



WinMagic Software License and Services Agreement - BitMana

IMPORTANT - THIS IS A LEGAL AGREEMENT BETWEEN YOU AND WINMAGIC CORP. ("WinMagic")

ACCEPTANCE OF AGREEMENT: By selecting "I Accept" or signing at the end of this Agreement, or by installing or using the software and other Licensed Materials (defined below), you acknowledge and agree that you have had the opportunity to read this Software License Agreement ("**Agreement**"), have understood it, and confirm that you will be legally bound by each of the terms and conditions of this Agreement. For purposes of this Agreement, "**you**" means: (i) you as an individual, if you ordered the software for your personal use or use as a sole proprietor; or (ii) the corporation, institution, partnership, organization or other entity that ordered the software and on whose behalf you as an individual are acting. If you disagree with any of the terms and conditions of this Agreement, or do not agree to be bound by the terms and conditions of this Agreement, you are required to select "I Do Not Accept" (and not sign at the end of this Agreement), in which case: (iii) WinMagic hereby revokes any interests or rights you may have gained in respect of the Licensed Materials; (iv) you are not permitted to install or use the Licensed Materials; and (v) the Licensed Materials must be permanently deleted from your computer(s).

APPLICATION AND PRIORITY OF TERMS: The terms and conditions of this Agreement apply regardless of, and take priority over, any terms and conditions that may have been set out in any order or quote that may have been submitted by you to WinMagic or WinMagic's reseller ("**Order**").

1. LICENSED MATERIALS: As used in this Agreement, the term "**Software**" means the machine-readable object code of the WinMagic BitMana encryption software (including all variants, modifications, enhancements, updates, releases, editions, copies and versions) made available to you for download in response to your Order, including: (i) any software owned by a third party, other than open source software, that is incorporated into the Software ("**Third Party Software**"); but excluding (ii) any open source software that is incorporated into, accompanying or distributed with the Software ("**Open Source Software**"). "**Documentation**" means the user manuals and documentation published by WinMagic and made available to you for download in connection with the Software. "**Licensed Materials**" means, together, the Software and the Documentation.

2. TITLE: The Licensed Materials are not sold to you; they are licensed to you under the terms and conditions of this Agreement. The Licensed Materials and all related proprietary rights, including any related trade secret rights, copyright, trademark rights, patent rights, or other intellectual property rights applicable to or derived from the Licensed Materials are owned by WinMagic and remain, without exception, the sole and exclusive property of WinMagic. The Licensed Materials are protected by this Agreement and by Canadian, United States, and international copyright laws and applicable treaties.

3. GRANT OF LICENSE: Subject to the terms and conditions of this Agreement, WinMagic hereby grants to you a non-exclusive, non-transferable, non-sublicensable and non-assignable license to download and use the Documentation, and to download, install and use (i.e. execute and run) the Software: (i) solely in object code format; (ii) solely for Permitted Installations; (iii) solely by Permitted Users; and (iv) solely during the Term, including, as applicable, each renewed Subscription Term; (the "**Permitted Use**").

4. DEFINITIONS: The following capitalized terms shall have the meanings as set forth below:

- (a) "**Business Days**" means weekdays (from Monday to Friday), with the exception of all statutory, civic and other generally recognized holidays in your local jurisdiction.
- (b) "**Date of Confirmation**" means the date you receive a link(s) allowing you to download the Licensed Material.
- (c) "**Endpoints**" means any device, including a desktop computer, laptop, tablet, mobile phone, virtual machine or server (including virtual machines or servers hosted by a third party in the cloud) owned, leased, rented or otherwise used by you or Permitted Users.

- (d) **"include", "includes" and "including"** means, as applicable, "include without limitation", "includes without limitation" or "including without limitation" and are not to be construed to limit any general statement which it follows to the specific or similar items or matters immediately following it.
- (e) **"Order Confirmation"** means the email or other communication sent to you by WinMagic providing a link(s) for downloading the Licensed Materials and confirming your name, the applicable number of Permitted Installations, the Term (the Subscription Term or the Perpetual License Term, as applicable), the Fees (Subscription Fee or Perpetual License Fee, as applicable), the level of Support Services (premium or standard support, as applicable), and in the case of a perpetual license the applicable Support Services Term and Support Services Fee.
- (f) **"Permitted Installations"** means installation of a single copy of the Software on the number of Endpoints on which the Software may be installed as verified in your Order Confirmation.
- (g) **"Permitted Users"** means your employees, contractors, and other parties as agreed to in writing between you and WinMagic.
- (h) **"Regular Business Hours"** means standard hours of business (8AM-5PM) in your local time-zone on Business Days.

5. OPEN SOURCE SOFTWARE: As provided or made available to you, the Software may work in conjunction with Open Source Software. Where applicable, such Open Source Software forms, and is distributed as, a separate and independent software program from the Software, even though such Open Source Software may have been aggregated with the Software for purposes of distribution only. In all cases, all Open Source Software is subject to the terms and conditions of the applicable open source licenses and notices set out at the following URL: www.winmagic.com/other-licenses-open-source ("**Open Source Licenses**"). By agreeing to be bound by this Agreement in accordance with the provisions set out above in the section entitled "Acceptance of Agreement", you agree to the terms and conditions of the applicable Open Source Licenses as they relate to such Open Source Software.

6. RESTRICTED USE: You shall: (a) not reverse engineer, decompile or disassemble the Software or otherwise attempt to ascertain the source code for the Software; (b) not modify or create derivatives of the Licensed Materials or merge all or part of the Licensed Materials with another program; (c) not sell, assign, transfer, distribute, lease, rent or grant a sublicense to (whether or not commercially for profit or otherwise) the Licensed Materials to any person other than Permitted Users; (d) not use the Licensed Materials as a service bureau or otherwise to provide services to a third party; (e) not alter, circumvent or override any download, installation, copy, access or use protection devices or mechanisms in the Licensed Materials; (f) not alter, circumvent or override any device or mechanism implemented to monitor or verify installation of, access to or use of the Licensed Materials; (g) not use the Licensed Materials other than in accordance with the Permitted Use, or otherwise interact with the Licensed Materials other than as expressly permitted by this Agreement; (h) not collect information or undertake any activities for any purpose that is competitive with the Licensed Materials or WinMagic; (i) not attempt to do any of the foregoing in this Restricted Use section; (j) at all times comply with all applicable local, provincial, state, federal and foreign laws in using the Licensed Materials; and (k) take appropriate action by agreement or otherwise with all Permitted Users to ensure they comply with all of the terms and conditions of this Agreement. The Software may be copied for Permitted Installations and one time only for backup and archival purposes. Any restrictions on your use of the Open Source Software is governed by the Open Source Licenses, as applicable.

7. AUDIT RIGHTS: You agree that WinMagic, upon notice to you, is entitled to audit your compliance with this Agreement and you will provide WinMagic with any access that may be required in order for Win Magic to fully and promptly conduct such audit. Any costs incurred in connection with this audit will be borne by WinMagic, unless the audit reveals a material breach of the terms and conditions of the Agreement, in which case you agree to pay all costs and expenses incurred by WinMagic in connection with such audit, in addition to all other costs associated with remedying your breach of this Agreement. Audits will be carried out during Regular Business Hours and WinMagic will endeavor reasonably to avoid adversely affecting your business operations.

8. FEES: You shall pay the fees in the amount agreed between you and WinMagic or WinMagic's reseller (the "**Fees**"), as follows:

- (a) in the case of a perpetual license grant, the onetime license fee for a Perpetual License Term (the "**Perpetual License Fee**") and the Support Services fee for each Support Services Term (the "**Support Services Fee**"); or
- (b) in the case of a non-perpetual license grant, the subscription fee for each Subscription Term (the "**Subscription Fee**").

If you paid a Perpetual License Fee to WinMagic and have therefore not paid for the Software by means of a Subscription Fee, you will incur reinstatement charges in the event of a partial or full lapse and, subsequent reinstatement and Renewal of your Support Services. Reinstatement charges will consist of retroactive fees for lapsed periods equal to the most recent paid term of support prorated to cover the lapsed period, plus an administrative fee set by WinMagic. You will not be entitled to reinstate Support Services at this fee structure if the lapse has been three (3) years or longer; in such situations, you shall be required to pay a fee at least equal to the original purchase price of the Software license (for the original quantity of licenses) plus at least one year of support.

In the event of termination of the Agreement due to a breach by WinMagic, then WinMagic shall refund to you, on a pro-rata basis the Support Services Fee for the then-current Support Services Term or the Subscription Fee for the then current Subscription Term, as applicable. Any other termination will result in the forfeiture of any prepaid Support Services Fees or Subscription Fee paid by you, except as otherwise expressly state in this Agreement.

9. PAYMENT:

- (a) **Initial Fees:** The Perpetual License Fee and the initial Support Services Fee (if you have a perpetual license), or the initial Subscription Fee (if you have a non-perpetual license), are payable in full, without deduction or offset, upon submission of your Order for the Licensed Materials.
- (b) **Renewal Fees:** If you have a perpetual license, your Order Confirmation will also set out the period for which you will be provided with Support Services (the "**Support Services Term**"). The Support Services Fee for each renewal of the Support Services Term (if you have a perpetual license), or the Subscription Fee for each renewal of the Subscription Term (if you have a non-perpetual license), are payable within thirty (30) days from the date of the invoice provided to you for such Fees.
- (c) **Taxes:** The Fees for the Licensed Materials do not include applicable local, provincial, state and federal taxes (other than taxes on WinMagic's income) and you are required to pay such taxes, as applicable, in addition to the Fees for the Licensed Materials.
- (d) **Non-Payment:** If you do not pay any amount that is due under this Agreement when payable, you agree to pay WinMagic interest of 18% per annum (or such lesser amount as may be required by applicable law), calculated and payable monthly, in addition to any unpaid amounts (including accrued interest) until all amounts payable by you have been paid in full. All Fees are non-cancelable and non-refundable. WinMagic may suspend or revoke your license or terminate this Agreement, without liability to WinMagic, in the event that any amounts payable by you are past due.
- (e) **Resellers:** If you order the Licensed Materials through one of WinMagic's resellers, your payment terms may be agreed between you and the reseller.

10. TERM: This Agreement shall commence on the Date of Confirmation and shall continue for the period set out in your Order Confirmation (as applicable, the "**Term**"), which will be either:

- (a) a perpetual license grant (the "**Perpetual License Term**"); or

- (b) a non-perpetual license grant for a specified subscription period (the "**Subscription Term**").

11. RENEWALS:

- (a) If you have a perpetual license, upon the expiration of the initial Support Services Term, the Support Services shall automatically renew for subsequent Support Services Terms of the same length, unless WinMagic in its sole discretion provides you with notice of WinMagic's intention to not renew at least thirty (30) days prior to the commencement of the next Support Services Term. For certainty, if you fail to pay the Support Services Fee for the next Support Services Term when due, or if WinMagic provides you with a notice of non-renewal, the Support Services will automatically terminate at the end of the last day of the then current Support Services Term.
- (b) If you have a non-perpetual license, upon the expiration of the initial Subscription Term, this Agreement shall automatically renew for subsequent Subscription Terms of the same length, unless WinMagic in its sole discretion provides you with notice of WinMagic's intention to not renew at least thirty (30) days prior to the commencement of the next Subscription Term. For certainty, if you fail to pay the Subscription Fee for the next Subscription Term when due, or if WinMagic provides you with a notice of non-renewal, this Agreement shall automatically terminate at the end of the last day of the then current Subscription Term.

12. RENEWAL NOTICE; CHANGE IN FEES: WinMagic may increase the Support Services Fee or Subscription Fee at the beginning of any renewal. At least 30 days prior to the automatic renewal of your Support Services Term or Subscription Term, as applicable, notice of such renewal will be sent to you by WinMagic and will include, if applicable, a reference to any increase in applicable Fees that will apply going forward. Unless you provide WinMagic with notice of your desire to not renew prior to the start of the next Support Services Term or Subscription Term, as applicable (the "**Notice of Non-Renewal**"): (i) renewal shall occur automatically; and (ii) you will be deemed to have agreed to any specified increase in Fees, without reservation. If you disagree with any increase in Fees as indicated to you by WinMagic or you would otherwise not like to renew your Support Services Term or Subscription Term, as applicable, WinMagic requires that you send a Notice of Non-Renewal and, if you have a non-perpetual license, discontinue use of the Licensed Materials by the end of the then current Subscription Term.

13. SUPPORT SERVICES: During the Support Services Term (if you have a perpetual license) or the Subscription Term (if you have a non-perpetual license) and, subject to this Agreement, including the terms set out in Schedule A, WinMagic agrees to provide you with either (a) standard maintenance and support, or (b) premium maintenance and support, in respect of the Software, based on the level of support selected in your Order and confirmed in your Order Confirmation (the "**Support Services** "). The content, extent and working methods of the Support Services provided shall be decided at the sole discretion of WinMagic. The Support Services exclude: (i) any extended, enhanced or additional maintenance and support beyond what is set out in Schedule A; (ii) any training, data processing services or any other consulting work or issues related to the Software, except as may be separately agreed by the parties; (iii) any issues related to any third party systems or services, including third party hardware, software, hosting services, the Internet, networking or connectivity issues; and (iv) any issues relating to your Endpoints. WinMagic shall have no obligation to provide the Support Services if: (A) the Fees have not been paid; (B) the Software is used outside the Permitted Use; (C) problems relate to your misuse of the Software; (D) you have not renewed your Support Services Term; or (E) problems relate to your hardware, other software or your other service providers, including any cloud service or other hosting service provider.

14. LIMITED WARRANTY: For 90 days from the Date of Confirmation (the "**Warranty Period**") and subject to the terms of this Agreement, WinMagic warrants that the Software will reasonably conform to the specifications contained in the Documentation. You agree that the limited warranty set out in this section is invalidated and that you will have no claim whatsoever in respect of that warranty if: (a) you are not the purchaser of the licenses to the Licensed Materials; (b) you fail to report in writing to WinMagic, during the Warranty Period, any defect or error claimed to be a breach of the warranty; (c) the Software is misused; (d) you fail to promptly install an update issued by WinMagic; (e) the claim to defect or error has been caused, in whole or in part, by persons other than WinMagic; or (f) the Software has been installed on a system that has not been certified by WinMagic as compatible with the Software at the time of purchase. If you have a warranty claim brought properly within the Warranty Period, WinMagic's sole responsibility pursuant to this limited warranty will be, at WinMagic's sole discretion, to: (i) replace the Software with a version that meets the above-stated warranty; or (ii) terminate this Agreement and return to you a pro-rata portion of the Fees paid by you for the then current Term.

In the case of a perpetual license, such refund will be calculated based on amortization of the Perpetual License Fee over a five (5) year period on a straight-line basis. If WinMagic, at its sole discretion, chooses to replace the Software, the Warranty Period applicable to the replacement Software will be the greater of the remaining time available to you pursuant to the original Warranty Period or 30 days from the date you receive a link allowing you to download the replacement Software. **THE LIMITED WARRANTY SET FORTH IN THIS PROVISION IS THE ONLY WARRANTY MADE BY WINMAGIC IN RESPECT OF THE SOFTWARE.**

WINMAGIC MAKES NO REPRESENTATIONS OR WARRANTIES, AND THERE ARE NO CONDITIONS, OF ANY KIND WHATSOEVER, WHETHER EXPRESS OR IMPLIED OR ARISING BY STATUTE OR OTHERWISE IN LAW OR EQUITY OR BY CUSTOM OR FROM COURSE OF DEALING OR USAGE OF TRADE, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IN CONNECTION WITH (i) THE LICENSED MATERIALS (EXCEPT FOR THE SOFTWARE WARRANTY EXPRESSLY PROVIDED ABOVE) OR SUPPORT SERVICES, (ii) ANY OPEN SOURCE SOFTWARE, (iii) ANY THIRD PARTY SOFTWARE, OR (iv) ANY PRODUCTS OR SERVICES NOT PROVIDED BY WINMAGIC, INCLUDING ANY CLOUD OR OTHER THIRD PARTY HOSTING SERVICES, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY WINMAGIC.

15. INDEMNITY: WinMagic will defend or at its option settle any claim or proceeding brought against you to the extent that it is based on an assertion that your Permitted Use of the Software in accordance with this Agreement constitutes direct infringement of any Canadian or United States copyright, and will indemnify you against all reasonable costs and damages finally awarded against you which result from any such claim or proceeding, provided that you notify WinMagic promptly in writing of any such claim or proceeding and give WinMagic full and complete authority, information and assistance to defend such claim or proceeding and any negotiations for a compromise or settlement. WinMagic will have no liability or obligation to you hereunder for any copyright infringement or any assertion, claim or proceeding relating thereto to the extent resulting from: (i) the combination of the Software with any other products not furnished by WinMagic; (ii) any addition to or modification of the Software made by any person or entity other than WinMagic; (iii) any software or other technology not claimed to be owned by WinMagic, including the Third Party Software and the Open Source Software and any materials related thereto; or (iv) any use of the Software outside of the Permitted Use. WinMagic will have no obligation hereunder for any costs incurred by you without WinMagic expressing prior written authorization. If the Software or any part thereof becomes, or in WinMagic's opinion is likely to become, the subject of any claim of infringement, WinMagic will have the right, at WinMagic's option and expense, to either (i) obtain for you the right to continue using the Software; (ii) replace the Software with a version that is non-infringing, or (iii) terminate this Agreement and provide you with a pro-rata refund of the Fees paid by you for the then current Term. In the case of a perpetual license, such refund will be calculated based on amortization of the Perpetual License Fee over a five (5) year period on a straight-line basis. This provision states the sole, exclusive and entire liability of WinMagic, and your sole, exclusive and entire remedy, with respect to any claim of copyright or other intellectual property infringement with respect to the Software, and any part thereof.

16. LIMITATION OF LIABILITY: UNDER NO CIRCUMSTANCE WILL WINMAGIC OR ANY OF WINMAGIC'S AFFILIATES BE LIABLE TO YOU FOR ANY LOSS OF PROFITS, REVENUE OR BUSINESS OPPORTUNITIES, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF WINMAGIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF SUCH DAMAGES WERE FORESEEABLE. FOR GREATER CERTAINTY, WITHOUT LIMITING THE FOREGOING, WINMAGIC SHALL NOT BE LIABLE FOR ANY LOSS OR COMPROMISE OF DATA OR INABILITY TO ACCESS OR USE DATA IF YOU NEGLECT TO BACK UP YOUR SECURED DOC™ KEY DATABASE OR PROFILE, IF YOU CANNOT RECALL YOUR PASSWORD OR IF YOU BECOME THE SUBJECT OF ANY RANSOMWARE OR OTHER CYBER ATTACK.

WINMAGIC'S AGGREGATE LIABILITY RELATING TO THE LICENSED MATERIALS, THE SUPPORT SERVICES OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT HOWEVER CAUSED, IS LIMITED TO THE FEES PAID TO WINMAGIC BY YOU IN THE NINETY (90) DAYS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

YOU AGREE THAT THE LIMITATION ON THE LIABILITY OF WINMAGIC AND ITS AFFILIATES AND THE LIMITED REMEDIES AVAILABLE TO YOU UNDER THIS AGREEMENT ARE UNDERSTOOD BY YOU, SHALL APPLY NOTWITHSTANDING A FUNDAMENTAL BREACH OF CONTRACT BY WINMAGIC, AND THAT THE FEES FOR THE LICENSED MATERIALS AND

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SUPPORT SERVICES AND OTHER PROVISIONS IN THIS AGREEMENT WERE DETERMINED IN CONSIDERATION OF SUCH LIMITATIONS.

17. CONFIDENTIAL INFORMATION: For purposes of this Agreement, the term "**Confidential Information**" means any information pertaining to WinMagic's business, whether disclosed orally, in writing or electronically. Confidential Information specifically includes the Licensed Materials and any trade secrets and information contained in or relating to the Licensed Materials or WinMagic's other computer software programs, technical information, know-how, processes, future products, marketing plans or proposals, financial and sales information, subcontractor and employee lists, existing, inactive or potential customer lists, and all other customer information, whether developed, acquired by or licensed to WinMagic, and including all information which WinMagic identifies in a conspicuous place as being "confidential" or "trade secret".

The term Confidential Information as used in this Agreement shall not include any information which: (a) was in the public domain at the time of disclosure by WinMagic to you; (b) is published or otherwise comes into the public domain after its disclosure to you through no violation of this Agreement by you; (c) is disclosed to you by a third party not under an obligation of confidence to WinMagic; (d) is independently developed by or for you without reference to WinMagic's Confidential Information; or (e) is required to be disclosed by any law or governmental regulation or produced under order of a court of competent jurisdiction, provided, however, that you provide WinMagic written notice of such request or order and WinMagic is provided with an opportunity to attempt to limit such disclosure.

18. CONFIDENTIALITY OBLIGATIONS: You will take all reasonable precautions necessary to safeguard WinMagic's Confidential Information, including: (i) taking all such actions as a prudent person would take to protect its own confidential information; and (ii) such other measures as WinMagic or its authorized representatives may reasonably request from time to time. You will not allow the removal, copying, or defacement of any confidentiality or proprietary notice placed on the Licensed Materials. The placement of copyright notices on any portion of the Licensed Materials will not constitute publication or otherwise impair their confidential nature.

You shall not allow any copying, disclosure, or use, in whole or in part, of any item of WinMagic's Confidential Information to any individual, entity, or other person, except to your employees or contractors who (i) require access for purposes of this Agreement and (ii) agree to comply with any use and non-disclosure restrictions applicable thereto under this Agreement or otherwise. If requested by WinMagic, you will cause such employees and contractors to execute appropriate non-disclosure agreements that would ensure the compliance by any such employees or contractors with the provisions set out herein. You acknowledge that any unauthorized use or disclosure of the Licensed Materials and/or the Confidential Information of WinMagic will cause irreparable damage to WinMagic and its licensors for which money damages are not an adequate remedy. You agree that, in the event of any such breach or threatened breach, in addition to other remedies at law or in equity that WinMagic may have, WinMagic shall be entitled to equitable relief, including injunctive relief and specific performance, notwithstanding that damages may be readily quantifiable, and you agree not to plead sufficiency of damages as a defence in the proceeding for such equitable relief brought by WinMagic. If any unauthorized use or disclosure occurs, you will immediately notify WinMagic and take, at your expense, all steps which may be necessary and/or available to recover the Confidential Information and to prevent any subsequent unauthorized use or dissemination.

If this Agreement is terminated, at WinMagic's request, you will within 30 days of the request either deliver to WinMagic or destroy all copies of Confidential Information and all documents containing Confidential Information and certify such delivery and/or destruction to WinMagic.

19. NON-WINMAGIC NETWORKS: You acknowledge and agree that your electronic communications of files encrypted by the Software will involve transmission over the Internet, and over various networks, none of which are owned or operated by WinMagic. You further acknowledge and agree that electronic communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means. WinMagic is not responsible for any of your electronic communications which are delayed, lost, altered, intercepted or stored during transmission across networks not owned and/or operated by WinMagic, including the Internet and your local networks.

20. EXPORT RESTRICTIONS: The Software and/or Open Source Software contain encryption technology and may be subject to export and import restrictions. Export of the Software and Open Source Software may require prior approval of the appropriate government authorities. You agree to fully comply with all Canadian and United States laws and regulations, and the laws and regulations of all other relevant jurisdictions, applicable to the export and import of the Software and Open Source Software, including 282450.00002/97191455.11

when you download, install and use the Software and Open Source Software. Without limiting the foregoing: (i) you represent that you are not named on any U.S. government list of persons or entities prohibited from receiving exports; and (ii) you shall not permit any person to use the Software in violation of any U.S. export embargo, prohibition, or restriction.

21. U.S. GOVERNMENT RESTRICTED RIGHTS: Use, modification, reproduction, release, display, or disclosure by the Government of the United States of America of the Software is subject to the restrictions set out in this Agreement and United States Federal Regulations, including but not limited to 48 C.F.R. Section 12.12 and Subsection 227.7202-3.

22. TRANSFER/ASSIGNMENT: WinMagic may transfer and assign this Agreement and WinMagic's rights and obligations pursuant to this Agreement, in whole or in part, to an affiliate, a subsidiary, or other third party without notice to you. With the prior written consent of WinMagic (not to be unreasonably withheld), you may transfer and assign this Agreement and your rights pursuant to this Agreement to another party provided that: (i) that party agrees in writing with WinMagic to become subject to the terms and conditions of this Agreement; and (ii) you are not transferring or assigning this Agreement or your rights under this Agreement to any third party for the purposes of monetary gain. You are otherwise not permitted to transfer or assign this Agreement or any of your rights or obligations under this Agreement to any third party.

23. TERMINATION: You may terminate this Agreement at any time by uninstalling the Software from all Endpoint(s) and permanently deleting the Software from all Endpoints. WinMagic may terminate this Agreement at any time if: (a) you breach any term or condition of this Agreement; or (b) you make a general assignment for the benefit of creditors or a proposal for rearrangement under any bankruptcy legislation, or a petition is filed against you under any bankruptcy legislation, or if you are adjudicated or declared as bankrupt, or if a liquidator, trustee in bankruptcy, custodian, receiver, receiver and manager, or any other officer with similar powers is appointed of or for you, or if you commit an act of bankruptcy or propose a compromise or arrangement or institute proceedings to be adjudged bankrupt or insolvent or consent to the institution of such appointment or proceedings or admit in writing inability to pay debts generally as they become due; or (c) for any reason where WinMagic, acting reasonably, believes that its rights and interests pursuant to this Agreement or in connection with the Licensed Materials, may be at risk from you or any third-party. Upon expiry or termination of this Agreement for any reason, the license and all other rights granted to you under this Agreement shall immediately terminate. Sections 2, 7, 9, 16, 17, 18, 20 and 22 to 28 shall survive any expiry or termination of this Agreement.

24. GOVERNING LAW: This Agreement is governed by the laws of the Province of Ontario and the laws of Canada applicable therein. You agree that any action or lawsuit commenced in connection with this Agreement or in connection with the subject matter hereof, will be brought before the courts of the Province of Ontario.

25. SEVERABILITY: If any provision of this Agreement is held to be unenforceable, in whole or in part, such determination will not affect the validity of any other provisions of the Agreement.

26. WAIVER: No waiver of or consent to depart from the requirements of any provision of this Agreement shall be binding against either party unless it is in writing and is signed by the party giving it. The failure of either party to exercise, and any delay of either party in exercising, any of its rights under this Agreement, in whole or in part, shall not constitute or be deemed a waiver or forfeiture of such rights, neither in the specific instance nor on a continuing basis. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

27. ENTIRE AGREEMENT: This Agreement constitutes the complete and entire statement of the agreement between you and WinMagic with respect to its subject matter and supersedes all prior writings, discussions, representations, or understandings.

28. AMENDMENTS: This Agreement may be amended by WinMagic from time to time upon renewal of the Subscription Term or, if you have a perpetual license, renewal of the Support Services Term. Notice of any such amendment will be included in the renewal email from WinMagic or otherwise sent to you by WinMagic and will include access to an updated version of this Agreement. The amendments will become effective if you chose to go forward with the renewal. If you do not agree to be bound by the amended terms of this Agreement, you should not proceed with the renewal (see Section 12) and this Agreement (including the licenses granted under this Agreement) will terminate and you must discontinue use of the Licensed Material at the end of the then current Subscription Term or Support Services Term, as applicable.

If you have any questions concerning this Agreement, or if you desire to contact WinMagic for any reason, please write to:

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WinMagic Corp.
501-5770 Hurontario St.
Mississauga, Ontario, Canada L5R 3G5
Tel.: +1 905 502-7000
Fax: +1 905 502-7001
Sales: 1-888-879-5879
E-mail: Info@WinMagic.com

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by a duly authorized representative as of the date set forth below.

WinMagic Corp.

Customer (You):

Signed: _____

Signed: _____

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Even if you do not sign above, you will be deemed to have agreed to the terms and conditions of this Agreement if you selected "I Accept" during the installation process or if you otherwise install or use the Licensed Materials.

SCHEDULE A SUPPORT SERVICE LEVEL AGREEMENT

This Support Service Level Agreement (“**SSLA**”) forms an integral part of the Software License and Services Agreement made between you and WinMagic (the “**Agreement**”). By accepting the Agreement you acknowledge and agree that you have had the opportunity to read this SSLA, have understood it, and confirm that you will be legally bound by each of the terms and conditions of this SSLA. The purpose of this SSLA is to specify the Support Services with respect to technical support for the Software, as referenced in Section 13 of the Agreement. All of the provisions of the Agreement are expressly incorporated into this SSLA as if set out herein at full length, except solely to the extent that specific provisions of the Agreement are expressly amended, deleted or supplemented in this SSLA. All capitalized terms used in this SSLA, and not otherwise defined herein, have the meaning ascribed to such terms in the Agreement, unless the context otherwise requires. In addition, the provisions set out below form part of this SSLA.

1. **DEFINITIONS:** The following capitalized terms shall have the meanings as set forth below:

- (a) **“Major Release”** means the next Version that has a subsequent ordered digit to the left of the decimal point compared to the immediate prior release.
- (b) **“Minor Release”** means all Versions after a Major Release that share the same digit to the left of the decimal point. This will usually, but not always, include bug fixes or patches for updates to supported operating systems.
- (c) **“Renewal”** means a term of the SSLA immediately after the initial term or any subsequent term.
- (d) **“SSLA”** means this Support Service Level Agreement, being Schedule A to the Agreement.
- (e) **“SES”** means the management console and deployment mechanism of the enterprise version of the Software.
- (f) **“Version”** means the discrete release of the Software identified by the X.X number.
- (g) **“Workaround”** means a change in the followed procedures or data to avoid error without substantially impairing use of the Software.

2. **SUPPORT SERVICES.** Subject to Section 13 of the Agreement, WinMagic shall provide you with the Support Services as set out in Appendix A, for either premium or standard Support Services, as applicable.

- (a) **Problem/Issue Resolution.** The response times set forth in Appendix A to this SSLA constitute targeted goals of WinMagic, and you understand that WinMagic shall use commercially reasonable efforts to meet these responses times. WinMagic does not guarantee the resolution of issues within the times specified in Appendix A. You acknowledge the potentially idiosyncratic nature of any issue, and agree that any sporadic or other failure to meet these response times shall not constitute a breach of WinMagic’s support obligations under this SSLA. WinMagic will solely determine, acting reasonably, the appropriate severity level for a given issue.
- (b) **Escalation Process.** If you feel that a Severity 1 or 2 issue is not progressing towards resolution in a timely manner or needs management attention, you may request a support team member to connect you (via phone or email based on availability) to WinMagic’s technical lead. Further escalation to senior management (Senior Manager, Technical Support) may also be requested.
- (c) **Obligation to Provide Support Services.** WinMagic shall have no obligation to provide the Support Services as set out under this SSLA where:
 - (i) your Fees have not been paid;
 - (ii) you have passed the End of Life (as defined in paragraph (j) below date;
 - (iii) the Software is used outside the Permitted Use;
 - (iv) problems relate to your misuse of the Software;

- (v) problems relate to your hardware, other software or your other service providers, including any cloud service provider or other hosting service provider;
- (vi) the license for the Software used by you is expired;
- (vii) the Software or Support Services are not purchased from WinMagic or an authorized partner; or
- (viii) An issue is caused by:
 - (A) relocation, movement, improper operation, neglect, misuse or misapplication of the Software, including use on unsupported operating systems;
 - (B) your failure (or the failure of your cloud service provider or other service providers) to maintain proper site or environmental conditions;
 - (C) any fault of your employees or contractors;
 - (D) any attempts at repairs, maintenance, or modifications to the Software performed by anyone other than authorized service personnel of WinMagic;
 - (E) casualty, act of God, strikes, riot, war, the unauthorized acts of third parties;
 - (F) failure or interruption of any electrical power, telephone or communication line or like cause; or
 - (G) any other cause external to the Software outside of the Permitted Use.
- (d) **Excluded Support Services.** Support Services do not include the following:
 - (i) step-by-step installation of the Software (except instructions as provided within the Documentation);
 - (ii) on-site professional services or training (unless otherwise agreed);
 - (iii) modification of the Software, security policy configuration and/or design.
- (e) **Bug Fixes and other Patches.** WinMagic will not apply bug fixes to the most recent Version. Bug fixes and any other patches (required as necessary for changes to operating systems) will be included in the next available Version (or Minor Release) and you agree to use that next available Version (or Minor Release) to apply the bug fixes or other patches. Notwithstanding the foregoing, WinMagic reserves the right to provide bug fixes and other patches directly to you to apply to the Version used by you, if so decided by WinMagic at its sole discretion.
- (f) **New Versions.** New Versions of the Software will be made available to you at the same time that WinMagic makes such New Versions available generally to its customers.
- (g) **Online Knowledge Base.** WinMagic's Documentation provides you with access to a repository of technical documents, release notes, known limitation documents, product advisories, and troubleshooting guides.
- (h) **Onsite Support.** If your Support Services include onsite Support Services, a WinMagic technical representative will visit your site subject to the following conditions:
 - (i) onsite visits will be undertaken only if all other support service activities have failed to resolve the issue;
 - (ii) you are limited to three (3) discrete site visits per year;
 - (iii) for any additional days onsite that are required after the first three (3) days, you will be charged at WinMagic's then-current list price for professional services;
 - (iv) you agree to reimburse WinMagic for reasonable travel costs for onsite visits;
 - (v) if, after the visit, it is determined by WinMagic that the source of the issue is due to a factor other than the Software, or that you had not installed available bug fixes or other patches, or for any reason referenced in Section 2(c) of this SSLA, you agree to pay WinMagic for the on-site services at WinMagic's then-current list price for professional services;
 - (vi) you agree to provide WinMagic or its authorized partner with sufficient and safe access to your facilities in order to permit WinMagic to fulfill its obligations under this SSLA; and
 - (vii) you understand that onsite support may not be available or may be delayed for some geographic regions.
- (i) **Your Obligations.** You agree to ensure that:
 - (i) you maintain current back-up copies of relevant files, data and configurations necessary for WinMagic to provide the Support Services;

- (ii) you are able to adequately and accurately describe any issues and provide required information to allow WinMagic to provide the Support Services;
- (iii) your personnel are appropriately trained on the Version for which you require assistance so that you are able to undertake specific tasks as directed by WinMagic to assist in troubleshooting;
- (iv) you are prepared to provide WinMagic with timely access to your network for severity 1 or 2 issues; and
- (v) You will also specify a point of contact who will manage a selected list of contacts as set out in Section 4. Should a user (who is not on the list of contacts) contact WinMagic for Support Services, WinMagic reserves the right to redirect such a user to your point of contact for further assistance.

(j) **Support Lifecycle.** WinMagic provides the applicable Support Services as set out in Appendix A of this SSLA on (i) all Versions of the then current Major Release and (ii) all Versions of the immediately preceding Major Release that were released in the preceding three (3) years.

(k) **End of Life (EOL) Process.** A Version is considered to be at End of Life (“EOL”) when it has been superseded by a Major Release and three (3) years has passed since the date that superseded Version was released. WinMagic will provide at least 12 months notification of the EOL of a Version; such notification method to be determined solely by WinMagic. WinMagic reserves the right to accelerate the EOL of a Version as a result of non-conformance to published specifications of a Version. If EOL is accelerated, WinMagic shall provide a fix for the reported non-conformance that may be available at the time the non-conformance is reported. If no such fix is available, WinMagic will use commercially reasonable efforts to remedy such non-conformance, which may include a Workaround or other temporary fix.

(l) **Computing Platforms (Operating Systems).** Computing platforms supported by each Version are specified by WinMagic in the Documentation and/or release notes. WinMagic reserves the right to discontinue the support of any computing platform at its discretion, with twelve (12) months’ notice to you.

3. AUTHORIZED TECHNICAL CONTACTS. You must specify a limited number of individuals authorized to contact WinMagic for any questions/issues relating to the Software. Typically, these individuals would include an SES Administrator and/or Help/Support Desk Staff within your IT department. These individuals may contact WinMagic via various means based on the applicable service level as stated in the Support Service Matrix (Schedule A). You may specify:

- (a) up to 50 technical contacts for premium Support Services, which may be located in various geographical regions across the globe; or
- (b) Up to 6 technical contacts for standard Support Services.

For technical contacts in excess of 6, Premium support is required, and is only available if you have a minimum of 1,000 Permitted Installations.

4. RENEWALS. If you purchased a perpetual license for the Licensed Materials from WinMagic for a Perpetual License Term, for convenience, and unless instructed otherwise by you, WinMagic shall send you a Renewal order a minimum of thirty (30) days before the end of your then current Support Services Term. You have the option to decline this renewal in writing and cancel the Renewal order, but only for licenses purchased and covered under this SSLA. If you purchased a non-perpetual license for the Licensed Materials from WinMagic for a Subscription Term, this SSLA will renew in conjunction with the renewal of the Subscription Term.

5. LIMITATION OF LIABILITY. Without limiting anything in the Agreement, if WinMagic furnishes you with advice or other assistance which concerns the Licensed Materials supplied under the Agreement or any system or equipment in which any such Licensed Materials may be used in conjunction with, and such advice or assistance is not reasonably expected to be part of the Support Services under this SSLA, the furnishing of such advice or assistance shall not subject WinMagic to any liability, whether in contract, warranty, tort (including negligence regardless of degree of fault), strict liability, patent infringement or otherwise.

6. TERMINATION. If the Support Services Term or Subscription Term, as applicable, is not renewed or the Agreement is terminated, then you and WinMagic shall have no further obligations under this SSLA after the date of expiry or termination.

7. GENERAL
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(a) **Priority.** In the event of any conflict or inconsistency between the Agreement and this SSLA, the Agreement shall prevail, except to the extent that the SSLA expressly states that it should prevail over the Agreement with respect to such conflict or inconsistency, in which case the SSLA shall prevail (but only in respect of the Support Services).

(b) **Force Majeure.** WinMagic shall not be deemed in default hereunder or liable for any loss or damage resulting from delays in performance or from failure to perform or comply with the terms of this SSLA due to any causes beyond its reasonable control, including acts of God or the public enemy; riots and insurrections, war, accidents, fire, strikes and other labor difficulties (whether or not the party is in a position to concede to such demands), embargoes, judicial action, lack of or inability to obtain export permits or approvals, necessary labor, materials, energy, components or machinery, acts of civil or military authorities.

**APPENDIX A
SUPPORT SERVICES**

PREMIUM SUPPORT SERVICES

Support Service Matrix	Included?
Access to Telephone Support 24x7x365 for critical issues with production impact (as per section 3 (a) - Issue Severity Matrix).	Yes
Access to Telephone Support during Regular Business Hours for your SES server installation.	Yes
Support Service levels - see definition in section 3 (a).	Yes
E-mail support	Yes
Online (electronic Ticketing)	Yes
Online Knowledge Base	Yes
Access to Online Instructional Video (when available)	Yes
Onsite support (only if all other options are unsuccessful in resolving the issue)	Yes
Documentation (manuals, release notes, set-up guides)	Yes

Issue Severity Matrix			
Severity Level	Definition	Response Requirement	Implementation
1	Catastrophic problem that severely impacts your ability to conduct business. This may mean widespread impact on your systems and/or application due to loss of critical Software functionality with no procedural workaround in-place.	WinMagic responds directly to you within two (2) Regular Business Hours following receipt of the support request from you.	The objective is to downgrade the problem severity and get your systems back in functional state within twenty-four (24) hours. Efforts to isolate, diagnose and deliver a workaround or fix to a Severity 1 problem shall be continuous. Daily phone contact and progress updates are also expected. These progress updates should be according to the solution plan provided by WinMagic, if applicable, or not less than once per day until the problem severity is reduced. Once the severity level has been changed to Severity 2 or Severity 3 (defined below), the procedure for that level as described below should be followed.
2	High-impact problem in which your operation is disrupted due to loss of important Software functionality but there is capacity to remain productive and maintain necessary business-leveled operations.	WinMagic's engineering support organization will respond to you within four (4) Regular Business Hours following receipt of the support request from you.	The objective is to provide a workaround or solution plan to you within an average of twenty (20) Business Days. Efforts to isolate, diagnose and deliver a workaround or fix to a Severity 2 problem shall be continuous during Regular Business Hours. Regular phone contact and progress updates are also expected. These progress updates should be according to the solution plan provided by WinMagic, if applicable, or not less than twice per week until the problem severity is reduced. Once the severity level has been changed to Severity 3 (defined below), the procedure for that level as described below should be followed.

3	Medium-to-low impact problem involving partial loss of non-critical Software functionality which does not disrupt critical operations. The problem impairs some operations but allows you to be functional with minor change/adjustment.	WinMagic's support organization will respond to you within three (3) Business Days following receipt of the support request from you.	The objective is to provide a workaround or solution plan to you within an average of thirty (30) Business Days. Efforts to isolate, diagnose and deliver a workaround or a fix to a Severity 3 problem shall be continuous during Regular Business Hours.
4	General usage questions, recommendations for future Software enhancements or improvements, documentation enhancement requests. There is no impact on the quality, performance or functionality of application as per design.	WinMagic's support organization will respond in a manner appropriate to the nature of the inquiry.	WinMagic will accept the support request and provide an update to you after initial review with concerned parties/teams internally. Software enhancement requests are submitted to the Software Management team for a decision to introduce changes when deemed appropriate for the Software.

STANDARD SUPPORT SERVICES

Support Service Matrix	Included?
Access to Telephone Support 24x7x365 for critical issues with production impact (as per section 3 (a) - Issue Severity Matrix).	No
Access to Telephone Support during Regular Business Hours for your SES server installation) from Monday to Friday, with the exception of your local statutory holidays.	Yes
Support Service levels - see definition in section 3 (a).	Yes
E-mail support	Yes
Online (electronic Ticketing)	Yes
Online Knowledge Base	Yes
Access to Online Instructional Video (when available)	No
Onsite support (only if all other options are unsuccessful in resolving the issue)	No
Documentation (manuals, release notes, set-up guides)	Yes

Issue Severity Matrix			
Severity Level	Definition	Response Requirement	Implementation
1	Catastrophic problem that severely impacts your ability to conduct business. This may mean widespread impact on your systems and/or application due to loss of critical Software functionality with no procedural workaround in-place.	WinMagic responds directly to you within four (4) Regular Business Hours following receipt of the support request from you.	The objective is to downgrade the problem severity and get your systems back in functional state within two (2) Business Days. Efforts to isolate, diagnose and deliver a workaround or fix to a Severity 1 problem shall be continuous. Daily phone contact and progress updates are also expected. These progress updates should be according to the solution plan provided by WinMagic, if applicable, or not less than once per day until the problem severity is reduced. Once the severity level has been changed to Severity 2 or Severity 3 (defined below), the procedure for that level as described below should be followed.
2	High-impact problem in which your operation is disrupted due to loss of important Software functionality but there is capacity to remain productive and maintain necessary business-leveled operations.	WinMagic's engineering support organization will respond to you within one (1) Business Day following receipt of the support request from you.	The objective is to provide a workaround or solution plan to you within an average of twenty (20) Business Days. Efforts to isolate, diagnose and deliver a workaround or fix to a Severity 2 problem shall be continuous during Regular Business Hours. Regular phone contact and progress updates are also expected. These progress updates should be according to the solution plan provided by WinMagic, if applicable, or not less than twice per week until the problem severity is reduced. Once the severity level has been changed to Severity 3 (defined below), the procedure for that level as described below should be followed.
3	Medium-to-low impact problem involving partial loss of non-critical Software functionality which does not disrupt critical operations. The problem impairs some operations but allows you to be functional with minor change/adjustment.	WinMagic's support organization will respond to you within three (3) Business Days following receipt of the support request from you.	The objective is to provide a workaround or solution plan to you within an average of thirty (30) Business Days. Efforts to isolate, diagnose and deliver a workaround or a fix to a Severity 3 problem shall be continuous during Regular Business Hours.
4	General usage questions, recommendations for future Software enhancements or improvements, documentation enhancement requests. There is no impact on the quality, performance or functionality of application as per design.	WinMagic's support organization will respond in a manner appropriate to the nature of the inquiry.	WinMagic will accept the support request and provide an update to you after initial review with concerned parties/teams internally. Software enhancement requests are submitted to the Software Management team for a decision to introduce changes when deemed appropriate for the Software.