

## Terms and Conditions

### 1. Definitions

Unless otherwise specifically provided in this Agreement, capitalized terms used in this Amendment shall have the meaning ascribed to them in Schedule 1.

### 2. Contractual Services

- 2.1. Subject to the terms and conditions of this Agreement, Magnolia grants to Customer a license for the Subscription Term pursuant to the license terms attached hereto as Schedule 2.
- 2.2. Magnolia provides, during the Subscription Term, on a Best Efforts basis the Services to Customer under the terms and conditions of this Agreement and the Service Level Agreement attached hereto as Schedule 3.
- 2.3. Customer may appoint a Certified Magnolia Partner for the implementation of its Website project and the management of its Website. Such Certified Magnolia Partner may use the Services and the license rights pursuant to this Agreement on behalf of and to the benefit of the Customer, provided that (a) Customer beforehand informs Magnolia in written form (email notification to info@magnolia-cms.com is sufficient), (b) Customer is responsible and ensures that any Certified Magnolia Partner agrees to abide by and fully complies with the terms and conditions of this Agreement, (c) such use does not result in an overuse of the Services or the Software, (d) such use is only for Customer's direct beneficial business purposes, and (e) Customer remains fully liable for any acts or omissions by the contractor with regard to this Agreement.

### 3. Obligations and Responsibilities of Customer

- 3.1. The Customer shall (i) provide Magnolia with all necessary co-operation in relation to this Agreement and all necessary access to such information as may be required by Magnolia in order to provide the Services; (ii) inform Magnolia at least 20 Business Days in advance of any Traffic Spike; (iii) inform Magnolia of any security issue relating to the Services as soon as possible but not later than 24 hours after knowledge of such security issue; (iv) upgrade the Software in accordance with Magnolia's instructions and within the applicable time periods, whereby Minor Releases must be deployed not later than 30 days upon the release and Major Releases not later than 60 days after the release; (v) deploy security updates in accordance with Magnolia's instructions as soon as possible; (vi) comply with all applicable laws and regulations with respect to its activities under this Agreement; (vii) be responsible for Authorised Users compliance with this Agreement; (viii) ensure that its network and systems comply with the relevant specifications provided by Magnolia from time to time; (ix) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Magnolia's data centres; and (x) inform Magnolia at least 5 Business Days before of any load or vulnerability tests that the Customer plans to perform on the Website(s).
- 3.2. In the event the Customer does not deploy security updates according to clause 3.1, Magnolia may either (i) deploy such updates itself, without having any liability for any damages, including but not limited to loss of data, or (ii) suspend the Services according to Clause 5.1.
- 3.3. In relation to the Authorised Users, the Customer undertakes that (i) the maximum number of Admins that it authorises to access and use the Cockpit shall not exceed the number described in the Subscription Package; (ii) it will not allow or suffer any Admin account to be used by more than one individual Authorised User; (iii) each Authorised User shall keep a secure password for his/her use of the Services, that such password shall be changed no less frequently than monthly and that each Authorised User shall keep his password confidential;
- 3.4. The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or

ethnically offensive; (ii) facilitates illegal activity; (iii) depicts sexually explicit images; (iv) promotes unlawful violence; (v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or (vi) in a manner that is otherwise illegal or causes damage or injury to any person or property; and Magnolia reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to the Service which may include disabling of public Instances of the Customer's Subscription Package or removal of the material that breaches the provision of this clause.

- 3.5. The Customer shall not (a) make any Service or Software available to, or use any Service or Software for the benefit of, anyone other than Customer unless otherwise stipulated in this Agreement, (b) sell, resell, license, sublicense, distribute, rent or lease any Service or Software, or include any Service or Software in an outsourcing offering, (c) permit direct or indirect access to or use of any Service or Content in a way that circumvents a contractual usage limit, (d) copy a Service or any part, feature, function or user interface thereof, (e) frame or mirror any part of any Service or Software other as permitted in the Documentation, (f) access any Service or Software in order to build a competitive product or service, or (g) reverse engineer any Service (to the extent such restriction is permitted by law).

#### **4. Obligations of Magnolia**

Magnolia (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities; (c) does not guarantee the Services in case of Unplanned Traffic Spikes or if the Customer exceeds the values defined in the Subscription Package; (e) may change the infrastructure to provide the Services from time to time which may require to interrupt the Services; apart from emergencies, Magnolia will inform the Customer of such a change duly in advance as further defined in the Documentation; Magnolia is not obliged to continue providing the Services during any such interruption.

#### **5. Temporary Suspension**

- 5.1. Magnolia may suspend the Customer's or any Authorized User's right to access or use any portion or all of the Services immediately upon prior notice to the Customer if Magnolia determines the Customer's or an Authorized User's use of or registration for the Services (a) poses a security risk to the Services or any third party, (b) may adversely impact the Services or the systems or content of any other customer of Magnolia, (c) may subject Magnolia, its Affiliates, or any third party to liability, or (d) may be fraudulent; (e) the Customer is, or any Authorized User is, in breach of this Agreement, including if the Customer is delinquent on its payment obligations for more than 15 Business Days; or (f) the Customer has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or becomes the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.
- 5.2. If Magnolia suspends the Customer's right to access or use any portion or all of the Services (a) the Customer remains responsible for all fees and charges it has incurred through the date of suspension; (b) the Customer remains responsible for any applicable fees and charges for any Services to which it continues to have access, as well as other applicable fees and charges, after the date of suspension; and (c) Magnolia will not erase any of the Customer Data as a result of the Customer's suspension, except as specified elsewhere in this Agreement.
- 5.3. Magnolia's right to suspend the Customer's or any Authorized User's right to access or use the Services is in addition to Magnolia's right to terminate this Agreement pursuant to clause 15.2.

#### **6. Payment Terms**

- 6.1. The Customer shall pay the Subscription Fees to Magnolia in accordance with this clause 6.
- 6.2. The Subscription Fees for a one year period shall be invoiced at the beginning of each one-year period of this Agreement (i.e. at the beginning of the Initial Term and thereafter at the anniversary of each Renewal Term). Each invoice shall be due 30 days after its dispatch by email to the B-PoC (the "**Due Date**"). Customer may not set potential claims off against the invoiced fees. On expiry of the Due Date Customer will be automatically in default (without any formal reminder). Interest shall accrue on such due amounts at an annual rate equal to 5% commencing on the due date and continuing until fully paid.
- 6.3. Any fee specified in this Agreement or in any promotional document, in particular any description on Magnolia's official internet platform, does not include any tax (e.g. value-added tax), custom duties or similar taxes and charges that may be assessed directly or indirectly by governmental authorities of any jurisdiction with regard to the granted license and/or the provision of the Services.
- 6.4. Upon request of Customer, Magnolia will review the Customer's usage of the Service. If the Parties assert, based upon such review, that the values of the Subscription Package (including but not limited to the Included Traffic, the Included Data Storage Space and any additional Traffic and/or Data Storage Space package, if any) are exceeded on a regular basis, the Parties shall negotiate in good faith an amendment of the Subscription Package and Fees in consideration of the Customer's needs.

## 7. **Warranty and Remedies**

- 7.1. Magnolia warrants to Customer that (a) the Software will perform substantially as described in the Documentation if used in connection with an updated Certified Stack and (b) any Service provided under this Agreement will be performed with reasonable skill and care and in a professional manner consistent with normal industry practices. Non-substantial variations from the Documentation remain reserved. Magnolia does not warrant that the performance of the Software will be uninterrupted or error-free. Modified Versions and Pre-release Versions are excluded from the warranty according to this clause to the extent the non-conformity of the Software results from Customer's or a third party's modification of the Software or the use of a Pre-release Version.
- 7.2. If the Software does not perform or a Service was not rendered as stipulated in clause 7.1, subject to compulsory law, Customer's sole and exclusive right and remedy shall be to (a) demand repair or replacement of the non-conforming Software or re-performance of the non-conforming Service in accordance with the Service Level Agreement or (b) terminate this Agreement, in the event of a material breach of Magnolia, pursuant to clause 15.2. TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY SET FORTH ABOVE, MAGNOLIA MAKES NO, AND HEREBY DISCLAIMS ANY AND ALL OTHER, (a) REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SERVICES AND THE SOFTWARE, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, OR (b) REMEDIES.
- 7.3. Under no circumstances, Magnolia shall be obliged to remedy a defect and/or be liable in any form, if (i) the defect has not been reported in accordance with the Service Level Agreement, (ii) the defect is a result of Customer's or any third party's modification of the Software or of the use of a Pre-release Version, or (iv) Magnolia is not able to reproduce the defect using a standard version of the Software operated in connection with an updated Certified Stack.

## 8. **Liability**

- 8.1. Subject to liability for death or personal injury caused by the negligence of Magnolia, fraud or fraudulent misrepresentation, willful intent, gross negligence, or any other liability which may not be excluded by law, Magnolia, its Affiliates, officers, directors, employees, agents, consultants or suppliers shall have no liability for any direct or

indirect damages or losses suffered in connection with this Agreement, including any loss of use, interruption of business, loss of goodwill, lost profits, loss or corruption of data, loss of anticipating savings, or any indirect, special, incidental, or consequential damages of any kind regardless of the form of action whether in contract, equity, tort (including negligence), product liability, or otherwise, even if the Customer has been advised of the possibility of such damages. This limitation shall specifically survive a failure of essential purpose of any remedies that may be provided in this Agreement.

- 8.2. Customer agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) Magnolia shall have no liability in any circumstances otherwise than in accordance with the express terms of this Agreement.

## 9. Force Majeure

- 9.1. Neither Party shall be liable to the other Party for any default, to the extent the default is wholly or materially caused, whether directly or indirectly, by circumstances beyond its reasonable control, such as fire, flood, other natural disasters, general strike, governmental action, embargos or communication line failures (the "**Force Majeure**"), provided the affected Party notifies the other Party in writing of the Force Majeure event within a reasonable time after its occurrence.
- 9.2. In the event the affected Party's delay or non-performance as a result of Force Majeure continues for a period of more than sixty (60) days, either Party shall have the right to terminate this Agreement with immediate effect.

## 10. Intellectual Property Rights

- 10.1. The Customer acknowledges and agrees that Magnolia and/or the respective licensors own all Intellectual Property Rights in the Software, the Services and the Documentation. Except as expressly stated herein, this Agreement does not transfer or grant the Customer any Intellectual Property Right in respect of the Software, Services or Documentation.
- 10.2. Upon prior consent of the Customer (such consent not to be unreasonably withheld or delayed), Magnolia shall have, for the term of this Agreement, a non-transferable, non-exclusive license to reproduce and display Customer's logos, trademarks, trade names and similar identifying marks on the official internet platform, in press releases and in other marketing materials of Magnolia as a reference for users of the Service.

## 11. Compliance

Within 30 business days from Magnolia's request made not more than once every twelve (12) months, Customer shall provide to Magnolia a compliance report ("Report") that includes information reasonably requested by Magnolia concerning Customer's use of the Software. The Report must be signed by Customer's authorized signatories. If (i) Magnolia does not receive such signed Report within thirty (30) Business Days, or (ii) Magnolia has reasonable suspicion that the Report is inaccurate or incorrect and that Customer is not in compliance with the terms of this Agreement, Magnolia shall have the right, on at least ten (10) days' prior written notice and not more than once every 12 months, to conduct a software audit during Customer's normal business hours to verify Customer's use of the Software, compliance with the terms of this Agreement and payments made to Magnolia hereunder. Customer shall promptly remit to Magnolia any shortfall in payment disclosed by such software audit including any late charges applicable thereto. In addition, if any such examination discloses a shortfall in payment to Magnolia of more than five percent for any year, Customer agrees to pay or reimburse Magnolia for the expenses relating to the software audit upon written request by Magnolia.

**12. Confidentiality**

- 12.1. The Parties expressly agree that the content of this Agreement, the source code of the Software and any further data and know-how, of which a Party becomes aware during the performance of this Agreement (the "Recipient Party"), directly, indirectly, in writing, orally, electronically or by any other means, are strictly confidential and/or proprietary in nature (the "Confidential Information"), unless the respective information (i) is in the public domain or is legitimately received from a third party at the time of disclosure; (ii) becomes generally available to the public, other than as a result of disclosure in violation of the terms of this Agreement or a disclosure by the Disclosing Party, triggered by a breach of this confidentiality obligation by the Recipient Party; (iii) is rightfully obtained by the Recipient Party through authorized disclosure by a third party; or (iv) was already in the Recipient Party's legitimate possession, without an obligation of confidentiality, prior to receipt from the Disclosing Party as evidenced by the records of the Recipient Party prior to disclosure.
- 12.2. Parties hereby undertake to
- a) keep strictly confidential any Confidential Information and not to disclose it to third parties, (i) except to representatives who need to know such information for purposes in accordance with this Agreement, and who are bound by confidentiality obligations as restrictive as the ones stipulated herein, and (ii) unless a disclosure is requested by mandatory rules of law, provided that all possible measures to limit the disclosure and to safeguard confidential treatment are taken;
  - b) use Confidential Information only in accordance with the terms and conditions of this Agreement;
  - c) use all reasonable care to protect the Disclosing Party's Confidential Information and to prevent any dissemination of such information to the same extent that it protects its own confidential Information, which in no event will be less than the safeguards a reasonably prudent business person would exercise in similar circumstances;
  - d) immediately notify the disclosing Party, if it becomes or ought to be aware of any unauthorized use or disclosure of the Confidential Information.
- 12.3. Upon written request of the Disclosing Party, unless use or knowledge of Confidential Information is reasonably necessary for the performance of this Agreement, or in the event of termination of this Agreement, the Recipient Party shall promptly destroy or, if expressly requested to do so by the Disclosing Party, return all written, electronically or otherwise stored documents, files and copies thereof containing Confidential Information, including memoranda, notes and other writings whatsoever prepared by the Recipient Party and based on or reflecting Confidential Information. Upon request of the Disclosing Party, Recipient Party shall confirm the deletion according to this clause in writing. Notwithstanding the foregoing, the Recipient Party may keep Confidential Information if requested by mandatory rules of law (e.g. accounting requirements).
- 12.4. Each Party may disclose Confidential Information to an Affiliate or third parties, provided that such disclosure is necessary for the purpose of performing its obligations under this Agreement and that the Affiliate or third party is bound by obligations as strict as the ones stipulated in this clause 12.
- 12.5. The above provisions of this clause 12 shall survive termination of this Agreement for as long as such information remains proprietary or confidential.

**13. Customer Data**

- 13.1. The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Customer consents to Magnolia's use of the Customer Data to provide the Services under this Agreement.

- 13.2. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Magnolia to use Best Efforts to restore the lost or damaged Customer Data from the latest back-up of such Customer Data available to Magnolia. Magnolia shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.

#### **14. Data Protection**

- 14.1. Each Party shall comply with all applicable data protection laws. If Magnolia processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Parties record their intention that the Customer shall be the data controller and Magnolia shall be a data processor and in any such case (a) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the European Union, EFTA, Switzerland or the country where the Customer and/or the Authorised Users are located, including in the United States of America, in order to carry out the Services and Magnolia's other obligations under this Agreement; (b) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to Magnolia so that Magnolia may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf; (c) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer if required by all applicable data protection legislation; (d) Magnolia shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time; (e) and each Party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.
- 14.2. If and to the extent required by the applicable data protection laws and regulations, the Parties will enter into a data transfer agreement based on the EU standard contractual clauses (with adaptations to comply with Swiss law if necessary).

#### **15. Term and Termination**

- 15.1. This Agreement shall commence on the Effective Date and shall continue for the Initial Term and, thereafter, this Agreement shall be automatically renewed for successive fixed periods of 12 months (each a "Renewal Period"), unless (a) either Party notifies the other Party of termination, in writing, at least 60 days before the end of the Initial Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or (b) otherwise terminated in accordance with the provisions of this Agreement.
- 15.2. Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if (a) the other Party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 60 days after being notified in writing to make such payment; (b) the other Party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; (c) any step, application, order, proceeding or appointment is taken or made by or in respect of that other Party for a distress, execution, composition or arrangement with creditors, winding up, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if that other Party is unable to pay its debts or if any event occurs which, under the applicable law of any jurisdiction to which it is subject, has an effect similar to that of any of the events referred to in this clause 15.2.

#### **16. Effects of Termination**

- 16.1. Upon termination of this Agreement, (i) the License and any other rights granted to Customer under this Agreement will terminate automatically and (ii) Customer shall immediately cease to use the Software and any other IP Rights of

Magnolia and shall, at its own expense, delete the Software from its IT systems and destroy any copy thereof, except for a reasonable number of copies of the Software and Documentation for archival purposes only.

- 16.2. During one year following the termination of this Agreement, Customer shall not use Magnolia CMS Community Edition or a Trial Version for any purpose other than non-commercial research and/or testing. If Customer, after Termination of this Agreement, proceeds to use a Trial Version or Magnolia CMS Community Edition, this Agreement shall be automatically renewed for a period of one year.
- 16.3. The provisions of this Agreement that by sense or content must remain in force after termination in order to achieve the intended purpose, shall survive the termination of this Agreement. The termination of this Agreement shall be without prejudice to the Parties' accrued rights hereunder.

#### **17. Notices and Points of Contact**

Except as otherwise provided in this Agreement, each Party must provide notices, requests, and other communications to the other Party in writing by (a) certified mail, hand delivery or delivery by a reputable overnight carrier service (b) facsimile with receipt of a "transmission ok" acknowledgement, or (c) e-mail with an acknowledgment of receipt by the other Party, in each case addressed to the contacts indicated on the cover page of this Agreement. Customer shall appoint a B-PoC and at least one S-PoC during the entire Subscription Term. If a License Key is required pursuant to the applicable license terms attached hereto as Schedule 2, Customer shall further appoint a L-PoC. Customer shall notify Magnolia of a change in any of the aforementioned points of contact without undue delay in written form.

#### **18. Miscellaneous**

- 18.1. This Agreement (including any schedules and annexes) shall supersede all prior oral and written agreements, letters or other communications or understandings of the Parties relating hereto and shall constitute the entire agreement between the Parties.
- 18.2. If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.
- 18.3. Neither Party may, or may purport to, assign, transfer, charge or otherwise deal with all or any of its rights or obligations under this Agreement in whole or in part, nor grant, declare, create or dispose of any right or interest in it without the prior written consent of the other Party which shall not be withheld without good reason.
- 18.4. An amendment of any of the provisions of this Agreement is only valid if it is in writing and signed by each Party or authorized representatives. Any provision contained in this Agreement may only be waived by a document signed by the Party waiving such provision.
- 18.5. Should any part or provision of this Agreement be held to be invalid or unenforceable by any competent arbitral tribunal, court, governmental or administrative authority having jurisdiction, the other provisions of this Agreement shall nonetheless remain valid. In this case, Parties shall endeavor to negotiate a substitute provision that best reflects the economic intentions of Parties without being unenforceable, and shall execute all agreements and documents required in this connection.
- 18.6. Magnolia may delegate or subcontract duties and/or obligations under this Agreement to third parties.
- 18.7. If a third party, according to the terms and conditions of this Agreement, is allowed to use the Software and/or the Services, such third party shall not be entitled to enforce any rights or benefits in this Agreement against Magnolia.

#### **19. Governing Law and Jurisdiction**

- 19.1. This Agreement and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with Swiss Law, under exclusion of its conflict of law rules and the provisions of the Vienna Convention on the Sales of Goods.
- 19.2. The Parties hereby irrevocably submit to the jurisdiction of the ordinary courts in Basel, Switzerland, and, at Magnolia's choice, to the ordinary courts at Customer's domicile with regard to any dispute arising out of or in connection with this Agreement.

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## Schedule 1 – Definitions

## Definitions

Unless otherwise specifically provided in this Agreement, the following terms shall have the following meanings:

Admin:	an employee or representative of Customer or an Certified Magnolia Partner who is authorised to use the Cockpit which can be accessed as part of the Services, if contained in the Subscription Package.
Affiliate:	means any legal entity or person which directly or indirectly exercises Control over another legal entity or person, or is under Control by a legal entity or person, or is under common Control by the same legal entity or person.
Agreement:	means this Master Services Agreement, all schedules, amendments, and any other attachments.
Authorised Users:	those employees, agents and independent contractors of the Customer who are authorised to use the Services including Admins.
Fallback Instance	a fall back instance which is automatically started up during a period of high load, traffic or other resource usage in the production environment running Software.
Availability:	Uptime availability of the Platform not including the time during Maintenance Windows or Force Majeure Events.
Availability Requirement	The target Availability, measured in a monthly average, to be met by the Platform, subject to the terms and conditions of this Agreement.
B-PoC	means the individual appointed by Customer as billing point of contact.
Best Efforts:	efforts which are commercially reasonable and may be reasonably expected by the Customer in accordance with industry standards.
Business Day:	a day other than a Saturday, Sunday or public holiday in Switzerland when banks in the Canton where Magnolia has its registered office are open for business.
Business Hours:	Business Hours: 9.00 am to 5.00 pm CET, each Business Day.
Certified Magnolia Partner:	is a third party provider which is approved as Magnolia Partner by Magnolia.
Certified Stack	means a specific configuration of IT-components defined and described by Magnolia that are working with Software and the Jackrabbit repository. Such configurations will be identified by Magnolia upon request of Customer. Furthermore, Magnolia may announce such Certified Stacks on its official internet platform <a href="http://www.magnolia-cms.com/">http://www.magnolia-cms.com/</a> . During this Agreement, Magnolia may change the composition of the Certified Stack (e.g. updated versions or change of software), provided that such change is necessary as a result of a third party provider's cessation of its support for a component of the Certified Stack. Reference within this Agreement shall always be to the most up to date update or change of the Certified Stack.
Cloud-bundle:	is the Magnolia Enterprise bundle including the cloud additional modules, pre-configured for the operation on the Magnolia Cloud Platform

Cockpit:	online application which is a part of the Services and described in the Documentation under <a href="https://documentation.magnolia-cms.com/display/DOCS/Cockpit">https://documentation.magnolia-cms.com/display/DOCS/Cockpit</a> .
Confidential Information:	is defined in clause 12.1 of the Master Services Agreement.
Control:	means the (beneficial) ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company.
Custom Module:	is a module which customize the cloud-bundle.
Customer Data:	the data inputted to the Platform and/or the Website by the Customer, Authorised Users, or Magnolia on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.
Data Storage Space:	the available disk space for the content and its metadata per Instance.
Documentation:	the document made available to the Customer by Magnolia online via <a href="https://documentation.magnolia-cms.com/display/DOCS/Magnolia+cloud">https://documentation.magnolia-cms.com/display/DOCS/Magnolia+cloud</a> or such other web address notified by Magnolia to the Customer from time to time which sets out a description of the Services and the user instructions for the Services, as amended by Magnolia from time to time. Notwithstanding the aforesaid, Magnolia shall not amend the Documentation in a way which materially reduces the functionality and/or the features of the Software, to the detriment of Customer. Reference within this Agreement shall always be to the most up to date update or change of the Documentation and with regard to Software contained in the Subscription Package.
Due Date:	is the date described in clause 6.2 of this Master Services Agreement.
Effective Date:	is defined in the Key Terms.
Included Data Storage Space:	is defined in Subscription Package in the Key Terms.
Included Traffic:	is defined in Subscription Package in the Key Terms.
Initial Term:	the initial term of this Agreement as set out in the Key Terms.
Instance:	an instance of the Software (either an author or a public instance) as provided for in the Subscription Package.
Intellectual Property Rights:	means all patents, utility models, know-how, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and trademarks, business names and domain names, rights in designs, rights in computer software, database rights, rights to use, and all other intellectual property rights, in each case whether registered or unregistered.
Key Terms:	the key terms of this Agreement as set out on the cover page(s) of this Agreement under "Key Terms" including but not limited to the Initial Term and the Effective Date, as amended from time to time.
L-PoC	means the individual, appointed by Customer, who is exclusively entitled and responsible to receive License Key(s) for Customer, if any.

Licensed Instances	is a specific number of instances, running on a physical server, virtual machine or cloud based service such as container, pod or in any other kind of package, on which Software may be installed and ran as specified in the Subscription Package.
License Key	is a string of characters enabling the usage of a Magnolia's Software.
Light Dev Module:	is a file and folder-based to define every Magnolia item which can be configured in <i>YAML</i> – such as apps, content types, templates, dialogs, themes, and others. It can also contain a lightweight <i>YAML</i> -based module descriptor and web resources such as <i>css</i> and <i>javascript</i> files.
Maintenance Windows	the time during maintenance windows for the implementation of updates or upgrades of the Software or other modifications and maintenance of the Platform and scheduled downtimes, all in accordance with this Agreement.
Major and Minor Release:	any Release of the Software which is identified by sequential increase in three-sequence identifier of the Release number. Main pattern for numbering the releases is major.major.minor, whereby any change in the two first numbers indicates a specific Major Release and any change of the last number identifies the Minor Release. For example in version 5.5.6, the first two numbers identify the Major Release (5.5) and the last number identifies the Minor Release (5.5.6).
Managed Services:	operation of Platform by Magnolia as further described in the Subscription Package and the Service Level Agreement.
Modified Version	is defined in clause 2.5 of Schedule 2.
Non-production Instance	means an instance which is not connected to any production environment and cannot be used to process data or content from production instances (e.g. developer or test computers/servers).
Performance:	the performance of the Website during Availability.
Performance Requirement:	the target Performance of the Website measured in a monthly average, subject to the terms and conditions of this Agreement.
Platform:	is the combination of processing, disk, network, software and other resources provided by Magnolia under this Agreement that together comprise a runnable and reasonably safe environment for the hosting of Magnolia software and to build a Website.
Pre-release Versions	means Magnolia Software which is not (yet) officially released or tested. Pre-release Versions may contain bugs and cause errors. Customer may use Pre-release Versions under the terms and conditions of this Agreement for the Software but is under no obligation to do so. Magnolia shall not be liable for any errors or damages resulting from use of such Pre-release Versions. Pre-release Versions are identified by Magnolia and are generally not included in official DX Core Releases.
Production Instance	is an instance running Software and processing production data.
Product Support:	standardized support only covering functional issues within the Service (malfunction of the Platform, Cockpit, Software), to the exclusion of issues particularly related to a specific project of the Customer.
Renewal Period:	the period described in clause 15.1 of this Agreement.

Report	is defined in clause 11 of this Agreement.
Repository Support	means consultancy of Customer relating to bringing back a corrupted repository to a consistent state (e.g. data rescue because of a lack of proper back up or other repository malfunctions etc.).
S-PoC(s)	means the individual(s) appointed by Customer who are, on behalf of Customer, entitled to request Product Support and/or Repository Support pursuant to the applicable SLA. The total number of S-PoCs accepted by Magnolia is defined by the applicable Service Level.
Second Level Domains:	below the Top Level Domains in the domain name hierarchy are the Second Level Domains. These are the names directly to the left of .com, .net, or other Top Level Domains. As an example, in the domain magnolia-cms.com "magnolia-cms" is the Second Level Domain.
Service Level Agreement or SLA	means the service level agreement attached in Schedule 2 to this Agreement.
Services:	the services contained in the Subscription Package.
Software:	the (online) software applications contained in the Subscription Package such as DX Core and any additional Add-on Packs and/or feature. During this Agreement, Magnolia may provide new versions of the Software (including Minor and Major Releases) including new features and bug fixes.
Subscription Fees:	the subscription fees payable by the Customer to Magnolia for the Subscription Package.
Subscription Package:	the subscription package purchased by the Customer as set out on the cover page of this Agreement under "Subscription Package" which may contain Software, Managed Services and/or Contractual Support Services and may be restricted by Included Traffic, Included Data Storage Space, any additional Traffic and/or Data Storage packages, the number of concurrent Authorized Users, the number of Websites, software editions, number of Instances or Servers and the number of Admins.
Subscription Term:	means the Initial Term together with any subsequent Renewal Periods, if any.
Support Request:	Customer's description of an error in text form comprising the following: (i) detailed description of the system configuration; (ii) detailed description of the different operational steps that have been performed raising the support case; (iii) detailed description of the operation(s) that has/have not been performed properly by the Service; (iv) detailed description of such operation's factual result; (v) description of the result expected by the Customer.
Support Services:	support services provided by Magnolia as further specified in this Agreement and the SLA.
Time to First Byte ("TTFB"):	is a measurement used as an indication of the responsiveness of a webserver or other network resource. TTFB measures the duration from the user or client making an HTTP request to the first byte of the page being received by the client's browser.
Time to Interact ("TTI")	is the point when a user can interact with a web page element once the page has rendered. After a shopper clicks on the add-to-cart button, for example, TTI measures the time it takes for the interactive element on the next page to become usable, such as the checkout button.
Top Level Domain:	the domain at the highest level in the hierarchical Domain Name System of the Internet. For all domains in lower levels, it is the last part of the domain name, that is, the last label of a fully

	qualified domain name. For example, in the domain name www.magnolia-cms.com, the Top Level Domain is “.com” (or “.COM”, as domain names are not case-sensitive).
Traffic:	the amount of data that is transferred from the Customer’s Website(s) within the scope of the Services to the visitors in consideration of the amount of Website views and requests of visitors.
Traffic Requirement	the target amount of Traffic once public instance of the Website is able to handle during Availability measured on a monthly basis, subject to the terms and conditions of this Agreement.
Traffic Spike:	any growth in Traffic higher than 50% per hour compared to the average Traffic during the previous 24 hours.
UAT	means user acceptance testing.
Uniform Resource Locator or URL	A uniform resource locator (URL) is the address of a resource on the Internet. A URL indicates the location of a resource as well as the protocol used to access it.
Unplanned Traffic Spike:	any Traffic Spike which was not communicated to Magnolia by the Customer 10 Business Days in advance and/or was not explicitly accepted by Magnolia in advance.
Virus:	anything or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
Website:	a website which is hosted on the Platform or another server and can be accessed under a domain consisting of one Top Level and one Second Level Domain. Further Second Level Domains referring to the identical Website via redirect or alternate server name alias are not considered as additional Second Level Domains for the purpose of this definition. One site is a configuration construct/feature in Magnolia CMS that allows different configuration of server to be applied to subset of resources based on the Uniform Resource Locator (URL) associated with such site definition.

## Schedule 2 – License Terms

## License Terms

### 1. Grant of the License

- 1.1. Subject to the terms and conditions of this Agreement, Magnolia grants to Customer a worldwide, non-exclusive, temporary, non-transferable, non-assignable, non-sub licensable license to install and use the Software and the Documentation for Customer's direct beneficial business purposes only and to make a reasonable number of copies of the Software and Documentation for archival purposes and as otherwise reasonably necessary to exercise Customer's rights hereunder, provided that all copyright and restricted right notices contained thereon are reproduced in such copies made by Customer.
- 1.2. License includes all updates or upgrades of the Software which are released during the term of this Agreement. Notwithstanding the foregoing, Magnolia shall have no obligation to elaborate or release any updates or upgrades of the Software.
- 1.3. The Software may contain third-party software and/or may be distributed together with third-party software that may be subject to other terms and conditions. Such third-party software and the applicable licenses are described at [www.magnolia-cms.com/thirdparty](http://www.magnolia-cms.com/thirdparty) and in a file in the root of the distribution file structure of the Software named "NOTICES.TXT".

### 2. Scope of the License

- 2.1. Unless otherwise provided in this Agreement, the usage of the Software is strictly limited by the restrictions described in the Subscription Package, such as limitations to Licensed Instances and Websites.
- 2.2. Non-Production Instances: In addition to the Licensed Instances, Customer is entitled to install and use the Software on unlimited Non-Production Instances provided that the Non-Production Instances are not connected to any production environment and cannot be used to process data or content from production instances. Only the processing of data or content from production to non-production instances and between non-production instances is allowed. If a Non-Production Instance is used in connection with a Production Instance, such Instance is considered a Production Instance.
- 2.3. Cold Standby Instance: Customer is entitled to use Software on unlimited Cold Standby Instances provided that the Cold Standby Instances are "manually" routed and started to take over production when one or more Production Instances fail.
- 2.4. Hot Standby Instance: Unless otherwise agreed upon in this Agreement, Hot Standby Instances are deemed to be Production Instances. An availability or disaster recovery Instance is considered to be a Hot Standby Instance either (i) if permanently turned on with access to data or content on Production Instances (subscriber and/or shared repository), or (ii) if turned on periodically to receive backup data or content from Production Instances while ready to immediately and automatically switch to production mode, or (iii) if registered as subscriber in a Magnolia CMS author instance, or (iv) if it has immediate access to the data or content on Production Instances when turned on (e.g. SAN based or near-line backup). If, according to the Subscription Package, Customer is entitled to the usage of Software on (a) Hot Standby Instance(s), such Hot Standby Instance(s) may be productive at most during twenty five (25) percent of the term of a year.
- 2.5. Fallback Instance: Unless otherwise agreed upon in this Agreement, Fallback Instances are deemed to be Production Instances. An Instance is considered to be a Fallback Instance either (i) if permanently turned on with access to data

or content on a Production Instance (subscriber and/or shared repository), or (ii) if turned on periodically to receive data or content from Production Instances while ready to immediately and automatically switch to production mode, or (iii) if registered as subscriber in a Magnolia CMS author instance, or (iv) if it has immediate access to the data or content on Production Instances when turned on (e.g. SAN based or near-line backup). If, according to the Subscription Package, Customer is entitled to the usage of Software on (an) Fallback Instance(s), such Fallback Instance(s) may be productive at most during sixty (60) percent of the term of a year.

- 2.6. Customer shall maintain accurate records necessary to verify the number and usage of Licensed Instances and of the produced copies of Software. Upon Magnolia's written request Customer shall provide such records as part of the Report in accordance with clause 11 of this Agreement.
- 2.7. Subject to the terms and conditions of this Agreement, Customer may modify the source code of the Software. Unless otherwise stipulated in this Agreement, such modified versions (the "Modified Versions") are treated like the Software and are subject to the same terms and conditions applying to the Software.
- 2.8. Customer shall not independently program, use or sell software having the same features as the Software or portions thereof and handling the same problems and tasks on the basis of the concept of the Software or portions thereof, or re-implement the Software or portions thereof.

### **3. Additional License Restrictions**

- 3.1. Customer shall not use the Software in connection with any other Magnolia Software not duly licensed. Furthermore, during the Subscription Term, Customer shall not use Magnolia CMS Community Edition or a Trial Version for any purpose other than non-commercial research. Customer shall not transfer data between Software and (i) any other Magnolia Software not duly licensed, (ii) a Magnolia CMS Community Edition or (iii) Trial Version.
- 3.2. Customer shall not remove or alter any copyright, trademark or proprietary notice contained in the Software and the Documentation.
- 3.3. Unless otherwise stipulated in this Agreement, Customer shall not (i) use the Software on behalf of, or for the benefit of, third parties, (ii) allow any third party to use the Software, (iii) rent, lease, lend, sublicense, grant rights in, assign or transfer the Software, or (iv) provide use of the Software in a computer service business or third-party outsourcing facility.
- 3.4. Customer shall not use the Software, or perform or allow the transfer, export or re-export of the Software in violation of any applicable export control laws or regulations administered by any governmental authority.
- 3.5. The Software is not designed, manufactured or intended for the use as online control equipment in hazardous environments requiring redundant failsafe performance, in particular in respect of, but not limited to, the operation of aircraft navigation or communication systems, air traffic control, of direct life supporting machines, of weapon systems, of nuclear, chemical or biological manufacturing facilities, or of any other production site in which a failure of the Software could lead directly or indirectly to death, personal injury or severe physical or environmental damage. Therefore such use of the Software is expressly excluded.

### **4. Delivery of the Software**

Magnolia shall make the Software available on its internet platform. By the Effective Date, Magnolia will deliver the temporary License Key Customer's L-PoC. The final License Key is valid from the beginning of each one-year period of this Agreement until the end of such one-year period and will be delivered upon full payment of the Subscription Fees for such period.

### **5. Intellectual Property Rights**

Magnolia will retain all rights in and to any copy, modification, enhancement, improvement, development, adaptation of, or derivative work from the Software, and any other work created by Magnolia under or in connection with this Agreement. Customer hereby irrevocably assigns to Magnolia all rights in and title to any Intellectual Property Rights relating to Modified Versions. Magnolia hereby agrees to grant a license to Customer to use such Modified Versions for the duration and subject to the terms and conditions of this Agreement. As an exception, all rights and title relating to independently running software modules that were exclusively developed by Customer and/or a Certified Magnolia Partner for Customer are excluded from this provision and therefore belong to Customer and/or such Certified Magnolia Partner. To the extent certain jurisdictions do not provide for the assignability of the rights relating to Modified Versions or Intellectual Property Rights, Customer hereby grants to Magnolia a worldwide, irrevocable, exclusive, transferable and sublicensable, royalty-free, unlimited and unrestricted license to use, modify, develop and exploit such Modified Versions, Intellectual Property Rights and related rights. Notwithstanding the aforesaid, Customer shall be entitled to use such Modified Versions during the Subscription Term and subject to the terms and conditions of this Agreement.

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## Schedule 3 – Service Level Agreement

## Service Level Agreement

### Product Support Service

#### Channels

Online Self-service / Support Channels	
Magnolia Documentation	<a href="https://documentation.magnolia-cms.com/">https://documentation.magnolia-cms.com/</a>
Magnolia Community	<a href="https://wiki.magnolia-cms.com">https://wiki.magnolia-cms.com</a>
Magnolia Support	<a href="https://jira.magnolia-cms.com/secure/CreateInfo.jspa?pid=10210">https://jira.magnolia-cms.com/secure/CreateInfo.jspa?pid=10210</a>
<b>Emergency Phone Support NA:</b>	
Emergency hours 17:00-09:00 Mon-Fri EDT	+1 305 767 2034
Emergency hours 00:00-24:00 Sat-Sun EDT	
<i>Emergency Phone Support Magnolia EMEA:</i>	
Emergency hours 17:00-09:00 Mon-Fri CET	+41 44 586 8644
Emergency hours 00:00-24:00 Sat-Sun CET	+420 773 936 770

#### Notes:

- Support will provide help on Best Efforts basis, trying to find workaround or working solution in cooperation with Customer.
- The scope of the emergency phone support, during emergency hours, is solely on bringing a previously running Website back in operation. All issue solving activities will be tackled during the next regular office hours.

#### Services Hours:

Magnolia CMS Service Levels	SLA-0 Base	SLA-1	SLA-3
Regular Office hours 09:00-17:00 CET on Business Days	X	x	x
Emergency hours 17:00-09:00 Mon-Fri CET			x
Emergency hours 00:00-24:00 Sat-Sun CET			x
Guaranteed Response Time during office hours	48 h	4 h	4 h

#### Scope:

Magnolia CMS Service Levels	SLA-0 Base	SLA-1	SLA-3
Product Support (unlimited)	x	x	x

Repository Support (unlimited)	x	x	x
Consulting (Backup/Recovery setup, Migration/ Update and Installation, Developer Support)		6h	16h

**Channel usage:**

Magnolia CMS Service Levels	SLA-0 Base	SLA-1	SLA-3
Ticket and Bug Track support	x	x	x
Regular Phone support during office hours, incidents/year (max 1h per incident)			6
Emergency Phone support, during emergency hours, incidents/year (max 1h per incident)			6
Remote Connection by support team		x	x
Registered Support Point-of-Contacts (S-PoC)	2	2	4

**Scope:**

Magnolia CMS Service Levels	SLA-0 Base	SLA-1	SLA-3
Patch (code fix on GIT)	x	x	x
Deploy snapshots - build binary (jar)		x	x
Guaranteed bug fix integration (after delivered and tested fix)		x	x

**Conditions**

Support Services shall be only provided under the following conditions:

- Magnolia provides, on a Best Efforts basis, Support Services, under the terms and conditions of this Agreement and in particular according to the Service Level agreed upon.
- Support Services are strictly limited to Licensed Software excluding Modified Versions, Pre-release Versions, Magnolia CMS Community Editions or Trial Versions. Magnolia supports each release (major or minor) of Licensed Software for a limited period of twenty four (24) months starting at the release date of the following “stable” release. Nevertheless, Magnolia intends to render Support Services for outdated versions, under reservation of the right to suspend the Support Case at its sole discretion anytime.
- Irrespective of the applicable Service Level, Support Services shall be only provided under the following conditions:
  - Support Services are provided online only, unless otherwise explicitly specified by the applicable Service Level.
  - Support Services are provided during Service Hours only.

- Support Cases may be only submitted by Licensee's S-PoC(s) in English only and in electronic form (the "Support Request").
- Upon analysis of the received Support Request Magnolia will notify Licensee whether the request is covered by the applicable SLA. In the event the Support Request is not covered, Magnolia may refuse to provide Support Services.
- Magnolia will react within a defined period of time starting with Licensee's Support Request (the "Response Time") as specified in the applicable SLA.
- Support Services will be only provided with regard to Licensed Software running on an updated Certified Stack and in English only.
- No specific Resolution Time is guaranteed.
- Each Support Request shall comprise the following: (i) detailed description of the system configuration; (ii) detailed description of the different operational steps that have been performed raising the Support Case; (iii) detailed description of the operation(s) that has/have not been performed properly by the Licensed Software; (iv) detailed description of such operation's factual result; (v) description of the result expected by the Licensee.
- Magnolia will reproduce the Support Case with in-house default installation using its own version of the Licensed Software running on an updated Certified Stack. Support Services will be only provided if Magnolia was able to reproduce the Support Case with such in-house installation.
- Bug-fixes are only provided via the code repository, via a binary package, or in form of a code patch.
- Requests for Support Services may be only submitted by the Customer's S-PoC(s) in English.