

## NO MAGIC CUSTOMER LICENSE AGREEMENT

This **Customer License Agreement** is made by and between the customer (“Customer”) and the DASSAULT SYSTEMES group legal entity, No Magic Incorporated (“No Magic”), as both are identified in the Transaction Document. This Agreement is accepted by Customer by executing the Transaction Document (including by clicking to accept or by electronic signature).

No Magic provides different No Magic Offerings as defined hereinafter. This Agreement and Annex 1 hereto sets forth the terms and conditions governing all No Magic Offerings ordered by Customer pursuant to a Transaction Document, on or after the Effective Date of this Agreement and during the term hereof. Each party acts exclusively in its own name and on its own behalf with respect to the rights and obligations pursuant to this Agreement. The parties agree as follows:

### GENERAL TERMS

#### 1. Definitions

**Agreement** means these General Terms, the Transaction Document(s) and the terms contained in the web links referenced herein and hereby incorporated by reference.

**Documentation** means, at any time, the current user documentation in any form or media as delivered together with the No Magic Offering for use in connection with the No Magic Offering.

**DS Group Company** means Dassault Systèmes, a French “société européenne” or any entity in which Dassault Systèmes, directly or indirectly, (i) owns more than 50% of the outstanding equity or ownership interest, or (ii) has the power to designate the managing authority.

**No Magic Offering** means one or more Licensed Programs offered by No Magic.

**Effective Date** means (i) for a Licensed Program, the later of the following (x) the date on which such Licensed Program is shipped or made available electronically to Customer or, if applicable, (y) the date on which Customer is informed by No Magic that the associated license key can be requested or is available,

**Licensed Program** means (i) any data processing program for which a license is ordered by and provided to Customer pursuant to a Transaction Document, consisting of a series of instructions or databases in machine readable form, (ii) associated Documentation, (iii) corrective patches and (iv) Releases to which Customer is entitled. A Licensed Program does not include new versions of a Licensed Program including any successor product which significantly differs in architecture, user interface or mode of delivery.

**Machine** means a computer equipment on which a Licensed Program is executed (1) (a) belonging to Customer or under its sole control or supervision and (b) located on Customer’s premises (provided when applicable that Users and Extended Enterprise Users, as applicable, may occasionally use laptop computers outside Customer’s premises) or (2) operated by a third party service provider as specifically authorized in the Agreement solely for and on behalf of Customer, in the same country.

**Release** means a periodic update of the same version of a No Magic Offering if and when made generally available to the market.

**Transaction Document** means the form (which may be online) referencing this Agreement signed or otherwise accepted by Customer and accepted by No Magic that identifies the No Magic Offering and/or Support Services ordered by Customer, the quantities thereof, fees payable.

**User** means any (a) Customer’s employee, or (b) employee of Customer’s consultant(s) or subcontractor(s) (i) who accesses a DS Offering, (ii) who works for the exclusive internal needs of Customer and (iii) whose usual workplace is located within Customer’s premises. For Academic Use of DS Offering, User means (i) any individual who works for Customer and is dedicated either to education or research or (ii) any individual regularly enrolled as a bona fide student in Customer’s academic program.

Defined terms can be used in a singular or plural form.

#### 2. License and Use Rights

##### 2.1 Grant.

No Magic grants Customer, from the Effective Date, a non-exclusive and non-transferable (except as expressly permitted herein) right, for the duration identified in the Transaction Document and solely for its internal business use, to:

- Make and install the necessary number of copies of the applicable Licensed Program for which on-premise installation is required;
- Use the No Magic Offerings according to the terms and conditions of this Agreement and their applicable Documentation;
- Allow its authorized users to access and use the No Magic Offering;
- Make one copy for back-up purposes of each Licensed Program for which on-premise installation is required.
- Install and use the Licensed Programs only in a manner authorized by the type of license and edition of the Licensed Programs for which Customer have paid the applicable license fee to No Magic.
- Use the No Magic Offerings with their designated License Types as such license types are set forth in Section 8 hereto.

Any sign-on or click through license for the Licensed Programs is superseded by the terms of this Agreement.

**2.1 Scope.** Customer agrees to operate each No Magic Offering in accordance with the terms and provisions of this Agreement and the Documentation for such No Magic Offering and to ensure that its authorized users comply with such terms and provisions. License keys, license tokens or delivery of media do not by themselves grant the legal right to use any No Magic Offering. Except as expressly set forth in this Agreement, no other express or implied right or license is granted to Customer.

Except as specifically permitted in this Agreement, Customer agrees not to: (a) correct errors, defects and other operating anomalies of any No Magic Offering, or (b) reverse engineer, decompile, disassemble, adapt or otherwise translate all or part of any No Magic Offering, or (c) provide, disclose or transmit any results of tests or benchmarks related to any No Magic Offering to any third party, or (d) use any software that may be delivered with any No Magic Offering other than the No Magic Offerings ordered hereunder, or (e) use the Licensed Programs to develop software code for any services that do not add value attributable to the intervention of specific human skills, such as, without limitation, in a data services operation or as an application service provider, or (f) install and/or operate and/or give access to the Licensed Programs on any hardware and/or software environment owned by or under control of any third party unless otherwise expressly authorized in the Agreement, or (g) represent or imply to any party that it is an authorized or certified provider of services for No Magic. Customer shall indemnify and defend No Magic against any claim, expense, judgment, damage or loss (including reasonable attorneys' fees) which arises out of or in any way relates to Customer's use of the Licensed Programs with third party end users.

### 3. Support Services

The following provisions shall apply for Support Services for the No Magic Offerings:

<https://www.nomagic.com/support>

Support Services policies are subject to change; however, any changes will not become effective until the commencement of the immediately following Support Services term. Customer should consult No Magic's Support Services policies on the No Magic website prior to renewal. To the extent applicable, unless Customer requests otherwise, or terminates Support Services, Support Services shall automatically renew on an annual basis and based on the then current Support Services policies and pricing. Support Services are not available for Demonstration and Evaluation Licenses.

### 4. Delivery and Payment

**4.1.1. Payment.** Customer shall pay all invoices by wire transfer, check or credit card within thirty (30) days from the date of invoice, Customer will be notified by email of upcoming renewal for those No Magic Offerings that are subject to automatic renewal.

**4.1.1 Late Payments.** Customer shall pay interest on late payments at the rate of 1.5% per month or the highest lawful rate on all sums unpaid at the due date, plus reasonable attorneys' fees and costs incurred in collecting unpaid amounts.

**4.1.2 Taxes.** All prices are exclusive of taxes. Customer shall be responsible for payment of any and all taxes, including fees, duties, excises, import VAT, or similar charges of any nature whatsoever, now in force or enacted in the future, that are levied, assessed, charged, withheld, or collected for or in connection with the transfer or usage, to the extent authorized hereunder, of the No Magic Offerings provided hereunder or otherwise arising in connection with this Agreement, but excluding domestic taxes based on No Magic's net income. If Customer is required to withhold, deduct, or pay for any tax from the amount of fees to be paid under this Agreement, then Customer shall pay such additional amount to No Magic as is necessary to ensure that No Magic receives a sum equal to what would have been received had no such withholding, deduction or payment been required.

### 5. Intellectual Property

**5.1 Ownership.** No Magic and/or its suppliers retain ownership in all intellectual property rights in all No Magic Offerings and all modifications, enhancements or other derivative works thereof. Licensed Programs are licensed, not sold. Customer shall preserve and reproduce all copyright, patent and trademark notices which appear in any No Magic Offering on all partial or integral copies thereof. Customer recognizes that the methodologies and techniques contained in or expressed within the No Magic Offerings are proprietary information or trade secrets of No Magic or its suppliers, whether or not marked as "confidential". Customer shall treat them as confidential information and not disclose them.

**5.2 Intellectual Property Indemnification.** No Magic will defend Customer against any claims made by a third party that a No Magic Offering delivered under this Agreement infringes a copyright in any country or a patent of the United States, and will pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Customer by a court of competent

jurisdiction or agreed to in a written settlement agreement signed by No Magic arising out of such claim, provided (i) Customer provides No Magic with prompt written notice of the claim, and (ii) Customer gives No Magic sole control of the defense of the claim and any related settlement discussions and provides reasonable cooperation in the defense and settlement of the claim.

If such a claim is made, or in No Magic's reasonable opinion a No Magic Offering is likely to become the subject of such a claim (or likely to be made), No Magic may at No Magic's expense, either secure the right for Customer to continue using the No Magic applicable Offering, modify it so that it is not infringing, or replace it with another program which is functionally equivalent. If none of the foregoing options is available on terms which are reasonable in No Magic's judgment, No Magic may terminate the licenses to the Licensed Program. No Magic shall either refund or provide a credit to Customer, at Customer's option, in an amount equal to the corresponding one-time fee paid for the licenses, depreciated on a straight-line over three (3) years upon return or destruction of all copies of the affected Licensed Program as certified by an officer of Customer.

No Magic shall have no obligation to defend or indemnify Customer against any claim related to (i) any modification of a No Magic Offering by anybody other than No Magic, (ii) the use of one or more No Magic Offerings in combination with other hardware, data or programs not specified by No Magic, or (iii) the use of corrective patches or Releases other than the most recent one.

This Section 5.2 states No Magic's entire liability and Customer's exclusive remedy for any claim of infringement of intellectual property rights.

## **6. Warranty**

**6.1 Warranty.** No Magic warrants for thirty (30) days from the initial delivery of each Licensed Program that such Licensed Program will materially conform to its Documentation when used in the specified operating environment. If the Licensed Program does not conform, and Customer has so notified DS within this warranty period, No Magic will attempt to make it conform as warranted. If No Magic has not corrected the non-conformity within ninety (90) days from the date of such notification, Customer may terminate the license to the non-conforming Licensed Program within thirty (30) days and receive a full refund of all fees paid for the non-conforming Licensed Program. This refund represents No Magic's sole liability and Customer's sole remedy for breach of warranty.

**6.2 THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS FOR DS OFFERINGS, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON INFRINGEMENT.**

6.2 No Magic disclaims all liability for any use or application of any No Magic Offering or the results or decisions made or obtained by users of the No Magic Offering. No Magic does not warrant that (i) the functions of any No Magic Offering will meet Customer's requirements or will enable it to attain the objectives Customer has set for itself, (ii) the No Magic Offering will operate in the combination or environment selected for use by Customer, or (iii) the operation of the No Magic Offering will be uninterrupted or free of errors. In all instances, Customer shall be solely responsible for ensuring that the results produced by No Magic Offering comply with quality and safety requirements of Customer's products or services. No employee or agent of No Magic is authorized to give a greater or different warranty. Customer shall have exclusive responsibility for (a) selection of the No Magic Offering to achieve Customer's intended results, (b) installation of the Licensed Program, (c) taking adequate measures to properly test, operate and use each No Magic Offering, and (d) results obtained therefrom.

The disclaimers above apply to the maximum extent permitted by applicable law.

## **7. Limitation of Liability**

EXCEPT FOR NO MAGIC'S LIABILITY UNDER SECTION 5.2 HEREOF, NO MAGIC'S MAXIMUM LIABILITY FOR DAMAGES SHALL NOT EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER FOR THE LICENSED PROGRAM WHICH CAUSED THE DAMAGES IN THE PRECEDING TWELVE (12) MONTH-PERIOD PRIOR TO THE OCCURRENCE OF THE CAUSE OF ACTION GIVING RISE TO THE CLAIM.

NO MAGIC SHALL HAVE NO LIABILITY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION CLAIMS FOR LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF DATA, THAT IN ANY WAY RELATE TO THIS AGREEMENT, ANY NO MAGIC OFFERING, DOCUMENTATION OR SERVICES, WHETHER OR NOT NO MAGIC HAS BEEN ADVISED OF THE POSSIBILITY OF

SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY REMEDY.

THE LIMITATIONS STATED IN THIS SECTION SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER THE ASSERTED LIABILITY OR DAMAGES ARE BASED ON CONTRACT (INCLUDING, BUT NOT LIMITED TO, BREACH OF WARRANTY), TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL OR EQUITABLE THEORY.

Customer waives any and all claims related to this Agreement or any No Magic Offerings or Documentation or services provided hereunder, for any direct, indirect, incidental or consequential damages, on any basis, against any No Magic licensors or any No Magic affiliate.

Any legal action against No Magic must be filed with the appropriate judicial jurisdiction within two (2) years after the applicable cause of action has arisen.

## 8. License Types

Scope of License. The rights granted above and the rights described in this Section are conditioned upon Customer paying the license fee (if one is required) which establishes Customer rights under this Agreement as to a specific license type described in this Section. If no license type is specified at the time of license, only a Seat license is granted. If Customer is a legal entity other than an individual, then Customer shall designate one (1) or more individuals, as applicable based upon license type, within Customer's organization and provide such designation to No Magic and only those designated individuals shall have the right to use the Licensed Programs. Except as specifically set forth below, all of the conditions, limitations, and restrictions set forth elsewhere in this Agreement are applicable to each license type. Not every license type is available for every edition of the Licensed Programs.

Licenses for the Licensed Programs granted under below types of licenses are granted for use on Machines by the Users only in the country of the Customer.

The types of licenses and their particular associated rights and limitations are:

(a) Machine based (or "Seat") based: Use of a No Magic Offering in Machine Based mode is authorized on the number of Machines for which the No Magic Offering has been ordered.

(b) Mobile User License. For each copy of the Licensed Programs Customer have licensed from No Magic for a Mobile User License, Customer may install and use that copy of the Licensed Programs by one single authorized User:

- i. On one (1) Machine controlled by Customer and located at Customer's place of business and which Machine is assigned to Customer on which the License Program is used by User pursuant to this Agreement;
- ii. On one (1) Machine controlled by Customer in a different logical network from the Machine described in section 8. (b) (i) above on which the License Program is used by User pursuant to this Agreement; and
- iii. On one (1) Machine controlled by a User and located at User's home and on which License Program is used by User pursuant to this Agreement.

PROVIDED, HOWEVER, that the Licensed Programs may only be used by Customer and no other person at the foregoing locations and PROVIDED FURTHER, HOWEVER, that at no time may the Licensed Programs be running simultaneously at more than one (1) of the foregoing locations. Over installations of the software per the license purchased will not be tolerated. No Magic has the right to invoice and bill for each over installation and will invoice at full price for each copy of the over installed software. No Magic electronically registers each installation of software on a per license purchased basis. Pre-installation support is available via email at [support@magicdraw.com](mailto:support@magicdraw.com) to assist customers with questions or installation issues.

(c) Floating License. For each copy of the Licensed Programs Customer have licensed from No Magic, Customer may only install and use that copy of the server software part of the Licensed Programs on one (1) Machine controlled by Customer and Customer may install the client part of the Licensed Programs on multiple Machines controlled by Customer; PROVIDED, HOWEVER, Customer may not have more simultaneous users using the client part of the Licensed Programs than the maximum number of copies of the edition of the Licensed Programs for which Customer have purchased as license.

(d) Server License. For each MagicDraw Teamwork Server, Cameo Collaborator, or Teamwork Cloud License Customer has licensed from No Magic, Customer, subject to subparagraph ii. below, may use the Licensed Program only in the manner described in the Documentation and only on computers which have the minimum system requirements described in the Documentation;



- i. Install and use the Licensed Program only in a manner authorized by the type of license and edition of the Licensed Program for which Customer has have paid the applicable license fee to No Magic, as further described in Section 4;
- ii. Create no more than one copy of the Licensed Program in machine-readable form for backup purposes only, provided that Customer must include No Magic's copyright and other proprietary notices on such copy;
- iii. Utilize the Licensed Program documentation only in conjunction with the use of the Licensed Program;
- iv. Utilize the functionality of the Licensed Program with other applications or augment the functionality of the Licensed Program solely for Customer licensed use through the Teamwork Cloud REST Application Program Interface; and
- v. Utilize the functionality of the Software with other applications through the Teamwork Cloud REST Application Program Interface to create plug-ins for use by Customer in conjunction with licensed use of the Licensed Program.

(e) Demonstration and Evaluation License.

- i. Demonstration and evaluation editions of the Licensed Programs are subject to time and functionality limitations established by No Magic from time to time. Demonstration and evaluation editions may only be used by Customer for learning more about the Licensed Programs for purposes of making an informed buying decision and not for any other business or commercial uses. Customer agree not to circumvent or attempt to circumvent the restrictions placed upon demonstration or evaluation editions by No Magic.
- ii. Notwithstanding Section 6 Warranty above, DEMONSTRATION AND EVALUATION EDITIONS OF THE LICENSED PROGRAMS ARE MADE AVAILABLE ON AN "AS IS" BASIS, AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.
- iii. NO MAGIC AND ITS LICENSORS SHALL HAVE NO LIABILITY FOR DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION CLAIMS FOR LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF DATA, THAT IN ANY WAY RELATE TO THIS AGREEMENT, ANY DEMONSTRATION AND EVALUATION EDITIONS OF THE LICENSED PROGRAMS, WHETHER OR NOT NO MAGIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY REMEDY.
- iv. CUSTOMER'S USE OF DEMONSTRATION AND EVALUATION EDITIONS OF THE LICENSED PROGRAMS SHALL BE AT CUSTOMER'S SOLE RISK. CUSTOMER SHALL INDEMNIFY AND HOLD NO MAGIC AND ITS LICENSORS HARMLESS FROM ANY AND ALL LIABILITY OR EXPENSE, INCLUDING REASONABLE ATTORNEYS' FEES, ARISING OUT OF CUSTOMER'S USE OF DEMONSTRATION AND EVALUATION EDITIONS OF THE LICENSED PROGRAMS UNDER THIS AGREEMENT.

(f) Academic Institution License. This type of license is only available to bona fide schools of education and institutions of higher learning. The Licensed Programs may only be installed on Machines owned or controlled by the academic institution and located at the academic institution's premises. Academic editions shall not be used for any business or commercial purposes. For purposes of this paragraph G, "business or commercial purposes" shall mean all activities other than providing training and instruction to students and preparation by faculty and teachers for purposes of providing training and instruction. "Business or commercial purposes" shall include, but is not limited to, use of the Licensed Programs for development of programs and applications for use by the academic institution internally. Furthermore, any documents produced by the Licensed Programs shall contain as a legend, watermark or other depiction the following statement: "For Academic Use Only-All Commercial Uses Are Prohibited" or similar statement. In addition to the foregoing, any license of an Academic Edition or an Academic Edition Site License which is granted by Licensor gratuitously shall be for a term which shall run through December 31st of the year following the year in which the license under this Agreement was first granted, and may be automatically extended for additional one (1) year periods, so long as the academic institution is in full compliance with the terms of this Agreement and this Agreement has not been otherwise terminated. Further, any license of an Academic Edition or an Academic Edition Site License which is granted by No Magic gratuitously, may be terminated by No Magic for any reason or for no reason at the end of any yearly term upon thirty (30) days' written notice to the academic institution.

(g) System License means a right to use certain No Magic Offerings for a specific database instance or as may be otherwise indicated in the Product Portfolio. A minimum number of Named User's rights to use certain identified NO MAGIC Offerings may be required in order to be granted a System License.

(h) Limited Functionality; Ancillary Programs. The following editions of the Licensed Program and ancillary computer programs comprising the Licensed Program are subject to the terms and conditions of this Agreement, including, without limitation, the license type specific conditions and limitations set forth in the preceding Section:

- i. File Converter. Customer may use the MagicDraw File Converter to convert MagicDraw files from the .mdf format and translate them into xmi format.
- ii. Resource Editor. Customer may use the MagicDraw Resource Editor to customize MagicDraw program commands and to translate MagicDraw program commands from one spoken language to another.
- iii. MagicDraw Reader Edition. The MagicDraw Reader Edition will only enable Customer to open, view and print MagicDraw and imported files (xml, xml.zip, mdzip). Customer will not be able to modify, translate, save or otherwise manipulate the data contained in MagicDraw files.

## 9. Term and Termination

**9.1 Term.** This Agreement shall come into force on the Effective Date of the Agreement and shall remain in full force and effect until terminated as provided hereunder.

**9.2 Termination for Breach.** Either No Magic or Customer may terminate this Agreement and/or any No Magic Offering and/or Support Services if the other is in breach of any of its obligations relating thereto and has failed to remedy such breach within thirty (30) days of receipt of written notice.

**9.3 Termination for Convenience.**

**9.3.1 Agreement.** No Magic or Customer may terminate this Agreement for convenience by providing the other party with a ninety (90)-day prior written notice.

**9.3.2 Licensed Program.** Customer may terminate the license to any Licensed Program by providing written notice. Such notice may be provided at any time for perpetual licenses.

**9.3.3 Support Services for Licensed Programs.** Customer may terminate Support Services for a Licensed Program, subject to the following conditions: (i) Customer provides DS with at least thirty (30) days prior notice, and (ii) such termination shall apply to Support Services covering all licenses of said Licensed Program held by Customer under any agreement then in force between Customer and any DS Group Company.

**9.4 Effect of Termination.** a) Unless otherwise specified hereunder, termination of this Agreement, any No Magic Offering or Support Services, shall not prejudice the rights (including without limitation all outstanding No Magic Offerings or Support Services, which shall continue in full force and effect for the term thereof and in accordance with the terms and conditions of this Agreement) and remedies that any party might have under this Agreement and shall not relieve Customer of its obligation to pay all fees that have accrued or are otherwise owed by Customer under this Agreement. Customer shall not be entitled to any refund or credit for early cancellation or termination of any No Magic Offering or Support Services unless otherwise specifically provided in this Agreement.

b) Despite any termination by No Magic for convenience of this Agreement, Customer may order Support Services under this Agreement at the then-current list price for any No Magic Offering for which the applicable use right is in effect. In such a case, this Agreement shall survive for the provision of such Support Services and for the duration thereof.

c) Customer may reinstate Support Services, provided such reinstatement is activated for all licenses of a given Licensed Program held by Customer under any license agreement then in force between Customer and any DS Group Company, and Customer pays all fees that would have been due in respect of Support Services from the date of termination of Support Services to the date of reinstatement of such Support Services, plus any applicable reinstatement fee as set forth at in the then current Support Services Policies

**9.4.1 Agreement.** Upon the effective date of termination of this Agreement: Customer will not have the right to submit any further orders under this Agreement other than for Support Services for any No Magic Offering for which the applicable use right is in effect and pursuant to the conditions specified in section 9.4 b) here above.

If this Agreement is terminated by No Magic for breach by Customer, No Magic reserves the right to terminate (i) Customer's right to use any No Magic Offerings for which payment has not been made, and (ii) Customer's right to use any or all No Magic Offerings ordered hereunder if such breach is for other than a failure to pay.

**9.4.2 Licensed Program.** Upon the effective date of termination or expiration of any license granted hereunder, (i) Customer shall immediately destroy or return all copies of all Releases of the terminated or expired Licensed Program and associated Documentation in their entirety and (ii) Customer shall duly certify the same in writing to No Magic.

## 10.Data

**10.1 For Commercial Users and US Government Users not using the Special Security Related Government Version - Recordal, Storage and Tracking of Computer Address.** CUSTOMER AGREES THAT NO MAGIC MAY RECORD, STORE, AND USE, FOR PURPOSES OF MONITORING COMPLIANCE WITH THIS AGREEMENT AND PRESERVING AND PROTECTING ITS RIGHTS UNDER ITS LICENSE COMPLIANCE PROGRAM, INFORMATION LINKED TO THE INSTALLATION AND USE OF THE LICENSED PROGRAMS. THE INFORMATION IS THE IP / MAC ADDRESS OF ANY MACHINE ON WHICH THE LICENSED PROGRAMS ARE INSTALLED AS WELL AS THE OPERATING SYSTEM AND THE JAVA VERSION WITH WHICH THE LICENSED PROGRAMS ARE USED.

**10.2 For US Government Users using the Special Security Related Government Version - A SPECIAL SECURITY RELATED GOVERNMENT VERSION THAT TURNS OFF MAGICDRAW'S "AUTO UPDATE" AND ALL OTHER RELATED COMMUNICATIONS BACK TO OUR SERVERS IS AVAILABLE FOR QUALIFIED GOVERNMENT CUSTOMERS UPON REQUEST. THIS VERSION WILL FULFILL CERTAIN SECURITY REQUIREMENTS FOR SUCH GOVERNMENT CUSTOMERS REQUIRING SECURE CERTIFICATION.**

## 11. Export

Export to Customer of No Magic Offering and Documentation is subject to all applicable countries' export and re-export laws and regulations. No Magic and its licensors shall have no liability towards Customer if necessary authorizations, licenses or approvals are not obtained. Customer shall not export or re-export, either directly or indirectly, No Magic Offering when such export or re-export requires an export license or other governmental approval without first obtaining such license or approval. Customer hereby warrants to No Magic that all No Magic Offerings ordered hereunder shall not be used in violation of any applicable export laws, including for proliferation of any nuclear, chemical or biological weapons or missile delivery systems and shall not be diverted to any country, company or individual if prohibited by the applicable export laws of any country. Customer recognizes that Customer Data may be transferred to or stored in any country. Customer undertakes to abstain from, and shall ensure all users abstain from, processing, storing or uploading on its data sharing environment any information or data, the export of which is controlled, regulated or subject to any permit or license under any applicable law or regulation. Customer shall be deemed to be the exporter of Customer Data. No Magic may terminate this Agreement and all licenses hereunder upon written notice if Customer violates these provisions.

Unless provided for in a separate agreement, the parties shall not disclose or exchange any information that (a) is subject to the United States Government's International Traffic in Arms Regulations (ITAR) or (b) requires a license from the United States government under the Export Administration Regulations (EAR) for the export or re-export of such information to citizens of countries designated under the EAR as being in Group B, such as France, or Group D, such as China.

## 12.Licensed Programs Compliance

**12.1 Security Mechanisms.** DS Group Companies undertake legal measures to eliminate unauthorized use of their DS Group Offerings. In this context, Licensed Programs may include a security mechanism that can detect the installation or use of illegal copies of a No Magic Offering, and that is able to collect and transmit data about illegal copies only. Data collected will not include any data created by Customer with the Licensed Program. By using the Licensed Program, Customer consents to such detection and collection of data, as well as its transmission and use if an illegal copy is detected. No Magic also reserves the right to use a hardware lock device, license administration software, and/or a license authorization key to control access to, and use of, any No Magic Offering. Customer may not take any steps to tamper with, circumvent or disable any such measures. Use of any Licensed Program without any hardware lock device, license administration software and/or license authorization key provided by No Magic is prohibited.

**12.2 Audit.** During the term of this Agreement and for a period of three (3) years thereafter, Customer shall establish and maintain accurate information records relating to the use of each No Magic Offering including, without limitation, the list of users accessing and using such No Magic Offering. When applicable, such information shall include destruction of the Licensed Program and the measures put in place by Customer to protect the access to and the use of each No Magic Offering. No Magic shall have the right at any time, at its own expense and under reasonable conditions of time and place, to audit and copy these records and/or the Customer's use of each No Magic Offering. Customer also hereby authorizes No Magic to verify its compliance with the terms of the Agreement. For such purpose, No Magic may conduct an audit on Customer's premises during normal business hours, in a manner that minimizes disruption to its business. No Magic may require Customer to provide it, or any third party No Magic engages to conduct such verification, with machine access, copies of system tools outputs, or other electronic or hard copy system information as appropriate. If the audit reveals unauthorized use of any No Magic Offering, Customer shall promptly pay to No Magic any amounts owed as a result of such unauthorized use at the then current list price. If such unauthorized use is five percent



or greater of Customer's authorized use for the applicable No Magic Offering, then in addition to Customer paying the applicable charges, Customer shall reimburse No Magic for the cost of such audit. By invoking the rights and procedures described above, No Magic does not waive its rights to enforce this Agreement or to protect its intellectual property by any other means permitted by law.

**12.3** Customer agrees, upon written request by No Magic which shall occur no more frequent than twice annually, to certify in writing that its use of the software is in compliance with the terms of this Agreement.

## **13. Miscellaneous**

**13.1 Purchase Orders.** Customer's purchasing terms and conditions shall not in any way supersede, supplement or otherwise modify the terms of this Agreement.

**13.2 Notices.** Unless otherwise provided herein, all notices required hereunder shall be in writing, in English, and shall be deemed to have been given on: (i) the date delivered in person or by express courier service, (ii) three (3) days after sending the notice if sent by certified or registered mail, or (iii) the date sent by confirmed facsimile, addressed to the parties at their address in the Transaction Documents, or at such other address as either party may designate to the other by notice served as hereby required, or contained in the relevant order form.

**13.3 Force Majeure.** Neither party hereto shall be liable for any default in the performance of its obligations under this Agreement resulting from (i) a case of force majeure as defined by the law governing this Agreement and the courts in such jurisdiction, or (ii) the following causes: strikes (whether previously announced or not), war (declared or not), riots, governmental action, acts of terrorism, acts of God (fire, flood, earthquake, etc.), or any electrical, utility or telecommunication outages.

**13.4 Third Party Hosting.** Customer is authorized to install and use the Licensed Programs remotely on computers operated by a well-established, reputable third party service provider, and to appoint such service provider to operate the hardware and manage the Licensed Programs solely for and on behalf of Customer; provided however, that (i) only duly authorized users shall have the right to use the Licensed Programs; (ii) Customer shall enter into a written agreement with such service provider under which the service provider agrees that its access to the Licensed Programs is solely for the purpose of providing the services mentioned above to Customer and is otherwise subject to all of the restrictions and limitations contained in this Agreement; and (iii) such service provider is not a competitor of No Magic. Customer acknowledges and agrees that the service provider shall be deemed an agent of Customer. If Customer becomes aware of any actual or suspected unauthorized access, use or disclosure of the Licensed Programs, Customer shall immediately terminate the service provider's access to the Licensed Programs. Customer shall defend and indemnify No Magic against any claim, expense, judgment, damage or loss (including reasonable attorneys' fees), which arises out of or in any way relates to any such service provider's access to or use of the Licensed Programs.

**13.5 Severability.** If any provision of this Agreement is found by a court of competent jurisdiction or arbitrator to be illegal, void or unenforceable, the other provisions shall remain in full force and effect, and the affected provision will be modified so as to render it enforceable and effective to the maximum extent possible in order to effect the original intent of the parties.

**13.6 Transfer, Assignment & Subcontract.** Any subcontract, assignment, delegation, or other transfer (including without limitation, by way of merger, acquisition, divestiture, or change of control or contribution in kind) of this Agreement, or any of Customer's rights, duties, benefits or obligations hereunder is subject to No Magic's prior written approval. Any attempt to do so without such consent is void. Any approved transfer of licenses may be subject to an adjustment charge. This Agreement shall be binding upon, and inure to the benefit of No Magic and its successors and assigns.

**13.7 Amendments & Non-Waiver.** No waiver, alteration, modification, or cancellation of any of the provisions of this Agreement shall be binding unless made by written amendment signed by both parties. A party's failure at any time to require performance of any provision hereof shall in no manner affect its right at a later time to enforce that or any other provision.

**13.8 Entire Agreement; Order of Precedence.** This Agreement comprises the complete agreement between the parties relating to the subject matter hereof and supersedes all prior and contemporaneous proposals, agreements, understandings, representations, purchase orders and communications, whether oral or written. Customer confirms that it (i) has full knowledge of all terms herein and those incorporated herein by reference, (ii) agrees to be bound by and to comply with such terms, and (iii) in entering into this Agreement, has not relied upon the future availability of functionality or product updates with respect to any No Magic Offering. The terms of this Agreement shall have no force or effect with respect to any claim based on the use of any intellectual property rights of No Magic outside the scope of the rights expressly granted and/or provided herein.



**13.9 Language.** This Agreement is provided in English and may be provided, for informational purposes only, in a language other than English. The English version shall be the only binding and enforceable version of this Agreement.

**13.10 U.S. Government Restricted Rights Legend.** The No Magic Offerings, and any other technical data provided hereunder are commercial in nature and developed solely at private expense. The No Magic Offerings are delivered as “Commercial Computer Licensed Programs” as defined in DFARS 252.227-7014 or as a “Commercial Item” as defined in FAR 2.101(a) and, consistent with FAR 12.212 and DFARS 227.7202, as applicable, are licensed to Customer only with those rights as are granted pursuant to this Agreement. Technical data is provided with limited rights only as provided in DFAR 252.227-7015 or FAR 52.227-14, whichever is applicable.

**13.11 Headers.** Headings in this Agreement are for convenience only and shall not affect the meaning or interpretation of any provision of this Agreement.

**13.12** No Magic may assign, delegate, subcontract or otherwise transfer any of its rights or obligations hereunder, in whole or in part, without Customer’s consent.

**13.13 Survival.** The following sections of these General Terms shall survive termination thereof: Sections 1, 2.2, 4.3, 5, 6.2, 7, 8, 9.4, 10.1, 10.3, 10.5, 10.7, 10.8, 11, 12, and 13.

**13.14 Governing law and jurisdiction.** This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to any conflict of laws principles and excluding application of the United Nations Convention for the International Sale of Goods. The parties irrevocably waive all rights to trial by jury for any litigation between them. The courts of the Commonwealth of Massachusetts shall have exclusive jurisdiction to hear any dispute arising out of or in connection with the interpretation and/or performance of this Agreement. Customer acknowledges and agrees that the foregoing shall not prevent, restrict or otherwise limit in any manner, No Magic's rights to seek equitable remedies, including injunctive relief, before any competent court in any jurisdiction.

## ANNEX 1

### Terms Applicable to European Union (EU), Iceland, Liechtenstein and Norway Residents.

- (i) Definitions – Definitions for this section:
- “GDPR” means as, from 25 May 2018, the Regulation (EU) 2016/679 (General Data Protection Regulation) and any delegated and implementing acts adopted in accordance with the General Data Protection Regulation and the member state’s laws specifying the provisions of the General Data Protection Regulation applicable to the Processing implemented.
  - “Controller”, “Data Subject”, “Personal Data”, “Process/Processing”, “Processor” and “Personal Data Breach” shall have the same meanings as in the GDPR.
  - “Sub-Processor” means any Processor appointed by NO MAGIC or by any other Sub-Processor of NO MAGIC that receives, from NO MAGIC or from any other Sub-Processor of NO MAGIC, Personal Data for the sole and exclusive purpose of Processing activities to be carried out on Customer’s behalf in accordance with the terms of this Agreement and the terms of a written subcontract if applicable.
- (ii) Data Privacy. Customer acknowledges and agrees that it is and shall at all times remain, the sole Data Controller of the Personal Data that will be Processed as part of its access to and use of one or more of the Services, and therefore, shall be responsible for complying with the GDPR, including but not limited to (i) transfer of Personal Data, (ii) information of Data Subjects, and (iii) access, modification, and deletion rights of Data Subjects. NO MAGIC, as the Data Processor, will collect, store and process the Personal Data in accordance with this Agreement.
- (iii) Location of Data Processing. In order for NO MAGIC to provide services and support services, Customer hereby appoints NO MAGIC as Processor and agrees that Personal Data provided by Customer (“Customer Personal Data”) may be transferred to and stored, accessed, and Processed in any country in which NO MAGIC or its affiliates or subcontractors are located. NO MAGIC will ensure that the same data protection obligations as set forth in this Agreement shall be imposed on the Sub-Processors by way of a contract and/or the standard contractual clauses from the European Commission in such a manner that the Processing will meet the requirements of the GDPR.
- (iv) NO MAGIC Obligations. NO MAGIC, as a Processor, will:
- to the maximum extent permitted by applicable law or for the duration of licensed use of the Services, whichever is longer, Process Customer Personal Data in accordance with this Agreement and Customer’s written reasonable instructions, which shall in all circumstances be consistent with this Agreement;
  - ensure that any and all persons who are authorized to Process Customer Personal Data are bound by appropriate obligations of confidentiality;
  - reasonably assist Customer in ensuring compliance with its obligations as a Data Controller regarding sections 32 to 36 of the General Data Protection Regulation, taking into account the nature of Processing as described in this Agreement. If NO MAGIC has reason to believe that a Personal Data Breach affecting Customer has occurred, NO MAGIC will (i) notify Customer of the Personal Data Breach promptly after NO MAGIC becomes aware of such Personal Data Breach, and (ii) provide Customer with all relevant and available information to allow Customer to comply with its notification obligations with competent supervisory authority;
  - reasonably assist Customer to fulfill its obligations in response to requests from Data Subjects to exercise their rights under the GDPR in a manner consistent with the use of the NO MAGIC Services and NO MAGIC’s role as a Processor.
  - make available to Customer all information in NO MAGIC’s possession needed to demonstrate Customer’s compliance with its obligations as required by the GDPR and reflected in this section and, in the event compliance with the GDRP cannot be evidenced through the appropriate documentation provided by NO MAGIC, allow for an audit. Customer shall notify NO MAGIC in writing of any such audit at least thirty (30) days in advance by indicating the audit’s scope, which shall be limited to assessing Customer’s compliance when the documentation provided by NO MAGIC does not demonstrate such compliance. Such audit shall be conducted by an independent auditor chosen by Customer at its sole cost and shall be performed not more than once every twelve (12) months;
  - keep a list of the Sub-Processors that will be involved in the Processing of Customer Personal Data due to the Processing activities implemented on Customer’s behalf and inform Customer of any intended changes concerning the addition or replacement of other Sub-Processors, thereby giving Customer the opportunity to object to such changes. Customer will be notified at least fifteen (15) days in advance before authorizing any new Sub-Processor to Process Customer Personal Data with a mechanism to obtain notice of that update, except in case of emergency. Customer may reasonably object to NO MAGIC’s use of a new Sub-Processor if (i) such new Sub-Processor Processes Customer Personal Data, and (ii) Customer demonstrates that it has a legitimate interest and notify NO

MAGIC, in writing, within fifteen (15) days after Customer's receipt of the notice, it being understood and accepted that, in the absence of an objection from Customer, Customer shall be deemed to have accepted the Sub-Processor. If Customer notifies NO MAGIC of its objection related to the new Sub-Processor within the above timeframe, Customer may terminate the NO MAGIC Services affected by this change of Sub-Processor within fifteen (15) days after NO MAGIC's receipt of such notice; and

- upon termination or expiration of this Agreement, delete or return all of Customer Personal Data, at Customer's option, and delete all existing copies, except where applicable law requires retention of Customer Personal Data or where Customer Personal Data is necessary for proof purposes during the applicable statute of limitation.