

## B. TERMS AND CONDITIONS

### 1. Definitions

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

- 1.1. "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.
- 1.2. "Agreement" means this Magnolia License Agreement comprising "A. Key Terms and Key Definitions", "B. Terms and Conditions", the applicable Service Level Agreement(s), the description of the Certified Stack and the Documentation which are both available on Magnolia's official internet platform <http://www.magnolia-cms.com>, and, as the case may be, any other annexes.
- 1.3. "Application Server" means a program that handles all application operations between users and an organization's backend business applications or databases.
- 1.4. "Certified Stack" means a specific configuration of IT-components defined and described by Magnolia that are working with Licensed Software and the Jackrabbit repository. Such configurations will be identified by Magnolia upon request of Licensee. Furthermore, Magnolia may announce such Certified Stacks on its official internet platform <http://www.magnolia-cms.com/>. During this Agreement, Magnolia may, at its sole discretion, change the composition of the Certified Stack (e.g. updated versions or change of software) and reference within this Agreement shall always be to the most up to date update or change.
- 1.5. "Cold Standby Server" means a fall back server which is exclusively used for securing availability and disaster recovery purposes and which takes over production only upon manual activation if one or more Production Servers running Licensed Software fail.
- 1.6. "Confidential Information" is defined in clause 15.1.
- 1.7. "Contractual Support Services" are Services rendered by Magnolia and included in the License & Service Package (i.e. covered by the applicable SLA).
- 1.8. "Contractual Support Services Fee" means the yearly fee for Contractual Support Services in accordance with the applicable Service Level.
- 1.9. "Disclosing Party" is the Party disclosing the Confidential Information to the Recipient Party.

- 1.10. "Documentation" means the content provided on <http://documentation.magnolia-cms.com>, as amended from time to time.
- 1.11. "Due Date" is defined in clause 9.1.
- 1.12. "Effective Date" means the date when this Agreement comes into force as defined in clause 18.1.
- 1.13. "Fixed Period" is defined in clause 18.4.
- 1.14. "Force Majeure" is defined in clause 13.1.
- 1.15. "Hot Standby Server" means a fall back server which automatically replaces a failed server if one or more servers in the Production Environment running Licensed Software fail.
- 1.16. "IP Claim" is defined in clause 12.2.
- 1.17. "IP Rights" is defined in clause 14.1.
- 1.18. "License Fee" means the yearly fee as specified in the License & Service Package according to the Key Terms and Key Definitions.
- 1.19. „License Key" is a string of characters enabling the usage of a Magnolia CMS Enterprise Edition.
- 1.20. "Licensed Servers" are a specific number of servers on which Licensed Software may be installed and run as specified in the License & Service Package according to the Key Terms and Key Definitions.
- 1.21. "Licensed Software" means the software listed in the License & Service Package according to the Key Terms and Key Definitions.
- 1.22. "Limited Warranty" is defined in clause 10.1.
- 1.23. "Magnolia CMS Community Edition" means a specific version of the Licensed Software with limited features and usage restrictions provided by Magnolia under a current version of a GNU General Public License free of charge.
- 1.24. "Magnolia CMS Enterprise Edition" means a commercial content management system provided by Magnolia under the Magnolia License Agreement (MLA) including Magnolia CMS Enterprise Edition Standard and Magnolia CMS Enterprise Edition Pro.
- 1.25. "Magnolia IPR" is defined in clause 14.1.

- 1.26. "Magnolia Software" means any software developed by Magnolia, including but not limited to Magnolia CMS Enterprise Edition Standard, Magnolia CMS Enterprise Edition Pro and Magnolia CMS Community Edition.
- 1.27. "Modified Versions" are defined in clause 4.7.
- 1.28. "Non-Production Server" means a server 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).
- 1.29. "Operating System" means a single instance of Windows, Mac OS or Linux/Unix system running on a physical, virtual or cloud-based infrastructure.
- 1.30. "Party" or "Parties" means either Magnolia and/or Licensee.
- 1.31. "Pre-release Version" means Magnolia Software which is not (yet) officially released, is not tested and is available through Licensee's S-POC. Pre-release Versions may contain bugs and cause errors. Licensee is under no obligation to use Pre-release Versions, and Magnolia shall not be liable for any errors or damages resulting from such Pre-release Version. Pre-release Versions are identified under [www.magnolia-cms.com](http://www.magnolia-cms.com), [documentation.magnolia-cms.com](http://documentation.magnolia-cms.com) and/or [marketplace.magnolia-cms.com](http://marketplace.magnolia-cms.com).
- 1.32. "Product Support" means standardized support only covering functional issues with the installed and operated Licensed Software (i.e. malfunction of the licensed software) running on an updated Certified Stack, to the exclusion of issues particularly related to a specific project of Licensee.
- 1.33. "Production Server" is a server processing production data and therefore running production instances of Licensed Software.
- 1.34. "Recipient Party" is defined in clause 15.1.
- 1.35. "Report" is defined in clause 17.1.
- 1.36. "Repository Support" means customer advice aiming to bring a corrupted repository back to a consistent state (e.g. data rescue because of a lack of proper back up or other repository malfunctions etc.). Repository Support is provided on a best effort basis only.
- 1.37. "Resolution Time" means the time period starting with Licensee's Support Request and ending with the remedy of the Support Case.
- 1.38. "Response Time" is defined in clause 7.3(e).

- 1.39. "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.
- 1.40. "Service Level" means the scope of standardized support services according to the applicable Service Level Agreement (the "SLA", as attached to this agreement). Magnolia offers four Service Levels, SLA-0 through SLA-3. SLA-1 through SLA-3 are only available in combination with a Magnolia CMS Enterprise Edition Pro license.
- 1.41. "Service Hours" is the period of time as described in the applicable Service Level during which Contractual Support Services are performed by Magnolia.
- 1.42. "S-PoC" is defined in clause 17.1.
- 1.43. "Support Case" means the content of Licensee's request for Support Service.
- 1.44. "Support Request" is defined in clause 7.3(c).
- 1.45. "Term" means the Initial Term together with any Fixed Period that is entered into.
- 1.46. "Top Level Domain" means 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). "Trial Version" means a Magnolia Enterprise Edition Standard or Pro test or demo version.

## **2. Purpose and Structure of this Agreement**

- 2.1. This Agreement governs the installation and the use of the Licensed Software and the Contractual Support Services.
- 2.2. The provisions under "B. Terms and Conditions" shall apply, unless Parties agree otherwise in section iv of the Key Terms and Key Definitions.

### **3. Grant of the License**

- 3.1. Subject to the terms and conditions of this Agreement, Magnolia grants to Licensee a worldwide, non-exclusive, temporary, non-transferable, non-assignable, non-sub licensable license to install and use the Licensed Software and the Documentation for Licensee's direct beneficial business purposes only and to make a reasonable number of copies of the Licensed Software and Documentation for archival purposes and as otherwise reasonably necessary to exercise Licensee's rights hereunder, provided that all copyright and restricted right notices contained thereon are reproduced in such copies made by Licensee.
- 3.2. Licensee is entitled to sublicense use of the Licensed Software to a third-party contractor to operate it solely on behalf of Licensee, provided that (a) Licensee beforehand informs Magnolia in writing, (b) Licensee is responsible for ensuring that any such contractor agrees to abide by and fully complies with the terms and conditions under sections 3, 4, 5, 6, 7, 14, 15, 17 and 19 of this Agreement, (c) such use does not result in an increase of the number of licenses and/or eligible servers, (d) such use is only for Licensee's direct beneficial business purposes, and (e) Licensee remains fully liable for any acts or omissions by the contractor with regard to this Agreement.
- 3.3. Licensee's Affiliates shall be also entitled to use the Licensed Software under the terms and conditions of this Agreement, provided that (a) Licensee is responsible for ensuring that any such Affiliate agrees to abide by and fully complies with the terms and conditions under sections 3, 4, 5, 6, 7, 14, 15, 17 and 19 of this Agreement, (b) such use does not result in an increase of the number of licenses and/or eligible servers and (c) Licensee remains fully liable for any acts or omissions by Affiliates with regard to this Agreement.
- 3.4. License includes all updates or upgrades of the Licensed 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 Licensed Software.
- 3.5. The Licensed 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/legal/3rd-party-licenses.txt](http://www.magnolia-cms.com/legal/3rd-party-licenses.txt) and in a file in the root of the distribution file structure of the Licensed Software named "NOTICES.TXT"..

#### **4. Scope of the License**

- 4.1. Unless otherwise provided in this Agreement, the usage of the Licensed Software on Production Servers is strictly limited to Licensed Servers. Each Licensed Server shall meet the following requirements:
- a) runs on a physical server or virtual machine or cloud based service (each a "virtual server");
  - b) each virtual or physical server is assigned to not more than eight cores (or vCPUs in case of Amazon EC2);
  - c) each virtual or physical server can have up to two Application Servers (i.e. Web Containers)
  - d) each Application Server can have one Magnolia instance.
- 4.2. Multi-Site: If Licensee, under this Agreement, is entitled to Magnolia CMS Enterprise Edition Pro, Licensed Software may be used for an unlimited number of Top Level and Second Level Domains. Magnolia CMS Enterprise Edition Standard may only be used for one Top Level and one Second Level Domain. Further Second Level Domains referring to the identical web site via redirect or alternate server name alias are not considered as an additional Second Level Domain.
- 4.3. Non-Production Servers: In addition to the Licensed Servers, Licensee is entitled to install and use the Licensed Software on unlimited Non-Production Servers provided that the Non-Production Servers 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.
- 4.4. Cold Standby Server: Licensee is entitled to use Licensed Software on unlimited Cold Standby Servers provided that the Cold Standby Servers are "manually" routed and started to take over production when one or more Production Servers fail.
- 4.5. Hot Standby Server: Unless otherwise agreed upon in this Agreement, Hot Standby Servers are deemed to be Production Servers. An availability or disaster recovery server is considered to be a Hot Standby Server either (i) if permanently turned on with access to data or content on Production Servers (subscriber and/or shared repository), or (ii) if turned on periodically to receive backup data or content from Production Servers 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 Servers when turned on (e.g. SAN based or near-line backup). If, according to the Key Terms and Key Definitions, Licensee is

specifically entitled to the usage of Licensed Software on (a) Hot Standby Server(s), such Hot Standby Server(s) may be productive at most during twenty five (25) percent of the term of a year.

- 4.6. Licensee shall maintain accurate records necessary to verify the number and usage of Licensed Servers and of the produced copies of Licensed Software. Upon Magnolia's written request Licensee shall provide such records as part of the Report in accordance with clause 17.1.
- 4.7. Subject to the terms and conditions of this Agreement, Licensee may modify the source code of the Licensed Software. Unless otherwise stipulated in this Agreement, such modified versions (the "Modified Versions") are treated like the Licensed Software and are subject to the same terms and conditions applying to the Licensed Software.
- 4.8. Licensee shall not independently program, use or sell software having the same features as the Licensed Software or portions thereof and handling the same problems and tasks on the basis of the concept of the Licensed Software or portions thereof, or re-implement the Licensed Software or portions thereof.

## **5. Additional License Restrictions**

- 5.1. Licensee shall not use the Licensed Software in connection with any other Magnolia Software not duly licensed. Furthermore, during this Agreement, Licensee shall not use Magnolia CMS Community Edition or a Trial Version for any purposes other than non-commercial research. Licensee shall not transfer data between Licensed Software and (i) any other Magnolia Software not duly licensed, (ii) a Magnolia CMS Community Edition or (iii) Trial Version.
- 5.2. Licensee shall not remove or alter any copyright, trademark or proprietary notice contained in the Licensed Software and the Documentation.
- 5.3. Licensee shall not use the Licensed Software on behalf of, or for the benefit of, third parties, allow any third party to use the Licensed Software (except as defined in 3.2), rent, lease, lend, sublicense, grant rights in, assign or transfer the Licensed Software, or provide use of the Licensed Software in a computer service business or third-party outsourcing facility, irrespective of whether such usage is based on the original or any Modified Version of the Licensed Software.
- 5.4. Licensee shall not use the Licensed Software, or perform or allow the transfer, export or re-export of the Licensed Software in violation of any applicable export control laws or regulations administered by any governmental authority.
- 5.5. The Licensed 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 Licensed Software could lead directly or indirectly to death, personal injury or severe physical or environmental damage. Therefore such use of the Licensed Software is expressly excluded. If Licensee could not definitively rule out that the intended use might be prohibited according to this clause, a written confirmation by Magnolia, expressly confirming the harmlessness of the Licensed Software's usage, shall be requested.

## **6. Delivery of the Licensed Software**

- 6.1. The Licensed Software may be delivered by electronic transmission (e.g. email). Magnolia may also ask Licensee to download the Licensed Software from Magnolia's official internet platform. In this event the disclosure of the download link is deemed as delivery of the Licensed Software. On the Effective Date, Magnolia will deliver the temporary License Key to Licensee. The effective License Key, valid from the beginning of each (1) one-year period of this Agreement until the end of such period, will be delivered upon full payment of License and Contractual Support Services Fee.

## **7. Contractual Support Services**

- 7.1. Magnolia provides, on a best effort basis, Contractual Support Services, under the terms and conditions of this Agreement and in particular according to the Service Level agreed upon, to Licensee and/or an approved third party in accordance with clause 3.2 above.
- 7.2. Contractual 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 Contractual Support Services for outdated versions, under reservation of the right to suspend the Support Case at its sole discretion anytime.
- 7.3. Irrespective of the applicable Service Level, Contractual Support Services shall be only provided under the following conditions:
  - a) Contractual Support Services are provided online only, unless otherwise explicitly specified by the applicable Service Level.
  - b) Contractual Support Services are provided during Service Hours only.
  - c) Support Cases may be only submitted by Licensee's S-PoC(s) in English only and in electronic form (the "Support Request").



- d) 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 Contractual Support Services.
- e) Magnolia will react within a defined period of time starting with Licensee's Support Request (the "Response Time") as specified in the applicable SLA.
- f) Contractual Support Services will be only provided with regard to Licensed Software running on an updated Certified Stack and in English only.
- g) No specific Resolution Time is guaranteed.
- h) 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.
- i) 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. Contractual Support Services will be only provided if Magnolia was able to reproduce the Support Case with such in-house installation.
- j) Bug-fixes are only provided via the code repository, via a binary package, or in form of a code patch.
- k) Magnolia may delegate the execution of Contractual Support Services to Affiliates and/or third parties.
- l) Magnolia reserves the right, at its sole discretion, to change the procedure for the reporting of Support Cases. Magnolia will inform Licensee accordingly.

## **8. License and Contractual Support Services Fee**

- 8.1. Licensee shall pay the yearly License Fee and Contractual Support Services Fee.
- 8.2. In the event of a renewal of this Agreement according to clause 19.4, the License Fee will be calculated according to the then applicable fees charged by Magnolia for the Licensed Software in consideration of the Licensed Servers six (6) months before the renewal. Magnolia will communicate the then applicable fees to Licensee in writing (e-mail is sufficient) not later than six (6) months

before the renewal. In the absence of such notification, the License Fee shall remain the same (i.e. the existing License Fee shall apply for the extended Agreement).

- 8.3. Licensee hereby agrees to pay an additional fee for any use of the Licensed Software beyond the scope granted under this Agreement (i.e. installation on more Production Servers than licensed) or any use of a Magnolia CMS Community Edition and/or Trial Version which is prohibited under clause 5.3. For the calculation of the additional license fee relating to a forbidden use of a Magnolia Community Edition and/or Trial Version, these versions shall be deemed as Magnolia CMS Enterprise Editions. Magnolia is entitled to invoice such additional fee according to the License Fees applicable at that time.

## **9. Payment Terms**

- 9.1. The License and Contractual Support Services Fee will be invoiced on a yearly basis at the beginning of each (1) one-year period of this Agreement. It shall be due 30 days after the receipt of the invoice by Licensee (the "Due Date"). Licensee may not set potential claims off against the invoiced fees. On expiry of the Due Date Licensee will be automatically in default (without any formal reminder). Interest on payment in arrear shall amount to 5% per year.
- 9.2. 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 services.

## **10. Warranty for Licensed Software and Services**

- 10.1. Magnolia warrants to Licensee that the Licensed Software will perform substantially as described in the Documentation if used in connection with an updated Certified Stack (the "Limited Warranty") and in accordance with the provisions of this Agreement. Insignificant variations from the Documentation are excluded from this warranty. In particular, Magnolia does not warrant that the performance of Licensed Software will be uninterrupted or error-free. Magnolia further does not warrant that the Licensed Software can be used for a particular purpose. Modified Versions of Licensed Software and Pre-release Versions are excluded from this Limited Warranty. Magnolia warrants to Licensee that any service provided under this Agreement will be performed in a workmanlike and professional manner consistent with normal industry practices. Subject to the aforementioned representations and warranties, Magnolia disclaims any and all other warranties or representations to the fullest extent permitted by law.

- 10.2. In the event the Licensed Software does not perform in accordance with the Limited Warranty or a service was not rendered in accordance with clause 10.1, subject to compulsory law, Licensee's sole and exclusive right and remedy shall be to demand repair and replacement of the Licensed Software by Magnolia or claim re-performance of the respective service. In particular, Licensee is not entitled to refuse acceptance of delivery, withdraw from or terminate the Agreement, reduce the License Fee or, subject to compulsory law, claim damages. Licensee must report a defect of the Licensed Software or a deficiency of the performed services to Magnolia in accordance with the provisions of section 7 (Contractual Support Services) and without undue delay after Licensee has taken notice or could have taken notice of the defect. If Magnolia should permanently fail to remedy a defect, the Parties shall be entitled to terminate the Agreement with immediate effect. In the event of such termination, Licensee shall receive a refund of the yearly License and Contractual Support Services Fees already paid by Licensee for the then remaining Initial Term or Fixed Period (as applicable).
- 10.3. Under no circumstances, Magnolia shall be obliged to remedy a defect, if (i) the defect has not been reported in accordance with clause 10.2, (ii) Licensee modified the Licensed Software, but solely to the extent the defect results from Licensee's modifications, (iii) the defect is a result from the use of a Pre-release Version, or (iv) Magnolia could not reproduce the defect using a standard version of Licensed Software operated in connection with an updated Certified Stack.

## **11. Liability**

- 11.1. Subject to willful intent, gross negligence and compulsory law and unless expressly otherwise stipulated in this Agreement, Magnolia shall have no liability for any direct or indirect damages in connection with this agreement, including any loss of use, interruption of business, lost profits, or any indirect, special, incidental, or consequential damages of any kind regardless of the form of action whether in contract, tort (including negligence), strict products liability, or otherwise, even if licensee has been advised of the possibility of such damages.

## **12. Intellectual Property Indemnity**

- 12.1. During the term of this Agreement, Magnolia shall defend any third party claim against Licensee subject to the notice provisions in this section to the extent such claim alleges that the use of the Licensed Software directly infringes upon any IP Right of a third party within the territory of the European Union, EFTA member state countries or Switzerland (the "IP Claim"). Magnolia shall pay Licensee the damages, costs, and expenses (including reasonable legal fees) finally awarded by a court of competent jurisdiction against Licensee, or agreed

to in a written settlement agreement signed by Magnolia, directly attributable to the IP Claim and not exceeding the amount of the License Fee in total.

- 12.2. Following notice of an IP Claim or any facts which may give rise to an IP Claim, Magnolia may, at its sole discretion, (a) procure for Licensee a license to continue using the Licensed Software, (b) replace the Licensed Software by another similar software and forbid Licensee to further use the Licensed Software, (c) modify the Licensed Software and forbid Licensee to further use the older version of the Licensed Software, (d) terminate this Agreement and proportionally refund the License and Contractual Support Services Fees for the upcoming period already paid by Licensee.
- 12.3. The indemnification obligations set forth in this section shall only apply if (a) Licensee notifies Magnolia of an IP Claim in writing promptly upon learning of or receiving it but not later than 7 days upon knowledge, (b) Licensee provides Magnolia with reasonable assistance requested by Magnolia, at Magnolia's expense, for the defense and settlement of the IP Claim, (c) Licensee provides Magnolia with the exclusive right to control and the authority to settle any IP Claim, including, without limitation, conducting the lawsuit in its own name or on behalf of Licensee, conducting all procedural acts, and/or giving instructions to Licensee, provided, however, that Licensee shall have the right to participate in the matter at its own expense, and (d) Licensee does not admit fault or liability of Magnolia or of itself.
- 12.4. Magnolia shall have no obligation to indemnify, and Licensee shall indemnify Magnolia for any damages relating to an IP Claim if such IP Claim is caused by, or results from (a) Licensee's combination or use of the Licensed Software with other software or services, products or data, if such claim or action would have been avoided by an omission of the combination or an exclusive use of the Licensed Software, (b) modifications of the Licensed Software by anyone other than Magnolia if such claim or action would have been avoided by use of the unmodified Licensed Software, (c) Licensee's continued infringing activity after being notified by Magnolia thereof or after being provided with an adapted version of the Licensed Software that would have avoided the alleged infringement, (d) Licensee's use of the Licensed Software not in accordance with the provisions of this Agreement, (e) Magnolia's modification of the Licensed Software in compliance with Licensee's specifications, (f) use of Licensed Software outside of the Territory of the European Union, EFTA member state countries or Switzerland, or (g) use of other than Magnolia's most current release of the Licensed Software, if the claim or action would have been avoided by use of the most current release, provided Licensee had been given an opportunity to use such most current release for no additional license fee.

- 12.5. The indemnification rights and obligations according to this section are Magnolia's sole and exclusive obligations, and the Licensee's sole and exclusive remedies, with respect to an IP Claim.

### **13. Force Majeure**

- 13.1. 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.
- 13.2. 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.

### **14. Intellectual Property Rights**

- 14.1. Any and all intellectual property rights (the "IP Rights"), such as copyrights, design rights, trade marks, patents and rights to domain names or know-how in or relating to the Licensed Software or any other products, trade names or denominations of or relating to Magnolia (the "Magnolia IPR") are exclusively owned by Magnolia. Licensee shall not acquire any IP Right in the Licensed Software or any other Magnolia IPR.
- 14.2. Licensee shall not request the registration of any IP Rights identical, similar and/or harmful to Magnolia IPR, nor support or entrust any third party with such registration. If any such application for registration is or has been filed by or with the support of Licensee, Licensee shall, at Magnolia's request, abandon all use of such source codes, denominations, symbols, brochures or designs and abandon any registration or application for registration thereof or transfer the registered rights to Magnolia without any compensation. In addition, Licensee shall reimburse Magnolia for all reasonable cost and expenses arising from any opposition or legal proceeding relating to Licensee's registration or attempt for registration, including reasonable attorney's fees, spent by Magnolia or its authorized representatives.
- 14.3. Magnolia will retain all rights in and to any copy, modification, enhancement, improvement, development, adaptation of, or derivative work from the Licensed Software, and any other work created by Magnolia under or in connection with this Agreement. Licensee hereby irrevocably assigns to Magnolia all rights in and title to any IP Rights relating to Modified Versions (cf. above clause 4.7). Magnolia hereby agrees to grant a license to Licensee 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 Licensee and/or a third party are excluded from this provision and therefore belong to Licensee and/or such third party. To the extent certain jurisdictions do not provide for the assignability of the rights relating to Modified Versions or IP Rights, Licensee 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, IP Rights and related rights. Notwithstanding the aforesaid, Licensee shall be entitled to use such Modified Versions for the duration and subject to the terms and conditions of this Agreement.

- 14.4. During the Term of this Agreement, Licensee hereby grants to Magnolia a limited, non-transferable, non-exclusive license to reproduce and display Licensee'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 Licensed Software.

## **15. Confidentiality**

- 15.1. The Parties expressly agree that the content of this Agreement, the source code of the Licensed 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.

- 15.2. 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.

15.3. 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).

15.4. For clarity, a Party may disclose Confidential Information to an Affiliate or third parties, provided that such disclosure is for the purpose of performing its obligations under this agreement and that the Affiliate or third party is bound by the obligations of this section 15.

15.5. These obligations stipulated in this section 15 shall survive the termination of this Agreement for as long as such information remains proprietary or confidential.

## **16. Contractual Penalty**

16.1. For each violation of section 15 (Confidentiality) Licensee shall pay to Magnolia a contractual penalty in the amount of the yearly License and Contractual Support Services Fee. The payment of the contractual penalty does not release Licensee from the abidance by the terms and conditions of this Agreement. In addition, Magnolia may request and assert the restoration of the contractual state or removal of the state infringing this Agreement. The right to assert claims for further damages (if any) remains reserved. With regard to such claims for further damages, the Licensee shall be deemed liable unless it can prove that it was not at fault.

## **17. Compliance**

- 17.1. Within 30 business days from Magnolia's request made not more than once every twelve (12) months, Licensee shall provide to Magnolia a compliance report ("Report") that includes information reasonably requested by Magnolia concerning Licensor's use of the Licensed Software. The Report must be signed by Licensee'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 Licensee 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 Licensee's normal business hours to verify Licensee's use of the Licensed Software, compliance with the terms of this Agreement and payments made to Magnolia hereunder. Licensee 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, Licensee agrees to pay or reimburse Magnolia for the expenses relating to the software audit upon written request by Magnolia.

## **18. Points of Contact**

- 18.1. Licensee shall appoint one specific individual person who is exclusively entitled and responsible to receive the License Key (L-PoC), and one who will be sent all invoices and will be responsible for any issues regarding this Agreement (B-PoC). Magnolia must immediately be notified in writing of a change in a Point of Contact. Licensee shall further appoint at least one specific individual person who is entitled to use the Contractual Support Services ("S-PoC"). The total number of S-PoCs accepted by Magnolia is defined by the applicable Service Level.

## **19. Term and Termination**

- 19.1. Unless Parties have agreed on a particular Effective Date in the Key Terms and Key Definitions, this Agreement shall enter into force on the date on which it is signed by both Parties.
- 19.2. The Agreement is concluded for an Initial Term as specified above in the Key Terms and Key Definitions. If Parties did not specify the Initial Term it shall be three (3) years. During the Initial Term none of the Parties' may terminate the Agreement except for the reasons set out in clause 19.5.
- 19.3. Either Party may ordinarily terminate this Agreement by the end of the Initial Term by giving written notice to the other Party 60 (sixty) days prior to the end of the Initial Term.



- 19.4. If none of the Parties wishes to terminate the Agreement according to clause 19.3, it shall be automatically renewed for a fixed period of one (1) year (the "Fixed Period"). During that period none of the Parties may terminate the Agreement except for the reasons set out in clause 19.5. Either Party may terminate the Agreement ordinarily at the end of the one (1) year period by giving written notice to the other Party sixty (60) days prior to the end of the one (1) year period. In the absence of such termination another Fixed Period in accordance with this clause shall commence.
- 19.5. In case of a material breach of a Party, the other Party may terminate this Agreement without notice and with immediate effect during the Initial Term or a Fixed Period according to clause 19.4. If Licensee does not pay the fees for the License & Service Package or any other services within 90 days after the date of issuance of the respective invoice this will be deemed a material breach.

## **20. Effects of Termination**

- 20.1. Upon termination of this Agreement, (i) the License and any other rights granted to Licensee under this Agreement will terminate automatically, (ii) Licensee shall immediately cease to use the Licensed Software and any other Magnolia IPR and shall, at its own expense, delete the Licensed Software from its IT-systems and destroy any copy thereof, except for a reasonable number of copies of the Licensed Software and Documentation for archival purposes only, and (iii) Magnolia shall cease to use any logos, trademarks and marks of Licensee in its promotional material.
- 20.2. During one year following the termination of this Agreement, Licensee shall not use Magnolia CMS Community Edition or a Trial Version for any purpose other than non-commercial research and/or testing. If Licensee, 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.
- 20.3. In the event of a termination according to clause 19.5, License and Contractual Support Services Fees already paid by Licensee will be proportionally refunded for the period starting with such termination, provided that Licensee has legitimately terminated this Agreement due to a material breach of contract by Magnolia.
- 20.4. 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.

## **21. Miscellaneous**

- 21.1. This Agreement (including any 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.
- 21.2. 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.
- 21.3. 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.
- 21.4. 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.

## **22. Governing Law and Jurisdiction**

- 22.1. 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.
- 22.2. 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 Licensee's domicile with regard to any dispute arising out of or in connection with this Agreement.

*[signatures on following page]*



**Signatures**

The signees acknowledge and accept the terms and conditions of this Agreement.

**Licensee**

**Magnolia International Ltd.**

Name: .....

Name: .....

Date: .....

Date: .....

Title: .....

Title: .....

.....

.....

Signature

Signature

## Attachment: Service Level Agreement

Magnolia CMS Service Levels	SLA-0 Base	SLA-1	SLA-2	SLA-3
<b><u>Service Hours</u></b>				
Regular Office hours 09:00-17:00 Mon-Fri CET	X	x	x	x
Emergency hours 17:00-09:00 Mon-Fri CET			x	x
Emergency hours 00:00-24:00 Sat-Sun CET				x
Guaranteed Response Time during office hours	48 h	4 h	4 h	4 h
<b><u>Support Scope</u></b>				
Product Support (unlimited)	X	x	x	x
Repository Support (unlimited)	X	x	x	x
Consulting (Backup/Recovery setup, Migration/ Update and Installation, Developer Support)		6h	10h	16h
<b><u>Support Channel</u></b>				
Ticket and Bug Track support	X	x	x	x
Regular Phone support during office hours, incidents/year (max 1h per incident)			4	6
Emergency Phone support, during emergency hours, incidents/year (max 1h per incident)			6	6
Remote Connection by support team		x	x	x
Registered Support Point-of-Contacts (S-PoC)	2	2	4	4
<b><u>Bug Fixing</u></b>				
Patch (code fix on SVN)	X	x	x	x
Deploy snapshots - build binary (jar)		x	x	x
Guaranteed bug fix integration (after delivered and tested fix)		x	x	x

**Note:** Support will provide help on best effort basis, trying to find workaround or working solution in cooperation with customer.

<https://www.magnolia-cms.com/services/support.html>

<http://www.magnolia-cms.com/magnolia-cms/pricing.html>