

Magnolia Network Agreement

GENERAL TERMS AND CONDITIONS

1. Definitions

Unless otherwise specifically provided, the subsequently listed terms shall have the following meanings throughout this Magnolia Software Network Agreement.

- 1.1. "Agreement" means this Magnolia Software Network Agreement comprising the following documents: (i) "General Terms and Conditions", and (ii) "Special Terms and Conditions", and (iii) as the case may be any "Schedule".
- 1.2. "Supported Stacks" are certain configurations of IT-components defined and described by Magnolia that are operating, or co-operating with, the Licensed Software. Such configurations will be identified by Magnolia upon request of the Licensee. Furthermore Magnolia may announce such Supported Stacks on its official internet platform.
- 1.3. "Effective Date" means the date, when this Agreement comes into force as specified in section 3.
- 1.4. "Expiration Date" means the date, when this Agreement ends as specified in the Special Terms and Conditions.
- 1.5. "Free-Version" means a specific version of the Licensed Software provided by Magnolia publicly free of charge, which comprise limited functionality and/or usage restrictions and for which Magnolia will not provide any supporting services.
- 1.6. "General Terms and Conditions" are establishing the general aspects of the business relationship between the Parties.
- 1.7. "Individual Service Agreement" means the arrangement between the Parties about the provision of Support Services not covered by the standardized content of a Service Level Agreement.
- 1.8. "Individual Support Services" comprise those Support Services that are not covered by a Service Level Agreement and for which the Parties have to conclude an Individual Service Agreement.
- 1.9. "License" means the right of the Licensee to use the Licensed Software according to the provisions of this Agreement.

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- 1.10. "License Fee" is the charge for the grant of the License to the Licensee by Magnolia.
- 1.11. "Licensed Servers" are the permitted number of servers for the usage of the Licensed Software as specified in the Special Terms and Conditions.
- 1.12. "Licensed Software" means the software described in the Special Terms and Conditions that has been developed independently by Magnolia or licensed by it from a third party including any upgrades thereof.
- 1.13. "Licensee" is the company, authority, organization or individual indentified in the Special Terms and Conditions as contractual partner of Magnolia.
- 1.14. "Magnolia" is the company indentified in the Special Terms and Conditions as contractual partner of the Licensee.
- 1.15. „MS-Key" is a computer program enabling the usage of a software that is distributed by Magnolia.
- 1.16. "Party"/"Parties" to this Agreement are individually or together Magnolia and/or the Licensee.
- 1.17. "Points of Contact" (POC) are individuals appointed by the Licensee, which are exclusively responsible for the contacts by Magnolia and any applications of Service Cases by the Licensee.
- 1.18. "Schedule" means any individual accord in addition to the General Terms and Conditions and the Specific Terms and Conditions that might be concluded by the Parties in writing at the conclusion or during the initial or any prolonged term of this Agreement and establishing further individual details of the business relationship between the Parties.
- 1.19. "Service Case" means a request of the Licensee relating to the provision of any advice, support or training services with regard to the operation of the Licensed Software or the remedy of any failure of the Licensed Software.
- 1.20. "Service Level Agreement" ("SLA") means the arrangement between the Parties about the provision of certain standardized Support Services by Magnolia.
- 1.21. "Special Terms and Conditions" are establishing the individual details of the business relationship between the Parties.
- 1.22. "Support Services" means professional services provided by Magnolia with regard to the operation and the remedy of a failure of the Licensed Software as

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generally described in section 8 and determined in the Special Terms and Conditions.

- 1.23. "Support Services Fee" is the charge for the performance of Support Services to the Licensee by Magnolia.
- 1.24. "Trial Version" means a test or demo version of the Licensed Software provided by Magnolia to potential customers that may comprise limited functionality and/or usage restrictions.

2. Scope of Application

- 2.1. This Agreement will apply to any order of the Licensed Software by the Licensee or any factual transfer of it between the Parties, irrespective whether such software is downloaded from the official internet platform of Magnolia by Licensee or transmitted by Magnolia to Licensee electronically or physically upon a data medium.
- 2.2. The General Terms and Conditions and the Special Terms and Conditions and any Schedule constitute the entire content of this Agreement.
- 2.3. The provisions of the General Terms and Conditions shall apply, unless the Parties agree upon individual regulations in writing set out in the Special Terms and Conditions or any Schedule deviating therefrom.
- 2.4. In case of any contradiction between provisions of the General Terms and Conditions and the Special Terms and Conditions or any Schedule, the provisions of the Special Terms and Condition or the Schedule shall prevail.
- 2.5. This Agreement supersedes all prior communications, orders and confirmations of a Party and any existing agreement between the Parties with regard to the Licensed Software.
- 2.6. In case of a prolongation of this Agreement, any supplementary arrangements in force at that time and concluded by the Parties during the initial or any prolonged term of this Agreement shall automatically be prolonged too.

3. Conclusion of this Agreement

- 3.1. This Agreement is concluded at the occurrence of the earlier of the following events:
 - a) Signing of the Special Terms and Conditions by both parties.

- b) Installation of the Licensed Software on any IT-system by or on behalf of the Licensee.
- c) Transmission of a MS-Key for the usage of the Licensed Software by Magnolia upon request by the Licensee.
- d) Download of the Licensed Software from the official internet platform of Magnolia by the Licensee.
- e) Any other action as expressly defined in the Special Terms and Conditions.

3.2. With conclusion of this Agreement it comes into full force.

3.3. If conclusion of this Agreement will occur according to the foregoing provision without signing of the Special Terms and Conditions by both Parties, the content of this Agreement will be determined by the standardized basic services, that have been publicly announced by Magnolia at the time of conclusion.

4. Grant of the License

4.1. Subject to the terms and conditions of this Agreement, Magnolia grants to the Licensee a limited, temporary, non-exclusive, non-transferable, non-sublicensable, revocable, worldwide license to use the Licensed Software only for the Licensee's own internal purposes.

4.2. Licensee accepts the grant of this License as determined according to the terms and conditions of this Agreement.

4.3. Licensee will not exceed the scope of the License granted under this Agreement and observe the restrictions of the License.

5. Scope of the License

5.1. The use of the Licensed Software is limited to internal purposes of the Licensee.

5.2. The utilization of the Licensed Software is limited to the application on Licensed Servers. For each Licensed Server the Licensee may run up to four instances (Web Applications) of the Licensed Software on up to two web-application servers on one physical or virtual server with up to two CPU's, whereby a total amount of four processing cores may operate the Licensed Software.

5.3. The License comprises all updates of the Licensed Software during the term of this Agreement. Notwithstanding the foregoing, Magnolia is under no obligation to elaborate or release any updates of the Licensed Software.

- 5.4. Licensee may make one (1) copy of the Licensed Software solely for backup purposes, provided that such copy of the Licensed Software shall include all applicable copyright, trademark and other proprietary notices of Magnolia.
- 5.5. Licensee shall maintain accurate records necessary to verify the number of licensed Servers and of the produced copies of the Licensed Software. Upon Magnolia's written request Licensee shall provide such records within ten (10) days.

6. License Restrictions

- 6.1. The Licensee will not use the Licensed Software in connection with any other software of Magnolia that is not properly licensed by the Licensee too. Furthermore, the Licensee will not use the Licensed Software with any copy, Trial or Free Version of the Licensed Software. Thereby the Licensee will ensure that
 - a) any transfer of data between the Licensed Software and any other software of Magnolia shall only be performed, if the latter one is properly licensed by the Licensee;
 - b) any transfer of data between the Licensed Software and a copy, Trial or Free Version of the Licensed Software shall not be performed.
- 6.2. Licensee shall not directly or indirectly modify, translate, decompile, disassemble or reverse engineer any portion of the Licensed Software in any form whatsoever, or otherwise attempt to derive source code or create derivative works therefrom, and shall not mandate or authorize any third party to do any of the above actions. Any modifications of the Licensed Software is only permitted in full an strict compliance with all of the following mentioned requirements:
 - a) Licensee may modify the Licensed Software for any adaptation to the internal IT-system or the intended use, if such modification serves, directly or indirectly, soley internal purposes and not any distribution of the modified Licensed Software.
 - b) Licensee shall implement prominent notices about the modification of the Licensed Software informing about content and date of the alterations.
 - c) Licensee may mandate third parties to perform actions according to the foregoing subsections a) and b), if such third parties are subject to binding confidentiality, non-disclosure, ownership and intellectual property obligations at least as restrictive as those set forth herein for the Licensee already prior to the performance of their services.

- 6.3. Licensee shall not remove or alter any copyright, trademark or proprietary notice in the Licensed Software. Licensee shall be responsible for the existence of such notices with regard to any copy created in accordance with this Agreement.
- 6.4. Licensee shall neither use the Licensed Software on behalf of, or for the benefit of, any third party nor allow any third party to use the Licensed Software.
- 6.5. Licensee shall not license or sublicense, promote, offer for sale, lease, loan or rent, or distribute or transfer in any way, or otherwise disseminate the Licensed Software, irrespective whether such a commercial usage is based on the original or any modified version of the Licensed Software.
- 6.6. Subject to the exclusion set forth in section 6.2, Licensee shall not integrate the Licensed Software into software products or computer software programs of its own or of third parties.
- 6.7. Licensee shall not use the Licensed Software, or perform or allow the transfer, export or re-export of the Licensed Software in violation of any applicable export control laws or regulations administered by any governmental authority.
- 6.8. The Licensed Software is not designed, manufactured or intended for the use as online control equipment in hazardous environments requiring redundant failsafe performance, in particular in respect of, but not limited to, the operation of aircraft navigation or communication systems, air traffic control, of direct life supporting machines, of weapon systems, of nuclear, chemical or biological manufacturing facilities, or of any other production site in which a failure of the Licensed Software could lead directly or indirectly to death, personal injury or severe physical or environmental damage. Therefore the use of the Licensed Software for such risk sectors is expressly excluded. If the Licensee could not definitively rule out that the intended use has to be qualified as a risk sector, a qualification in writing by Magnolia has to be requested, expressly confirming the harmlessness of the Licensed Software's usage prior to its implementation.

7. Delivery of the Licensed Software

- 7.1. Magnolia will deliver the Licensed Software to Licensee immediately after conclusion of this Agreement, unless conclusion has not already been performed according to section 3 by way of installation or download of the Licensed Software by the Licensee.
- 7.2. Delivery of the Licensed Software may be performed by one of the following actions in the sole discretion of Magnolia:
 - a) electronic transmission of the Licensed Software to a Point of Contact;

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- b) physical transfer of a data-medium containing the Licensed Software from Magnolia to the Licensee;
 - c) download of the Licensed Software from the official internet platform of Magnolia by the Licensee as enabled or instructed by Magnolia.
- 7.3. Delivery of the Licensed Software will include the prompt provision of a MS-Key, if necessary to operate the Licensed Software properly.
- 7.4. Delivery shall be deemed to have been made when the Licensed Software or any necessary MS-Key enters into the possession of the Licensee.
- 7.5. Licensee shall provide Magnolia with a confirmation in writing about the receipt of the Licensed Software and/or a necessary MS-Key within twenty-four (24) hours of transmission or download.
- 7.6. Magnolia may evidence receipt of the Licensed Software and/or a necessary MS-Key by Licensee also with independent carrier's records or verification of the download.

8. Support Services

- 8.1. Magnolia provides professional services comprising advice and assistance with regard to
- a) the installation and operation of the Licensed Software;
 - b) the development of adaptations and extensions to the Licensed Software and their implementation and integration;
 - c) the development of IT architecture and structure for any usage of the Licensed Software;
 - d) instruction and training of Licensee's personnel in respect of the usage of the Licensed Software.
- 8.2. Under this Agreement Magnolia will provide such Support Services as specified in the applicable Service Level Agreement or any Individual Service Agreement which shall be attached as Schedule to this Agreement.
- 8.3. Generally, the scope of Support Services as usually requested by customers is defined under different Service Level Agreements with standardized contents. The following aspects will apply to all such Service Level Agreements, unless

otherwise expressly agreed in writing by the Parties in the Special Terms and Conditions.

- a) The Support Services will be rendered online.
- b) The Support Services will be provided during a defined "Service Time", which is such daily period within the Points of Contact could contact Magnolia.
- c) Licensee shall submit Service Cases only through a Point of Contact.
- d) Service Cases have to be submitted electronically to the Support Service address specified in the Special Terms and Conditions.
- e) Magnolia will check the subject matter of the Service Case and the scope of the applicable Service Level Agreement and reject the Service Case, if it is not governed by the scope of the applicable Service Level Agreement. In such a case the Licensee has to request Individual Support Services and agree with Magnolia about the provision of such services.
- f) Magnolia will react within a defined "Response Time", which is the period between the proper report of the Service Case by a Point of Contact until the point in time when a representative of Magnolia actively starts working on the Service Case.
- g) If the Service Level Agreement stipulates unlimited hours of support, the respective Support Services will be provided only with regard to the installation and operation of the Licensed Software running on a Supported Stack. Any other Support Services are not covered by the unlimited hours of support.
- h) "Resolution Time" is the time between the start of the Response Time and the remedy of the Service Case. A certain Resolution Time is neither specified nor guaranteed by the Service Level Agreement, because any remedy depends on the specific circumstances of each Service Case.
- i) In case of any failure of the Licensed Software the following procedure shall apply:
 - (1) The report of a failure has to comprise the following descriptions: (i) a description of the different operational steps that have been performed raising the Service case; (ii) a description of the operation(s) that has/have not been performed properly by the Licensed Software; (iii) a description of such operation's factual result; (iv) a de-

scription of the result expected by the Licensee; (v) a description of any modification according to section 6.2 performed by the Licensee that has possibly become active in connection with the respective operation of the Licensed Software.

- (2) Magnolia will reproduce the Service Case with in-house default installation using own Licensed Software running on a Supported Stock. A Service Case will only be accepted, when it could be reproduced by Magnolia in-house with such installation.
 - (3) Bug-fixes or workarounds will be made available via the code repository or via binary package at the discretion of Magnolia.
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- j) Each Party has to bear its own expenses of any kind that are spent in connection with the provision or the receipt of Support Services.
 - k) Magnolia may assign third parties with the provision of the Support Services.
 - l) Magnolia may change the procedure for the reporting of Service Cases in its sole discretion. Magnolia will inform the Points of Contact accordingly. Furthermore, Magnolia may publish such procedures only on its official internet platform and give notice to the Points of Contact accordingly.
- 8.4. If the Licensee requests the provision of Individual Support Services, the Parties have to agree in writing on the conclusion of a respective Individual Service Agreement, which determines bindingly at least the exact scope of the Support Services and the Support Services Fee.

9. License Fee

- 9.1. The Licensee shall pay a License Fee as consideration for the use of the Licensed Software.
- 9.2. The License Fee to be paid by the Licensee is specified in the Special Terms and Conditions.
- 9.3. If this Agreement will be prolonged, the License Fee will be calculated according to the then applicable royalties charged by Magnolia for the Licensed Software with regard to the number of servers installed, unless the Parties agree otherwise in writing.

- 9.4. If Licensee licenses further servers under this Agreement during the initial or a prolonged term of it, this Agreement will be entirely prolonged in respect of all Licensed Servers for a prolongation period of twelve (12) months. The License Fee will be calculated according to the then applicable royalties charged by Magnolia for the Licensed Software and the number of servers installed.
- 9.5. The License Fee shall be due with the conclusion of this Agreement or any agreement about additional Licenses and with any prolongation of this Agreement.
- 9.6. If Licensee uses the Licensed Software beyond the scope of the License as defined in section 5.2, Magnolia will invoice such additional usage according to the then applicable royalties charged by Magnolia for the Licensed Software and the respective use. Such License Fee shall be due immediately.

10. Support Services Fee

- 10.1. The Licensee shall pay a charge as Support Services Fee for the provision of the professional services by Magnolia.
- 10.2. The Support Services Fee for a Service Level Agreement as determined by the Parties is specified in the Special Terms and Conditions.
- 10.3. If the Licensee requests a change in the application of the relevant Service Level Agreement, the Support Services Fee will be calculated according to the then applicable prices charged by Magnolia for the respective type of Service Level.
- 10.4. If Licensee requests the provision of Individual Support Services the Parties have to agree in writing on the Support Services Fee for such professional services.
- 10.5. The Support Services Fee shall be due with the conclusion of this Agreement or any Individual Service Agreement and with any prolongation of this Agreement.

11. Payment of the License Fee and the Support Services Fee

- 11.1. The Licensee shall pay the License Fee and/or the Support Services Fee within ten (10) days from the date of a valid and accurate invoice issued by Magnolia upon maturity of the respective License Fee or Support Services Fee.
- 11.2. Any License Fee or Support Services Fees specified in this Agreement or any promotional documents, in particular any description on the official internet platform of Magnolia, do not include sales, use, value-added tax or any other kind of taxes, custom duties or similar taxes and charges that may be assessed directly

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or indirectly by governmental authorities of any jurisdiction with regard to the transfer of the Licensed Software from Magnolia to the Licensee and/or the usage of it by the Licensee and/or the provision of Support Services by Magnolia.

12. Warranty for Licensed Software

- 12.1. Subject to section 12.2 and 12.3, Magnolia warrants that the Licensed Software could be operated properly in connection with a Supported Stack.
- 12.2. Magnolia provides the Licensed Software “as is” and without any further warranty, representation or guarantee of any kind. In particular, Magnolia does not warrant, represent or guarantee, that the Licensed Software may be used for a particular purpose, that it is correct or complete, or that use of the Licensed Software will be uninterrupted or error-free, or that in case of a defect such defect will be correctable.
- 12.3. Furthermore, Magnolia specifically disclaims any and all warranties, representations or conditions, irrespective whether express, implied, statutory or otherwise, including without limitation any implied warranty or condition of merchantability, non-infringement or fitness for a particular purpose, to the fullest extent permitted by law.
- 12.4. In any case a defect of the Licensed Software has to be reported to Magnolia by the Licensee in writing within seven (7) days after Licensee has taken notice or could have taken notice of its occurrence in order to claim for any remedy.
- 12.5. In case that the Licensee could assert legally effective a claim according to the foregoing provisions of this section 12, Magnolia shall, at its own discretion, either make reasonable efforts to repair or replace the Licensed Software or to refund the License Fees paid by the Licensee for the period within the Licensed Software could not be operated properly.
- 12.6. If Licensee has used the Licensed Software in a manner inconsistent with the provisions of this Agreement, the assertion of any remedy with regard to a defect of the Licensed Software by the Licensee shall be excluded.
- 12.7. In any case Magnolia shall not be obliged to perform any remedies, if (i) the Service Case has not been reported and described by the Licensee in a manner consistent with the provisions of this Agreement, or (ii) the Service Case could not be reproduced with standardized Licensed Software not adapted or customized by the Licensee and operated in connection with a Supported Stack.

13. Warranty for Support Services

- 13.1. Subject to section 13.2, Magnolia warrants that any Support Services provided under this Agreement will be performed in a workmanlike and professional manner consistent with normal industry practices.
- 13.2. Magnolia disclaims any and all other warranties, representations or conditions, irrespective whether express, implied, statutory or otherwise, including without limitation any implied warranty or condition, to the fullest extent permitted by law.
- 13.3. In any case a deficiency of Support Services has to be reported to Magnolia by Licensee in writing within seven (7) days after Licensee has taken notice or could have taken notice of its occurrence in order to claim for any remedy.
- 13.4. In case that the Licensee could assert legally effective a warranty according to the foregoing provisions, Magnolia shall re-perform the respective Support Services. If such re-performance fails, Licensee is entitled to recover the Support Services Fee paid.
- 13.5. In any case Magnolia shall not be obliged to perform any remedies, if the Service Case has not been reported and described by the Licensee in a manner consistent with the provisions of this Agreement.

14. Liability

- 14.1. Subject to section 12 "Warranty for Licensed Software", section 13 "Warranty for Support Services" and section 15 "Intellectual Property Indemnification", it is mutually acknowledged and expressly agreed that the liability of either Party shall be limited to the fullest extent permitted by the applicable law. In particular, but not limited to, any liability for any indirect, incidental, consequential or special damage shall be excluded as permitted.
- 14.2. In any case the total and aggregate liability of a Party shall not exceed the total amount of the License Fees and the Support Services Fees paid by Licensee for the initial or prolonged term of this Agreement within the damages occur.
- 14.3. Such limitation of liability shall not apply for any deliberate or gross negligent actions or omissions of a Party.
- 14.4. In case of a Force Majeure event the liability of a suffering Party is excluded according to section 16.

15. Intellectual Property Indemnification

- 15.1. Magnolia will, at its own expense, defend and hold harmless Licensee against any claim or action instituted against Licensee that the Licensed Software used in accordance with the terms of this Agreement infringe any patent, copyright, trade secret, or other proprietary right of a third party, provided that Magnolia is
- a) notified promptly in writing of any such claim or action related thereto; and
 - b) given the right to control and direct the investigation, preparation, defense and settlement of the claim or action; and
 - c) given Licensee's assistance and full cooperation for the defense of the same.
- 15.2. Magnolia agrees to pay any final award of damages, including any awarded costs and attorneys' fees, assessed against Licensee resulting from such action, or any payment due to a settlement agreed to by Magnolia in writing prior to conclusion of the settlement. Magnolia will not be responsible for any settlement it had not approved. Furthermore, Magnolia will pay Licensee's reasonable cost for assistance and full cooperation in the defense of such a claim or action, which shall not include fees for an attorney Licensee has chosen in addition to the one(s) provided by Magnolia.
- 15.3. Following notice of a claim or any facts which may give rise to a claim, Magnolia may, in its sole discretion and at its option,
- a) procure for Licensee the right to use the Licensed Software; or
 - b) replace the Licensed Software by a software that could rightfully be used by the Licensee; or
 - c) modify the Licensed Software to make it non-infringing.
 - d) If Magnolia determines that it is not commercially reasonable to perform any of the foregoing alternatives, Magnolia shall have the option to terminate this Agreement and refund the License Fees and the Support Services Fees paid by Licensee, less depreciation for the period of its factual use assuming straight line depreciation over the term of this Agreement.
- 15.4. In no event Magnolia will have any obligations under this section 15 or any liability for any third party's claim or action, if the claim or action is caused by, or results from:

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- a) Licensee's combination or use of the Licensed Software with other software or services, products or data, if such claim or action would have been avoided by an omission of the combination or an exclusive use of the Licensed Software; or
- b) modifications of the Licensed Software by anyone other than Magnolia if such claim or action would have been avoided by use of the unmodified Licensed Software; or
- c) Licensee's continued infringing activity after being notified by Magnolia thereof or after being provided an adapted version of the Licensed Software that would have avoided the alleged infringement; or
- d) Licensee's use of the Licensed Software in a manner not strictly in accordance with the provisions of this Agreement; or
- e) Magnolia's modification of the Licensed Software in compliance with Licensee's specifications; or
- f) use of an other than Magnolia's most current release of the Licensed Software, if the claim or action would have been avoided by use of the most current release, provided Licensee had been given an opportunity to use such most current release for no additional fee.

15.5. In case of the occurrence of one of the constellations set forth in section 15.4, Licensee will defend and hold harmless Magnolia or any third party supplier of Magnolia for any third party claim in the same manner as provided for in this Agreement as indemnification by Magnolia.

16. Force Majeure

- 16.1. Neither Party shall be under any liability to the other Party for any direct, indirect, incidental, consequential or special damages, to the extent that such damages are wholly or partly caused, whether directly or indirectly, by circumstances beyond its reasonable control ("Force Majeure"). As Force Majeure events have to be qualified any Acts of God such as fire, explosion, flood and storm, or events such as war, civil disturbance, riots, governmental action, general strike, lockout or other labor dispute, embargo, import or export restrictions, general inability to procure or shortage of raw materials, energy or transport capacities.
- 16.2. In case of a Force Majeure event the suffering Party shall as soon as possible give the other Party notice in writing of the circumstances and the expected duration of the hindrance with the performance of the respective obligations.

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- 16.3. During a Force Majeure event of an affected Party the other Party may similarly suspend the performance of its obligations, until such time the affected Party resumes the performance of its obligations.
- 16.4. In the event the delay or non-performance of the affected Party continues for a period of more than sixty (60) days, either Party shall have the right to terminate this Agreement with immediate effect without liability.

17. Ownership and Intellectual Property

- 17.1. Licensee acknowledges and agrees that all title, interest, ownership rights and intellectual property rights of whatever nature including, but without limitation, all copyrights, patents, design rights, trademarks and database rights in and to the Licensed Software are and shall remain the sole and exclusive property of Magnolia and/or its third party suppliers.
- 17.2. Licensee shall acquire no title, right or interest in the Licensed Software other than the License specifically granted herein by Magnolia and title to any physical media by which the Licensed Software is delivered.
- 17.3. Magnolia will retain all rights in and to any copy, translation, modification, enhancement, improvement, development, adaptation of, or derivative work from, the Licensed Software and any work performed by Magnolia under this Agreement.
- 17.4. After modification of the Licensed Software by the Licensee according to section 6.2 the Licensee may submit the modified software to Magnolia under the terms of the Magnolia Contributor License Agreement.
- 17.5. Licensee shall not apply, and shall not support directly or indirectly the application by any third party, to register any trademark, trade name, word, logo, mark or combination of words, logos or marks ("Contractual Marks") held or used by Magnolia by anywhere in the world. If any such application for registration is or has been filed, which, in the reasonable opinion of Magnolia, is confusingly similar, deceptive or misleading with respect to, or dilutes or in any way damages any of the Contractual Marks, Licensee shall, at Magnolia's request, abandon all use of such objects and any registration or application for registration thereof. In addition, Licensee shall reimburse Magnolia for all reasonable cost and expenses of any opposition or legal proceeding, including reasonable attorney's fees, spend by Magnolia or its authorized representatives on account of such issues.
- 17.6. Licensee shall not apply, and shall not support directly or indirectly the application by any third party, to register any encrypted or encoded portion of the Li-

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censed Software in any form whatsoever. If any such application for registration is or has been filed by or on behalf of the Licensee in any country, Licensee shall, at Magnolia's request and discretion,

- a) transfer without compensation any rights resulting from the registration to Magnolia or abandon application for registration thereof; and
- b) reimburse Magnolia for all reasonable cost and expenses of any opposition or legal proceeding, including reasonable attorney's fees, spent by Magnolia or its authorized representatives on account of such issues.

17.7. During the term of this Agreement, Licensee grants to Magnolia a limited, temporary, non-transferable, non-exclusive license to reproduce and display Licensee's logos, trademarks, trade names and similar identifying marks on the official internet platform, in press releases and in other marketing materials of Magnolia as a reference for users of the Licensed Software.

18. Confidentiality

18.1. The Parties expressly agree that the content of this Agreement, the code of the Licensed Software and any further data and know-how, of which the recipient Party becomes aware of during the performance of this Agreement directly or indirectly, in writing, orally, or by inspection of tangible objects are confidential ("Confidential Information"), unless the respective information (i) was or becomes generally available to the public, other than as a result of disclosure in violation of the terms of this Agreement; or (ii) is rightfully obtained by the recipient Party through authorized disclosure by a third party; or (iii) was in the recipient Party's possession, without an obligation of confidentiality, prior to receipt from the disclosing party as evidenced by the records of the recipient Party prior to disclosure.

18.2. Each recipient Party shall

- a) use the disclosing Party's Confidential Information only for the purpose of, and only to the extent necessary for the performance of any of its obligations under, this Agreement;
- b) maintain the disclosing Party's Confidential Information in confidence and not disclose or make available it to third parties, (i) except to those of its representatives, who have a need to know such information for purposes of this Agreement and who are subject to binding confidentiality and non-disclosure obligations at least as restrictive as those set forth herein prior to the disclosure of the Confidential Information to them, and (ii) unless applicable mandatory rules of law require a disclosure, provided that rea-

sonable measures are taken to limit such disclosures and to obtain confidential treatment or a protective order;

- c) use all reasonable care to protect the disclosing Party's Confidential Information and to prevent any dissemination of such information to the same extent that it protects its own Confidential Information of a like nature, which in no event will be less than the safeguards a reasonably prudent business person would exercise in similar circumstances;
 - d) to immediately notify the disclosing Party, if it becomes aware or ought to be aware of any unauthorized use or disclosure of the Confidential Information.
- 18.3. Upon written request of the disclosing Party or in the event of termination/expiration of this Agreement the recipient Party shall promptly destroy or, if expressly requested to do so by the disclosing Party, return all written, electronically or otherwise stored documents, files and copies thereof containing Confidential Information, including memoranda, notes and other writings whatsoever prepared by the recipient Party and based on or reflecting Confidential Information. Notwithstanding the foregoing, the recipient Party is released from its obligation to return or destroy all Confidential Information to the extent that it is obliged to store the respective information due to mandatory legal or accounting requirements.
- 18.4. The confidentiality obligation shall remain in full force and effect after expiration/termination of this Agreement as long as the information is still not publicly known or accessible.

19. Points of Contact

- 19.1. Licensee will appoint at least one specific individual person, or any further individuals as agreed by the Parties, as Points of Contact (POC).
- 19.2. The Points of Contact are the responsible addressees, who will be contacted by Magnolia or may contact Magnolia on behalf of Licensee with regard to the delivery of the Licensed Software and application and execution of Service Cases.
- 19.3. Information may be transmitted to Points of Contact by mail, fax or email.

20. Term and Termination

- 20.1. The initial term of this Agreement starts at the Effective Date and ends generally on the Expiration Date. If the Special Terms or Conditions does not provide an

Expiration Date or have not been signed by both Parties, the term of this Agreement shall be one (1) year.

- 20.2. This Agreement shall be prolonged for a prolongation period of twelve (12) months, if none of the Parties receives a termination notice in writing by the other Party at the latest thirty (30) days before the Expiration Date or the expiration of this Agreement respectively.
- 20.3. In case of a material breach of a Party, the other Party may terminate this Agreement immediately without termination notice.

21. Effects of a Termination

- 21.1. Upon termination of this Agreement the following effects shall occur:
- a) The License and any other rights granted to the Licensee under this Agreement will terminate automatically.
 - b) Licensee shall immediately cease any further use of the Licensed Software and must, at its own expense, delete the Licensed Software from its IT-systems and destroy any copy thereof.
 - c) During one year after termination, Licensee shall not use any trial or free version of Magnolia Software for the application that Licensed Software was used for under this Agreement. The continuative use of trial or free Magnolia Software shall automatically prolong this agreement for one year and implicate payment of license fee as defined in the Special Terms and Conditions of this Agreement.
 - d) Licensee will certify in writing the deletion of the Licensed Software and the destruction of any copies thereof upon written request by Magnolia.
 - e) Magnolia shall cease to use name, logos, trademarks and marks of the Licensee in its promotional material.
- 21.2. License Fees and Support Services Fees paid by the Licensee for the initial or any prolonged term of this Agreement will only be refunded, if the Licensee has validly terminated this Agreement due to a material breach of Magnolia.
- 21.3. Termination of this Agreement shall be without prejudice to the Parties' accrued rights hereunder.

- 21.4. The provisions of this Agreement that by sense or content must remain in force after termination to achieve the intended purpose, shall survive termination for any reason.

22. Miscellaneous

- 22.1. Any notice or other communication required or permitted to be given under, or in connection with, this Agreement shall be in the English language and in writing signed by or on behalf of the person giving it and served by facsimile or e-mail, followed up by a postal or recognized courier service as prepaid express registered document with recorded delivery/return receipt, unless the sender is not receiving a valid, digitally signed acknowledgment of receipt from the addressee, at addresses indicated in the Special Terms and Conditions or as otherwise notified from time to time. Any notice shall be deemed to have been duly given as of the date of serving it, if a valid delivery/return receipt will proof delivery to the addressee within a reasonable period of time after this date unless otherwise expressly provided in this Agreement.
- 22.2. Neither Party has entered into this Agreement in reliance upon any express or implied representation, warranty, promise, inducement or undertaking of the other Party, which is not expressly set out or referred to in this Agreement.
- 22.3. Neither Party may, or may purport to, assign, transfer, charge or otherwise deal with all or any of its rights or obligations under this Agreement in whole or in part, nor grant, declare, create or dispose of any right or interest in it without the prior written consent of the other Party.
- 22.4. Any amendment of this Agreement is valid only if it is in writing and signed by or on behalf of each Party hereto. The term "amendment" shall include any supplement, deletion or replacement or other modification of the wording.
- 22.5. No delay or failure to exercise or enforce any right or remedy granted hereunder shall operate as a waiver thereof, nor in any way prejudice a Party's rights hereunder. No waiver of any breach shall operate as a waiver of any separate or subsequent breach.
- 22.6. If any provision of this Agreement shall be or be determined to be or becomes invalid, illegal or unenforceable, such provision shall be given no effect but without invalidating any of the remaining regulations, which shall remain valid, binding and enforceable. The Parties agree to substitute such a provision by a mutually agreeable, valid and enforceable regulation the effect of which is as close as possible to such provision maintaining the economic purposes and intentions of the Parties. The same shall apply in case of an omission of this Agreement.

23. Governing Law and Jurisdiction

23.1. This Agreement shall be governed by, and construed in accordance with, the Laws of the jurisdiction applicable at the official domicile of Magnolia, to the exclusion of any conflict of laws provisions. Additionally, the application of the UN Convention on the Sale of Goods is expressly excluded.

23.2. Any dispute arising under, or in connection with, this Agreement shall be submitted to the exclusive jurisdiction of the competent court at the official domicile of Magnolia.
