

DIRECTORY SEARCH™

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- b) The Software and domain license are "in use" when it is installed and configured to allow users to perform user and contact searches against a single Active Directory forest.
- c) Multiple instances a single license of the software may be installed provided they are all configured to query against the same Active Directory forest.

2) TITLE

- a) Licensor represents and warrants that we have the legal right to enter into and perform obligations under this EULA, and that use by the Licensee of the Software, in accordance with the terms of this EULA, will not infringe upon the intellectual property rights of any third parties.
- b) Licensor retains ownership of all right, title, and interest in the Software and Documentation.

3) INTELLECTUAL PROPERTY

- a) All now known or hereafter known tangible and intangible rights, title, interest, copyrights, and moral rights in and to the Software, including but not limited to all computer code, algorithms, images, photographs, animations, video, audio, music, text, data, and other information, are owned by the Licensor.
- b) In some cases, Licensor Software utilizes third party developer libraries; in these cases, Licensor warrants that use of said libraries is legal and within the constraints of third-party licensing agreements.
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- a) In consideration for the grant of the Software license and the use of the Software, Licensee agrees to pay Licensor the sum of a license fee.
- b) Licensor will not require payment for services or other charges that exceed fees paid for the current term unless the maximum additional amount payable is agreed upon in advance and authorized by Licensee in writing.
- c) Payment for Software license are due within 30 days of invoice date unless alternate terms have been agreed upon. Payments overdue for more than 60 calendar days may be subject to 15% penalties.

5) EVALUATION

- a) If this software is installed in “Evaluation” mode, Software is provided by the Licensor to the Licensee for a period of 21 days from the date of installation for the purposes of testing, training, and evaluation.
- b) At the end 21 days, Licensee agrees to either purchase Software license, request trial license extension, or remove the Software from any server on which the Software is installed.

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The amendment of the United States Code, Chapter 17, codified as 17 USC 117, permits the owner of a copy of a computer program to make copies necessary for the use or backup of a computer program. You may either:

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- b) backup copies of license keys or authorization keys, or,
- c) backup the server on which the Software is running, or,
- d) backup configuration files and allowed customizations, or,
- e) transfer the Software to backup media provided you keep the original solely for backup or archival purposes.

7) SOFTWARE MAINTENANCE AND SUPPORT

- a) Unless agreed upon otherwise, for one year from date of purchase, Licensor shall make available to Licensee any new, corrected or updated version of the Software as created by Licensor.
- b) Licensor shall provide email and telephone technical support directly related to issues concerning Software.
- c) Such enhancement shall include all modifications to the Software which increase the speed, efficiency, improve security, or ease of use of the Software, or add additional capabilities or functionality to the Software.
- d) Enhancements may not include any substantially new, add-on packs, or rewritten version of the Software.
- e) Licensee may purchase additional years of software support and maintenance at Licensee's request.
- f) Unless extended, Licensor's Software support and maintenance obligations terminates at the end of the support period.

8) **CUSTOMER RESPONSIBILITY**

- a) We have made all reasonable efforts to ensure that the Software will operate on any computer that meets the requirements stated in the Documentation and that it will not negatively impact the operation of the customer's Active Directory or Windows systems.
- b) Licensee is solely responsible for system backups, archives, and precautions against system failure.
- c) Licensee is solely responsible for ensuring adequate security policies, strong password requirements, cyber security procedures, and other security measures are in place and in use by Licensee personnel.

9) **THINGS YOU MAY NOT DO**

The Software and Documentation are protected by United States copyright laws and international treaties. You must treat the Software and Documentation like any other copyrighted material -- for example a book. You may not:

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- c) modify or adapt Software binaries or merge it into another program,
- d) reverse engineer, disassemble, decompile, or make any attempt to discover the source code of the Software other than customization outlined in the Documentation,
- e) place the Software or license codes onto a server so that it is accessible via a public network such as the Internet,
- f) provide Software licenses to others for use outside of licensed Customer organization,

- g) sublicense, rent, lease or lend any portion of the Software or Documentation.

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- a) Provided Software is under a current software maintenance agreement, you may transfer all your rights to use the Software and Documentation to another person or legal entity provided you transfer this Agreement, the Software and Documentation, including all copies, update and prior versions to such person or entity and that you retain no copies, including copies stored on computer.
- b) Official transfer ownership must be acknowledged by Licensor.

11) LIMITED WARRANTY

We warrant that for a period of 90 days after delivery of this copy of the Software to you:

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- b) the Software will perform in substantial accordance with the Documentation.
- c) To the extent permitted by applicable law, the foregoing limited warranty is in lieu of all other warranties or conditions, express or implied, and we disclaim any and all implied warranties or conditions, including any implied warranty of title, noninfringement, merchantability or fitness for a particular purpose, regardless of whether we know or had reason to know of your particular needs.
- d) No employee, agent, dealer or distributor of ours is authorized to modify this limited warranty, nor to make any additional warranties.
- e) Some countries or states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. this warranty gives you specific legal rights, and you may also have other rights which vary from location to location.

12) LIMITED REMEDY

- a) Licensor shall not be responsible for, and shall not pay, any amount of incidental, consequential, direct, or other indirect damages, whether based on lost revenue or otherwise, regardless of whether Licensor was advised of the possibility of such losses in advance.
- b) In no event shall Licensor's liability hereunder exceed the amount of license fees paid by Licensee, regardless of whether Licensee's claim is based on contract, tort, strict liability, product liability or otherwise.
- c) Our entire liability and your exclusive remedy shall be the replacement of any software installer, license key, optical media, or other media not meeting our Limited Warranty which is returned to us or to an authorized Dealer or Distributor with a copy of your receipt, or
- d) If we or an authorized Dealer or Distributor are unable to deliver a replacement installer media or license key that is free of defects in materials or workmanship,

you may terminate this Agreement by returning the Software and Documentation and your money will be refunded.

- e) Licensee is entirely responsible for ensuring that software is installed, operated, and maintained in an environment that is secured appropriately and at a minimum standard as measured by Licensee's industry.
- f) In no event will we be liable to you for any damages, including any lost profits, lost savings, or other incidental or consequential damages arising from the use or the inability to use the software (even if we or an authorized dealer or distributor has been advised of the possibility of these damages), or for any claim by any other party.

13) CUSTOMER INPUT AND FEEDBACK

Feedback, suggestions, feature requests, suspected bug reports, limitation, or compatibility notifications regarding the operation, use, or feature set of the Software ("Feedback".) Licensee assigns to Licensor all rights in the Feedback and agrees that We shall have the right to use or implement Feedback and related information in any manner We deem appropriate.

14) TERM AND TERMINATION

- a) This license agreement takes effect upon your use of the software and remains effective until terminated.
- b) You may terminate it at any time by destroying all copies of the Software and Documentation in your possession.
- c) It will also automatically terminate if you fail to comply with any term or condition of this license agreement or if you allow your software maintenance and support to expire. You agree on termination of this license to either return to us or destroy all copies of the Software and Documentation in your possession.

15) PUBLICITY AND SOCIAL MEDIA

- a) Licensee and Licensor may disclose the form and existence of this Agreement in advertising, press releases, or other materials but shall not otherwise attempt to obtain publicity from its association with the other party.
- b) Licensee and Licensor agree to notify the other party via written or electronic communications if both parties are to be mentioned together in a news article, blog, or other media outlet.
- c) Licensee and Licensor agree to refrain from negative social media postings relating to the other party without first notifying the party in question and allowing 10 business days for the party to resolve the negative issue.

16) CONFIDENTIALITY

- a) The Software contains trade secrets, proprietary algorithms, and processes that belong to Licensor and it is being made available to Licensee in strict confidence.

- b) This software may leverage libraries and functions provided by Microsoft Corporation and Telerik Software. Licensor makes no warranties regarding frameworks and libraries provided by Microsoft or any other third party.
- c) Any use or disclosure of the software, or of its algorithms, protocols or interfaces, other than in strict accordance with this license agreement, may be actionable as a violation of our trade secret rights.
- d) Licensee and Licensor agree not to disclose to any third-party non-standard pricing, terms, or conditions of Software purchases or support agreements.
- e) Licensor acknowledges that, it and its employees, subcontractors or agents in the course of this Agreement may be exposed to or acquire information that is confidential to Licensee or Licensee's clients. Licensee Data is confidential information. Licensor shall maintain the confidentiality of Licensee's confidential information, with the exception of information that is part of or becomes part of the public domain through lawful means and without breach of any confidentiality obligation on the part of the Licensor.

17) LICENSOR INDEMNIFICATION

- a) Licensee shall indemnify, defend, and hold Licensor, and Licensor agents, officials and employees harmless from all third-party claims, demands, suits, actions, proceedings, losses, liabilities, damages, awards, and costs (including reasonable attorneys' fees and expenses), which may be brought or made against Licensee, or their agents, officials, or employees and arising out of or related to any of the following (each an indemnifiable loss):
 - i) Personal injury, death or tangible property damage caused by any alleged act, omission, error, fault, mistake or negligence of Licensor, its employees, agents, or representatives in connection with Licensor's performance under or related to the Agreement.
 - ii) Any willful or grossly negligent act or omission by Licensor that constitutes a material breach of the Agreement, including any breach of warranty.
 - iii) Claims that the Software or its use infringes or violates any patent, copyright, trademark, trade secret, or other proprietary right of a third party.
- b) Licensee will notify Licensor with 30 days in writing via registered mail of any action, Licensee will timely notify Licensor in writing of any action, claim or demand of which Licensee becomes aware and which Licensee reasonably expects to result in an indemnifiable loss. Licensor's obligation under this section does not extend to any indemnifiable loss to the extent caused by:
 - i) The negligence or willful misconduct of Licensee, or their agents, officials or employees; or
 - ii) Licensee's modification of Licensor's software where the unmodified version of the software would not cause an indemnifiable loss.

18) GENERAL PROVISIONS

- a) This written license agreement is the exclusive agreement between you and us concerning the Software and Documentation and supersedes any and all prior oral or written agreements, negotiations or other dealings between us concerning the Software.
- b) At Your expense, this license agreement may be modified in writing signed by a notary public, You, and Us.
- c) In the event of legal dispute between You and Us concerning the Software or Documentation, You agree to mediation prior to initiation litigation.
- d) In the event of litigation between you and us concerning the Software or Documentation, the prevailing party in the litigation will be entitled to recover attorney fees and expenses from the other party.
- e) You agree that the Software will not be shipped, transferred, or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations.

19) **NONWAIVER**

No course of dealing, course of performance, or failure of either party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of any term, right, or condition. No waiver of breach of any provision of this Agreement shall be construed to be a waiver of any subsequent breach of the same or any other provision.

20) **SECURITY AND SUPPLY CHAIN RISK MANAGEMENT**

- a) Licensor warrants that We have taken reasonable steps to ensure that all Software code, Documentation, third party developer libraries, scripts, cascading styles (CSS), open source code, and underlying dependencies to be free from defects and from hostile or malicious code.
- b) Licensor warrants our development, support, and customer relationship environments meet or exceed ISO/IEC 27001 and 27002 cyber security standards and that all reasonable steps are taken to maximize the level of security and integrity of software we deliver.
- c) Licensee agrees to install and operate Software in an environment with security procedures and processes implemented that meet or exceed acceptable security procedures for Licensee's industry sector. Licensor agrees to follow relevant vendor best practices for information technology and security and to hold Licensee free from harm for any failings on the part of Licensor.
- d) Licensee agrees that acceptable supply chain risk management processes are in place for the acquisition of hardware / software / compute capabilities that meet or exceed framework such as the NIST SP 800-161 or ISO/IEC 27036.

21) **JURISDICTION AND CHOICE OF LAW**

- a) This Agreement shall be construed and enforced in accordance with the laws of the state of Hawaii in the United States of America.

- b) This EULA shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of Hawaii, without regard to conflicts of laws provisions thereof.
- c) Any legal action or proceeding relating to this EULA shall be brought exclusively in courts located in Honolulu, HI, and each party consents to the jurisdiction thereof.
- d) The prevailing party in any action to enforce this EULA shall not be entitled to recover costs and expenses including, without limitation, attorney's fees.
- e) This EULA is made within the exclusive jurisdiction of the United States, and its jurisdiction shall supersede any other jurisdiction of either party's election.

22) **DISPUTE RESOLUTION**

- a) Any dispute between the parties under this Agreement that is not resolved through informal discussions, Licensee and Licensor agree to mediation through a mechanism agreed to by both parties.
- b) In the event that information discussions or mediation are unsuccessful, either party may initiate litigation to resolve the dispute. Neither party waives its right to a jury trial.

23) **NO ASSIGNMENT**

- a) Neither this Agreement nor any interest in this Agreement may be assigned by Licensee without the prior express written approval of Licensor.

24) **FINAL AGREEMENT**

- a) This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.
- b) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, legatees, successors, and assignees.

25) **SEVERABILITY**

- a) No failure to exercise, and no delay in exercising, on the part of either party, any privilege, any power or any rights hereunder, will operate as a waiver thereof, nor will any single or partial exercise of any right or power hereunder preclude further exercise of right hereunder.
- b) If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

26) **HEADINGS**

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.F

