

## Source Code License Agreement

Last Updated: May 9, 2023

### **“Covered Source Code”**: Payment Integration SDK Software

This Source Code License Agreement (“**Agreement**”) is made by and between Licensee and BigCommerce, Inc (itself and its affiliates, collectively “**BigCommerce**”) and governs Licensee’s use of the Licensed Code. “**Licensee**” means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement.

By accepting this Agreement, by (A) clicking a box indicating acceptance, (B) executing a separate agreement with BigCommerce that references this Agreement, or (C) using or otherwise accessing the Licensed Code after BigCommerce has knowingly and intentionally made the Licensed Code available to Licensee, Licensee agrees to the terms of this Agreement. If the individual accepting this Agreement is accepting on behalf of a company or other legal entity, such individual represents that they have the authority to bind such entity to these terms and conditions. If the individual accepting this Agreement does not have such authority, or does not agree with these terms and conditions, such individual must not accept this Agreement and may not use the Licensed Code. This Agreement is effective between Licensee and BigCommerce as of the date of Licensee accepting this Agreement (the “**Effective Date**”). In any event, Licensee may not use the Licensed Code unless BigCommerce has knowingly and intentionally made the Licensed Code available to Licensee.

#### 1. Definitions.

- a. “**Documentation**” means BigCommerce’s technical documentation and supporting materials relating to the Licensed Code, if any, and any modifications to or derivative works of the foregoing developed by or for Licensee.
- b. “**Feedback**” means all reports and other materials, information, ideas, concepts, feedback and know-how concerning the Licensed Code and/or Documentation.
- c. “**Intellectual Property Rights**” means copyright rights (including, the right to use, the copyrighted work), trademark rights (including, without limitation, trade names, trademarks, service marks, and trade dress), patent rights (including, without limitation, the right to make, use, sell, offer for sale and import), trade secrets, moral rights, right of publicity, right of privacy, authors’ rights, contract and licensing rights, goodwill and all other intellectual property rights as may exist now and/or hereafter come into existence and all renewals and extensions thereof, regardless of whether those rights arise under the law of the United States or any other state, country or jurisdiction throughout the world.
- d. “**Licensed Code**” means (i) the Source Code versions of the Covered Source Code provided to Licensee by BigCommerce under this Agreement; (ii) the test code and test scripts provided to Licensee by BigCommerce for use with the Covered Source Code; (iii) any modifications to or derivative works of the foregoing developed by or for Licensee; and (iv) any Updates or Upgrades provided by BigCommerce to Licensee.
- e. “**Open-Source Software**” means software delivered to Licensee hereunder that is subject to the provisions of any open-source license agreement, which may include, without limitation, the GNU Lesser General Public License and the Mozilla Public License.
- f. “**Source Code**” means programming code that can be printed or displayed in a form readable and understandable by a computer programmer of ordinary skills.
- g. “**Updates**” means any bug fixes or error corrections to the Licensed Code.
- h. “**Upgrades**” means any new versions of the Licensed Code other than Updates.

#### 2. Licenses.

- a. **License Grant.** Subject to the terms and conditions of this Agreement, BigCommerce grants to Licensee a non-exclusive, non-transferable, non-sublicensable license to (i) use, reproduce, modify and create derivative works of the Source Code of the Licensed Code and (ii) execute the Licensed Code; and (iii) use, reproduce, modify and create derivative works of the Documentation; in each case of (i), (ii) and (iii) only for Licensee's internal business purposes.
- b. **License Restrictions and Requirements.** Licensee shall:
- i. keep all copies of the Licensed Code and Documentation in the possession of Licensee and not make available or provide the Licensed Code and/or Documentation to any third parties unless expressly permitted herein;
  - ii. not remove from any copies of the Licensed Code or Documentation any product identification, copyright or other notices;
  - iii. not disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Licensed Code or Documentation;
  - iv. only install the Licensed Code on password protected servers;
  - v. only disclose the Licensed Code and Documentation to Licensee employees and third party consultants who have a need to know such information in order for Licensee to exercise its rights under this agreement are who are bound by enforceable confidentiality obligations no less restrictive than the terms of this Agreement;
  - vi. maintain complete and accurate logs of all modifications to the Licensed Code and supply such records to BigCommerce upon request;
  - vii. ensure that all modifications to the Licensed Code performed by, for or on behalf of Licensee conform to BigCommerce's approved threat modeling framework/vulnerability management framework and to the secure coding practices published by the Open Web Application Security Project: [https://www.owasp.org/index.php/OWASP\\_Secure\\_Coding\\_Practices\\_-\\_Quick\\_Reference\\_Guide](https://www.owasp.org/index.php/OWASP_Secure_Coding_Practices_-_Quick_Reference_Guide);
  - viii. adhere to all implementations of code integrity checking required by BigCommerce, such as issuing a verifiable digital signature at the end of each code change; and immediately notify BigCommerce of any compromise or suspected compromise to Licensee's digital identity;
  - ix. provide BigCommerce, upon request, with such evidence as is deemed necessary by BigCommerce to demonstrate that (i) Licensee has established minimum acceptable levels of security in accordance with the BigCommerce Data Protection Addendum entered into by the parties in connection with this Agreement; and (ii) Licensee has performed sufficient testing to ensure that common security vulnerabilities have been mitigated; and
  - x. adhere to all regulatory and compliance requirements, including but not limited to the Payment Card Industry Data Security Standard, ISO 27001, and the General Data Protection Regulation, applicable to Licensee's use of the Licensed Code.
- c. **Review.** BigCommerce reserves the right, at its own expense and with commercially reasonable notice, to audit the Licensee's development processes and controls to verify Licensee's compliance with its obligations under Section 'License Restrictions and Requirements'.
- d. **Upgrades and Updates.** BigCommerce shall not be obligated to develop or deliver any Updates or Upgrades to Licensee.
- e. **Support.** Nothing herein shall require BigCommerce to provide any technical or other support for the Licensed Code. Any technical support provided will be an accommodation to Licensee and shall not create an obligation for BigCommerce to provide further technical support.
- f. **Open-Source.** Licensee shall not allow or cause any Licensed Code to become subject to any "copyleft," open source or similar licensing or distribution models. Any Open-Source Software provided to Licensee is provided on an "as-is" basis at the sole risk of Licensee. Notwithstanding any language to the contrary in this Agreement, BigCommerce makes no express or implied warranties of any kind with respect to any

Open-Source Software provided to Licensee and shall not be liable for any damages regarding the use or operation of the Open-Source Software furnished under this Agreement. Any and all express or implied warranties, if any, arising from the license of Open-Source Software shall be those warranties running from the third-party manufacturer or licensor to Licensee.

3. Delivery; Acceptance.

- a. **Delivery.** BigCommerce shall deliver or make available the Licensed Code and Documentation to Licensee promptly following the Effective Date in a mutually agreed to manner.
- b. **Acceptance by Licensee.** Licensee accepts the Licensed Code and Documentation upon delivery.

4. Ownership.

- a. **Licensed Code.** Licensee acknowledges that BigCommerce retains all right, title and interest, including all Intellectual Property Rights, in and to the Licensed Code and Documentation. BigCommerce reserves all rights not expressly granted to Licensee by BigCommerce under this Agreement. There are no implied rights. Licensee shall promptly notify BigCommerce in writing upon its discovery of any unauthorized use or infringement of BigCommerce's Intellectual Property Rights in or to the Licensed Code, Documentation or Confidential Information. Licensee hereby assigns and agrees to assign to BigCommerce all right, title and interest worldwide in any modifications to and derivative works of the Licensed Code and/or Documentation made by or for Licensee (all of which are deemed licensed back to Licensee under the terms of this Agreement), and agrees to assist BigCommerce, at BigCommerce's expense, in perfecting and enforcing these rights.
- b. **Feedback.** Licensee shall provide BigCommerce with all Feedback created by Licensee relating to the Licensed Code and Documentation. Licensee acknowledges and agrees that all Feedback will be the property of BigCommerce. Licensee agrees to assign, and hereby assigns, all right, title and interest, including all Intellectual Property Rights, in and to the Feedback to BigCommerce and agrees to assist BigCommerce, at BigCommerce's expense, in perfecting and enforcing these rights.

5. Confidentiality Obligations. Licensee acknowledges and agrees that the Licensed Code, Documentation and Feedback are considered confidential and proprietary information of BigCommerce ("**Confidential Information**"). Licensee shall at all times, both during the term of this Agreement and at all times thereafter, keep and hold Confidential Information in the strictest confidence, and shall not use Confidential Information for any purpose other than the exercise of its license rights under this Agreement. Licensee shall not disclose any Confidential Information to any person or entity without BigCommerce's prior written consent, other than to its employees who have a legitimate need to know and have agreed in writing to confidentiality obligations consistent with this Agreement. If Licensee is required to disclose Confidential Information in response to a valid and binding order by a court or other governmental body, Licensee shall immediately notify BigCommerce in writing so that BigCommerce may obtain a protective order requiring the Confidential Information so disclosed be used only for which the order was issued, and Licensee shall cooperate in connection therewith as instructed by BigCommerce.

6. Warranty and Warranty Disclaimer.

- a. **Power and Authority.** Each party represents and warrants that it has full corporate power and authority to enter into this Agreement, to carry out its obligations under this Agreement, and to grant the rights granted in this Agreement.
- b. **Warranty Disclaimer.** THE LICENSED CODE AND DOCUMENTATION IS PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY TYPE OR KIND. BIGCOMMERCE EXPRESSLY DISCLAIMS AND EXCLUDES ANY AND ALL WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND THOSE ARISING FROM COURSE OF DEALING, CUSTOM, CONDUCT, USAGE OF TRADE OR OTHERWISE. BigCommerce does not warrant that the Licensed Code or Documentation will be error-free or will meet Licensee's needs or requirements.

7. Limitation of Liability.

- a. **Consequential Damages Waiver.** IN NO EVENT WILL BIGCOMMERCE BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING LOSS OF PROFITS AND

LOSS OF USE, ARISING OUT OF OR RELATING THIS AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND EVEN IF BIGCOMMERCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR ANY LIMITED REMEDY HEREUNDER.

- b. **Cap on Direct Damages.** IN NO EVENT WILL BIGCOMMERCE'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED \$100 USD.

8. Term and Termination.

- a. **Term.** This Agreement commences on the Effective Date and continues until terminated in accordance with this Agreement, unless terminated sooner in accordance this Agreement, continues in effect thereafter.
- b. **Termination.** If a party materially breaches this Agreement and fails to cure the breach within 10 days after written notice of breach is given to it by the other party, the notifying party may terminate this Agreement upon further written notice of termination. Either party may terminate this Agreement for convenience on 15 days' notice to the other party. If BigCommerce reasonably suspects Licensee is misusing the Licensed Code, BigCommerce may immediately terminate this Agreement and Licensee's access to the Licensed Code without notice.
- c. **Effect of Termination.** Upon expiration or termination of this Agreement, (i) the rights and licenses granted to Licensee pursuant to this Agreement will automatically and immediately terminate; (ii) Licensee shall immediately destroy or, if requested by BigCommerce, return all Licensed Code, Documentation and other BigCommerce Confidential Information and intellectual property furnished under this Agreement and have an officer of Licensee promptly certify to BigCommerce in writing that Licensee has fully complied with the requirements of this subsection; and (iii) Licensee shall cease to use all Intellectual Property Rights of BigCommerce and its Licensed Code and Documentation provided or made available under to this Agreement.
- d. **Survival.** Sections 'Definitions', 'Ownership', 'Confidentiality Obligations', 'Warranty and Warranty Disclaimer', 'Limitation of Liability', 'Term and Termination' and 'General Provisions' shall survive termination of this Agreement.

9. General Provisions.

- a. **Relationship.** The relationship between the parties will be that of independent contractors. Nothing contained herein will be construed to imply a joint venture, principal or agent relationship, or other joint relationship, and neither party will have the rights, power or authority to create any obligation, express or implied, on behalf of the other.
- b. **Governing Law.** The laws of the State of Texas govern all matters arising out of or relating to this Agreement. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.
- c. **Attorneys' Fees.** In the event any proceeding or lawsuit is brought by either party in connection with this Agreement, the prevailing party in such proceeding will be entitled to receive its costs, expert witness fees and reasonable attorneys' fees, including costs and fees on appeal.
- d. **Assignment.** Licensee may not transfer or assign its rights under this Agreement without the prior written consent of BigCommerce. Any attempted assignment or transfer in violation of this Section is void.
- e. **Waiver.** No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.
- f. **Severability.** If any term or provision of this Agreement will be found to be invalid, illegal or unenforceable, the remainder of the provision will be amended to achieve as closely as possible the economic effect of the original term and the validity, legality, or enforceability of the remaining terms and provisions will not in any way be affected or impaired thereby.

- g. **Export Compliance.** Licensee will not export, directly or indirectly, the Licensed Code, or any portion thereof in any form, to any country for which United States laws or regulations require an export license or other governmental approval, without first obtaining such license or approval. Licensee hereby will indemnify and hold BigCommerce harmless from and against any losses, damages, penalties or causes of action resulting from a violation of this Section 10.7.
- h. **Notices.** All notices required hereunder will be in writing and will be given by personal delivery, nationally recognized overnight delivery service or by mail (certified or registered, postage prepaid, return receipt requested) as follows:

Notices to BigCommerce: 11305 Four Points Drive Building II, First Floor Austin, TX 78726

Notices to Licensee: Registered company or personal address, as applicable.

All notices will be deemed effective upon personal delivery, or three days following deposit in the mail.

- i. **Injunctive Relief.** It is expressly agreed that a violation of this Agreement will cause irreparable harm to BigCommerce and that a remedy at law would be inadequate. Therefore, in addition to any and all remedies available at law, BigCommerce will be entitled to an injunction or other equitable remedies in all legal proceedings in the event of any threatened or actual violation of any or all of the provisions of this Agreement, without the need to post bond.
- j. **Force Majeure.** Neither party will be liable to the other for delays or failures in performance resulting from causes beyond the reasonable control of that party, including, but not limited to, acts of God, labor disputes or disturbances, material shortages or rationing, riots, acts of war, governmental regulations, communications or utility failures, or casualties.
- k. **Entire Agreement; Amendment.** This Agreement, including all Exhibits, reflects the entire agreement of the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous understanding or agreements between the parties, whether written or oral. Except as provided in Section 'Modifications', this Agreement will not be amended, altered or changed except by written agreement signed by both parties that identifies itself as an amendment to this Agreement.
- l. **Construction of Agreement.** This Agreement has been negotiated by the respective parties hereto and their attorneys and the language hereof shall not be construed for or against any party. The titles and headings herein are for reference purposes only and shall not in any manner limit the construction of this Agreement, which shall be considered as a whole. The word "including" is not limiting and will be deemed to be followed by the wording "without limitation."
- m. **Controlling Language.** This Agreement is prepared and executed in the English language only, which language shall be controlling in all respects. Any translations of this Agreement into any other language are for reference only and shall have no legal or other effect. Any notice which is required or permitted to be given by one party to the other under this Agreement will be in the English language and will be in writing. All proceedings related to this Agreement shall be conducted in the English language.
- n. **Modifications.** BigCommerce may modify this Agreement at any time by posting a revised version on the BigCommerce website; provided, however, that BigCommerce will provide at least 90 days' advance notice for materially adverse changes to this Agreement. Subject to the 90-day advance notice requirement with respect to materially adverse changes, the modified terms will become effective upon posting. By continuing to use the Licensed Code after the effective date of any modifications to this Agreement, Licensee agrees to be bound by the modified terms. Licensee will check the BigCommerce website regularly for modifications to this Agreement.