MediaSaaS Terms & Conditions

1. Application

These general conditions (hereafter "General Conditions") shall apply to all present and future agreements between mediaSaaS Ltd, 79 Essex Road, London N1 2SF, UK, hereinafter “mediaSaaS” and mediaSaaS’s customer ("the Customer"), unless and to the extent agreed otherwise in writing.

These General Conditions prevail over the terms issued by the Customer, even if mediaSaaS did not expressly reject such terms. Any other conditions than these General Conditions, as well as any provisions to the contrary, even when issued by the representatives of mediaSaaS, have to be confirmed in writing by mediaSaaS in order to be applicable. In case any clause of the General Conditions or any agreement between parties would be considered by a court as invalid, void or too far reaching, parties confirm that their intention is to apply in such case a substitute clause that has as far as legally permitted the same effect as the clause written down in the General Conditions or agreement.

2. Offers and orders

Any offer shall be valid for the period as stated therein. Unless otherwise stated, the offer shall be valid for 30 (thirty) days from the date of the offer. All offers shall be without any obligation for mediaSaaS. Agreements shall be formed only when mediaSaaS, after it has received the order, confirms the order in writing with an authorized signatory. Offers shall be based on the information supplied by the Customer. The Customer represents and warrants that such information is accurate. It shall always be deemed that mediaSaaS can assume such information to be correct.

3. Payment terms, prices and taxes

All prices quoted by mediaSaaS are in Pounds Sterling and do not include Value Added Tax or any similar tax in any other jurisdiction ("VAT") or travelling expenses. The Customer shall be responsible for paying any applicable VAT and travelling expenses.

Payment of each invoiced amount, taxes included, must be made to the account number of mediaSaaS, without requiring any expenses to be incurred by mediaSaaS, within 30 (thirty) days after the date of the invoice. mediaSaaS will provide to the Customer the IBAN and the BIC codes of mediaSaaS in order to minimise the payment expenses. The payment of invoices regarding travel expenses is due according to the invoice fifteen (15) days after invoice date. Any payment after the fixed date of payment shall be subject to delay interest of 12 (twelve) % p.a. and to the invoicing of liquidated damages equivalent to 10% of the sum invoiced with a flat rate minimum of £250 (two hundred and fifty Pounds sterling) and a flat rate maximum of £2500 (two thousand five hundred Pounds sterling) without any need of prior notification to be sent to the Customer. The parties agree that these sums represent a genuine pre-estimate of mediaSaaS's loss. This clause shall not in any event exclude the possible payment of damages or other remedies.

All amounts payable by the Customer to mediaSaaS are exclusive of any tax or similar governmental charge that may be assessed by any jurisdiction, except for net income, net worth or franchise taxes, assessed on mediaSaaS. The parties agree that the Customer shall pay directly such taxes to the appropriate tax authority (except for any VAT, which shall be paid to mediaSaaS). Within a period of 30 (thirty) days from payment date the Customer must send to MediaSaaS all official receipts of payment of such taxes issued by the appropriate tax authority.

4. Termination

Either party shall in case of default at all times give the other party an express written notice to remedy the default. Either party shall then have 60 days from the date of such message to cure the default. If the default is not corrected by the end of such period, the parties reserve the right, in addition to any other remedies retained in these General Conditions, or may be entitled to by law, to immediately, without intervention of the court, terminate any order by law and - with respect to mediaSaaS - terminate any licenses granted under such order, without any repayment by either party. mediaSaaS may immediately terminate any order in total upon written notice if (a) The Customer becomes or is deemed insolvent, becomes or is deemed unable to pay its debts, files a petition of bankruptcy (or any similar petition under any insolvency law of any jurisdiction), ceases its activities, commences a voluntary winding up or goes into liquidation, is placed under receivership or judicial management, enters into a scheme of arrangement with any or all of its creditors, undergoes a change in ownership or control, or proposes any dissolution, or (b) The Customer attempts to transfer the mediaSaaS software application (hereinafter “the Licensed Program”) to a third party in violation of these General Conditions. Within 2 (two) weeks after discontinuance of use of the Licensed Program as provided for in this clause or otherwise, the Customer shall certify in writing to mediaSaaS signed by a duly authorized representative of the Customer that through its best efforts and to the best of its knowledge the original and all copies, in whole or in part, in any form, including partial copies, of the Licensed Program, have been destroyed unless directed otherwise in writing by mediaSaaS.

5. Liability

In no event shall mediaSaaS's liability include any indirect, special, incidental or consequential damage regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise, whether foreseeable or not and whether arising from any act or omission on the part of mediaSaaS in respect of its obligations or howsoever arising out of the use of the Licensed Program and/or any deliverables (including implementation and customisation services) or the related information or documentation, hereinafter referred to as “the Delivered Product(s)”, or any other damage which has not been caused directly and immediately by mediaSaaS, such as but not limited to loss of income, claims of third parties, loss of data, damages or defects due to materials, software or information from the Customer or a third party, even if mediaSaaS has been advised by the Customer or should have reasonably been aware of the possibility of such loss. In no event shall mediaSaaS be liable for deficiencies in the framework or equipment in which the Delivered Products have been implemented by or at the instructions of the Customer or for deficiencies or changes in software supplied by third parties, whether or not selected at the suggestion of mediaSaaS.

If any liability is found, the total liability of mediaSaaS to the Customer in any event shall never exceed half the total amount paid by the Customer to mediaSaaS for the specific Delivered Products that caused the damages, for the preceding 12 (twelve) months period prior to the occurrence of the event that gives rise to the claim. The waiver by either party of any default or breach of any agreement between parties shall not constitute a waiver of any subsequent default or breach.

6. Title

All intellectual property rights in, title to or ownership of the Delivered Product(s) shall at all times remain with MediaSaaS. The Customer is not allowed to modify or create derivative works from the Delivered Products. In such case, ownership of any intellectual property rights, including but not limited to all copyrights, relating to such modification or derivative work will automatically vest in mediaSaaS without any restriction.

The Customer shall not use, print, copy, modify, translate or alter the Delivered Product(s) in whole or in part except as expressly provided for in an agreement or as permitted by applicable law. In addition, the Customer has no permission to reverse the Delivered Product(s) into source code, to decompile, disassemble, or analyse the Delivered Product(s) by "reverse engineering" and each attempt thereto shall constitute an infringement to these General Conditions, unless such act is expressly permitted by applicable law and except where the Customer has not received from mediaSaaS, within a reasonable time, after written request, such information as is available to mediaSaaS and as is necessary to create software programs which are interoperable with the Delivered Products but which do not infringe mediaSaaS or its third party licensor's intellectual property rights.

7. Force Majeure

Neither Party shall be liable for loss, damage, failure to perform or delay in performing all or any obligation under these General Conditions if such loss, damage, failure or delay is due to Acts of God, fire, flood, pandemic, strike, embargo, terrorist attack, war insurrection or riot or other cause beyond the reasonable control of that Party. Any delay resulting of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstance.

8. Complaints

Complaints relating to the invoices must be notified to mediaSaaS directly and by registered mail within 15 (fifteen) days after the invoice date, stating the precise nature and extend of the complaints.

9. Hiring of personnel

The Customer and mediaSaaS shall undertake not to employ or to enter into any agreements in any other way, either directly or indirectly, with any of each other's employees (including self-employed consultants) who are involved in performing obligations under an agreement between the parties or in the execution thereof, or with a company in which the other party has direct or indirect interests, without the prior written consent of the other party.

This prohibition applies for the duration of each order and/or each agreement and for 12 (twelve) months thereafter. If the prohibition is infringed, the infringing party shall pay the other party liquidated damages equal to either (a) the total cost incurred by the non-infringing party in relation to the employee during the preceding 12 (twelve) months of the employee's relationship with the non-infringing party, or (b) the total cost for the infringing party during the first 12 (twelve) months of the employee's relationship with the infringing party, whichever is the larger amount. If one of these relationships lasts less than 12 (twelve) months, the cost for the period of 12 (twelve) months shall be calculated on the basis of the average cost over the actual number of months. The parties agree that these sums represent a genuine pre-estimate of each party's loss.

10. Jurisdiction and Applicable Law

These General Conditions and any agreements between mediaSaaS and the Customer are exclusively governed by English law. In case of disputes or claims with respect thereto, the Courts of London shall have exclusive jurisdiction.

11. Third Party Rights

No third party shall have the benefit of or the right to enforce any terms of these General Conditions and any agreements.