

## TERMS AND CONDITIONS FOR SALES

These Terms and Conditions for Sales (these "Terms and Conditions") are incorporated into this website and into each electronic and written document referencing them as if fully stated therein. **ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY FORM DELIVERED BY YOU OR ON YOUR BEHALF ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS, AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.** Except to the extent waived, amended or modified by an officer of Singlewire Software, LLC ("Singlewire" or "Seller") in a signed electronic or written document:

### **1. Important Information about these Terms and Conditions.**

These Terms and Conditions are the exclusive terms and conditions under which Seller sells and/or provides to you ("You" or "Customer"), and You purchase and/or accept from Seller, products, including, but not limited to software licenses (together, "Products") and/or services, including, but not limited to, software maintenance services (together, "Services"). **YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS AND SHALL BE DEEMED TO HAVE ACCEPTED THEM BY SIGNING AN ACKNOWLEDGEMENT OF THEM, PLACING AN ORDER, ACCEPTING DELIVERY OF A PRODUCT AND/OR PERMITTING, EXPRESSLY OR IMPLIEDLY, A SERVICE TO COMMENCE.** These Terms and Conditions are subject to change without prior notice, except that the Terms and Conditions posted on Singlewire's website at the time You place an order will govern the order in question. These Terms and Conditions constitute a binding contract between You and Seller (together, the "Parties" and individually, each a "Party").

If You are one of Seller's authorized resellers (a "Reseller"), You are authorized and/or required to delegate certain of Your rights and/or obligations hereunder to Your customer, all pursuant to Your reseller agreement with Seller. If You are a customer of a Reseller, then certain of Your obligations hereunder may be performed through the

Reseller instead of directly to Seller, all pursuant to any instructions the Reseller provides to You.

Customer may request Products and/or Services by issuing a purchase order to Seller and/or by using other methods acceptable to Seller. Orders are not binding on Seller until accepted by Seller. All orders are subject to Product availability and Service capacity, and Seller cannot guarantee that it will be able to fulfill Customer's orders.

## **2. Pricing Information.**

Subject to these Terms and Conditions, pricing for Products and Services will be as established on Seller's bids/quotes and/or website, subject to any additional terms or conditions contained therein, and if no bid/quote has been provided, as established on Customer's purchase orders or other electronic or written documents acceptable to Seller, if and to the extent accepted by Seller. Bids/Quotes expire after thirty (30) days unless another time period has been specified therein. Seller reserves the right to make adjustments to pricing, Products, Service offerings and/or Product and/or Service performance for reasons including, but not limited to, changing market conditions, Product unavailability, licensor/manufacturer price changes, supplier price changes and errors in advertisements and/or bids/quotes. Any delivery dates, completion dates and/or estimates of time and/or materials provided by Seller or purported deadlines contained in any document are estimates only to be used for Seller's planning only, and Customer acknowledges that no employee of Seller is authorized to make a fixed or firm bid/quote based on time and/or material on behalf of Seller that is not in an electronic or written document signed by an officer of Seller that expressly states that the bid/quote is "firm" or "fixed."

## **3. Payment.**

Unless otherwise provided in the bid/quote, invoices are due and payable in full thirty (30) days from the date of the invoice, subject to continuing credit approval by Seller. In

the event Customer fails to remit timely without reasonable cause, Seller may impose an interest charge on past-due sums at the lower of one and one-half percent (1.5%) per month, or highest rate allowed by law. Customer will pay for, and will indemnify and hold Seller harmless from, any applicable sales, use, transaction, excise or similar or other taxes and any federal, state or local fees or charges (including, but not limited to, environmental or similar fees) imposed on, in respect of or otherwise associated with Products, Services, these Terms and Conditions and/or any other document or signed written or electronic agreement between the Parties, excluding, however, income taxes on profits that may be levied against Seller and employment-related taxes. Customer must claim any exemption from such taxes, fees or charges at the time of purchase and if requested by Seller, provide Seller with the necessary supporting documentation. In the event of a payment default, Customer will be responsible for all of Seller's costs of collection, including, but not limited to, court costs, filing fees and reasonable attorneys' fees. In addition, if payments are not received as described above, Seller reserves the right to suspend Services until payment is received and/or terminate future Services.

#### **4. Confidential Information.**

Each Party anticipates that it may be necessary to provide access to information of a confidential nature of such Party or of a third party (hereinafter referred to as "Confidential Information") to the other Party in the performance of these Terms and Conditions and/or any other signed written or electronic agreement between the Parties. "Confidential Information" means any information or data in oral, electronic or written form which the receiving Party knows or has reason to know is proprietary or confidential and which is disclosed by a Party in connection with these Terms and Conditions and/or any other signed written or electronic agreement between the Parties or which the receiving Party may have access to in connection with these Terms and Conditions and/or any other signed written or electronic agreement between the Parties, including, but not limited to Seller's Software Information, bids/quotes and other pricing information and any and all copies of the foregoing. Confidential Information does not include information

which: (a) is or becomes known to the public through no act or failure to act on the part of the receiving Party; (b) except in the case of Seller's Software Information, was known to the receiving Party or becomes known to the receiving Party from a third party having the right to disclose it and having no obligation of confidentiality to the disclosing Party with respect to the applicable information; or (c) except in the case of Seller's Software Information, is independently developed by agents, employees and/or subcontractors of the receiving Party who have not had access to such information. To the extent practicable, Confidential Information should be clearly identified or labeled as such by the disclosing Party at the time of disclosure or as promptly thereafter as possible, however, failure to so identify or label such Confidential Information will not be evidence that such information is not confidential or protectable.

Each Party agrees that it will protect and hold the other Party's Confidential Information confidential for a period of no less than five (5) years (and, as to trade secrets of each Party, including, but not limited to, Seller's Software Information, for such longer time as such information remains a trade secret of such Party without unauthorized disclosure by the receiving Party hereunder) following the date of disclosure and to do so in a manner at least as protective as it holds its own Confidential Information of like kind but to use no less than a reasonable degree of care. Except to the extent otherwise required by open records laws applicable if Customer is legally subject thereto, disclosures of the other Party's Confidential Information will be restricted (i) to those individuals who are participating in the performance of these Terms and Conditions and/or any other signed written or electronic agreement between the Parties and, in each case, who need to know such Confidential Information for purposes of providing, receiving and/or using Products and/or Services in a way expressly permitted by these Terms and Conditions and/or any other signed written or electronic agreement between the Parties, or (ii) provided such Confidential Information is not Seller's Software Information (as defined below), to its business, legal and financial advisors, each on a confidential basis. Each Party agrees not to use, or permit others to use, directly or indirectly, any Confidential Information of the other Party for any purpose other than the business purposes contemplated by these

Terms and Conditions and/or any other signed written or electronic agreement between the Parties and, in the case of Seller's Software Information, in any way not expressly permitted by these Terms and Conditions and/or any other signed written or electronic agreement between the Parties. Once a Party no longer has the express right under these Terms and Conditions and/or another signed written or electronic agreement between the Parties to use Seller's Software Information (as defined below), and in all other cases at the written request of the disclosing Party, the receiving Party will return and certify the destruction of all copies of the Confidential Information except to the extent otherwise required by open records laws applicable if Customer is legally subject thereto.

If a receiving Party is required by law (other than open records laws applicable if Customer is legally subject thereto), rule or regulation, or requested in any judicial or administrative proceeding or by any governmental or regulatory authority, to disclose Confidential Information of the other Party, the receiving Party will give the disclosing Party prompt notice of such request so that the disclosing Party may seek an appropriate protective order or similar protective measure and will use reasonable efforts to obtain confidential treatment of the Confidential Information so disclosed.

#### **5. Title, Software, Work Product, Warranties and Limitation of Liability.**

Title to Products passes from Seller to Customer (or if You are a reseller, Your customer) upon delivery to Customer (or if You are a reseller, Your customer). Notwithstanding the foregoing, title to and ownership of software, Work Product (as defined below) and supporting documentation (whether in written or electronic form) and all copies thereof remain with the applicable licensor(s) of the same, regardless of the form or media in or on which they may exist, and Customer agrees to protect all of Seller's ownership interests therein. When Seller is not the licensor under or manufacturer of a Product, the only warranties offered are those of the licensor/manufacturer, not Seller, and Customer is relying on the licensor's/manufacturer's descriptions and specifications only and not on any statements, specifications, photographs or other illustrations representing the Product that may be provided by Seller. When Seller is the licensor under a Product, the

only warranties offered are any contained in any applicable signed written or electronic license agreement between the Parties, and Customer is not relying on any descriptions, statements, specifications, photographs or other illustrations representing the Product. Except for any warranty provided by Seller in an applicable signed written or electronic software license agreement between the Parties in which Seller is the direct licensor, the Products are provided by Seller "AS IS" without any warranties whatsoever. Seller does not guarantee that the Products will operate uninterrupted or error free.

Customer will not (i) reverse engineer, disassemble, decompile or otherwise attempt to derive the source code of any software or Work Product; (ii) use any software, Work Product and/or supporting documentation to provide services to others; (iii) train persons other than Customer's users (or if You are a reseller, Your customer's users) located at a single location of Customer's; and/or (iv) use all or any portion of any software, Work Product and/or supporting documentation or any copy thereof in any manner that is inconsistent with these Terms and Conditions and/or any applicable signed written or electronic license agreement between the Parties or use the same or any Product in violation of any applicable law or regulation. Except to the extent expressly permitted by these Terms and Conditions and/or another signed written or electronic agreement between the Parties, Customer will not make any copies of the software, Work Product and/or supporting documentation or otherwise reproduce all or any portion thereof without the prior signed written or electronic consent of an officer of Seller. Customer acknowledges that software, Work Product and supporting documentation are purchased separately from any future upgrades, updates and fixes to them, and Customer is not entitled to any of the same or any software maintenance Services under a signed written or electronic license agreement between the Parties unless such license agreement explicitly states that any one or more of them are included.

All software, Work Product, and supporting documentation and its and their contents, including, but not limited to, source and object codes, logic and structure, and any and all copies of the foregoing, regardless of the form or media in or on which any of them may

exist (all together, "Seller's Software Information"), form a part of Seller's Confidential Information, constitute valuable trade secrets, are the intellectual property and confidential information of Seller and any other of their licensor(s) and are protected by United States copyright and intellectual property laws, international treaty provisions and applicable laws of the country in which such Confidential Information is being used.

**EXCEPT FOR ANY WARRANTY PROVIDED BY SELLER IN AN APPLICABLE SIGNED WRITTEN OR ELECTRONIC SOFTWARE LICENSE AGREEMENT BETWEEN THE PARTIES IN WHICH SELLER IS THE DIRECT LICENSOR, SELLER HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, RELATED TO PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY**

**LICENSOR'S/MANUFACTURER'S WARRANTY.** Customer expressly waives any claim that it may have against Seller based on any product liability or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property rights (each a "Claim") with respect to any Product and also waives any right to indemnification from Seller against any such Claim made against Customer by a third party. Customer acknowledges that no employee of Seller is authorized to make any representation or warranty on behalf of Seller that is not in these Terms and Conditions or provided by Seller in an applicable signed written or electronic software license agreement between the Parties in which Seller is the direct licensor.

"Work Product" means work product, materials and other deliverables to be provided or created (individually or jointly) in connection with a Service and/or a Product, including, but not limited to, all inventions, discoveries, methods, processes, formulae, ideas, concepts, techniques, know-how, data, designs, models, prototypes, works of authorship, computer programs and future upgrades, updates and fixes, proprietary tools, methods of analysis and other information (whether or not capable of protection by patent,

copyright, trade secret, confidentiality, or other proprietary rights) or discoveries in the course of performance of any signed written or electronic agreement between the Parties that are embodied in such work or materials and all copies of the same, in all cases, regardless of the form or media in or on which they may exist. Unless otherwise provided in a signed written or electronic license agreement between the Parties, Customer's sole rights to software, Work Product and/or supporting documentation will be a non-transferable, non-exclusive license to Customer (or if You are a reseller, Your customer) to use the same solely for Customer's internal use (or if You are a reseller, Your customer's internal use), on a single server and to maintain one copy of each for emergency and backup purposes. In addition, Customer (or if You are a reseller, Your customer) may make reasonable copies of supporting documentation to support Customer's users (or if You are a reseller, Your customer's users) at that single location, provided, however, that Customer (or if You are a reseller, Your customer) only makes exact copies of supporting documentation as originally provided by Seller and that Customer (or if You are a reseller, Your customer) ensures that each copy contains all titles, trademarks, service marks and notices concerning copyright and restricted rights that exist in the original. Customer acknowledges that Seller may incorporate into Products, software, Work Product and/or documents supporting either or both intellectual property created by third parties ("Third Party Intellectual Property"), and Customer agrees that its right to use Products containing Third Party Intellectual Property may be subject to the rights of third parties and limited by agreements with such third parties.

Seller will perform the Services for Customer (or if You are a reseller, Your customer) described in any written or electronic document to which Seller is bound (such as a binding bid, quote or statement of work) pursuant to its terms and conditions and these Terms and Conditions. Each such document hereby incorporates these Terms and Conditions and constitutes a separate agreement with respect to the Services performed. In the event of an addition to or a conflict between any term or condition of any such document and these Terms and Conditions, these Terms and Conditions shall control, except as expressly authorized in an electronic or written document signed by an officer

of Singlewire that amends these Terms and Conditions by specific reference to these Terms and Conditions. Each such amendment will be applicable only with respect to Services governed by such document and not to future Services.

Seller warrants to Customer (or if You are a reseller, Your customer) that the Services will be performed in a good and workmanlike manner by trained professionals and in accordance with generally accepted industry standards of care and competence.

Customer's sole and exclusive remedy (and if You are a reseller, Your customer's sole and exclusive remedy) and Seller's entire liability with respect to this warranty will be to either (a) re-perform or cause to be re-performed, at no additional charge to the Customer (and if You are a reseller, Your customer), the portion of the Services not in compliance with this warranty, or (b) refund amounts paid by Customer related to the portion of the Services not in compliance; provided, however, in each case of alleged noncompliance, Customer (or if You are a reseller, You and/or Your customer) notifies Seller of the alleged noncompliance within five (5) business days of its occurrence. Seller shall have the exclusive option to invoke (a) or (b) above, except that if Customer's notification (or if You are a reseller, Your notification or Your customer's notification) includes a request to have Seller invoke (a) before (b) or if Customer's notification (or if You are a reseller, Your notification or Your customer's notification) includes a request to have Seller invoke (b) without (a) because Seller's noncompliance involves gross negligence or willful misconduct on the part of Seller, then Seller will honor such request.

**EXCEPT AS SET FORTH HEREIN AND EXCEPT TO THE EXTENT WAIVED, AMENDED OR MODIFIED BY AN OFFICER OF SELLER IN A SIGNED ELECTRONIC OR WRITTEN DOCUMENT THAT EXPRESSLY AMENDS SELLER'S WARRANTY AND SUBJECT TO APPLICABLE LAW, SELLER MAKES NO OTHER, AND EXPRESSLY DISCLAIMS ALL OTHER, REPRESENTATIONS, WARRANTIES, CONDITIONS OR COVENANTS, EITHER EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, DURABILITY, TITLE, ACCURACY OR NON-INFRINGEMENT) ARISING OUT OF OR RELATED TO**

**THE PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY CONCERNING THE RESULTS TO BE OBTAINED FROM THE SERVICES. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE. CUSTOMER ACKNOWLEDGES THAT NO REPRESENTATIVE OF SELLER IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY ON BEHALF OF SELLER THAT IS NOT IN THESE TERMS AND CONDITIONS OR IN AN ELECTRONIC OR WRITTEN DOCUMENT THAT IS SIGNED BY AN OFFICER OF SELLER AND THAT EXPRESSLY AMENDS SELLER'S WARRANTY.**

Seller will not be responsible for and no liability shall result to Seller for any delays which result from any circumstances beyond its reasonable control including, but not limited to, Product unavailability, systems or Internet congestion or performance, equipment failure, material changes in costs, fire, severe weather conditions, failure of power, labor problems, acts of war or hostilities, terrorism, embargo, action or inaction by Customer, acts of God or acts or laws of any government or agency. In the event of such delay, Seller may elect to discontinue provision of Products and/or Services or to extend the time for performance for a period equal to the time lost by reason of the delay. Any Product or Service delivery dates, completion dates and any other purported deadlines are estimates only.

**UNDER NO CIRCUMSTANCES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN WILL SELLER OR ITS SUPPLIERS, SUBCONTRACTORS OR AGENTS BE LIABLE FOR: (A) ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, BUSINESS, REVENUES OR SAVINGS OR DAMAGES FOR DATA OR AS A RESULT OF USE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE, IN EACH CASE, WHETHER A CLAIM**

**FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY; (B) ANY CLAIMS, DEMANDS OR ACTIONS AGAINST CUSTOMER BY ANY THIRD PARTY; (C) ANY LOSS OR CLAIM ARISING OUT OF OR IN CONNECTION WITH CUSTOMER'S IMPLEMENTATION OF ANY CONCLUSION OR RECOMMENDATION BY SELLER BASED ON, RESULTING FROM, ARISING OUT OF OR OTHERWISE RELATED TO ANY OF THE PRODUCTS AND/OR SERVICES; OR (D) ANY UNAVAILABILITY OF THE PRODUCT FOR USE OR ANY LOST, DAMAGED OR CORRUPTED DATA OR SOFTWARE. IN THE EVENT OF ANY LIABILITY INCURRED BY SELLER, SELLER'S AGGREGATE AND CUMULATIVE LIABILITY FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL IN NO EVENT EXCEED THE DOLLAR AMOUNT PAID BY CUSTOMER FOR EITHER THE PRODUCT GIVING RISE TO THE CLAIM OR THE SPECIFIC SERVICE GIVING RISE TO THE CLAIM.**

#### **6. Miscellaneous.**

These Terms and Conditions, together with all electronic or written documents to which Seller is bound (such as a binding bid, quote or statement of work), contain the entire understanding of the Parties with respect to the matters contained herein and supersede and replace in their entirety any and all other prior and contemporaneous agreements and understandings, whether oral, written, electronic or implied, between the Parties hereto with respect to the subject matter hereof. Customer may issue a purchase order for administrative purposes only (meaning, exclusively for purposes of requesting a quantity and/or type of Product and/or Service and for purposes of identifying Customer (or if You are a reseller, You and/or Your customer)); additional or different terms and conditions contained in any such purchase order will be null and void. No course of prior dealings between the Parties and no usage of trade will be relevant to determine the meaning of these Terms and Conditions or any purchase order, invoice or other document in electronic or written form. No provision of these Terms and Conditions or of any other document in electronic or written form will be deemed waived, amended or

modified by Seller unless such waiver, amendment or modification is made by an officer of Seller in a signed electronic or written document. No valid waiver or consent will be construed as a waiver of or consent to subsequent acts or failures to act. Any delay or failure by either Party to exercise any right or remedy will not constitute a waiver of that Party to thereafter enforce such rights. Seller may assign and/or subcontract all or any portion of its rights and/or obligations under these Terms and Conditions and/or under any other document in electronic or written form or assign the right to receive payments, without Customer's consent. Customer may not assign these Terms and Conditions, any other document in electronic or written form or any of its rights or obligations herein or therein except to the extent permitted by an officer of Seller in a signed electronic or written document. Subject to such restriction on assignment, these Terms and Conditions and all other signed written or electronic agreements between the Parties will be binding on and inure to the benefit of the Parties hereto and their successors and assigns. Notices provided under these Terms and Conditions will be given in an electronic or written document and deemed received upon the earlier of actual receipt, five (5) days after mailing if mailed by certified mail, return receipt requested, or one (1) day after such notice is sent by overnight courier or by email transmission, provided, however, in each case, confirmation of delivery is obtained. Notices to Seller shall be sent to: Legal Department, Singlewire Software, LLC, P.O. Box 46218, Madison, WI 53744-6218, [legal@singlewire.com](mailto:legal@singlewire.com). Notices to Customer (or if You are a reseller, You and/or Your customer) shall be sent using contact information located on Customer's purchase order (or if You are a reseller, Your and/or Your customer's purchase order), any other communication from Customer (or if You are a reseller, You and/or Your customer) or as Customer (or if You are a reseller, You and/or Your customer) may notify Seller. Each Party consents to receiving electronic documents, which may be provided via a web browser or an email application connected to the Internet, provided, however, that each Party may withdraw consent to receiving electronic documents or have documents provided in non-electronic form by notifying the other Party and requesting the same. Each Party consents to using English for all oral, written and electronic communications.

Electronic signatures (or copies of signatures sent via electronic means) are the equivalent of written and signed documents. If any provision of these Terms and Conditions or of any other signed written or electronic agreement between the Parties is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or conditions hereof or thereof or the whole of these Terms and Conditions or the applicable agreement. **THESE TERMS AND CONDITIONS AND ANY OTHER DOCUMENT IN ELECTRONIC OR WRITTEN FORM WILL BE GOVERNED BY THE LAWS OF THE STATE OF WISCONSIN, WITHOUT REGARD TO CONFLICTS OF LAWS RULES. ANY LITIGATION WILL BE BROUGHT EXCLUSIVELY IN DANE COUNTY, WISCONSIN, AND EACH PARTY CONSENTS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED THEREIN, SUBMITS TO THE JURISDICTION THEREOF AND WAIVES THE RIGHT TO CHANGE VENUE. EACH PARTY FURTHER CONSENTS TO THE EXERCISE OF PERSONAL JURISDICTION BY ANY SUCH COURT WITH RESPECT TO ANY SUCH PROCEEDING.** Except in the case of nonpayment, neither Party may institute any action in any form arising out of any Product, any Service, these Terms and Conditions and/or any other document in electronic or written form more than one (1) year after the cause of action has arisen. In the event of any termination by You of a binding bid, quote or statement of work, You shall pay Singlewire any termination fee set forth therein in addition to all amounts incurred up to and including the termination date. Documents may be signed in separate counterparts each of which shall be deemed an original and all of which together will be deemed to be one original. The relationship between Seller and Customer is that of independent contractors and not that of employer/employee, partnership or joint venture. The provisions of the Uniform Computer Information Transactions Act ("UCITA") shall not apply. The following terms and conditions are hereby incorporated herein as if fully stated herein:

[Additional terms for Singlewire's software maintenance services can be found by clicking here.](#)

[Additional terms for Singlewire's other services can be found by clicking here.](#)

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