

MediusFlow Business Partner Terms & Conditions

THESE MEDIUSFLOW BUSINESS PARTNER TERMS & CONDITIONS GOVERN YOUR PARTICIPATION IN OUR BUSINESS PARTNER PROGRAM. BY EXECUTING AN ENROLLMENT FORM THAT REFERENCES THESE MEDIUSFLOW BUSINESS PARTNER TERMS & CONDITIONS, YOU AGREE TO BE BOUND BY THE TERMS SET OUT HEREIN.

These MediusFlow Business Partner Terms & Conditions were last updated on August 22, 2016. They are effective between You and Us as of the date of Your acceptance thereof.

1 Definitions

- 1.1 **"Agreement"** means these Business Partner Terms & Conditions and the Enrollment Form.

"Cloud Service" means the online, web-based services as stated in the respective Order Forms entered into between Us and End Clients.

"Commission Level" means the commission level set out in the Enrollment Form.

"End Client/s" means the legal entity/entities identified by You pursuant to this Agreement and with which an Order Form is executed.

"Enrollment Date" means the effective date of enrollment in the partner program as stated in the Enrollment Form.

"Enrollment Form" means a MediusFlow Business Partner Enrollment Form.

"Lead" means an identified opportunity to provide the Cloud Service and associated Professional Services to a prospective End Client.

"MediusFlow Global Pricelist" means the global pricelist for MediusFlow defined by Medius.

"Order Form" means an ordering document specifying the services/products to be provided for each End Client by Us to the End Client.

"Party"/"Parties" means You and Us.

"Professional Services" means the activities and deliverables to be provided by Us to an End Client separately from the Cloud Service, as stated in the respective Order Forms entered into with the End Client.

"Referral Fee" means the commission You are entitled to in the event of You providing Us with a qualified referral Lead.

"Sale" means a sale whereby an End Client entered into an Order Form with Us for the subscription of the Cloud Service and/or the provision of Professional Services, as a result of Your performances under this Agreement.

"Support plan/s" means any separate support plans subscribed to by an End Client under an Order Form.

"Target Segments" means the market segments, as stated in the Enrollment Form, for which this Agreement is valid.

"We"/"Us"/"Ours" means the Medius company with which You have executed an Enrollment Form.

"You"/"Your"/"Yours" means the company or other legal entity that executes the Enrollment Form and thereby accepts this Agreement with Us.

2 Provision of the Cloud Service, Professional Services and support

We are responsible for the provision of the Cloud Service to the End Client, as well as for any support related thereto, and for the provision of any Professional Services ordered by the End Client (as applicable), all in accordance with the terms set out in the respective Order Form entered into between Us and the End Client.

3 Role of business partner, obligations, limitations etc.

- 3.1 **Role of business partner.** Through the execution of the Enrollment Form, We hereby grant to You, and You accept from Us, subject to the terms and conditions of this Agreement, a right to market and promote the Cloud Service and associated Professional Services. Under no circumstances are You authorized to distribute the Cloud Service (or any other products and/or services We may offer currently or at any time in the future) for resale. You shall lead all sales activities for Your Leads and shall be the primary contact for prospective End Clients in pursuit of a Sale.

Notwithstanding anything in this Agreement to the contrary, the arrangements created by this Agreement are made on a non-exclusive basis and nothing set out herein shall restrict or impede Us from entering into partner agreements with other parties, including for the marketing and promotion of the Cloud Service by such parties within the Target Segments.

- 3.2 **Partner obligations.** You shall at all times act in good faith and shall not engage in any fraudulent activities. You may only market and promote the Cloud Service and associated Professional Services in a manner which reflects positively upon the business and reputation of Medius and that is not in any way deemed contrary to applicable laws on unfair marketing, bribes or that is in any other way deemed illegal or inappropriate. You shall have qualified personnel available to fulfill Your obligations under this Agreement and Your sales representatives shall be capable of delivering

the value proposition of the Cloud Service and its interface, advantages and high-level functionality.

3.3 Partner limitations. You shall only market and promote the Cloud Service and associated Professional Services and lead sales activities to Leads that have their principal place of business (in respect of geographical segments) and their primary business activities (in respect of business segments) within the Target Segments. Taking the aforesaid into consideration, should You become aware of a Lead outside the Target Segments, You may refer such Lead to Us, for which You may be entitled to a Referral Fee in accordance with what is set out in Section 6.

3.4 Partner representation. You shall not make any representation or warranty concerning the Cloud Service or the Professional Services, or any rights granted hereunder which are contrary to any terms and conditions set out in the MediusFlow Master Cloud Subscription Agreement or the MediusFlow Professional Services Agreement, nor shall You under any circumstance commit Us to any contracts.

4 Order process

4.1 Provision of the Cloud Service and associated Professional Services to an End Client shall be conditioned upon each End Client entering into an Order Form with Us whereby the End Client agrees to be bound by the MediusFlow Master Cloud Subscription Agreement and/or the MediusFlow Professional Services Agreement (as applicable) and any other agreements or appendices associated therewith.

4.2 We shall provide You with any draft Order Forms or final Order Forms including relevant associated documents. The Order Form governs Our delivery to the End Client with the associated terms and shall state you as Business Partner.

5 Documentation

We shall ensure that You have access to current marketing materials in the form of leaflets, presentations, website and other necessary materials in order to provide information about the Cloud Service to prospective End Clients.

6 Referrals

6.1 Leads. For any Leads referred by You to Us that are not within the Target Segments (see Section 3.3 above) You shall be entitled to a Referral Fee, in the amount set out in the Enrollment Form, under the following conditions:

- a) The Lead is deemed as qualified by Us and is converted into a Sale through the execution of an Order Form; and
- b) You are the first partner to refer the Lead.

For the avoidance of doubt, You will not be entitled to a business partner commission for such referrals.

6.2 Referral payment. If You are entitled to a Referral Fee according to section 6.1 You shall receive payment when We have received the first annual subscription fee from the converted Lead.

7 Business partner commission

7.1 Business partner commission. For any Leads referred by You to Us that are within the Target Segments and that are converted into a Sale (after being deemed as qualified by Us), You shall be entitled to a business partner commission up to the Commission Level.

To calculate the business partner commission the following formula shall apply:

$$\text{Commission} = (\text{commission base} - \text{direct external costs}) \times \text{Commission Level}$$

Where

- Direct external costs means any direct costs payable by Us to third parties for the provision of third party software/services under the Order Form.
- Commission base is Our subscription revenue for the Cloud Service during the agreed term in the Order Form excluding any subscriptions for associated Support Plans.

7.2 Payment of commission. We shall, upon having processed an Order Form stating you as the Business Partner, issue a statement containing Your commission and the End Client invoice plan. During the term of the Order Form, We shall, upon receiving payment from the End Client in accordance with the End Client invoice plan, pay to You Your commission.

8 Fees and Payments

8.1 Enrollment fee and partner program fee. Your rights under this Agreement are dependent on Your payment of the enrollment fee and the partner program fee as set out in the Enrollment Form.

8.2 Referral Fee. You may be entitled to Referral Fees in accordance with what is set out in Section 6.

8.3 Commission. You are entitled to a business partner commission in accordance with what is set out in Section 7

8.4 End client pricing is governed by the then current MediusFlow Global Pricelist. Any deviations require prior written approval by Us. We shall have the exclusive right to determine fees for the Cloud Service and associated Professional Services, and all other terms and conditions in connection therewith.

8.5 Taxes etc. All fees and prices stated in this Agreement are exclusive of taxes, carriage costs, customs, duties and other similar taxes and expenses.

8.6 Payment term. Payment term is thirty (30) days net.

8.7 Expenses. You shall be solely responsible for Your own expenses, and those of Your personnel, including but not limited to expenses incurred in the promotion, demonstration and marketing of the Cloud Service and associated Professional Services.

9 Confidentiality

9.1 Each Party undertakes to keep confidential all information (written or oral) of a confidential nature regarding the

business and affairs of the other Party which have been obtained or received prior to this Agreement or which the Party will obtain or receive during the term of this Agreement, save for information which is:

- a) already in its possession without restrictions as to use or disclosure other than as a result of a breach of this Section 9;
- b) or becomes a part of the public domain through no act or omission of the other Party;
- c) is lawfully received from a third party without restrictions as to use or disclosure; or
- d) required by a court of law or other competent authority (including, but not limited to public authorities, competent stock exchanges, where applicable).

9.2 Each Party shall take all such steps as shall from time to time be necessary to ensure compliance with the provisions of this Section 9 by its employees, agents and subcontractors. Each Party shall, however, have the right to announce the entering into of this Agreement (and any other agreements in connection therewith) by issuing press releases, on websites or any other means. The other Party shall be given opportunity to give its approval to the wording of such announcement. This Section 9 shall survive expiry or termination of this Agreement for a period of five (5) years.

9.3 For the duration of this Agreement, both Parties shall actively promote each other. This includes but is not limited to communicating the other Party as a “trusted partner” on their website.

10 Intellectual property rights and other proprietary rights

10.1 All intellectual property and other proprietary rights and information in and to the Cloud Service are and shall remain Our property or (where applicable) Our suppliers’, affiliates’ or third party licensors’. Nothing in this Agreement shall be interpreted as an assignment or any intellectual property or other proprietary rights of either Party. Except as expressly granted herein, neither Party grants to the other Party any rights to any of its intellectual property rights and in no event will such grant be implied.

10.2 For the duration of this Agreement, each Party grants to the other Party a limited, non-exclusive, royalty free right to use the trademarks, name and logo (“**Marks**”) of the other Party, solely as is necessary to perform the marketing and promotional tasks authorized in this Agreement and in accordance with any guidelines provided by the other Party. All other use of the other Party’s Marks requires such Party’s prior written approval. For the sake of clarity, after termination or expiration of this Agreement, a Party’s right to use the other Party’s Marks shall cease.

11 Indemnification

Each Party (“**Indemnifying Party**”) shall defend, indemnify and hold harmless the other Party, the other Party’s affiliates, and their directors, officers, employees and agents (each an “**Indemnified Party**”) for all losses, damages, injuries, costs and expenses (including without limitation court costs and reasonable attorneys’ fees) from all third

party claims incurred by the Indemnified Party arising out of (i) the death or bodily injury of any agent, employee or business invitee of the Indemnified Party, (ii) the damage, loss or destruction of any tangible property of the Indemnified Party, to the extent caused by the negligent acts or omissions or willful misconduct of the Indemnifying Party, arising out of or related to this Agreement, or (iii) any breach of the obligations of either Party set forth in this Agreement.

12 Limitation of Liability

12.1 Neither Party will in any event be liable under this Agreement or the termination thereof for any loss of profits, loss of revenues, loss of use, loss of anticipated savings or indirect or consequential damages of any kind.

12.2 Our aggregate liability for all damages arising out of or related to this Agreement, whether in contract or tort, or otherwise, shall be limited to the total fees actually paid by You under this Agreement during the twelve (12) month period immediately preceding the event giving rise to such liability. Notwithstanding anything to the contrary, Our limitations of liability under this Section 12.2 shall not apply to damages caused by Our gross negligence or willful misconduct.

12.3 We shall have no liability to You in respect of any default unless You shall have served written notice of the same upon Us within thirty (30) days after the date You became aware or should have become aware of the circumstances giving rise to the default.

13 Force Majeure

A Party is exempted from liability if and to the extent it is prevented from performing its obligations due to circumstances that are outside the Party’s reasonable control, including but not limited to, fire, flood, other natural disasters, war, labor strike, interruption of transit, terrorist acts, accidents, civil commotion, acts of any governmental authority and other events outside the Party’s reasonable control. As soon as such circumstances have ceased, the Party relieved of its obligations shall be obliged to resume its undertakings under this Agreement. A Party shall promptly notify the other Party in writing in order to be released under this provision. If the circumstances continue for more than three (3) months, either Party may terminate this Agreement upon written notice to the other Party. In such case no Party shall have any liability to the other Party.

14 Term & Termination

14.1 This Agreement shall enter into force upon execution of the Enrollment Form and shall continue until it has been terminated.

14.2 Either Party may terminate this Agreement for convenience upon three (3) months prior written notice to the other Party. If We terminate for convenience You shall be entitled to a pro-rata portion of any pre-paid partner program fees for the remainder of the Agreement term.

- 14.3 In addition to specific termination rights set out elsewhere in this Agreement, each Party shall have the right to immediately terminate this Agreement if (i) the other Party has committed a material breach of this Agreement, and has not rectified the same within thirty (30) days after receipt of written notice from the non-breaching Party specifying the breach, or (ii) the other Party becomes the subject of a bankruptcy order or becomes insolvent or makes any arrangement or composition with or assignment for the benefit of its creditors or goes into liquidation, either voluntary (other than for reconstruction or amalgamation) or compulsory, or if a receiver or administrator is appointed over its assets.
- 14.4 Upon termination of this Agreement. You shall cease to be a participant in the partner program and You shall immediately discontinue all marketing and promotion of the Cloud Service and Professional Services. Further, each Party shall immediately return to the other Party all goods, documentation and other items received from the other Party.
- 14.5 Any termination of this Agreement shall not affect (i) any rights and liabilities of the Parties accrued prior to such termination, and (ii) any provision of this Agreement that is expressed to survive its expiration or termination.

15 Assignment and subcontracting

- 15.1 Neither Party shall be entitled to assign or transfer all or any of its rights, benefits or obligations under this Agreement, without the prior written consent of the other Party, except that We may (i) transfer and assign this Agreement to a Medius affiliate and/or (ii) transfer and assign Our right to receive payment under this Agreement or any part thereof to any third party. In addition, We shall be entitled to transfer and assign this Agreement to any entity that acquires all or substantially all of Our assets.
- 15.2 Each Party may use subcontractors for performance of its obligations under this Agreement, provided that any such subcontracting shall not diminish such Party's liability under this Agreement. You agree that You shall not engage any subcontractor that is a competitor of Us.

16 Deliberation

- 16.1 The Parties agree to, in accordance with the best of their abilities, put all efforts forward to resolve any possible disputes through deliberations. Neither Party shall take legal actions before first having invited the other Party to deliberate regarding the matter at hand.

17 Miscellaneous

- 17.1 The Parties agree that this Agreement with appendices constitutes the Parties' full regulation of all matters discussed in this Agreement. All and any possible written and/or oral undertakings and promises preceding this Agreement are replaced by this Agreement. Changes and/or additions to this Agreement shall be made in writing and signed by both Parties.
- 17.2 In the event any part of this Agreement is found invalid this shall not mean this Agreement as a whole is found invalid. In

case the invalidity significantly affects any Parties' received benefit or performance according to this Agreement fair and reasonable adjustments to this Agreement shall be made.

- 17.3 This Agreement shall not be construed more or less strictly against either Party as a result of its participation or not in its preparation or drafting.
- 17.4 Notices to be given under this Agreement shall be in writing and shall be delivered by hand or sent by first class post or e-mail (such e-mail notice to be confirmed by letter posted within 3 days) to the address or to the e-mail address of the other Party set out above. Any notice shall be deemed to have been received when delivered by hand at the time of delivery, when sent by post on the date on which it would be received in the normal course of posting and when sent by e-mail when the proper answer back confirmation is received by the sender. Changes of postal address, e-mail address or telephone shall be notified to the other Party.

18 Notices, Governing Law and Arbitration

General. This Agreement shall be governed by the respective laws as set out below in this Section 18, which also sets out how claims or disputes arising out of or in connection with this Agreement shall be handled.

If You are contracting with:	Notices should be addressed to:	The Governing law, without regard to its principles of conflict of laws, is:	Any claim or dispute shall be resolved by arbitration according to the following clause:
Medius Aps Delta Park 46 DK-2655 Vallenbæk Denmark	Medius Aps Delta Park 46 DK-2655 Vallenbæk Denmark Email: finance@medius-group.com	Danish law	All disputes arising out of or in connection with the present Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by a sole arbitrator appointed in accordance with the said Rules. The seat of arbitration shall be Copenhagen, Denmark. The language to be used in the arbitral proceedings shall be English.
Medius Business Process Software B.V. Parade 18 5211 KL's Hertogenbosc The Netherlands	Medius Business Process Software B.V. Parade 18 5211 KL's Hertogenbosc The Netherlands Email: finance@medius-group.com	Dutch law	All disputes arising out of or in connection with the present Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by a sole arbitrator appointed in accordance with the said Rules. The seat of arbitration shall be Hague, Netherlands. The language to be used in the arbitral proceedings shall be English.
Medius AS Rådhusgata 23 NO-0158 Oslo Norway	Medius AS Rådhusgata 23 NO-0158 Oslo Norway Email: finance@medius-group.com	Norwegian law	All disputes arising out of or in connection with the present Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by a sole arbitrator appointed in accordance with the said Rules. The seat of arbitration shall be Oslo, Norway. The language to be used in the arbitral proceedings shall be English.
Medius Sweden AB Platensgatan 8 S-582 20 Linköping Sweden	Medius Sverige AB Platensgatan 8 SE-582 20 Linköping Sweden Email: finance@medius-group.com	Swedish law	Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC Institute"). The Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce shall apply, unless the amount in dispute (including any counterclaims) exceeds SEK 1,000,000. Where the amount in dispute exceeds SEK 1,000,000, the Arbitration Rules of the SCC Institute shall apply. The arbitration tribunal shall however under all circumstances be composed of a sole arbitrator. The place of the arbitration shall be Stockholm, Sweden, and the language in the proceedings shall be English.
Medius Software Inc. 14 E 44th St FL 5 New York, NY 10017 USA	Medius Software Inc. 14 E 44th St FL 5 New York, NY 10017 USA Email: finance@medius-group.com	Internal laws of the State of New York	Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be resolved in accordance with the Commercial Dispute Resolution Procedures of the American Arbitration Association ("AAA") in effect on the date of the initial request by the claiming Party, that gave rise to the dispute to be arbitrated (as such rules are modified by the terms of this Agreement or may be further modified by mutual agreement by the Parties). The arbitral tribunal shall be composed of three arbitrators, and the arbitrators shall consider the dispute at issue in New York, NY, to the extent practicable within thirty (30) days of the designation of the arbitrators. The decision of the arbitrators shall be final and binding upon the Parties. The final award shall award to the prevailing Party its reasonable attorneys' fees and costs incurred in connection with the arbitration to the extent the arbitrator deems the Party to have prevailed, and may grant such other, further and different relief as authorized by the rules of the AAA. Judgment upon any decision of the arbitrator may be entered into in any court in the United States having jurisdiction thereof, or application may be made to such court for a judicial acceptance of the decision in an order of enforcement.
Medius International AB Platensgatan 8 S-582 20 Linköping Sweden	Medius International AB Platensgatan 8 SE-582 20 Linköping Sweden Email: finance@medius-group.com	Swedish law	Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC Institute"). The Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce shall apply, unless the amount in dispute (including any counterclaims) exceeds SEK 1,000,000. Where the amount in dispute exceeds SEK 1,000,000, the Arbitration Rules of the SCC Institute shall apply. The arbitration tribunal shall however under all circumstances be composed of a sole arbitrator. The place of the arbitration shall be Stockholm, Sweden, and the language in the proceedings shall be English.