

Special Conditions – Hosting Services

Further and subject to the General Terms and Conditions (“**General Conditions**”) entered into between Company and Customer, these Special Conditions set out the additional special terms and conditions applicable to Company’s provision of, and Customer’s payment for and receive of, Company’s Services where such services are named in an applicable Service Order.

1. DEFINITION AND INTERPRETATION

- 1.1 Except as expressly defined below, capitalized terms used in these Special Conditions shall have the same meanings as defined in the General Conditions.
- 1.2 In these Special Conditions and/or Service Order, the following defined terms shall have the following meanings:
“**Customer Technology**” means Customer’s proprietary technology, including Customer’s IT System Operations design, content, software tools, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), know-how, trade secrets, and any related intellectual property rights throughout the world (whether owned by Customer or licensed to Customer from a third party) and also including any derivatives, improvements, enhancements or extensions of Customer Technology conceived, reduced to practice, or developed during the Term of this Agreement by Customer.
“**Service(s)**” means the hosting services provided by Company as described in the Service Order.

2. DELIVERY OF SERVICES

- 2.1 As part of the Services, Company provides servers, the associated operating system and other applicable software, equipment in shared environment within Company’s Data Centre (collectively, the “**Platform Equipment**”). Company acts solely as the provider of the Platform Equipment it uses to provide the Services, which may have been manufactured or otherwise provided by a third party.
- 2.2 Customer’s sole remedy for any malfunction or defect in the Platform Equipment is the applicable Service Levels guarantee if any. Company will perform the initial configuration of the Platform Equipment and such maintenance and support Service as specified in the Service Order.
- 2.3 Company will occasionally perform maintenance services which Customer acknowledges may require Platform Equipment downtime, and in such event Company will attempt to provide prior notice of such downtime. Customer shall supply (and shall cause its third-party suppliers to provide) Company with such reasonable assistance as Company requires to provide the Services.

3. CUSTOMER’S OBLIGATIONS

- 3.1 Customer is solely responsible for all other services not specified in the Service Order, which may include, without limitation, the user account management, administration and support of Customer’s software and the software that is part of the Platform Equipment once it is installed by Company.
- 3.2 In addition, Customer acknowledges and agrees that while Company may perform certain backups as part of its internal operations with respect to the Services, such backups are not the complete disaster recovery solution for Customer and, as such, Customer is solely responsible for backup of its software and data residing on the Platform Equipment.
- 3.3 Company reserves the right to monitor Customer’s bandwidth and/or disk usage and to utilize technology to limit such usage to ordered amounts and/or to charge Customer for any excessive usage. Company further reserves the right to suspend access to Customer’s website, script or other application in the event Company reasonably believes that such website, script or other application is the cause of interruptions in Company’s ability to provide services to other customers, which suspension or termination shall not relieve Customer’s obligation to pay the fees for the Services. In the event of any such suspension, Company will notify Customer as soon as practicable so that Customer may take remedial action in order to regain access to its website, script or other application.
- 3.4 Customer acknowledges and agrees that in an effort to control spam (i) Company may utilize certain technologies to block incoming and outgoing email which Company determines, in its sole discretion, may be spam, (ii) Company servers will not accept connections from unsecured systems (including, without limitation, open relays, open proxies, open routers or any other system that has been determined to be available for unauthorized use), (iii) Company may, in its sole discretion, reject connections from systems that use dynamically assigned or residential IP addresses, and (iv) Company may, in its sole discretion, reject connections from any IP address that does not have reverse DNS.
- 3.5 Customer agrees that if, in the course of performing the Services, it is necessary for Company to access Customer Technology, Company is hereby granted and shall have a non-exclusive, royalty-free license, during the Term of the Agreement, to use the Customer Technology solely for the purposes of delivering the Services to Customer. Company shall not use the Customer Technology for any purpose other than providing the Services.
- 3.6 Customer shall:
 - (a) warrant and undertake that none of the hosting materials shall contain any statement or content that is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, discriminatory, menacing, in breach of confidence or in respect of which Customer is not the true and lawful owner of the copyright or trade mark, as the case may be, or for which Customer has not obtained all necessary licences and/or approvals;
 - (b) use its best efforts to obtain and deliver to Company all such consents and licences as Company may reasonably require in order to host those materials on to the Platform Equipment or to modify the same from time to time and, failing delivery of such consents or licences in relation to any material, Company may at its discretion, refuse to host those materials on the Platform Equipment; and
 - (c) fully comply with the Acceptable Use Policy at all times as presented and updated from time to time on the Company website.

4. IP ADDRESS

- 4.1 Company shall grant Customer for the Term of this Agreement a non-exclusive, non-transferable and revocable licence to use IP addresses assigned to Customer.
- 4.2 Customer’s licence to use the IP addresses terminates immediately upon Company ceasing to provide the Services in all cases.

5. Liability

- 5.1 Company shall use its reasonable endeavour to make the Platform Equipment and the Services available to Customer and take reasonable care to treat Customer data stored in the Platform Equipment as secured and confidential but because the Services are provided by means of IP technology, Company makes no warranties or representations that the Services will be uninterrupted, error-free or non leakage of data and Company shall in no circumstances be liable for interruptions of Services, downtime of server, data loss or leakage or any kind of loss claimed by Customer whatsoever.