

# Contributor Agreement



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## CONTRIBUTOR AGREEMENT

### Contributor Agreement

We're very happy you're interested in contributing to Marketcetera. Like many other open source projects, we need you to complete a Contributor License Agreement ("CLA") so we can add you to the list of approved contributors and review the changes you propose.

Note that the following agreement is not a transfer of copyright ownership, this simply is a license agreement for contributions. You also do not change your rights to use your own contributions for any other purpose.

For some background on why contributor license agreements are necessary, you can read FAQs from many other open source projects:

- Django's excellent [CLA FAQ](#)
- A [well-written chapter](#) from Karl Fogel's Producing Open Source Software on CLAs
- The [Wikipedia article](#) on CLAs

This is part of the legal framework of the open-source ecosystem that adds some red tape, but protects both the contributor and the company / foundation behind the project. It also gives us the option to relicense the code with a more permissive license in the future.

If you have more questions, send us an email at [info@marketcetera.com](mailto:info@marketcetera.com).

#### Marketcetera Contributor License Agreement

Thank you for your interest in participating as a contributor to the Marketcetera development project (the "Project"). The Project consists of individual development projects for Marketcetera products, including but not limited to Marketcetera Strategy Studio, DARE, Marketcetera integration tools, and Marketcetera Order Loader, which may be made available by Marketcetera under free and/or commercial licenses and subscriptions.

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In order to conclusively and clearly set out the responsibilities and obligations associated with Contributions (as defined below), Marketcetera Inc ("Marketcetera"), as owner of the Project, has each Contributor enter into this Contributor License Agreement (the "Agreement") and agree to the terms below. If you do not agree to the terms and conditions of the Agreement, please do not submit your contributions to Marketcetera; such agreement is a condition of Marketcetera's willingness to consider your contribution, and such willingness is, among other things, consideration for this Agreement.

You and Marketcetera hereby accept and agree to the following terms and conditions:

1. Contributors and Contributions
  - a. Any individual or legal entity that voluntarily submits to the Project a Contribution (including any legal entity represented by an individual that makes such a submission) is addressed herein as "Contributor" or "You" (whether or not capitalized). For legal entities, the entity making a Contribution and all other entities that control, are controlled by, or are under common control with that entity are considered to be a single Contributor. For the purposes of this definition, "control" means
    - i. the power, direct or indirect, to cause the direction or management of such entity, whether by contract or otherwise, or
    - ii. ownership of fifty percent (50%) or more of the outstanding shares, or
    - iii. beneficial ownership of such entity.

- b. A "Contribution" is any work, including any modification or addition to an existing work that has been submitted for inclusion in or documentation of, any of the products or projects owned or managed by Marketcetera.
  - c. A work is deemed "submitted" for inclusion in, or documentation of, any of the products or projects owned or managed by Marketcetera when any form of electronic, verbal, or written communication or documentation sent to the Project or Marketcetera (including but not limited to communication via email to [contributions at marketcetera.com](mailto:contributions@marketcetera.com)) includes a reference of your intent to have such work so included or to make a contribution.
  - d. Any Contribution submitted by You to the Project shall be under the terms and conditions of this Agreement, without any additional terms or conditions. Your signature on this Agreement is not necessary for its validity or enforcement. In the event Marketcetera should request that You execute this Agreement in written form with a personal signature, or execute a form of assignment or other documents necessary or appropriate in connection with the foregoing or to complete a copyright registration filing, You agree to do so promptly and without additional consideration.
2. Contributor Grants.

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- a. You hereby irrevocably assign, transfer, and convey to Marketcetera all right, title and interest in and to the Contribution. Such assignment includes all copyrights, copyright applications, and copyright registrations, and all other intellectual property or proprietary rights other than patents relating to the Contribution, together with all causes of actions accrued in your favor for infringement thereof, recognized in any jurisdiction, whether or not perfected ("Proprietary Rights"). Without limiting the generality of the foregoing, Marketcetera shall have the right to use or not use the Contribution and to use, sell, register, distribute, license, reproduce, re-use, alter, modify, edit, change, or otherwise commercialize the Proprietary Rights as it sees fit, in any manner now known or in the future discovered, and for any purpose. To the extent that under any applicable mandatory law, Proprietary Right cannot be assigned, You irrevocably agree to grant, and You hereby grant, to Marketcetera an exclusive (or non-exclusive, if a exclusive license is not effectively granted) perpetual, irrevocable, unlimited, sublicensable, assignable, worldwide, fully paid, and unconditional license to fully use, exercise, exploit and commercialize such Proprietary Right in any manner now known or in the future discovered. To the extent such license grant is non-exclusive or is not fully valid, effective or enforceable under mandatory law, You irrevocably agree to grant, and You hereby grant and agree to grant and confirm, to Marketcetera (and anyone else requested by Marketcetera), such rights and permissions (and to impose restriction on third parties) as Marketcetera reasonably requests from time to time in order so that Marketcetera has a legal and business position as close as possible to full and exclusive legal ownership.
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  - e. In order to ensure that Marketcetera will be able to acquire, perfect and use its Proprietary Rights under Section 2.1 and its patent license under Section 2.2, You will:
    - (i) sign any documents to assist Marketcetera in the documentation, perfection and enforcement of its rights, and (ii) provide Marketcetera with support and reasonable access to information for recording, perfecting, securing, defending, and enforcing its rights. You also irrevocably authorize Marketcetera to act and sign on your behalf and take any necessary steps in order to perfect Marketcetera's rights under this Agreement.
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- a. Upon general availability release of a Marketcetera product that includes your Contribution, Marketcetera shall identify You by name in the acknowledgements section of the code notes. Marketcetera's sole liability and your sole remedy for breach of this Section is for Marketcetera to correct the attribution in the next release following the date on which the breach was brought to Marketcetera's attention. Any Contributor who does not want to be identified as a Contributor must notify Marketcetera of that by means of an email to [contributions at marketcetera.com](mailto:contributions@marketcetera.com).
4. Contributor Representations.

With acknowledgement and agreement that Marketcetera and Users of its products will invest significant resources in product development, application development, marketing, and other cost-intensive undertakings in reliance upon your representations in this Agreement, You represent and warrant that:

- a. You are over the age of 18, and You are legally entitled to grant the above assignment and license.
  - b. If your employer(s) has rights to intellectual property that You create that includes your Contributions, You have received permission to make Contributions on behalf of that employer, that your employer has waived such rights for your Contributions to the Project, and that your employer has executed a separate CLA with Marketcetera.
  - c. Each of your Contributions is your original creation and You have not assigned or licensed any related Proprietary Rights or other rights to any third party. You represent that any Contribution submission(s) You make shall clearly and conspicuously include full disclosure and complete details of any third-party rights or license or other restriction (including, but not limited to, related copyright, patents and trademarks) which are associated with any part of your Contribution or with anything accompanying Your Contribution.
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  - f. Entering into and performing this Agreement and submitting a Contribution does not violate, breach or constitute a default under any other agreement to which You or your employer is a party, does not require any consent, approval or waiver from or notice to any third party, and does not violate any law or regulation or third party right.
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6. Disclaimer of Warranties.  
EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 4, NEITHER YOU NOR MARKETCETERA MAKE ANY WARRANTIES OF ANY KIND TO THE OTHER PARTY, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF A CONTRIBUTION'S MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
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- a. Marketcetera is under no obligation to accept any Contribution or include any Contribution in any Project software or documentation.
  - b. For any Contribution from You that Marketcetera accepts and, in its reasonable discretion, decides is of material value to the Project (i.e. feature contributions that significantly extend or improve the functionality of Project software as determined by Marketcetera), Marketcetera may, in its discretion, provide, as additional consideration for your Contribution (which additional consideration is not necessary to support the this Agreement or Marketcetera's rights under this Agreement), any one of the following items:
    - i. a Marketcetera branded shirt
    - ii. a US \$50 donation to the Apache Foundation
    - iii. a tree dedicated to you through Friends of the Urban Forest (FUF) by Marketcetera Inc.
  - c. Do not submit a Contribution if the consideration set forth in this Agreement is not acceptable to you (because, by submitting a Contribution, You are irrevocably accepting the consideration provided under, and becoming bound by, this Agreement). Instead contact Marketcetera at [contributions at marketcetera.com](mailto:contributions@marketcetera.com) with a complete description of the contribution you are prepared to make and a summary of the business terms on which the contribution could be made. From time to time Marketcetera may offer extraordinary compensation for a Contribution that provides extraordinary benefit to the Project.
  - d. For a conclusive determination of whether your Contribution gives rise to such additional consideration You may contact the Project at: [contributions at marketcetera.com](mailto:contributions@marketcetera.com). YOU ACKNOWLEDGE AND AGREE THAT THE CONSIDERATION YOU RECEIVE PURSUANT TO THIS AGREEMENT (WHICH MAY OR MAY NOT INCLUDE ADDITIONAL CONSIDERATION UNDER THIS SECTION 8) IS THE SOLE AND EXCLUSIVE CONSIDERATION YOU WILL EVER RECEIVE IN CONNECTION

WITH YOUR CONTRIBUTION AND YOUR OBLIGATIONS AND RESPONSIBILITIES  
UNDER THIS AGREEMENT.

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At no time hereafter shall You dispute, contest, or aid or assist others in disputing or contesting, either directly or indirectly, Marketcetera's exclusive right, title, and interest in any and all Contributions, including (but not limited to) any and all copyright and other intellectual property rights therein claimed by Marketcetera.

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This Agreement contains the entire agreement between the parties, and supersedes all prior or contemporaneous agreements or understanding, whether written or oral, relating to its subject matter. The terms of this Agreement are binding contractual obligations and not mere guidelines or recitals. The "License Summary" made available in conjunction with this Agreement is provided for informational purposes only, and in the event of a conflict between the License Summary and the terms of this Agreement, the terms of this Agreement shall prevail. This Agreement need not be signed by You to be a valid and binding agreement between You and Marketcetera if a Contribution is made. This Agreement may be terminated by either party upon written notice to the other party, provided that the terms of this Agreement shall remain in full force and effect with respect to any Contribution submitted prior to the termination date of this Agreement (as well as any assignment, license or right hereunder with respect thereto or with respect to any related Proprietary Right). This Agreement may be amended or modified only in writing executed by both parties. If any provision of this Agreement shall be deemed invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected and such provision shall be deemed modified only to the extent necessary to make such provision consistent with applicable law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, U.S.A. (without regard to its principles of conflicts of law). You agree that the terms and conditions of this Agreement are reasonable and necessary for protection of Marketcetera's interest in the Project and the assigned Contributions, and that irreparable injury will result to Marketcetera if You breach any term or condition herein. You agree that Marketcetera may take any necessary action to compel specific performance or enjoin any violation of this Agreement before any court of competent jurisdiction. Marketcetera, as used herein, shall mean Marketcetera Inc, as well as its successors and assigns.

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