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Registration number: 2010/017564/07
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MediaCloud Networks Hosting and Domain Service Terms

1. Specific Terms and Conditions

1.1.   These Service Terms are entered into subject to the MediaCloud Standard Terms, which are incorporated by reference. Unless this document states otherwise, it will be subject to the Standard Terms, including the definitions and rules of interpretation contained in it.

1.2.   The Customer hereby appoints MediaCloud to perform the Services as described in the Service Order and hereby accepts the appointment.

2. Definitions

2.1.   "Customer Equipment" means any equipment installed at the MediaCloud Premises by the Customer that MediaCloud does not own, including without limitation servers, peripherals, routers, switches, Software, Databases, Data cables, and uninterruptible power supplies.

2.2.   "Customer System" means the Customer Equipment operated together by the Customer as a system.

2.3.   "Colocation Hosting" means the Service described in clause 9.

2.4.   "Dedicated Hosting" means the Service described in clause 8.

2.5.   "Remote KVM" means a method by which the Customer is able to control the Customer Equipment from a remote location by means of the Internet and which simulates the operation of a keyboard and pointer device (mouse) as well as presenting a screen approximating the screen that the Customer's employee would see if he was present at the MediaCloud Premises.

2.6.   "Shared Hosting" means the Services described in clause 7.

2.7.   "Software" will have the meaning ascribed to that term in the Standard Terms.

3. Description of Service

MediaCloud will provision a hosting Service as described in the Service Order.

4. Duration

The Service will be provided for the period set out in the Service Order until terminated as per the Standard Terms or this document.

5. Fees

Customer must pay the Fees monthly in advance as specified in the Service Order.

6. Service Feasibility

6.1.   MediaCloud cannot guarantee the provision of the requested Service upon the receipt of a Service Order. Provision of the Service is subject to MediaCloud confirming that it is technically feasible to do so. Applicants will be formally notified after receipt of a Service Order on whether or not the Service can be provided.

6.2.   If the requirements of clause 6.1 are not met, the Agreement will terminate, and no liability will attach to MediaCloud for any loss suffered by the Customer as a result.

7. Shared Hosting

7.1.   MediaCloud will make a server available to the Customer, on the following terms:

7.1.1.   MediaCloud will make available a user account on the server for the Customer, but the Customer will not have exclusive use of the server. Control over the server will be limited to File Transfer Protocol (FTP) access and minimal web server settings.

7.1.2.   The server will, subject to the reasonable security measures described elsewhere in this document, be "live" and accessible by general users of the Internet, unless the Customer explicitly requests otherwise.

7.1.3.   The server will at all times remain the property of MediaCloud or a Supplier and the possession or ownership of the server will not pass to the Customer under any circumstances.

7.1.4.   MediaCloud will be responsible for the setup of the server at the commencement of the Service Order. The server will be set up with the Software necessary to allow the Customer to make use of it as contemplated in the Service Order. MediaCloud may at its discretion charge a setup fee in this regard.

7.1.5.   MediaCloud will be responsible for the maintenance of the server, which will include at its sole discretion effecting upgrades to the Software installed on the server, or repairs and upgrades to the hardware in the server.

7.1.6.   MediaCloud will allow the Customer access to the server by way of the Internet in such a way as allow the Customer to use it for the purpose or purposes set out in the Service Order.

7.1.7.   The Customer may be granted access to Email accounts if so stipulated in the Service Order.

7.1.8.   MediaCloud will provide the Customer with internet connectivity from the server, and bandwidth as set out in the Service Order.

7.1.9.   Notwithstanding the provisions of clause 7.1.4:

7.1.9.1.   MediaCloud will not be responsible for the effect of any Software that the Customer may install or have MediaCloud install on the server; and the Customer will be liable for any increased bandwidth used as a result of the installation of such Software.

7.1.9.2.   Should any Software installed on the server by the Customer or by MediaCloud on the instructions of the Customer interfere with Software installed on the server by another customer, or should such Software threaten the security of the System, MediaCloud may take any steps it at its sole discretion deems necessary to remedy the problem including without limitation:

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7.1.9.2.1. taking over administration of that Software on the server,

7.1.9.2.2. removing the Software from the server,

7.1.9.2.3. suspending the Customer's access to the server, or

7.1.9.2.4. relocating the Customer's account to another server.

7.2. Shared Hosting will be provided for web hosting and POP email hosting only.

8. Dedicated Hosting

8.1. MediaCloud will make a server available to the Customer, on the same terms as those set out in clause 7.1 above, save that:

8.1.1. the Customer and MediaCloud will be the only parties with access to the server; and

8.1.2. the Customer will have full administrative rights to the server, including the ability to install and configure Software, which can be exercised remotely.

8.2. Any support services or service levels in respect of the Dedicated Hosting Services will be in provided in respect of hardware only, and will not be provided in respect of any software installed thereon.

9. Cloud Hosting

9.1. MediaCloud will provide the Customer with access to a software-managed server cluster (the "Server Cluster") which will allow the Customer to set-up and operate a virtualised server (the "Virtual Server") on the servers making up the Server Cluster. This Service will be provided on the following terms:

9.1.1. The Customer will not have exclusive access to the Server Cluster, but no other customer using the service will have access to the Customer Data.

9.1.2. The Virtual Server will, subject to the reasonable security measures described elsewhere in this document, be "live" and accessible by general users of the Internet, unless the Customer explicitly requests otherwise.

9.1.3. The servers which make up the Server Cluster will at all times remain the property of MediaCloud or a Supplier and the possession or ownership of the servers will not pass to the Customer under any circumstances.

9.1.4. MediaCloud will be responsible for the maintenance of the Server Cluster, which will include at its sole discretion effecting upgrades to the Software installed on the servers, or repairs and upgrades to the hardware in the servers.

9.1.5. MediaCloud will allow the Customer access to the Server Cluster by way of the Internet in such a way as allow the Customer to use and customise the Virtual Server for the purpose or purposes set out in the Service Order. The Customer acknowledges that adding further functionality to the Virtual Server could result in additional Fees being levied by MediaCloud.

9.1.6. MediaCloud will provide the Customer with internet connectivity from the Server Cluster, and bandwidth as set out in the Service Order.

9.1.7. Notwithstanding the provisions of clause 9.1.5:

9.1.7.1. MediaCloud will not be responsible for the effect of any Software that the Customer may install on the Virtual Server; and the Customer will be liable for any increased bandwidth used as a result of the installation of such Software.

9.1.7.2. Should any Software installed on the Virtual Server by the Customer or by MediaCloud on the instructions of the customer threaten the security of the MediaCloud System, MediaCloud may take any steps it at its sole discretion deems necessary to remedy the problem including without limitation:

9.1.7.2.1. taking over administration of that Software,

9.1.7.2.2. removing the Software from the Virtual Server, or

9.1.7.2.3. suspending the Customer's access to the Virtual Server.

9.2. The Customer acknowledges that the Server Cluster may potentially be located anywhere in the world and that in providing the Cloud Hosting Services, MediaCloud may transfer Personal Information to a different jurisdiction to that in which the Customer is located and Process it there.

10. Dedicated Hosting

10.1. MediaCloud will make the following available to the Customer if it is specified in the Service Order:

10.1.1. an amount of space in racks at the Premises;

10.1.2. Internet connectivity;

10.1.3. bandwidth specified in the Service Order;

10.1.4. Remote KVM Service;

10.1.5. labour by MediaCloud Personnel charged at the Time and Materials Rate.

10.2. The Customer will provide the following:

10.2.1. servers and peripherals;

10.2.2. Software for installation on servers and peripherals, and

10.2.3. any other equipment listed in or implied by the terms of the Service Order.

10.3. The Customer will provide MediaCloud with the proposed specifications for the Customer System, and MediaCloud may at it sole instance:

10.3.1. accept the specifications, or

10.3.2. reject the specifications and require the Customer to provide fresh specifications.

10.4. Should MediaCloud and the Customer be unable to reach agreement on the specifications within a reasonable time, in that

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event either party may cancel the Service Order on written notice to the other, and MediaCloud will refund all monies paid by the Customer in respect of the service, less MediaCloud's reasonable charges for Time and Materials in attempting to facilitate provision of the Service.

10.5.   Should MediaCloud accept the specifications, in that event a representative of MediaCloud will oversee the installation of the Customer Equipment at the Premises. In no event may the Customer enter the Premises for this purpose unaccompanied.

10.6.   MediaCloud will take reasonable measures to protect the Customer Equipment from damage from water, dirt, electrical power surge, or fire but makes no warranty in this regard.

10.7.   The Customer will ensure that the Customer Equipment does not interfere, whether electronically or physically, with the normal operation of the System, or with the operation of any equipment belonging to other customers.

10.8.   Ownership in the devices listed in clause 10.2 will remain vested in the Customer, subject to the provisions of the Standard Terms.

10.9.   The Customer is encouraged to insure the Customer Equipment.

11.   Access to MediaCloud Premises

11.1.   If MediaCloud is providing Colocation Hosting, MediaCloud will provide to the Customer and its Personnel with access to the MediaCloud Premises for the purposes of installation, testing, commissioning, operation, repair, upgrade and maintenance of the Customer Equipment at all times,.

11.2.   Access is subject to the following:

11.2.1.   Access will be subject to such reasonable access and security procedures as may be determined by MediaCloud from time to time.

11.2.2.   MediaCloud reserves the right to deny any person access who fails to, or who MediaCloud believes may fail to, adhere to the access and security procedures.

11.2.3.   MediaCloud also reserves the right to search any person entering or leaving the MediaCloud Premises and the Customer must notify its Personnel of this possibility.

11.2.4.   The Customer will provide MediaCloud with reasonable written notice of its intention to access the Premises.

11.2.5.   The Customer notes that MediaCloud is not the owner of the premises and consequently undertakes to comply with any conditions for access imposed by the owner.

11.2.6.   MediaCloud reserves the right to insist that a MediaCloud employee be present at all times contemplated in this clause 11.2.

11.3.   MediaCloud may on prior written notice to the Customer inspect the Customer's installation and Customer Equipment located on the MediaCloud Premises to ensure compliance with the building regulations and restrictions agreed between the parties.

12.   Hosting Support

12.1.   MediaCloud will provide hosting support to the Customer subject to the following conditions:

12.1.1.   The Customer will be responsible for reporting faults in the Service to MediaCloud, and must follow the procedure set out on the MediaCloud Website as amended from time to time in doing so;

12.1.2.   MediaCloud will provide support using the methods set out on the MediaCloud Website;

12.1.3.   Hosting support will be provided on a reasonable effort basis, which means that MediaCloud will make reasonable endeavours to rectify errors in the System within a reasonable time but gives no warranty in this regard;

12.1.4.   Hosting support is available during Business Hours, unless the error is of such a nature that it renders the Customer's website inaccessible or non-functional to the extent that it no longer fulfils its purpose, in which case support will be rendered at all times. MediaCloud may upon receipt of a support request at its sole instance determine if the error is of such a nature and act accordingly; and

12.1.5.   Should the fault lie with another party, MediaCloud will make reasonable efforts to advise that other party of the fault.

12.2.   In the case of Dedicated Hosting and if agreed in a Service Order, the Customer may have MediaCloud provide the following additional Services:

12.2.1.   security and Software updates as required (license fees payable by the Customer unless otherwise agreed); and

12.2.2.   on-site intervention changed at the Time and Materials Rate (Remote Hands).

12.3.   In the case of any other hosting package, MediaCloud will be obliged to provide hosting support in respect of errors in the MediaCloud System only and, without limiting the aforegoing, will not be obliged to render assistance in respect of any of the following:

12.3.1.   any error in the Customer System;

12.3.2.   any error in Supplier, upstream or third party equipment or Software.

12.4.   In the event that any ad hoc services are provided to the Customer by MediaCloud which are not set out in a Service Order or otherwise reflected in this document, MediaCloud will undertake such services at the Time and Materials Rate; such services include without limitation the following:

12.4.1.   development of any computer programme, including scripting;

12.4.2.   Database development, including the creation of stored procedures, structures and triggers;

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12.4.3. assistance with and debugging of Customer's computer programmes; and

12.4.4. project management.

12.5. Should MediaCloud need to relocate the Customer Equipment within the MediaCloud Premises this will be treated as "Routine Maintenance" as set out in the Standard Terms with the proviso that this will be done on no less than 5 (five) Business Days' notice to the Customer.

13. Bandwidth and its Measurement

The following provisions will apply in respect of bandwidth:

13.1. MediaCloud will provide the Customer with regular reports that will allow the Customer to monitor its use of bandwidth;

13.2. MediaCloud however makes no warranty as to the accuracy of the information returned by such Software and particularly notes that the information reflected by it may be up to 48 hours out of date.

13.3. The Customer will have a duty to monitor its use of bandwidth.

13.4. The Customer's use of bandwidth will be charged for as set out in the Service Order.

13.5. Should a Service Order include access by the Customer to a certain amount of bandwidth and the Customer exceeds this quantity:

13.5.1. MediaCloud will charge the Customer for such excess bandwidth at a rate to be determined by MediaCloud from time to time; and

13.5.2. MediaCloud reserves the right to increase the Customer's bandwidth allocation to the package that most closely approximates the Customer's actual usage.

14. Email accounts

If email accounts are made available to the Customer, they will be provided on the following terms:

14.1. MediaCloud may filter incoming email for bulk unsolicited email (Spam), and Malicious Code. This filtering will be done on a best effort basis without any warranty of any kind.

14.2. The servers used to provide an email Service will be subject to the same level of security as the rest of the MediaCloud System.

14.3. MediaCloud will be entitled to take whatever steps it deems necessary to prevent the sending of bulk unsolicited email using the MediaCloud System.

14.4. MediaCloud will be entitled to take whatever steps it deems necessary to prevent an IP address allocated to MediaCloud from being blocked as result of the transmission of bulk unsolicited email, and may amongst other measures:

14.4.1. suspend the Customer's email account, and

14.4.2. suspend access to a domain name hosted on the MediaCloud System.

14.5. If MediaCloud incurs costs in unblocking any of its IP addresses as a result of a Customer sending bulk unsolicited email using the MediaCloud System, the Customer will be liable for those costs.

14.6. If email accounts are held on MediaCloud's servers:

14.6.1. MediaCloud may delete emails received or sent more than 90 days before a given date;

14.6.2. If the mailbox size specified in the relevant Service Order is exceeded, no further emails will be received into the Customer's account;

14.6.3. No emails larger than 5 Mb will be sent or received;

14.6.4. Upon termination of the Service all email will be deleted and email addresses associated with the Customer's account will cease to function;

14.6.5. MediaCloud has no responsibility for backing up email stored on its servers; and

14.6.6. "Webmail" is provided as a complimentary service and MediaCloud gives no warranty that it will be accessible by the Customer at any given time.

15. Domain Services

15.1. If the Customer so requests in a Service Order, MediaCloud will register or renew an internet domain name or domain names as the Customer's agent on behalf of the Customer, subject to and upon payment of MediaCloud's Fee for doing so, which will include the registrar's application or renewal fee.

15.2. MediaCloud does not operate an advisory service in respect of domain names, and makes no warranty that the Customer will be able to lawfully hold any particular domain name.

15.3. Any amount paid by MediaCloud to register or renew a domain name is not refundable.

15.4. The Customer will be bound by the terms and conditions of the domain name space under which any domain name registered on its behalf falls, and should become familiar with them. MediaCloud may provide these terms to the Customer for the Customer's convenience, and MediaCloud makes no warranty that they are the current terms.

15.5. MediaCloud will send the Customer a notification per email a reasonable time before the expiry of any domain name registration, but the Customer nonetheless has the duty to ensure that it renews any domain in good time. MediaCloud will not be liable for any damage suffered by the Customer as a result of its failure to renew a domain name.

15.6. If any domain name dispute is brought in respect of a domain name registered by the Customer or on behalf of the Customer by MediaCloud:

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15.6.1. MediaCloud may furnish a third party with the Customer's name and address and thereafter refer all correspondence relating to the matter to the Customer; and

15.6.2. The Customer indemnifies MediaCloud in respect of all costs incurred by MediaCloud should MediaCloud be obliged to defend the dispute, including the adjudicator's fees and attorneys' fees on the scale as between attorney and own client, whether MediaCloud is the registrant of the domain name or not.

16. Remote Hands

MediaCloud may place its employees at the disposal of the Customer in order to undertake maintenance of the Customer Equipment at the MediaCloud Premises, and such services will be charged to the Customer at the Time and Materials Rate.

17. Environment

17.1. MediaCloud will provide an environment suitable for the purposes of rendering the Services including but not limited to:

17.1.1. redundant electrical power supply;

17.1.2. air conditioning so as to maintain the MediaCloud Premises within a temperate range reasonable as determined by Good Industry Practice;

17.1.3. fire suppression at a level reasonable as determined by Good Industry Practice;

17.1.4. redundant switching infrastructure;

17.1.5. Facilities monitoring at a level reasonable as determined by Good Industry Practice;

17.1.6. Access control at a level reasonable as determined by Good Industry Practice;

17.2. Notwithstanding the above, MediaCloud gives no warranty in this regard beyond that given in the Standard Terms.

18. Customer Data

18.1. MediaCloud takes steps in accordance with Good Industry Practice to secure the integrity of Customer Data. However, unless otherwise agreed, MediaCloud gives no warranty in this regard, and it is the Customer's duty to ensure that the Customer Data is backed up and can be restored as required.

18.2. Upon termination of the Services we may delete all Customer Data from the MediaCloud System without notice to the Customer.

19. Service Levels

19.1. MediaCloud makes use of upstream providers to itself provide the Services, and consequently service levels are subject to the performance of such upstream suppliers. As a result, MediaCloud can only provide the Service on a "reasonable effort" basis and makes no warranties as regards quality of the Services, including data throughput and availability of the Services.

19.2. The Services provide access to the internet, which is subject to bandwidth constraints, system failures and all manner of other factors that may impact on the Customer's access, for which MediaCloud accepts no responsibility.