macmon NAC Licence Conditions

between

macmon secure gmbh
Alte Jakobstraße 79-80, 10179 Berlin

– macmon –

and the end user

– Customer –

macmon and the Customer are also referred to as the "**Parties**" and individually as a "**Party**".

§1
Subject matter of the Agreement

(1) macmon's Sales Partner ("**Sales Partner**") will provide the Customer with one version of the software "macmon NAC" ("**Contractual Software**") together with the application documentation in return for the remuneration specified in the order ("**Licence Fee**"). The scope of functions and services of the Contractual Software can be derived conclusively from the licence certificate and the application documentation belonging to the Contractual Software. Public statements by macmon or third parties (e.g. the presentation of product attributes in public, such as on macmon's website) do not constitute descriptions of the Contractual Software that supplement or modify the description of services. For the avoidance of doubt: The Customer will receive the Contractual Software directly from the Sales Partner. The Sales Partner acts on its own behalf and is also the licensor. The Sales Partner does not represent macmon.

(2) Additional services, e.g. instructions, installation, adaptation, upkeep or training, or new editions and supplements to the Contractual Software are not the subject matter of this Agreement. These additional services will be provided only by the Sales Partner or macmon if they are expressly agreed in the order or are set out in a separate agreement. Updates and upgrades ("**Maintenance**", cf. clause 7) should always be part of the agreement between the Sales Partner and the Customer.

(3) Depending on how critical the concrete purpose of use is, for example, if life and limb could be endangered due to restrictions to the Contractual Software, the Customer will, at its own discretion, deploy another solution as a backup service for the Contractual Software that can become active immediately should the Contractual Software be unavailable or only available to a limited extent. macmon strongly recommends such a solution as part of a normal security concept.

§2
Delivery

The Contractual Software will be delivered in executable form (compiled) with the functionality described in the application documentation. The executable code for the Contractual Software will be provided to the Customer as a download via the internet. The Contractual Software includes application documentation which will also be provided to the Customer as a download.

§3
Grant of rights

(1) The Customer will receive from the Sales Partner, subject to the condition precedent of full payment of the Licence Fee, a simple, non-exclusive, non-transferable right to use the Contractual Software in its company, and merely in countries where its company has branches, for the duration specified in the licence certificate on the number of servers, workstations and on the number of network nodes specified in the licence certificate, subject to the terms and conditions of this Agreement, for the purposes of simultaneously monitoring its network. In addition, the Customer is entitled to make a reasonable number of backup copies and the usual data backups.

(2) For the avoidance of doubt: The Customer is, therefore, only entitled to install and load the Contractual Software on the maximum number of servers, workstations and network nodes specified in the licence certificate and run it for the specified duration and use it to monitor the number of network nodes set out in the licence certificate. The MAC addresses tolerated by macmon in the network will be decisive for the licence units "network nodes" or "nodes" which need to be taken into consideration in the licensing process.

(3) Any further use of the Contractual Software, in particular, if it is to be used by a higher number than the number of workstations/network nodes set out in the licence certificate, or to extend the period of use, the Sales Partner or macmon will need to grant additional rights to the Customer.

(4) The Customer will without undue delay notify the Sales Partner or macmon of every intended use that goes beyond the contractually agreed extent, in particular, the simultaneous use of the Contractual Software for more than the number of workstations or network nodes set out in the licence certificate, as well as any use that goes beyond the agreed duration ("**Overuse**"). macmon or the Sales Partner and the Customer will in this case attempt to reach an agreement with regard to extending the usage rights. If an Overuse takes place without such an extension of the usage rights, both macmon and the Sales Partner will be entitled to terminate these Licence

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Conditions and the licence certificate without notice, and the Customer will be obliged to pay for the Overuse in accordance with macmon's price list as applicable at the time, plus a surcharge of 15 %.

If the Customer does not notify macmon of the Overuse, a lump sum in the amount of three times the price of the utilised usage according to macmon's price list will become due.

(5) If no Maintenance has been required for a period of time and if an upgrade to the current version is to be made, then either the new price or the maintenance fee for the overdrawn period, taking into account any reactivation items, whichever is less, must be paid.

(6) Notwithstanding the licence and usage rights granted, macmon will retain all rights to the Software, including all copies or partial copies of the same made by the Customer. The Customer's ownership of machine-readable recording media, data storage and data processing equipment will not be affected by this.

(7) The Customer undertakes to retain the copyright and protective marks, such as copyright marks and other reserved rights, unchanged in the Contractual Software and to assume unchanged all complete or partial copies of machine-readable software produced by the Customer.

(8) The Customer may only pass on the Contractual Software to third parties in its entirety as it was handed over to the Customer, i.e. only through simultaneous transfer of the licence and the usage rights. The prerequisite for this is that the transferee agrees to the contractual terms and conditions of the Sales Partner and macmon. In the event of a transfer to third parties, all copies of the software must be rendered completely and irreversibly unusable by the Customer.

(9) The Customer will notify the Sales Partner and macmon without undue delay about the transfer to third parties and provide details about the transferee (person and address). The Customer is prohibited from (re)renting, i.e. temporary transfer in return for payment, unless this has been expressly permitted by macmon, for example, in the event that the Customer is a Managed Service Provider.

(10)   The Contractual Software contains components that are licensed under an open source licence. macmon assumes no warranty and no liability for such components, unless it has modified them. A list of the included components together with the applicable open source licence is available upon request.

§4
Remuneration

The Customer will pay the Licence Fee plus statutory VAT, if applicable, to macmon or the Sales Partner for the delivery of the Contractual Software and the granting of usage rights.

§5
Additional services

The Parties may enter into separate agreements for services provided by macmon that go beyond the use of the Contractual Software.

§6
Customer's duties

(1) The Customer will procure and install at its own expense any additional software that is required to use the Contractual Software and, where applicable, is set out in documentation, descriptions of the installation requirements and/or in delivery and invoice documents, in the appropriate, authorised version.

(2) The Customer is obliged to only use suitable employees when using the Contractual Software and to record in an appropriate manner the use of the software and any special incidents that occur.

(3) If macmon carries out work directly at the Customer's premises on the basis of a separate agreement, the Customer will provide macmon with the necessary rooms, equipment, software, documents with error examples and data material, if applicable, including test data, computer time as well as employees for information purposes within good time and to an appropriate extent.

(4) The licensee is obliged to take suitable action to secure the Contractual Software against access by unauthorised third parties, in particular to keep all copies of the Contractual Software in a protected place.

(5) The licensee will make a daily recoverable Backup of all data that could be affected by errors or by a failure of the Contractual Software on an independent system ("**Backup**").

(6) The Parties are aware that the Contractual Software may be subject to export and import restrictions. In particular, there may be licensing requirements and the use of the Contractual Software or related technologies may be subject to restrictions abroad. The Customer will comply with the applicable export and import control regulations of

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the Federal Republic of Germany, the European Union and the United States of America, as well as all other relevant regulations. Performance of the Agreement by macmon is subject to the condition that no obstacles which are based on the national and international regulations of export and import law, as well as no other legal provisions, will prevent performance.

(7) The Customer is aware that (a) the Contractual Software contains copyright-protected and confidential information, which is protected by the applicable intellectual property laws and other regulations, and (b) macmon owns all rights to the Contractual Software and to updates/upgrades, except for third party software, in particular all intellectual property rights. Such intellectual property rights include all rights that exist under patent law, copyright law, trade secrets law, trademark law, unfair competition law and all other ownership rights.

(8) The Customer undertakes not to, and also will require users of the Contractual Software to be obliged not to (i) copy, sell, rent, lease, loan, sublicense, distribute, transfer, modify, adapt, translate, create derivative works of, decompile, reverse engineer, disassemble or otherwise attempt to create a source code for the Contractual Software and/or updates/upgrades in each case unless this is expressly permitted by law or an agreement, (ii) use the Contractual Software for purposes that breach any law or any third party rights; or (iii) remove, obscure or alter any notices relating to copyright, trademark or other ownership rights of macmon which are affixed to or contained in or accessed in connection with or through the Contractual Software.

§7
Updates/upgrades (Maintenance)

(1) During the term of the usage rights and a simultaneously existing, separately concluded maintenance agreement, the Customer will be obliged to download updates or upgrades of the Contractual Software made available by macmon for downloading from time to time and to install and configure these itself ("**Installation of Updates/Upgrades**"). The Installation of Updates/Upgrades may only be carried out by experienced users who have familiarised themselves sufficiently with the Contractual Software and its functions. Before the Installation of Updates/Upgrades takes place, a Backup as defined in clause 6 must be created. The information on the Installation of Updates/Upgrades contained in the application documentation must be complied with. The Installation of Updates/Upgrades must first be carried out on a clone of the productive system and may only be carried out on the productive system after successful testing. Instructions on how to carry out such tests can be found in the application documentation. Furthermore, the Installation of Updates/Upgrades should only be carried out on bank working days in Berlin between 9 a.m. and 5 p.m. so that in the event of an emergency support can be requested from the Sales Partner or macmon, whose availability, however, depends on available capacity, unless otherwise agreed between the Customer and the Sales Partner or macmon.

(2) When using the Contractual Software in environments within the meaning of clause 1 (3), it is mandatory that a Backup service is set up before the Installation of Updates/Upgrades is carried out.

(3) No duty to remedy any errors or defects in the Contractual Software will be made by either macmon or the contractual partner as part of a maintenance agreement. The Customer will only have the option of installing the updates/upgrades provided in accordance with this clause 7.

(4) The provisions set out in this Agreement with regard to the Contractual Software will apply accordingly to updates/upgrades.

§8
Notification of defects and warranties

If the Customer has purchased the Contractual Software from macmon and not from the Sales Partner, the following warranty rights will apply, otherwise the warranty rights in the agreement between the Customer and the Sales Partner will apply:

(1) macmon will remedy any quality defects and defects in title in the Contractual Software within a reasonable period of time. The warranty is excluded for immaterial defects.

(2) The Customer is only entitled to warranty rights for the Contractual Software where all available updates/upgrades have been installed.

(3) In addition the following applies:

a) The commercial Customer may only assert claims based on defects if it has duly complied with its inspection duties and its duties to provide notification of defects under section 377 German Commercial Code (*HGB*). Furthermore, the Customer must notify macmon of any obvious defects within 14 days of receipt of the goods, otherwise the Customer's claims for defects will lapse. Any complaints and all notifications of defects must be documented by the Customer in a manner that is as comprehensible as possible for macmon and must be communicated to macmon in writing without undue delay. If the Customer breaches its obligation to report defects, it will no longer be entitled to the claims for defects described below for those defects that would have been detectable during a proper initial inspection.

b) The warranty will not cover any defects caused by deviations from the intended operating conditions for the Contractual Software and specified in the description of services. macmon will no longer be obliged to provide a warranty if changes have been made to the Contractual Software without macmon's express written consent, unless the Customer can prove that the defect is not due to the change and that the error analysis and remedy of a defect will also not be impaired by this.

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c) macmon's warranty obligation will also not apply if the Customer uses the Contractual Software in a hardware or software environment other than that intended, unless the Customer can prove that the defect is not due to the changed hardware or software environment and that the error analysis and remedy of a defect will also not be impaired by this.

d) macmon must be given the opportunity to inspect the defect on site. This inspection by macmon must take place without undue delay provided macmon expresses interest in an immediate remedy.

e) Claims for defects will not exist in the case of slight deviations from the agreed quality or in the case of slight impairment to use of the Contractual Software.

f) If there is a defect in the Contractual Software for which macmon is responsible, macmon will be entitled, at its discretion, to remedy the defect or to make subsequent fulfilment. However, macmon is under no circumstances obliged to make a new delivery or new production within the scope of the subsequent fulfilment. If subsequent fulfilment (k below) fails, the Customer will be entitled to reduce the price or, at its option, rescind the Agreement. In the event of a reversal of the Agreement, the Customer will be credited for the usage rendered. The credit will be calculated on the basis of a normal useful life of four years. The Customer may in turn subtract the price reduction incurred during usage caused by the defect which led to the reclamation.

g) If, for reasons which are not within macmon's sphere of responsibility, the Customer unjustly reports a defect, claiming that it is within macmon's sphere of responsibility, macmon may charge the Customer the reasonable costs of remedying and/or ascertaining the defect.

h) macmon can charge the Customer the additional costs of the necessary expenses required for subsequent fulfilment, in particular, transport, travel, labour and material costs, if these expenses are increased because the Contractual Software has to be moved to somewhere other than the delivery address, except if it is moved to the location where it is to be used for the purpose stipulated in the Agreement.

i) The limitation period for claims and rights due to defects, irrespective of the legal grounds, is one year. This limitation period will also apply to other claims for damages against macmon, irrespective of their legal basis. It applies provided the claims are not related to a defect. It will also apply to any consequential harm caused by a defect provided such harm is not attributable to a tortious act. However, the above limitation period will apply subject to the following conditions:
- The limitation period generally does not apply in the case of intent.
- The limitation period will also not apply if macmon has fraudulently concealed the defect or if macmon has assumed a warranty for the quality of the Contractual Software. In these cases, instead of the one-year limitation period,

the applicable time limits up to section 438 (1) no. 3 German Civil Code (*BGB*) and the exclusion of the extension of the time limit in the case of fraudulent intent pursuant to section 438 (3) German Civil Code (*BGB*) will apply.

- Furthermore, the limitation period of one year will not apply to claims for damages in cases of injury to life, limb, health or freedom, to claims under the German Product Liability Act (*ProdHaftG*), to a grossly negligent breach of duty or culpable breach of material contractual obligations.
- The limitation period for all claims for damages begins on delivery. If a defective supply makes subsequent fulfilment necessary, limitation will only be suspended pending subsequent fulfilment and will not be triggered anew.

j) The Customer cannot assert further claims or rights (withdrawal, price reduction, damages or reimbursement of expenses) until macmon has been given an opportunity to make subsequent fulfilment within a reasonable time limit, provided macmon has not provided any warranty to the contrary. If subsequent fulfilment fails despite at least two unsuccessful attempts, if macmon refuses to provide subsequent fulfilment or if subsequent fulfilment is not possible or not reasonable for the Customer, the Customer can withdraw from the Agreement or reduce the remuneration (reduction). Clause 9 of these conditions applies to the assertion of damages and reimbursement of expenses.

k) Claims arising from legal defects are also subject to the following:
- Unless otherwise agreed, macmon is merely required to make delivery free of third-party rights in the country of the delivery address.
- If macmon infringes third-party property rights macmon can, at its own discretion, either at its own expense obtain an adequate usage right which is sufficient for the agreed or presumed use and then transfer this right to the Customer, or modify the Contractual Software supplied in such a way that the property right is not infringed, or replace the Contractual Software supplied, provided in each case the agreed and presumed use of the Contractual Software supplied is not impaired. If this is not possible or if macmon refuses to render subsequent fulfilment or if macmon's attempts at subsequent fulfilment fail, the Customer will be entitled to the rights and claims provided for by statute. Clause 9 applies to claims for damages and the reimbursement of expenses.

§9
Liability

(1) For each case of slight negligence, each Party will only be liable in the event of breach of contractual duties, the fulfilment of which characterises the Agreement and on which the contractual partner may rely; and the liability is limited to the foreseeable damage typical for such agreements. This does not apply to damage resulting from injury to life, limb or health nor to instances of mandatory statutory liability, in particular, due to the German Product Liability Act (*ProdHaftG*), in the event of default or the EU General Data Protection Regulation. In addition, strict liability is excluded for defects that already exist at the time of conclusion of the Agreement.

(2) In cases under (1), liability for indirect damage, including loss of profit, is excluded.

(3) macmon will only be liable for the loss of data and programmes and their recovery if this loss could not have been avoided by reasonable preventive action, in particular by a daily Backup (within the meaning of clause 6).

(4) The liability in cases under (1) is limited to the Licence Fee in the respective calendar year in which the damaging event took place (the maximum liability sum applies to all losses together which arise in that year or which are based on a damaging event from that year).

(5) The limitation of liability set out in this clause also applies to the personal liability of the employees, representatives and bodies of macmon.

(6) macmon's liability for Contractual Software where not all the updates/upgrades have been installed and configured is excluded.

§10
Miscellaneous

(1) The Customer is only entitled (a) to offset if its counterclaim is either (aa) undisputed or (bb) has been ruled final and absolute by a court of law or (cc) results from the exercising of a statutory revocation right or (dd) where such claim is synallagmatic to the claim against which the Customer offsets; (b) to assert a right of retention if its counterclaim is either (aa) undisputed or (bb) has been ruled final and absolute by a court of law or (cc) if such claim is based on the same contractual relationship as the claim against which the Customer asserts its right.

(2) These Licence Conditions and their interpretation and all non-contractual obligations in connection with it are governed by the substantive law of the Federal Republic of

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Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) does not apply.

(3) Neither of the Parties may assign rights or claims under these Licence Conditions without the prior written consent of the other Party.

(4) Any amendments and additions to these Licence Conditions must be in written form to be valid.

(5) General terms and conditions as well as any other pre-printed provisions in letters from both parties will not be valid, with the exception of macmon's general terms and conditions, available at www.macmon.eu/legal, which are ranked behind these Licence Conditions.

(6) If any provision of these Licence Conditions is or becomes void or invalid in whole or in part, this will not affect the validity of the other provisions. Statutory law (section 306 (2) German Civil Code (*BGB*)) will apply in place of any general terms and conditions which are either not included or which are invalid. In all other respects, the Parties will agree on a valid provision to replace the void or invalid provision that reflects as closely as possible the original economic purpose, provided that no supplementary interpretation of the Agreement takes precedence or is possible.

(7) These Licence Conditions contain all agreements and declarations by the Parties on the subject of the Agreement. They supersede all previous agreements and understandings, oral or written declarations of intent and other legally binding or non-binding arrangements and side agreements made by the Parties in respect of the subject of the Agreement.

(8) The exclusive place of jurisdiction for all disputes arising from or in connection with these Licence Conditions including its validity is Berlin.