

Special Service Conditions magnews Platform on-premises

1. Introduction

1.1. These special service conditions (hereinafter “**SCC**”) together with the general terms of service (“**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., fiscal code and Italian VAT number 02243600398, with registered office in Faenza (RA), viale G. Marconi 30/14, 48018, Italy, Certified Electronic Mail (“**PEC**”) address 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

“**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**”).

“**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.

“**Client’s Systems**”: with specific reference to the magnews Platform service on premises mode, reference is made to the Client’s Systems to mean the set of hardware, software, networks and telecommunications systems made available by the Client as part of the provision of the Supplier’s Services.

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“Extraordinary Maintenance”: means unscheduled maintenance interventions of the Supplier’s Systems due to events beyond the Supplier’s reasonable control.

“License of Use”: means the contractual terms of use of the EmailSuccess Software and the magnews Platform by the Client.

“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.

“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.

“Server”: means the server owned by the Client on which it is installed the EmailSuccess Software and the magnews Platform.

“Software EmailSuccess” or **“Software”**: means the Supplier’s software, used by magnews Platform, which allows, among others, to optimize email sending and delivery, define message delivery policies, recognize bounce and optimize automatic resend attempts, manage multiple sending IPs, and certify the message sender through DKIM signatures.

“Supplier’s Systems”: means, 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.

“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.

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

3. Licence of Use

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3.1. The Client is permitted to use the Service only for the purposes set forth in this Agreement.

3.2. The Client acknowledges and agrees that this Agreement does not constitute a sale or assignment of any title or ownership rights relating to the Service, upgrades, documentation and any other applications/programs related to the use of the Service.

3.3. The license granted by this Agreement is limited, non-exclusive, non-transferable and revocable.

3.4. In any event, and except as expressly permitted by applicable law, the Client agrees not to copy, sub-license, rent, lease, sell, decompile, reverse-engineer, disassemble, attempt to obtain source code, modify or translate, decodify, or create derivative works and/or works, and not to take any unlawful, fraudulent action on the Software or otherwise exceed the scope of the License of Use acquired under this Agreement.

3.5. The Service Product Key expires after 365 days from the date of signing the Agreement. In the absence of termination, the Supplier will communicate a new Product Key.

4. Ownership of the database

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

4.2. 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.

5. Privacy and security of personal data

5.1. If regulated by the Agreement, 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. In particular, the Supplier, as Data Processor, can process personal data of the Client in order to carry out the support and Maintenance activities (e.g.: scheduled activities) on the magnews Platform.

6. Supplier's Terms and Conditions of Use

6.1. 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; the Client 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 relevant, illegal or otherwise in violation of the law and/or rights of third parties 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.

7. Obligation of vigilance and security

7.1. 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 liable for any theft, loss or loss of confidentiality of the credentials to access the magnews Platform.

8. Technical support

8.1. At the first renewal of the relevant SO and for subsequent anniversaries, the Client is required to pay the annual fee set forth in the relevant SO, which includes technical support service by the Supplier's Help Desk and the release of updates to the Software and the magnews Platform.

8.2. The Client may contact support and the Help Desk by sending an email to helpdesk@magnews.com.

8.3. Technical support is limited to the last 6 (six) releases of the magnews Platform and the last 2 (two) releases of the EmailSuccess Software. Corrective maintenance is guaranteed only on the latest release. Earlier releases are considered "End Of Life" (EOL). It is possible to migrate data to the latest release of:

- 1) the Platform only starting from one of the last 6 (six) releases of the magnews Platform;
- 2) the Software only from one of the last 2 (two) releases of the EmailSuccess Software.

8.4. It is expressly understood that Supplier shall have no liability for damages suffered by the Client or by third parties attributable to Client's use of an EOL release.

9. Non-used Traffic within the reference period

9.1. If the consideration foresees the sale of SMS credits in relation to a given reference period, any sms credits not used by the end of this period cannot be used subsequently and will not be reimbursed.

10. Traffic extra – Sms

10.1. In the case of extra traffic over and above what is stated in the current SO, upon the expiration of the SO or each subsequent anniversary, the Provider may bill for the extra traffic by applying the purchase price for text messages.

11. Italian ISTAT adjustment

11.1. 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.

12. SLA

12.1. With reference to the Service provided on premises mode, the service levels of "*Taking Care of Requests for Assistance*" (KPI 2), available at the following link apply to this SO: <https://www.magnews.com/magnews-service-level-agreement-sla/>, unless different and further specific agreements are entered into between the Supplier and the Client.

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. Cookie/tracking technology clause

14.1. 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.

14.2. The "**Web Conversion Tracking**" tool 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.

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

14.4. In particular, it allows tracking behavioral data of both anonymous and known visitors, i.e. visitors associated to Contacts registered in the magnews database.

14.5. Should an anonymous visitor be identified as a Contact, all browsing data gathered before their identification will also be associated with that same Contact.

14.6. The Client, acting as Controller of the data thus obtained, undertakes to process the data in accordance with the applicable law. It is understood that the Supplier undertakes to notify the Client of any changes in the technical nature of this technological tool in order to enable the Client to comply with the applicable laws and regulations on the protection of personal data also for the protection of Users.

15. “Alias” clause

15.1. 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, when applicable, and by Resolution AGCom 12/23/CIR, may send SMS by setting an alphanumeric code (Alias).

15.2. 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 culpable facts or omissions, brought by any third party and/or the competent Authorities.

15.3. 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.

15.4. 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.

15.5. 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.

15.6. 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.

16. Supplementary Clauses for the Additional Service

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

1) 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:

i. it shall 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;

ii. it 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;

2) grant the Supplier access to and use of the Client's Systems if necessary for the provision of the Additional Service;

3) immediately notify the Supplier of any circumstances affecting the proper performance of the Additional Service;

4) 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;

5) not take any action that may jeopardise and/or impede and/or influence the correct execution of the Additional Service.

16.2. 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.

16.3. 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. any changes autonomously performed by the Client and/or third parties on behalf of the Client to the Configuration Activities performed by the Supplier (where applicable);
2. 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. 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 serious negligence;
4. 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. loss of profit, business opportunities, turnover.

16.3.1. 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.

16.4. 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.

16.4.1. 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.

16.5. 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.

16.6. 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.

16.6.1. 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.

16.7. 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.

16.8. 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.

16.8.1. 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).

16.9. 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 Agreement, 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.

16.10. 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 16.9. 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.

17. Additional terms for the WhatsApp Business service

17.1. Without prejudice to the provisions of Article 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 terminate in advance 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.

17.2. 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. The Client is also aware that the WhatsApp Business service is provided through subcontractors and under licence from third parties.

17.3. 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 Italian Civil Code, as provided in Article 5.3 of the GTS.

18.4. 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.

18.5. 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.

18. Retention of Data and Information – Reference

18.1. The Provider makes available to the Client at the following <https://www.magnews.com/data-retention-policy-on-the-magnews-saas-platform/> the retention times provided by default in relation to the magnews Platform Service (delivered on premises mode). It is understood that the Client may autonomously modify the applied retention times in line with its needs and/or requirements.

19. Case History, logos and marks

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

- (i) 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;
- (ii) grants the Supplier the non-exclusive right to use the Client's logos and marks until such authorisation is expressly revoked.

19.2. 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, www.magnews.com, www.tbd.it, 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).

19.3. 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.

20. Changes and updates to the Services

20.1. 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 Help Desk 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.

20.2. 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.

20.3. 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 (fifteen) 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 (ten) days of receipt of the aforementioned notice, after which the changes will be deemed accepted by the Client.

20.4. 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.

20.5. 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).

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