

# Special Service Conditions magnews Platform

## ***Notice for those activating the free trial of the magnews Platform:***

*Diennea S.r.l. may offer free trial periods of the magnews Platform to new Clients. This 30-day trial period is intended solely for the purpose of testing the Platform's features. During the trial period, only some of the Platform's functionalities will be available, and the sending of communications will be limited both in type and quantity. The same Client is not allowed to activate more than two (2) trial magnews accounts.*

*At the end of the 30-day period, the Client will no longer have access to the magnews Platform, and their data and information will be deleted from the Supplier's systems. Therefore:*

- i. If the Client wishes to continue using the Service and receive the best offer from the Supplier to use the magnews Platform with its additional capabilities, they can contact the email address [helpdesk@magnews.com](mailto:helpdesk@magnews.com);*
- ii. The Client is required to extract their own data and information before the trial period ends and the account is closed if they wish to retain them.*

*During the trial period, both the Client and the Supplier may terminate the Service at any time, without any charge or cost, by notifying the contact details provided during the activation of the free trial.*

*The following provisions of the below-mentioned CSS do not apply to the magnews Platform free trial, also considering that some of its functionalities are not included:*

*7. Packages of messages and/or SMS credits not used within the reference period; 8. Exceeding User threshold; 9. Extra traffic billing– Email and SMS; 10. Italian ISTAT adjustment; 11. SLA / Up Time; 12. Usage standard limits of the magnews Platform; 15. Cookie/tracking technology clause; 17. "Alias" clause; 18. Supplementary Clauses for the Additional Service; 19. Additional clauses for the WhatsApp Business and Sinch Engage; 21. Case History, logos, and marks*

## **1. Introduction**

**1.1.** These special service conditions (hereinafter "**SSC**") together with the general terms of service (hereinafter "**GTS**") available at the following link <https://www.diennea.com/en/general-terms-of-service-gts/>, along with further detailed provisions, within the service orders (hereinafter "**SO**"), govern the supply of services (hereinafter "**Service**") that the company Diennea S.r.l., C.F. and P. IVA 02243600398, with registered office in Faenza (RA), viale G. Marconi 30/14, 48018, Italy, Certified Electronic Mail ("**PEC**") address [dienneasrl@pec.it](mailto:dienneasrl@pec.it) (hereinafter the "**Supplier**") in the person of its legal representative pro tempore undertakes to provide the service to the subjects, legal persons (hereinafter briefly referred to as "**Client/s**") who request it according to the terms and conditions described below. Supplier and Client shall hereinafter be referred to synthetically as "**Parties**" (collectively) or "**Party**" (individually). GTS, SSC and SO shall hereinafter be jointly referred to as the "**Agreement**".

## 2. Definitions

**"Case History"**: means the story of the projects that the Supplier develops for the Client, including the latter's company history, the objectives set and the results achieved.

**"Project Document"**: this is a document in which the Parties undertake to identify in detail the specific modalities for the provision of training services on the magnews Platform, set-up of the magnews Platform and/or configuration or integration with Client's Systems ("**Additional Services**"). In the event that the Project Document has not been provided for, the specific modalities for the provision of such Additional Services shall be detailed in the SO.

**"Routine Maintenance"**: means the scheduled maintenance of the Supplier's Systems.

**"Extraordinary Maintenance"**: means unscheduled maintenance interventions of the Supplier's Systems due to events beyond the Supplier's reasonable control.

**"magnews Platform"**: means the system of software and hardware designed, developed and managed by the Supplier that enables the management of personalised information pushing services by e-mail, SMS or through other digital messaging services.

**"Supplier's Terms and Conditions of Use"**: means the document that can be found at the following hyperlink: <https://www.magnews.com/acceptable-use->

policy/, which sets out the fundamental principles for the correct use of the magnews Platform by the Client.

**“Additional Service”**: means, as actually identified in the SO and/or in the Project Document, if any, the following activities:

- a) configuration activities of the magnews Platform and/or the Client’s Systems, which include, in particular, activities to modify the functional characteristics of the same on the basis of specific parameters (**“Configuration Activities”**);
- b) set-up activities related to the execution of marketing campaigns from the magnews Platform and/or the Client’s Systems, together with – where foreseen in the specific SO – training activities with respect to the magnews Platform (**“Set-Up Activities”**).

**“Supplier’s Systems”**: indicates, generally, the set of hardware, software, networks and telecommunications systems (expressly including the magnews Platform) organised by the Supplier for the provision of the Services and, specifically and depending on the context, each of these elements.

**“Client’s Systems”**: means the communication, networks, servers, hardware and software equipment and devices already installed at the Client or operated by the Client, to which the Supplier has access for the provision of the Services. The Client’s Systems also include, where applicable, software and applications in use at the Client that are the subject of the Additional Services;

**“Excessive Use”**: means the use of a provided service that results in exceeding, within a calendar month, the purchased service plan or any other agreed usage limitations (e.g., restrictions on traffic levels, traffic rerouting, the number of systems covered by the service, etc.).

**“Users”** or **“Contacts”**: means the recipients of messages and/or notifications (natural or legal persons) and, more generally, of the Client’s communications.

### **3. Ownership of the database**

**3.1.** The Client declares that the ownership of the databases of the Users used to send communications by the same through the Supplier’s Systems (with specific reference to the magnews Platform) vests in the Client itself.

**3.2.** The Client declares that User databases under controllership of third parties or unlawfully acquired will not constitute the subject of the use of the Service.

## **4. Privacy and security of personal data**

**4.1.** The Supplier, as Data Processor (as referred to in Article 13.2 of the GTS), undertakes to process the personal data of the Client in order to properly provide the Service and in accordance with what is better agreed in the Data Processing Agreement which can be consulted here, which, by signing the relevant SO, is understood to be fully accepted and binding between the Parties.

## **5. Supplier's Terms and Conditions of Use**

**5.1.** The Client declares to have read and understood the Supplier's Terms and Conditions of Use <https://www.magnews.com/acceptable-use-policy/> and commits to use the magnews Platform according to the principles outlined therein; he also recognizes that different use of the magnews Platform from what is indicated in the Supplier's Terms and Conditions of Use constitutes a severe and relevant conduct pursuant to Article 5.3 of the GTS and, if it will be the case, illegal or otherwise in violation of the law and/or rights of the other relevant under article 5.4 of the GTS; and where there is injury to the Supplier or to third parties, the Client undertakes to hold harmless and indemnify the Supplier against any claim for compensation under article 5.2 of the GTS.

## **6. Obligation of vigilance and security**

**6.1.** The Client undertakes to ensure the proper use of the Service and to put in place all appropriate measures to prevent any undue access by unauthorized persons, remaining, however, responsible for any theft, loss or loss of confidentiality of the credentials to access the magnews Platform.

## **7. Packages of messages and/or SMS credits not used within the reference period**

**7.1.** If the consideration foresees the sale of the packages of messages (e-mail) and/or SMS credits in relation to a given reference period, any messages (email) not sent and/or SMS credits not used by the end of this period cannot be used subsequently and will not be reimbursed.

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## **8. Exceeding User threshold**

**8.1.** When the User threshold applicable to the Client at the time of signing this SO, or that which has been applied over time due to effective use of the Service, is exceeded, the Supplier will invoice the User threshold effectively used, applying the price of the corresponding range indicated in Annex – EXTRA CONTACT RANGES.

**8.2.** The additional cost due will be invoiced the month following the exceeding of the threshold and shall be paid within 60 days of the end of the month from the invoice date.

## **9. Extra traffic billing – Email e sms**

**9.1.** When extra traffic with respect to what reported in the active SO is used, the Supplier can invoice extra traffic by applying the CPM of € 0,2 for emails, or the purchase price for SMS messages upon the expiration of the SO or upon each subsequent renewal.

## **10. Italian ISTAT adjustment**

**10.1.** At each renewal of this SO, the Supplier reserves the right to update the annual licence fee for the magnews Platform (in the amount applied at the time of renewal) on the basis of the change in consumer prices relating to the Italian Istat FOI index

## **11. SLA/ Up Time**

**11.1.** The service levels offered by the Supplier are indicated at the following link: <https://www.magnews.com/magnews-service-level-agreement-sla/>.

## **12. Usage standard limits of the magnews Platform**

**12.1.** The usage standard limits of the Platform are specified at the following link: <https://www.magnews.com/standard-limits-of-use-of-the-platform/>.

## **13. Remote access to magnews Platform**

**13.1.** The Client acknowledges that the Supplier may access the magnews Platform to carry out consulting activities for the optimization of the Service usage

by the Client, to manage and/or support in the corresponding administrative and commercial operations, and to perform Maintenance and security activities.

## **14. Maintenance**

**14.1.** The Supplier reserves the right to suspend, in whole or in part, access to the magnews Platform for Ordinary and/or Extraordinary Maintenance needs.

**14.2.** The Supplier will give prompt notice of the intervention of Ordinary Maintenance within 5 (five) working days prior of such maintenance.

**14.3.** The Supplier shall make every effort, but without giving any undertaking in this regard, to forewarn the Client of the work of Extraordinary Maintenance and to minimize inconveniences resulting from these interventions.

## **15. Cookie/tracking technology clause**

**15.1.** Diennea provides the Client with a cookie/tracking technology, which is directly inserted in the magnews Platform under this Agreement and which can be entirely activated and managed by the Client.

**15.2.** The tool “**Web Conversion Tracking**” enables the Client to analyze and process the information related to the recipients of their communications, in order to aggregate such recipients in “profiles”, i.e. in homogeneous groups based on behavior or specific characteristics.

**15.3.** The “**Web Experience**” tool allows the Client to track the actions of visitors on one or more of the Client’s websites.

**15.4.** In particular, it allows tracking behavioral data of both anonymous and known visitors (i.e. associated to contacts in the magnews DB). Should an anonymous visitor be identified as a contact, all browsing data gathered before their identification will also be associated with that same contact.

**15.5.** The Client, acting as Controller of the data thus obtained, undertakes to process the data in accordance with the applicable law, and to provide Diennea, acting as Data Processor, with detailed instructions about the processing carried out under this Agreement. The appointed Data Processor undertakes to inform the Client of any necessary technical changes to this technological tool, thus complying with the duty of information arising out of their appointment and in

order to enable the Client to achieve the same privacy obligation compliance with respect to the recipients of their communications.

## **16. Penalty clause**

**16.1.** If the activity of the Client using the Service leads to the inclusion of IP addresses or domains of the Supplier (and/or its suppliers), whether they are shared or personal, in the “Main Monitored Blacklists” (available at the following link: <https://www.magnews.com/black-list-monitor-service/>), the Supplier shall have the right to promptly block the outgoing communications and to definitively close the Client’s account, without prejudice to the right of the Supplier to compensation for additional damages

**16.2.** If the activity of the Client using the Service leads to a reporting of abuse/spam to the Supplier by a Client’s contact, starting from the third abuse/spam report from the date of signature of the GTS, the Client shall pay to the Supplier, as a penalty, the amount of Euro 200.00 for each violation, as minimum compensation for the activities that the Supplier shall put in place in order to handle the request of the contact, with respect to both the same contact and the Client in accordance with the role of data processor (as mentioned in article 13.2 of the GTS), without prejudice to the right of the Supplier to compensation for additional damages. Please note that the number of abuse/spam reports is related to a period of 12 months from the date of receipt of the abuse/spam report. Therefore, starting from the third abuse/spam report recorded during the last 12 months from the date of its receipt, the Client shall pay to the Supplier, as a penalty, the amount of Euro 200.00 for each violation, as described above, without prejudice to the right of the Supplier to compensation for additional damages.

**16.3.** The conducts described in points 16.1. and 16.2. above also integrate severe and relevant conduct under Article 5.3 of the GTS and, if it is the case, illegal activity or otherwise activity in violation of the law and/or significant rights of others relevant under Article 5.4 of the GTS, and where there is injury to the Supplier or to third parties, the Client undertakes to hold harmless and indemnify the Supplier against any claim for compensation under Article 5.2 of the GTS.



## 17. "Alias" clause

**17.1.** The Client, if so permitted by the supplier of the messenger service integrated in the magnews Platform, pursuant to AGCom Resolution no. 42/13/CIR, may send SMS by setting an alphanumeric code (Alias).

**17.2.** The Client shall only use Alias which he actually uses as legitimate holder or over which he has a legitimate right of use on the basis of current applicable law (with particular reference to trademark laws and AGCom Resolution 42/13/CIR, insofar as it is applicable, and Resolution 12/23/CIR) and undertakes to hold harmless the Supplier and indemnify it against any claims, including damages or sanctions, for its own facts or omissions, brought by any third party and/or the competent Authorities.

**17.3.** The Client agrees not to use generic Alias (i.e. "hotel", "restaurant", etc.), which may deprive the message of its distinctive features or make the sender not easily recognizable.

**17.4.** Prior to the start of the activities, the Client shall notify the Supplier of any Alias that he intends to use and update promptly the Supplier on the elimination or the non-use of any Alias previously communicated, in order to allow the Supplier to communicate the Alias for its registration in the database managed by AGCom ("**AGCom Data Base**") or for its update, acknowledging that in case of non-communication, it may not be possible to send messages using the Alias.

**17.5.** In case of failure of registration of an Alias in the AGCom Data Base, the message may be send anyway, but Alias will be replaced by a numeric sender id assigned by the supplier of the messaging service integrated in the magnews Platform. The Client who intends to delete from AGCom Data Base the Alias previously communicated to the Supplier and registered according to the present clause, shall communicate in writing to the Supplier this intention within 20 (twenty) days before the date of expiration of the Agreement.

**17.6.** By signing this Agreement, the Client authorizes the supplier of the messenger service integrated in the magnews Platform to publish its personal information and contact data in the AGCom Data Base.

## 18. Supplementary Clauses for the Additional Service

**18.1.** The Client, in addition to providing the utmost cooperation to the Supplier for the purposes of providing the Additional Service, undertakes to:

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1. a) promptly transmit to the Supplier all information (also of a technical nature), data and material, as well as any other information that may be necessary for the supply of the Additional Service, as may be specified by the Supplier in the SO and/or in the Project Document and/or agreed between the Parties in subsequent written communications by e-mail. In this regard, the Client guarantees that:
2. it will transmit to the Supplier documentation and information with content that is accurate and truthful and, where applicable, for which it has a licence to use images, graphics, data, etc., for which the Client is and remains solely responsible, even in the event of actions or claims by third parties against the Supplier that are based on breach of the provisions of the Contract or the applicable laws;
3. shall not transmit to the Supplier any documentation whose content is illegal or in breach of the law, in accordance with the applicable pro tempore laws, or which also infringes the intellectual and industrial property rights of third parties;
4. b) grant the Supplier access to and use of the Client's Systems if necessary for the provision of the Additional Service;
5. c) immediately notify the Supplier of any circumstances affecting the proper performance of the Additional Service;
6. d) act in good faith and promptly comply with any instruction sent by the Supplier, should technical actions be necessary for the correct supply of the Additional Service;
7. e) not take any action that may jeopardise and/or impede and/or influence the correct delivery of the Additional Service.

**18.2.** It is understood that the Supplier shall in any case not be liable for any non-performance in connection with the provision of the Additional Service in the event that the Client fails to fulfil these obligations and duties of cooperation as set forth herein. The Client also undertakes to indemnify and hold the Supplier harmless from any liability or legal action (even by third parties), including related costs or expenses that may arise or result from the Client's breach of its contractual obligations.

**18.3. Limitations and/or exclusions of the Supplier's liability.** Without prejudice to the provisions of article 7 of the Supplier's GTS, the Client acknowledges that the Supplier, except as provided for by mandatory provisions of law, cannot be held liable for:

1. a) any changes independently performed by the Client and/or third parties on behalf of the Client to the Configuration Activities performed by the Supplier (where applicable);

2. b) loss, loss of profit, indirect, consequential or punitive damage suffered by the Client or a third party and resulting from the supply of the Additional Service, performed in accordance with the Project Document that may have been agreed between the Parties and/or in accordance with the different/additional activities agreed between the Parties and approved and confirmed in writing by the Client;
3. c) damage or loss of the Client's data and/or information during the execution of the Additional Service that is not directly attributable to the Supplier in cases of wilful misconduct or gross negligence;
4. d) any malfunctioning that may occur after the delivery of the Additional Service, in particular within the third-party platforms subject to the Configuration Activities (if any);
5. e) loss of profit, business opportunities, turnover.

**18.3.1.** The Client further agrees to indemnify and hold harmless the Supplier against any claims or actions by the Client and/or third parties arising from circumstances attributable to the Client's failure to obtain licences or other permits or approvals related to/required for the provision of the Additional Service, as well as software or materials that the Client has instructed or requested to be integrated.

**18.4. Malfunctions.** The Client may notify the Supplier of any reports, malfunctions or anomalies relating to the Configuration Activities or relating to the performance by the Supplier of Set-Up Activities. In the case of Configuration Activities, the Supplier and the Client will agree in writing on the changes to be implemented, which will be carried out by the Supplier within the limits of its own competence and as far as technically possible, without prejudice to the limitations of liability in this regard provided for above.

In the event that 10 days have elapsed since the end of the Configuration Activities foreseen, if any, and since the conclusion of the Set-Up Activities without the Supplier having received any report and/or observations from the Client, the Client shall not be entitled to make any subsequent objection whatsoever regarding the Additional Service supplied by the Supplier, which shall then be deemed approved, and the Supplier shall not be held liable under any circumstances for failure to supply or inexact performance of the Additional Service. The Supplier's monitoring obligations with respect to the activities actually agreed upon within the scope of the Additional Service and referred to in the SO(s), where expressly provided for in the Project Document, shall remain unaffected.

**18.5. Client Warranties.** The Client warrants to the Supplier that it has obtained all necessary licences, authorisations, regulatory certifications or approvals to grant the Supplier the right of access and licence to use the Client's Systems (including third-party platforms), without infringing the licence rights of third parties. The Client also warrants that it has signed the relevant terms and conditions with the aforementioned third parties for the lawful use – including in favour of the Supplier – of the relevant platforms.

**18.6. Access to the Client's Systems. Authorisations.** The Client authorises the Supplier to access the Client's Systems, including third party platforms expressly the subject of the Additional Services, on behalf of the Client and, where applicable, to use the third party licences for the use of related services necessary for the provision of the Additional Services.

The Client grants the Supplier the necessary access to the Client's Systems, including the third-party platforms (through one or more dedicated and individual accounts reserved for the Supplier), for the sole purpose of carrying out the activities related to the delivery of the Additional Service. The Supplier undertakes to take all appropriate measures to prevent any undue access to it by unauthorised persons and to maintain the confidentiality of the relevant access credentials assigned by the Client. The Supplier also undertakes to promptly notify the Client of any circumstances that conflict with the Supplier's security policies.

**18.7. SLA.** If agreed between the Parties, the Supplier undertakes to provide the Additional Service with the methods and service levels described in the SO and/or in the Project Document, if any.

**18.8. Redetermination of Activities and Cases of Early Termination.** The Client is aware that, where foreseen by the SO(s), the Supplier shall proceed with the actual implementation of the activities on the basis of what has been agreed upon in the Project Document possibly agreed upon between the Parties, it being understood that it shall be the Supplier's responsibility to promptly notify the Client of any possible circumstance that affects the correct execution of the Service in order to allow the Parties to cooperate in good faith to identify alternative ways to guarantee the execution of the agreed activities.

**18.8.1.** In the event that it is not possible to identify alternative ways of guaranteeing – in whole or in part – the execution of the agreed activities due to circumstances that are not attributable to the Client and to the Supplier, the Parties reserve the right to redetermine the content of the SO(s) and/or the

Project Document, if any, reserving the right for the Supplier to adjust the agreed fees in accordance with such changes, or alternatively to proceed to the consensual termination of the SO(s).

**18.9. Suspension of the Service.** The Supplier has the right to suspend the supply of the Additional Service and/or of specific activities agreed upon in the framework of the SO(s), without this right being contested by the Client as a breach or violation of the Contract, in the event that the Client has not fulfilled its obligations under the Contract. It shall be the Supplier's responsibility to communicate the suspension of the Service by PEC or registered letter with return receipt, according to the procedures set forth in article 5.3 of the GTS.

**18.10. Termination.** The Supplier reserves the right to terminate pursuant to article 1456 of the Italian Civil Code the SO(s) activated by the Client for the performance of the Additional Service, within 15 (fifteen) days from the communication of the suspension referred to in paragraph 18.9. above, if the Client has not remedied the breach of its obligations as identified in the Supplier's dispute, considering the Client's failure to cooperate as a serious breach on its part. It is understood that, in such circumstances, the Client retains the obligation to pay the consideration set out in the SO(s), without prejudice to the Supplier's right to compensation for any greater damage.

## **19. Additional terms for the WhatsApp Business service and Sinch Engage**

**19.1.** Without prejudice to the provisions of Section 8.2 of the GTS and the provisions of the SO relating to the termination of the Parties, with specific reference to the WhatsApp Business service, the Supplier reserves the right to prematurely terminate WhatsApp Business service in the event that: (a) the provision of WhatsApp Business service becomes impossible; (b) there are legal, regulatory, or governmental prohibitions or limitations affecting WhatsApp Business service; (c) any license necessary to provide WhatsApp Business service is terminated or expires. In such case, the Supplier will provide thirty (30) days notice of early termination of such specific service, and will endeavour to verify the need to renegotiate in good faith the economic terms of the applicable SO in relation to such service, where appropriate.

**19.2.** In addition to the provisions of Articles 5.5 and 6.2 of the GTS, in the event of a breach of the provisions contained in the aforementioned articles in the context of the use of the WhatsApp Business service purchased by the Client, the Client agrees to indemnify and hold the Supplier harmless from any liability for

claims of infringement of third party copyright and authors' rights. Client is also aware that the WhatsApp Business service is provided through subcontractors and under licence from third parties.

**19.3.** In the event that a claim is made against the Client for violations referred to in the preceding paragraph, the Supplier reserves the right to suspend the WhatsApp Business service and interrupt the execution of the affected SO or terminate the relevant Agreement in accordance with Article 1456 of the Civil Code, as provided in Article 5.3 of the GTS.

**19.4.** Limited to the WhatsApp Business service, Client acknowledges that the Supplier's maximum aggregate liability for direct damages may in no case exceed €10,000.00 for all events – direct and/or related – that may give rise to such liability, occurring within a period of twelve (12) months from the Effective Date of the SO or its subsequent renewals applicable in relation to this service.

**19.5.** Client understands and agrees that, with specific reference to the WhatsApp Business service, the *WhatsApp Client Terms* set out in the document attached to the SO in force between the Parties, which constitutes an integral part of the Agreement, will apply.

**19.6.** As an additional integration to these SSC, with specific reference to the Sinch Engage service, where requested by the Client and subject to the SO, the Client acknowledges and accepts that such service is provided pursuant to the MessengerPeople GmbH contractual terms and conditions available at this link <https://engage.sinch.com/terms-and-conditions/> to be understood as fully binding towards the Client with the signature of these SSC and as a consequence of the use of the service. With respect to the personal data processing activities carried out in the context of the provision of the Sinch Engage service, the Client acknowledges that these shall remain subject to the data protection policies and related contractual documentation on this matter issued by MessengerPeople GmbH, including the privacy policy available here: <https://www.sinch.com/privacy-policy/>. The Client also acknowledges and accepts that any personal data processing activities performed by MessengerPeople GmbH on behalf of the Client in the context of the provision of the service will only be carried out to the extent and for the purposes agreed between the Client and MessengerPeople GmbH, as governed by the relevant data processing agreement (available at <https://www.sinch.com/data-protection-agreement/>), which the Client declares to know and accept.

## **20. Additional provisions for the Web Application Firewall (WAF) service**

**20.1.** In addition to the terms provided under the Agreement, with specific reference to the Web Application Firewall service, where activated, the Client:

- acknowledges and accepts that the service will be performed using sub-contractors. Accordingly, the Client authorizes Diennea to carry out all necessary activities to enable the service delivery and to cooperate actively with it;
- undertakes not to use the service for purposes unrelated to its business activity, nor to assign or resell the service to third parties, or to combine the service with other services to create additional services or added value;
- remains solely responsible for the “content”, meaning texts, files, documents, data (including personal data) and other materials provided by the Client or its users, which reside in or through the systems of the Supplier and its subcontractors used to deliver the service;
- grants access to Client’s Systems where the service is delivered through the Client’s Systems and, if necessary, allocate externally accessible IP addresses to Client’s Systems to facilitate service delivery;
- grants the right to derive and create certain aggregated analytical data from the use of and the provision of the service and the “content” and to use such aggregated data for other purposes (including the improvement of the service provided by the Supplier and its subcontractors), provided that such use is not contrary to or prohibited by applicable laws.

**20.2.** It is understood that the Web Application Firewall service may be modified, in whole or in part, during the validity of the SO, including individual components thereof. In such cases, notwithstanding the provisions of Article 11 of the GTS, the Client will be notified at least 20 (twenty) days in advance. The Client may partially terminate the SO affected by such changes, limited to the Web Application Firewall service, without costs or penalties, by sending a written notice within 20 days from the Supplier’s communication. If the Client does not provide any notice to Diennea or does so late or in a manner inconsistent with the foregoing, such behavior will be considered acceptance of the changes to the service and the SO by the Client.

**20.3.** Unless otherwise specified in writing by the Supplier, the Web Application Firewall service is provided “as is” and “as available,” in compliance with the SLA of the magnews Platform, available here<sub>1</sub>, and its use is at the sole risk of the Client. To the extent permitted by applicable law, no implied warranties of merchantability or fitness for a particular purpose are offered. It is understood



that the use of the Web Application Firewall service does not guarantee that security threats and vulnerabilities will be detected or mitigated, nor does it guarantee that the Client's Systems will become invulnerable. In case of the Supplier's non-performance regarding the service delivery, the Supplier may, at its sole discretion, ensure exact service performance or offer discounts on the service fees in accordance with the terms set forth in the aforementioned SLA.

**20.4.** The Client will be informed in case of Excessive Use of the Web Application Firewall service when 80% of the purchased service plan usage is reached or when the limits of the service plan are exceeded. Such Excessive Use will be billed within the following 30 (thirty) days from the overage, during which the Client may submit a request to upgrade its service plan to a higher level capable of covering the reported Excessive Use. It is understood that failure to pay the fees accrued for each instance of Excessive Use allows the Supplier to suspend the Web Application Firewall service or terminate the Agreement pursuant to Article 1456 of the Italian Civil Code, with a 10 (ten) day notice period.

For the purposes of applying this provision, usage will be verified as follows, through the use of so-called Points of Presence, i.e., cloud-managed data centers on behalf of the Client, for the delivery of the Web Application Firewall service:

- legitimate throughput will be measured every 5 minutes, and such measurements will be recorded;
- at the end of each day (day starting at 00:00 UTC), an automatic calculation will discard the top 5% of measurement, and the 95-percentile measurement will be considered as the maximum legitimate throughput of the day ("maximum legitimate throughput");
- the "maximum legitimate throughput" of any day should be equal to or less than the purchased service plan.

If the "maximum legitimate throughput" of any day exceeds the service plan for three or more days in a calendar month, the service usage will be considered Excessive Use under this provision and will be promptly notified to the Client.

**20.5.** Notwithstanding the terms applicable to the magnews Platform service, the Client may request the termination of the Web Application Firewall service and withdraw from the SO, limited to the Web Application Firewall service, by providing written notice with a 30 (thirty) day notice period. Similarly, the Supplier may notify the termination of the service and withdrawal from the SO, limited to the Web Application Firewall service, with the same 30 (thirty) day notice period. It is understood that such communication does not affect the validity of the SO



and the Agreement concerning the delivery of other services provided by the Supplier.

**20.6.** To the extent permitted by non-derogable applicable laws, it is understood that in no case shall liability towards the Client exceed the amounts paid in relation to the Web Application Firewall service during the 12 months preceding the harmful event or non-performance. This provision shall apply even after the termination of the Web Application Firewall service delivery.

## **21. Retention of Data and Information – Reference**

**21.1.** The Client declares that the retention times available at the following link <https://www.magnews.com/data-retention-policy-on-the-magnews-saas-platform/> indicate the instructions that the Supplier, as Data Processor, undertakes to comply with, without prejudice to the Supplier's right to retain data in order to comply with specific legal obligations, regulations and/or requests from authorities, as well as to assert or defend its rights and interests against any claims, actions and disputes regarding the provision of the Services covered by the Agreement and the Data Processing Agreement. In the event of changes to the above instructions, the Client shall, in written form, inform the Supplier, who reserves the right to quote any additional costs associated with the provision of the service.

## **22. Case History, logos and marks**

**22.1.** With regard to the activities covered by the Agreement and the relationship between the Parties, the Client:

- grants the Supplier the non-exclusive right to use the Case History and the related materials (including videos, images, texts, etc.) free of charge and without time or territory limits, including the right to process, publish, re-adapt, reproduce;
- grants the Supplier the non-exclusive right to use the Client's logos and marks until such authorisation is expressly revoked.

**22.2.** The Supplier specifies that it will use the Client's Case History and logos for the following purposes:

- publication on current and future websites owned by the Supplier (such as, but not limited to: [www.diennea.com](http://www.diennea.com), [www.magnews.com](http://www.magnews.com), [www.tbd.it](http://www.tbd.it), [www.magnews.it](http://www.magnews.it));

- publication in information brochures (Company Profile, Best Practices, PPT) in both digital and printed format;
- presentation at events in which Diennea participates;
- promotional activities through media, press releases and advertising;
- by way of reference (with particular reference to the Client's logo and marks).

**22.3.** At the Client's request, the Supplier undertakes to have the Client review the drafts of the promotional material, as well as to cease using them, and to remove the relevant information from the paper and digital media where it has been published and where technically possible.

## **23. Changes and updates to the Services**

**23.1.** The Client accepts and recognises that Diennea has the right to modify, at any time, the Service covered by the SO, including the magnews Platform and Helpdesk Service, and the conditions under which the same are offered, even removing some of their functions. It is understood between the Parties that for the purposes of this provision, as well as pursuant to Article 11 of the GTS, changes to the SO or the Service are not to be considered changes to the Services due to software updates of the magnews Platform necessary to guarantee an improvement in software performance and to ensure an adequate level of information security.

**23.2.** Notwithstanding the provisions of Article 11 of the GTS, changes to the Services shall be communicated to the Client 60 (sixty) days in advance of the date on which the changes are to take effect by PEC or registered letter with return receipt. In the event that the Client, by virtue of the changes to the Service and to the conditions under which the same are offered to the Clients, decides to withdraw from this SO, it must notify Diennea in writing by Certified E-Mail or registered letter with return receipt, within 30 (thirty) calendar days from receipt of the Supplier's notice of change.

**23.3.** Limited to the WhatsApp Business service, the Client agrees that, as a partial derogation to the provisions of Articles 11.1 and 11.2 of the GTS, the Supplier may modify the economic conditions indicated in the SO applicable to this specific service, by notifying the Client in writing at least 15 days beforehand by email. In these circumstances, the Client will have the right to partially withdraw from the SO affected by these changes, limited to the specific WhatsApp Business service, by sending the relevant notice to the Supplier within 10 days of receipt of the aforementioned notice, after which the changes will be deemed accepted by the Client.

**Diennea S.r.l.**

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**23.4.** It is understood that in the event that the Client does not communicate anything to Diennea or does so late or in a manner different from that set forth above, such conduct shall be considered as acceptance by the Client of the changes to the Service and the SO.

**23.5.** Notwithstanding the provisions of article 11 of the GTS, limited to the Additional Service, whenever changes and/or additions to the actual supply are necessary with respect to the provisions of the SO and/or the Project Document, the Parties must agree in writing by e-mail on the additional and/or different activities to be performed. Said further and/or different actions shall be effectively implemented by the Supplier only when the latter has received express approval in writing from the Client, also to be sent by e-mail. In the absence of such express approval, the Supplier shall refrain from taking any actions that are different and/or additional to those indicated in the SO and/or in the Project Document, without this giving rise to any assumption of liability on the part of the Supplier, and without prejudice to the obligations to pay the amount due by the Client for the supply of the Additional Service pursuant to the SO(s).

*These SSC were updated on 17/12/2024*

*See previous versions of the SSC:*

*Click here if you wish to consult and download the special service condition valid until 16/12/2024*

*Click here if you wish to consult and download the special service condition valid until 20/10/2024*

*Click here if you wish to consult and download the special service condition valid until 19/06/2024*

*Click here if you wish to consult and download the special service condition valid until 08/04/2024*