Client as described in the Application Form.

**"Intellectual Property"** means all intellectual property rights relating to or owned by either Party to this Agreement anywhere in the world (including present and future intellectual property rights) including without limitation Confidential Information, business names, domain names, copyright, database rights, patents, trade or service marks, designs, software, software programmes and source code and all variations, modifications or enhancements to each of them together with any application or right to apply for registration of those rights;

**"Materials"** means all materials owned by a party used in the provision of Hosting Services, including software programmes and source code;

**"Monthly Billing Date"** is the date of the month of the Commencement Date.

**"Acceptable Use Policy"** means the policy setting out the terms and conditions on which the Client agrees to utilise Xtraordinary's network, systems, products and services as specified in Appendix A;

**"Personnel"** means any employees, agents or contractors of either Party;

**Servers** means Xtraordinary's computer server equipment.

**"Service Fee"** means the fee specified on the Application Form to be paid by the Client for the performance by Xtraordinary of its obligations under this Agreement;

**"Term"** shall mean the period between the Commencement Date and the end date of this Agreement as specified in Clause 7 of this Agreement;

**"Web Site"** means the Client's web site or sites as hosted on Xtraordinary's Servers.

## **2. Interpretation**

2.1 In this Agreement, unless the context otherwise requires:

- (a) a reference to any document is a reference to that document as varied, novated or replaced from time to time;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a gender includes all other genders;
- (d) a reference to a person or entity includes a natural person, a partnership, a corporation, trust, association, an unincorporated body, authority or other entity; and
- (e) a reference to a person includes that person's legal personal representative, successors and permitted assigns;

2.2 Headings have been inserted for convenience only and shall not affect the interpretation of this Agreement.

## **3. Provision of Hosting Services**

Xtraordinary will provide Hosting Services to the Client on the terms and conditions of this Agreement and as set out in this Application Form.

## **4. Availability**

4.1 The Client acknowledges that Xtraordinary's systems, servers and equipment may from time to time be inoperative or only partly operational as a consequence of mechanical breakdown, maintenance, hardware or software upgrades, telecommunication connectivity problems or other causes.

4.2 Xtraordinary agrees to rectify faults or problems and to restore the system to full operational capacity as soon as reasonably practicable.

4.3 Notwithstanding the terms of Clauses 4.1 and 4.2, Xtraordinary agree to comply with the provisions of the Service Level Agreement in Appendix B in relation to any Downtime during the Term.

## **5. Limitation of Liability**

5.1 Xtraordinary gives no condition, warranty or undertaking and makes no representation to the Client about the suitability of, or fitness of Hosting Services for the Client's purposes other than those conditions, warranties, undertakings or representations expressly set out in this Agreement.

5.2 With the exception of any rights which the Client may have under applicable law, all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded from these Terms to the fullest extent permitted by law.

5.3 Subject to sub-clause 5.2:

- (a) **Xtraordinary's total liability** in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the

performance or contemplated performance of this Agreement **shall be limited to the total value of Hosting Services paid to Xtraordinary by the Client** in terms of this Agreement; and

(b) Xtraordinary shall not be liable to the Client or any third party for any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever or howsoever caused which arise out of or in connection with the Agreement, or for loss of profit, loss of business, loss of data, depletion of goodwill or loss occurring in the normal course of business or otherwise.

## **6. Client Content**

6.1 Xtraordinary will not be responsible for the accuracy and functionality of the Client Content.

6.2 If Xtraordinary reasonably forms the view that the Client Content of Client Content may be in breach of its Acceptable Use Policy (AUP, see Appendix A), Xtraordinary may remove that Client Content from its servers and shall within twenty four (24) hours thereafter notify the Client of its removal. In addition, the Client shall fully and effectively indemnify Xtraordinary in respect of all losses of whatsoever nature incurred by Xtraordinary as a result of the breach of AUP.

**6.3 Xtraordinary will have no liability for any loss or damage to any data stored on Servers or back-up facilities.**

6.4 The Client will maintain adequate insurance cover in respect of any loss or damage to data stored on Servers or back-up facilities.

## **7. Term**

Where fees are paid monthly this Agreement will commence on the Commencement Date and will subsist for an **initial period of one month** (the Initial Period) unless earlier terminated in accordance with its terms. Following the Initial Period, this agreement shall automatically continue in force for **recurring periods of one month** unless terminated in accordance with its terms or by either party on giving the other **10 days written notice** prior to the **Monthly Billing Date**.

Where fees are pre-paid on a frequency greater than one month (for example quarterly, six-monthly or annually) this Agreement will commence on the Commencement Date and will subsist for an **initial period of the payment frequency** (the Initial Period) unless earlier terminated in accordance with its terms. Following the Initial Period, this agreement shall automatically continue in force for the same **recurring frequency periods** unless terminated in accordance with its terms or by either party on giving the other **10 days written notice** prior to their next **Billing Date**.

## **8. Charges and Payment**

8.1 (a) The Client will pay Xtraordinary the Service Fees specified in this order form together with any VAT and other applicable taxes at the then prevailing rate ( "**Service Fees**" ).

8.2 The Client will pay the Service Fees within 7 days after the date of Xtraordinary's invoice.

8.3 Any Additional Fees and out of pocket expenses and charges will be agreed on in writing in advance between the parties and invoiced separately. The Client shall reimburse Xtraordinary for any such Additional Fees and out of pocket expenses reasonably incurred by Xtraordinary.

8.4 If the Client is in arrears in any payment due to Xtraordinary under this Agreement, the Client will pay, in addition to the arrears, interest at the rate of four per centum (4%) per annum above the base rate for the time being of The Royal Bank of Scotland plc on all arrears calculated on a daily basis from the date the default occurs until payment is made in full as well before as after judgement .

8.5 Without limiting any other right or remedy available to Xtraordinary, Xtraordinary may on giving seven (7) days notice, and without having to account for or to repay any money previously paid to it pursuant to the terms of this Agreement, refuse to commence, complete or deliver any work or otherwise comply with the provisions of this Agreement on Xtraordinary's part to be observed or performed in the event the Client:

- (a) fails to pay any sums due to Xtraordinary under this Agreement; or
- (b) otherwise defaults in the due observance and performance of this Agreement.

## **9. Ownership & Software Licensing**

9.1 The Parties acknowledge that this Agreement does not have the effect of transferring the ownership of any Intellectual Property.

9.2 Any Intellectual Property owned by either party and required for the performance by the other party of its obligations under this Agreement shall be licensed to that other party on a non-exclusive, royalty-free basis for the sole purpose of fulfilling that party's obligations under this Agreement and for the period during which the use of that Intellectual Property by that party pursuant to this Agreement is required.

9.3 Where the Client places or installs their own Material on Xtraordinary's Servers, the Client is responsible for ensuring that they have secured all necessary licences required for the performance by Xtraordinary of its obligations under this Agreement and for the period during which the use of those rights by Xtraordinary pursuant to this Agreement is required.

## **10. Domain Name Registration**

If Xtraordinary is requested to register domain names on behalf of the Client at no time do Xtraordinary represent that any particular domain name is available for registration. The registration and use of domains names is subject to the terms and conditions of the relevant naming authority. If payments are not received in respect of domain name registrations Xtraordinary may cancel or retain them. The Client is responsible for ensuring they have rights to use domain names that are registered through Xtraordinary and the Client hereby indemnifies Xtraordinary for any loss of whatsoever nature incurred by Xtraordinary in that regard. In the event of a dispute between the Client and third parties in respect of the rights to domain names, Xtraordinary retains the right to suspend or cancel disputed domain names.

## **11. Acceptable Use Policy**

11.1 The Client acknowledges that it will comply with the Acceptable Use Policy as published in Appendix A to this document.

11.2 The Acceptable Use Policy is a standard policy for the conduct of Xtraordinary's business and is necessary for the orderly and efficient provision of its hosting services to clients.

11.3 In the event of the Client breaching the Acceptable Use Policy, Xtraordinary retains the right to suspend or terminate the provision of Hosting Services and shall within twenty four (24) hours thereafter notify the Client of such suspension.

## **12. Equipment and Access**

The Client must provide, at its own cost, all telecommunications services, computers and other equipment or services necessary to enable it to have access to Hosting Services. The Client must comply with all applicable legal requirements, rules and regulations that apply to the communications means by which the Client obtains access to Hosting Services.

## **13. Personnel and Sub-Contractors**

Xtraordinary may in its absolute discretion sub-contract the performance of any of its obligations under this Agreement.

## **14. Warranties**

14.1 Each party warrants that:

- (a) it has authority to enter and to perform its obligations under this Agreement; and
- (b) it has the ability to perform its obligations under this Agreement.

14.2 Xtraordinary warrants that Hosting Services will in all respects comply with the description in the Application Form.

14.3 The Client warrants that:

- (a) the use by Xtraordinary of any works or Materials submitted by the Client to Xtraordinary under this Agreement will not infringe the rights of any person or contravene any law; c (b) at the time of entering into this Agreement it is not relying on any representation made by Xtraordinary which has not been expressly set out in this Agreement;
- (c) it will take all reasonable steps to ensure that any software used in connection with Hosting services and any material or data provided to Xtraordinary will be free from any Computer Virus and will not damage or corrupt any other data or system;
- (d) That it is solely responsible for communicating with persons who maintain or access its Web Sites and that it will not divert any complaints or concerns from such persons to Xtraordinary.
- (e) Where the Client allows its own customers to maintain web sites within the web space provided as part of the Hosting Service, the Client remains fully bound by this contract and is responsible for the activities and actions of such persons.

14.4 Xtraordinary shall not be liable for defects resulting from improper use of Hosting Services by the Client or by another third party.

## **15. Indemnity**

15.1 Each party ("the first party") indemnifies and undertakes to keep indemnified the other party, its officers, servants and agents ("the second party") against any costs or expenses (including the cost of any settlement) arising out of any claim, action, proceeding or demand that may be brought, made or prosecuted against the second party by any person arising out of or as a consequence of an unlawful or negligent act or omission of the first party, its officers, servants or agents in any way connected with this Agreement whether arising from any failure by the first party to comply with the terms of this Agreement or otherwise.

15.2 The indemnity extends to and includes all costs, damages and expenses reasonably incurred by the second party in defending any such action, proceeding, claim or demands.

## **16. Termination**

16.1 Xtraordinary may terminate this Agreement by notice in writing to the Client in the event that:

- (a) The Client fails to pay any amount to Xtraordinary due under this Agreement and does

not make that payment within seven (7) days after receiving notice requiring the Client to do so;

- (b) The Client fails to perform any of the obligations on its part to be observed or performed pursuant to the On-Line Conduct Policy, or
- (c) The Client fails to perform any of the obligations on its part to be observed or performed pursuant to this Agreement, or
- (d) Any of the warranties or representations made by the Client contained in this Agreement are false or inaccurate in any material way.

16.2 Either party shall be entitled to terminate this Agreement forthwith by notice in writing to the other if the other party shall:

- (a) commit any material breach of any of its obligations under this Agreement
- (b) pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect;
- (c) make any voluntary arrangement with its creditors or become subject to an administration order;
- (d) have a receiver or administrative receiver appointed;
- (e) cease or threaten to cease to carry on business.

### **17. Confidential Information**

17.1 Each party may use the Confidential Information of a disclosing party only for the purposes of this Agreement and must keep confidential all Confidential Information of each disclosing party except to the extent (if any) the recipient of any Confidential Information is required by law to disclose the Confidential Information.

17.2 Either party may disclose Confidential Information of the other party to those of its employees and agents who have a need to know the Confidential Information for the purposes of this Agreement but only if the employee or agent executes a confidentiality undertaking in a form approved by the other party.

17.3 All documents and other materials containing Confidential Information of either party will be returned to that party immediately upon completion of Hosting Services

17.4 The parties' obligations to keep information confidential will survive the termination of this Agreement.

17.5 The obligations of confidentiality under this Agreement do not extend to information that:

- (a) was rightfully in the possession of the receiving party before any negotiations leading to this Agreement;
- (b) is, or after the day this Agreement is signed, becomes public knowledge (otherwise than as a result of a breach of this Agreement); or
- (c) is required by law to be disclosed.

### **18. Force Majeure**

18.1 "**Force Majeure**" means anything outside the reasonable control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, power shortage, transportation embargo, failure or delay in transportation, including without limitation where Xtraordinary ceases to be entitled to access the Internet or ceases to have access to the Internet for whatever reason, any act or omission (including laws, regulations, disapprovals or failures to approve) of any government or government agency.

18.2 If a party is wholly or partially precluded from complying with its obligations under this Agreement by Force Majeure, then that party's obligation to perform in accordance with this Agreement will be suspended for the duration of the Force Majeure.

18.3 As soon as practicable after an event of Force Majeure arises, the party affected by Force Majeure must notify the other party of the extent to which the notifying party is unable to perform its obligations under this Agreement.

### ***19. Notification, Variation of Agreement***

19.1 Any notices given by Xtraordinary to the Client may be given by e-mail, facsimile or letter. Xtraordinary may vary the terms of this agreement by giving one's month's notice. Continued use of service implies acceptance of new terms.

19.2 The Client shall be responsible for ensuring that Xtraordinary has been provided with up to date information to allow Xtraordinary to serve notices in terms of Clause 19.1

### ***20. Jurisdiction***

The parties agree that this Agreement shall be subject to the Law of Scotland and to the exclusive jurisdiction of the Scottish Courts

## ***Appendix A***

### **Acceptable Use Policy (AUP)**

The following activities and material are **not permitted** on Xtraordinary's hosting services:

Sending unsolicited commercial email.

Running Internet Relay Chat (IRC) servers.

Pornography and other sexually explicit material.

Promoting prostitution or similar services.

Using hosting services in any manner that is illegal or libelous.

Storing or distributing material (including software) that infringes the owner's copyright, trademark or patent.

Advertisement of web links leading to material that infringes the owner's copyright, trademark or patent.

Acting as a directory service to external services that aid in infringing an owner's copyright, trademark or patent.

Use of unlicensed software that infringes the software author's rights.

Hosting sites promoted by means of unsolicited email or newsgroup spamming.

Promoting services or software that assist in the distribution of unsolicited commercial email.

Unauthorised probing, scanning or testing the vulnerability of other systems.

Unauthorised monitoring of data or traffic on any system.

Use of unauthorised IP addresses.

Interference with internet services, including attacks by mass mailing and flooding.

Transmission of any material that threatens or encourages harm or destruction of property or people.

Transmission of any material that harasses another person.

Posting of defamatory, scandalous, or private information about a person without their consent.

Making fraudulent offers to sell or buy products, items or services.

Activities amounting to forgery or impersonation.

Anonymous proxy services.

Any activity which gives rise to disruption of Xtraordinary's network or business activities, or has potential to bring Xtraordinary's reputation into disrepute.

## ***Appendix B " Service Level Agreement (SLA)***

### **Downtime due to Service Failure.**

In the event of the total periods of Downtime, due to failure of the hosting service, in a calendar month during the Term, exceeding 0.1% of time in said month a service credit will be made. One full day's credit of the Service Fee will be given for each hour of Downtime beyond the 0.1% allowable, up to a maximum credit of 100% of the month's Service Fee.

The maximum overall service credit payable due to Downtime in any calendar month will be 100% of the month's Service Fee.

For the purposes of this provision, Downtime excludes:

- periods of essential maintenance, announced on Xtraordinary's web site at least 24 hours in advance of the maintenance commencing.
- any period during which any service or Web Site is unavailable as a direct consequence of any breach of the Agreement by the Client, the negligence of the Client or its employees, servants or agents, any defect in any of the Web Sites (other than any defect caused by an act or omission of Xtraordinary) any incompatibility between platform software and content and any defect in any software provided by the Client to Xtraordinary under the Agreement.

Any period of Downtime is deemed to commence from the time it is reported by the Client to Xtraordinary until the incident is resolved by Xtraordinary.

Claims for refund of the Service Fee or part thereof must be made on a claim form (available from Xtraordinary) within 7 days of the end of a calendar month in respect of Downtime occurring in the previous calendar month.

**Version Mag-1.0, Updated 5 November 2008**