



Magnolia Network Agreement

GENERAL TERMS AND CONDITIONS

1. Definitions

- 1.1. "Agreement" means this License Agreement comprising (i) this document "General Terms and Conditions", establishing the general details of the relationship between the Parties; and (ii) the document "Special Terms and Conditions", establishing the individual details of the relationship between the Parties; and (iii) any Schedule, developed by the Parties as the case may be and establishing further individual details of the relationship between the Parties.
- 1.2. "Certified Stacks" are IT-configurations detailed and defined by Magnolia. Such configurations will be identified by Magnolia upon request of the Licensee. Furthermore Magnolia may announce such Certified Stacks on its official internet platform.
- 1.3. "Effective Date" means the date, when this Agreement comes into full force as specified in the Special Terms and Conditions.
- 1.4. "Expiration Date" means the date, when this Agreement ends as specified in the Special Terms and Conditions.
- 1.5. "License" means the right of the Licensee to use the Licensed Software according to the provisions of this Agreement.
- 1.6. "Licensee" is the company, authority, individual or any other person indicated in the Special Terms and Conditions.
- 1.7. "License Fee" is the charge for the grant of the License by Magnolia.
- 1.8. "Licensed Servers" are the number of servers as specified in the Special Terms and Conditions.
- 1.9. "Licensed Software" means the software developed and owned by Magnolia and delivered under this Agreement, including any upgrades thereof, as described in the Special Terms and Conditions.
- 1.10. "Magnolia" is the company indicated in the Special Terms and Conditions.
- 1.11. "Party"/"Parties" to this Agreement are individually or together Magnolia and/or the Licensee.



- 1.12. "Points of Contact" (POC) are individuals as defined in section 19.
- 1.13. "Schedule" means any individual appendix as may be executed by the Parties at the conclusion of this Agreement or from time to time during the initial or any prolonged term of this Agreement.
- 1.14. "Service Level Agreement" means the arrangement determined by the Parties in the Special Terms and Conditions or any Schedule with regard to the Support Services provided by Magnolia.
- 1.15. "Special Terms and Conditions" is a Schedule comprising the individual details of this Agreement.
- 1.16. "Support Services" means professional services provided by Magnolia with regard to the Licensed Software as described in section 8 and defined in the Special Terms and Conditions.
- 1.17. "Support Services Fee" is the charge of the performance of professional services by Magnolia.
- 1.18. "Trial Version" means a demo version of the Licensed Software provided by Magnolia that may comprise limited functionality and usage restrictions.

2. **Scope of Application**

- 2.1. This Agreement will apply to all orders or factual transfers of Licensed Software between the Parties, irrespective whether such software is downloaded from the official internet platform of Magnolia by Licensee or transmitted by Magnolia to Licensee.
- 2.2. These General Terms and Conditions and any Schedule, in particular but not limited to the Special Terms and Conditions, 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 other Schedule.
- 2.4. In case of any contradiction between the General Terms and Conditions and the Special Terms and Conditions or any other Schedule, the provision of the Special Terms and Condition or the Schedule shall prevail.
- 2.5. This Agreement supersedes all prior communications, orders, confirmations of a Party and any existing license agreement between the Parties with regard to the Licensed Software.

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3. **Conclusion of this Agreement**

3.1. This Agreement is concluded at the occurrence of the earlier of the following events:

- a) when it is signed by both parties;
- b) when the Licensed Software has been installed or used by or on behalf of Licensee on any IT-system; or
- c) by a download of the software from the official internet platform of Magnolia by the Licensee as enabled by Magnolia; or
- d) as otherwise expressly defined in the Special Terms and Conditions.

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

4. **Grant of the License**

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

4.2. Licensee accepts the grant of this License subject to the terms and conditions of this Agreement.

5. **Scope of the License**

5.1. The use of the License is limited to the 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 with up to a total of four processing cores.

5.2. Subject to the license restrictions established by this Agreement, Licensee may adapt the Licensed Software solely for internal purposes and/or to obtain interoperability with other software used by Licensee.

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 or archival purposes, provided that such copy of the Licensed Software shall include all applicable copyright, trademark and other proprietary notices of Magnolia.

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5.5. Licensee shall maintain accurate records necessary to verify the number of licensed Servers and 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. In addition, the Licensee will not use the Licensed Software with copies of the Licensed Software, exceeding the scope of the License, or a Trial Version or any other demo, free or community version of it. Thereby the Licensee will ensure that any transfer of data between the Licensed Software and any other software of Magnolia, including, but not limited to, copies, Trial Versions and other demo, free or community versions, shall only be performed, if the latter one is properly licensed by the Licensee.

6.2. Licensee shall not directly or indirectly modify, adapt, 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 authorize or allow any third party to do any of the above, except under these circumstances:

- a) Licensee may modify the Licensed Software in source and binary forms for internal purposes only with regard to any adaptation to the internal IT-system or the intended use.
- b) Licensee shall implement prominent notices stating the adaptation of the Licensed Software and setting forth the nature and the date of the adaptation.
- c) Licensee may mandate third parties to perform actions according to 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 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 conservation of the same on all copies received under this Agreement and on any backup copy created in accordance with this Agreement.

6.4. Licensee shall not use the Licensed Software on behalf of, or for the benefit of, any third party and shall not allow any third party to use the Licensed Software.



- 6.5. Licensee shall not license or sublicense, market, promote, offer or expose for sale, lease, loan, rent, distribute or transfer usage of the Licensed Software in any way or otherwise disseminate the Licensed Software.
- 6.6. 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 exceed the scope of the License granted under this Agreement, in particular, but not limited to, by creating more than the allowed number of installations or instances.
- 6.8. 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.
- 6.9. The Licensed Software is not designed, manufactured or intended for use as on-line control equipment in hazardous environments requiring fail-safe performance, in particular in, but not limited to, the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life supporting machines, weapon systems, chemical or biological manufacturing facilities, or in any other production sites 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 high-risk purposes is expressly excluded. If the Licensee could not rule out that the intended use has to be qualified as a high-risk purpose, a qualification in writing by Magnolia has to be requested, expressly confirming the harmlessness of the Licensed Software's usage prior to its use.

7. **Delivery of the Licensed Software**

- 7.1. Magnolia will deliver the Licensed Software to Licensee after conclusion of this Agreement.
- 7.2. Delivery of the Licensed Software may be performed in the sole discretion of Magnolia either
 - a) by an electronic transmission of the software to a Point of Contact;
 - b) or a physical transfer of a media containing the software from Magnolia to the Licensee; or
 - c) by a download of the software from the official internet platform of Magnolia by the Licensee as enabled by Magnolia.



- 7.3. Delivery of the Licensed Software will include the provision of any software key necessary to operate the software properly.
- 7.4. Delivery shall be deemed to have been made when the Licensed Software enters into Licensee's possession.
- 7.5. Licensee shall provide Magnolia with a confirmation of receipt of the Licensed Software in writing within twenty-four (24) hours of transmission or download.
- 7.6. Magnolia may evidence receipt of the Licensed Software by Licensee 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 the installation and operation of the Licensed Software as well as the development of architecture and extensions, implementation and integration, and training of usage as requested by the Licensee.
- 8.2. The scope of the Support Services is defined under different Service Level Agreements. Generally, the following aspects will apply to all different Service Level Agreements.
 - a) The professional services will be rendered online, unless otherwise expressly agreed in writing between the Parties.
 - b) The professional services will be provided during a defined "Service Time", which is the daily period within Magnolia could be contacted by the Licensee.
 - c) Licensee shall submit service issues only through a Point of Contact.
 - d) Service issues have to be submitted electronically to the support service address specified in the Special Terms and Conditions.
 - e) Licensee shall report service issues according to the following description requirements: (i) a description of the different steps, that are performed by the Licensee raising the service issue; (ii) a description of the operation that might not be performed properly; (iii) a description of such operation's factual result; (iv) a description of the result expected by the Licensee; (v) a description of any adaptation according to section 6.2 a) performed by the Licensee that becomes active in connection with the respective operation of the Licensed Software.



- f) Magnolia will react within a defined "Response Time", which is the time between the proper report of the service issue by a Point of Contact until a representative of Magnolia actively starts working on the solution of the service issue.
- g) Magnolia will reproduce the service issue with in-house default installation using own Licensed Software. Service issues will only be accepted, when they can be reproduced in-house by Magnolia.
- h) Magnolia will check the service issue's subject matter and the scope of the Licensee's service status and provide an acceptance or a rejection of the service issue.
- i) Unlimited hours of support will be provided only with regard to functional issues affecting the installation and operation of the Licensed Software running on a Certified Stack. Any other areas of advice and assistance, including, but not limited to, customizing, developing extensions, integration, architecture as well as instruction and training in how-to-use the Licensed Software, are not covered by the unlimited hours of support, but are qualified as individual Support Services.
- j) Bug-fixes or workarounds will be made available via the code repository or via binary package at the discretion of Magnolia.
- k) "Resolution Time" is the time between the start of the Response Time and the remedy of the service issue. A certain Resolution time is not specified and guaranteed by the Service Level Agreement, as any remedy depends on the specific circumstances of each issue.
- l) 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, unless otherwise expressly agreed in writing.
- m) Magnolia may assign third parties with the provision of the Support Services.
- n) Magnolia may change the procedure for the reporting of service issues in its sole discretion. Magnolia will inform the Points of Contact accordingly. Information may be transmitted to Licensee by mail, fax or email. In addition, Magnolia may publish such procedures only on its official internet platform and give notice to the Licensee accordingly.

8.3. Under this Agreement Magnolia will provide such Support Services as specified in the Special Terms and Conditions or any Schedule.



8.4. If Licensee requests the provision of additional, individual or other Support Services the Parties have to agree in writing on the conclusion of another Service Level Agreement, which shall be attached as Schedule to this Agreement.

9. **License Fee**

9.1. The Licensee shall pay royalties as "License Fee" for the use of the Licensed Software.

9.2. The License Fee agreed by the Parties 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 this type of software and the number of servers installed, unless the Parties agree otherwise in writing.

9.4. If Licensee wants to license 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 this type of 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 5.1, Magnolia will invoice such additional usage according to the then applicable royalties charged by Magnolia for this type of 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 Service Fee for the provision of the professional services by Magnolia.

10.2. The Support Services Fee for the Service Level Agreement as determined by the Parties is specified in the Special Terms and Conditions.

10.3. If the Licensee requests additional Support Services during the initial term or a prolongation of this Agreement, the Support Services Fee for such additional professional services will be calculated according to the then applicable services fee charged by Magnolia for this type of Service Level.

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10.4. If Licensee requests the provision of individual or other 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 agreement about additional, individual or other Support Services 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 the 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 or indirectly by governmental authorities of any jurisdiction with regard to the transfer of the Licensed Software from Magnolia to the Licensee and the usage of it by the Licensee and/or the provision of Support Services by Magnolia.

12. Warranty for Licensed Software

12.1. Magnolia warrants that the Licensed Software will be operable with regard to Certified Stacks.

12.2. Subject to section 12.1, Magnolia provides the Licensed Software "as is" and without any 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, 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 case that the Licensee could assert legally effective a warranty or representation according to the foregoing provisions, Magnolia shall, at its 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.



12.5. In any case Magnolia shall not be obliged to perform any repair, replacement or refund, if Licensee uses the Licensed Software in a manner inconsistent with the provisions of this Agreement.

13. **Warranty for Support Services**

13.1. 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. Subject to section 13.1, 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 deficiencies with regard to Support Services have to be reported in writing by Licensee within seven (7) days after Licensee has taken notice or could have taken notice of their occurrence in order to claim for any remedies.

13.4. For any breach of this warranty for Support Services under this Agreement Licensee's exclusive remedy and Magnolia's entire liability shall be the re-performance of such deficient delivered services. If the re-performance fails Licensee is entitled to terminate this Agreement and to recover the License Fee paid for the period within the Licensed Software could not be operated properly.

13.5. In any case Magnolia shall not be obliged to perform any remedies, if the service issue is reported by the Licensee in a manner inconsistent with the provisions of this Agreement or the service issue could not be reproduced with standardized Licensed Software not adapted or customized by the Licensee.

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 breach of section 6 "License Restrictions" and of section 17 "Ownership and Intellectual Property".

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;
- 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 assessed against Licensee resulting from such claim or action, including any awarded costs and attorneys' fees, or any settlement amount agreed to by Magnolia. Magnolia will not be responsible for any settlement it does not approve in writing. Magnolia will pay the cost of Licensee for assistance and full cooperation for the defense of a claim, which shall not include attorney's 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 continue to use the Licensed Software,
- b) replace the Licensed Software, or
- c) modify the Licensed Software to make it non-infringing.

If Magnolia determines that it is not commercially reasonable to perform any of these alternatives, Magnolia shall have the option to terminate the License for the allegedly infringing Licensed Software and refund the License Fees and the Support Services Fees paid by Licensee for such allegedly infringing Licensed Software, less depreciation for use assuming straight line depreciation over the initial or prolonged term of this Agreement.

15.4. In no event will Magnolia have any obligations under this section or any liability for any claim or action if the claim or action its 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 the non-combined or exclusive use of the Licensed Software; or
- b) modification 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 allegedly infringing activity after being notified thereof or after being provided modifications 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 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.

Licensee will defend, or at its option settle, and indemnify Magnolia or any third party supplier of Magnolia for any claims referred to in this subsection in the same manner as provided in the foregoing clauses 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 (herein referred to as "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 delay with the performance or the non-performance of the respective obligations.



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 or derivative work of the Licensed Software and any work performed by Magnolia under this Agreement or any individual Support Service Agreement.

17.4. After adaptation of the Licensed Software according to section 6.2 a) the Licensee may submit the adapted 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 or trade name or any other mark held or used by Magnolia (herein referred to as "Contractual Marks") or any word or logo, or combination of words and logos, confusingly similar to them anywhere in the world. If any such application for registration is or has been filed by or on behalf of the Licensee in any country and relates to any Contractual Mark 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 marks and any registration or application for registration thereof, and 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-



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, spend by Magnolia or its authorized representatives on account of such issues.

17.7. During the term of this Agreement, Licensee grants to Magnolia a 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.

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 (herein referred to as "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. Subject to section 17.6, 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 reasonable measures are taken to limit such disclosures and to obtain confidential treatment or a protective order;

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- 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 the request for the performance of Support Services.

20. Term and Termination

- 20.1. The initial term of this Agreement starts at the Effective Date and ends on the Expiration Date as specified in the Special Terms and Conditions.
- 20.2. This Agreement shall be prolonged for a prolongation period of twelve (12) months, if none of the Parties receives a termination notice by the other Party at the latest thirty (30) days before the Expiration Date.

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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

- a) the License and any other rights granted to the Licensee under this Agreement will terminate automatically; and
- 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; and
- c) Licensee will certify in writing the deletion of the Licensed Software and the destruction of any copies thereof upon written request by Magnolia; and
- d) Magnolia shall cease to use name, logos, trademarks 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 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 pre-paid 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.



- 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 however effected.
- 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.

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.