

# Medius Master Cloud Subscription and Services Agreement

THIS MEDIUS MASTER CLOUD SUBSCRIPTION AND SERVICES AGREEMENT GOVERNS YOUR SUBSCRIPTION AND USE OF OUR PRODUCTS AND SERVICES. THIS AGREEMENT DEFINES THE TERMS AND CONDITIONS PURSUANT TO WHICH WE ARE PREPARED TO OFFER OUR PRODUCTS AND SERVICES AND SETS OUT A FRAMEWORK UNDER WHICH YOU MAY FROM TIME TO TIME PLACE ORDERS FOR SUCH PRODUCTS AND SERVICES. BY EXECUTING AN ORDER FORM THAT REFERENCES THIS MEDIUS MASTER CLOUD SUBSCRIPTION AND SERVICES AGREEMENT, YOU ACCEPT THIS AGREEMENT AND AGREE TO BE BOUND BY THE TERMS SET OUT HEREIN. UNLESS OTHERWISE AGREED IN WRITING, EACH AGREED ORDER FORM WILL, TOGETHER WITH ITS TERMS AND CONDITIONS SET OUT IN THIS MEDIUS MASTER CLOUD SUBSCRIPTION AND SERVICES AGREEMENT, FORM A LEGALLY BINDING AGREEMENT BETWEEN YOU AND US.

This Medius Master Cloud Subscription and Services Agreement was last updated on 13 December 2022. It is effective between You and Us as of the date of Your acceptance thereof.

## 1 Definitions

1.1 **“Activities”** means an activity under a SDA, an Order Form, a project plan or a Change Order.

**“Agreement”** means this Medius Master Cloud Subscription and Services Agreement and all Order Forms referencing this Agreement.

**“Affiliate”** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity where “control”, for the purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**“AP Service”** means the Medius Accounts Payable Automation service referenced in the Order Form.

**“API”** means application programming interface.

**“Availability”** means when the Cloud Service is available according to the following formula:

$$\text{Availability (\%)} = \frac{\text{SL} - \text{DT}}{\text{SL}} * 100$$

SL = Cloud Service Level

DT= Downtime

Availability is measured on a calendar quarter basis.

**“Breaking Changes”** means changes made to APIs of the AP Service and/or FX Integration that would cause the components of an external system interfacing the AP Service APIs and/or the FX Integration to become non-operational or alter its behavior in a non-expected way.

**“Business Hours”** means Monday through Friday, 8-18 CET for Cloud Service provided from data centers in the European Union and the United Kingdom, 8.30-17 AEST for Cloud Service provided from data centers in Australia or 8-

20 EST for Cloud Service provided from data centers in North America, with the exception of local public holidays and December 24-26<sup>th</sup>, December 31<sup>st</sup>, January 1<sup>st</sup>, Good Friday and the Monday after Easter.

**“Change Order”** means a mutually agreed, in writing, change to the Professional Services to be provided under a SDA.

**“Change Request”** means a request to make additions, modifications or for the removal of part of the Cloud Service or, if applicable, any Locally Installed Components.

**“Cloud Service”** means the online, web-based services as stated in associated Order Forms, including the AP Service, the Procurement Module, the Supplier Portal and the Payment Module.

**“Cloud Service Level (SL)”** means 24 hours a day and 365 days a year.

**“Customer Data”** means any data, information or material provided or submitted by You or on behalf of You to the Cloud Service in the course of using the Cloud Service.

**“Deliverable”** means a deliverable defined in a SDA.

**“Documentation”** means the documentation covering functionality, performance and use relating to the Cloud Service.

**“Downtime (DT)”** means the period within the Cloud Service Level that the Cloud Service is not available. The Downtime is calculated, within the Cloud Service Level, from when the failure was reported by You until the Cloud Service is again available. Downtime shall not include:

- Interruptions due to problems in Your own systems.
- Interruptions that fall under force majeure in accordance with Section 11.

- Interruptions initiated by You.
- Interruptions due to network availability or bandwidth limitations outside of Our network and the networks of our third party providers.
- Scheduled maintenance as set out in Appendix 1, Clause 2.3.

**“ERP Integration”** means the process, content and tools that enable the AP Service to exchange data with Your ERP system or other system exchanging master data and/or posting information as stated in associated Order Forms.

**“FX Integration”** means the file exchange based integration to the AP Service as referenced in in the associated Order Form.

**“Incident”** means any deviation from the standard operation of the Cloud Service or any Locally Installed Components which causes an interruption to, or a reduction in the quality of, the Cloud Service.

**“IP Rights”** means any of Our intellectual property rights or other proprietary rights, title, or interest relating to the Cloud Service or the Professional Services.

**“Locally Installed Components”** means any software that is required to be installed at Your premises/services for the Cloud Service. This includes, but is not limited to, software for the ERP Integration and capture of invoice information.

**“Medius Pay”** means the Payment Module and/or the Third Party Payment Services.

**“Ordered Third Party Product/Service”** means a product or service that is developed and owned by a third party but provided by Us under an Order Form.

**“Order Form”** means an ordering document specifying the services/products to be provided hereunder that is entered into between You and Us.

**“Party”/ “Parties”** means You and Us.

**“Payment Module”** means the Medius Pay platform.

**“Procurement Module”** means the procurement service modules or any combination thereof referenced in the Order Form.

**“Professional Services”** means the Activities and Deliverables to be provided by Us.

**“Response Time”** means the time between when We have received a report from You related to the Cloud Service indicating an Incident in accordance with Appendix 1, Section 4.4 and when We respond back to You that an Incident has been identified, case ID number created, priority level assessed and initial problem description documented.

**“Scope, Definition & Assumptions” or “SDA”** means a written statement specifying the Professional Services to be provided by Us. Where Professional Services in any SDA are described in a general or summary manner, such Professional Services shall be deemed to include not only the Professional Services described but also those that are

inherent or necessary for Our proper execution of the Professional Services.

**“Service Request”** means a request to provide You with information or advice in respect of the Cloud Service and/or Locally Installed Components which is not considered as an Incident or a Change Request.

**“Service Suspension”** is defined in Section 4.3.

**“Subscription Term”** means the term of each ordered product subscription as set out in the Order Form.

**“Supplier Portal”** means the supplier portal module referenced in the Order Form.

**“Support Event”** means a request from You to Us to handle an Incident, Service request or Change request.

**“Third Party Payment Services”** means the third party payment service(s) that may be accessed through the Payment Module where the use is governed by the Third Party Payment Services’ terms of use.

**“We”/”Us”/”Ours”** means the Medius company with which You have executed an Order Form.

**“You”/”Your”/”Yours”** means the company or other legal entity that executes the Order Form and thereby accepts this Agreement.

## 2 Provision of Services and Professional Services

2.1 **Scope.** We shall provide you with the Cloud Service and the Professional Services as specified in any Order Form referencing this Agreement, subject to Your payment of all applicable fees as set forth in Section 6.

2.2 **Updates/Changes.** We may, with reasonable prior notification to You, make updates or other changes to the Cloud Service and its functionality, including but not limited to the underlying technology related to data capture, and e-invoicing, as long as the functionality of the Cloud Service in all material aspects remains the same. Any such updates or changes will be automatically applied.

## 3 Rights granted and Restrictions

3.1 For the duration of the Subscription Term, and subject to the terms and conditions of this Agreement and the due payment of all applicable fees, We grant You a limited, non-exclusive and non-transferable (unless so explicitly permitted under an associated partner agreement between Us and a certified partner) right to use the Cloud Service (and for any Locally Installed Component the right to install), including any Documentation accompanying the Cloud Service or any Locally Installed Component. You do not acquire under this Agreement any right to use the Cloud Service, Documentation or Locally Installed Components outside of the scope, agreed license restrictions or beyond the duration of this Agreement. Upon the termination or expiry of this Agreement, Your right to use the Cloud Service, the Documentation and any Locally Installed Components will automatically terminate.

3.2 As between You and Us, You exclusively own all rights, title and interest in and to all Customer Data. You shall have sole

responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and intellectual property ownership of and right to use all Customer Data and hereby warrant that You have and that You will continue to have all rights and consents necessary to allow Us to use all such data as contemplated by this Agreement. You hereby grant Us a royalty free, fully-paid, non-exclusive right and license to reproduce, use, process, store and transmit Customer Data for the purposes of providing, maintaining and developing the Cloud Service and performing Our obligations under this Agreement and any other activities expressly agreed to by You.

- 3.3 In the event the license restriction applicable for the Cloud Service or the Locally Installed Components is exceeded You are obliged to extend Your right of use by purchasing applicable extensions at prices set out in Our from time to time applicable price list. Such extended right of use and any associated fees shall be effective immediately and apply for the remainder of the term of this Agreement.
- 3.4 The right to use the Cloud Service and any Locally Installed Components is limited to Your internal purposes only. Any use of the Cloud Service or the Locally Installed Components by any third party or for providing services to any third party, unless explicitly permitted in this Agreement or an associated partner agreement entered into between Us and a certified partner, is strictly prohibited. Notwithstanding the aforesaid, the Cloud Service and any Locally Installed Components may be used by Your subsidiaries and Affiliates for their internal purposes. You acknowledge and agree that We shall have no liability whatsoever towards Your Affiliates under this Agreement and that You have the full responsibility to ensure that any of Your Affiliates comply with the terms of this Agreement when using the Cloud Service.
- 3.5 You must protect any Locally Installed Components and associated Documentation in a manner consistent with Our rights expressed in this Agreement. You may not sublicense, loan, transfer, or distribute any Locally Installed Components to a third party or create derivative works based on any part thereof unless explicitly permitted under an associated partner agreement between Us and a certified partner. You may not attempt to:
- a) reverse engineer, decompile, disassemble, translate, or adapt the Cloud Service or any Locally Installed Component, or
  - b) create the source code from the object code of the Cloud Service or Locally Installed Component, unless to the extent explicitly permitted by applicable mandatory law.
- 3.6 We may, at any time during Your normal business hours and upon reasonable advance notice, conduct an audit at Your premises to ascertain if Your use of the Cloud Service or the Locally Installed Components in compliance with the provisions of this Agreement. You shall reasonably assist Us in the conduct of such audit and shall grant Us reasonable access to Your premises and computer equipment for that purpose. In the event that an audit reveals that you are using the Cloud Service or any Locally Installed Component beyond the scope of the agreed license, then, in addition to any other

remedies available to Us, You will promptly reimburse Us for the costs of such audit.

- 3.7 All ownership rights, intellectual property rights and other proprietary rights relating to the Cloud Service, the Documentation and any Locally Installed Components or created, developed or used in or in connection therewith belong to Us or, when applicable, Our third party licensors. This Agreement does not entail any assignment of any intellectual property to You. Further, this Agreement does not grant You any rights in any trademarks or service marks which remain the exclusive property of Ours or any third party providers. You may not alter or remove trademarks, service marks, copyright notices or other markings from the Cloud Service, the Documentation or any Locally Installed Components or their associated packaging.
- 3.8 If You or any of Your Affiliates or Users sends or transmits any communications or materials to Us by mail, email, telephone, or otherwise, suggesting or recommending changes to Our IP Rights, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or similar feedback, We are free to use such feedback irrespective of any other obligation or limitation between the Parties under this Agreement. You hereby assign to Us, on Your behalf, and on behalf of Your Users, all right, title, and interest in, and We are free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in such feedback, for any purpose whatsoever, although We are not required to use any such feedback.
- 3.9 We may monitor how the Cloud Service is used and performed and collect, use, compile and disclose quantitative data derived from the use of the Cloud Service for industry analysis, benchmarking, analytics and other business purposes. We have all rights, title and interest in and to such data and may make the data publicly available, provided that the data does not include any data that would enable the identification of You, Your Users or any third party utilizing the Cloud Service.
- #### 4 Use of the Cloud Service and the Locally Installed Components
- 4.1 You are responsible for identifying and authenticating all of Your personnel, and the personnel of Your Affiliates, as applicable, that are authorized by You to use the Cloud Service and/or Locally Installed Components in accordance with this Agreement (collectively “Users”), for approving access by Users and for maintaining the confidentiality of usernames, passwords and account information. We are not responsible for any harm caused by Your Users, including individuals who were not authorized to have access to the Cloud Service and/or Locally Installed Components but who were able to gain access through any actions or omissions of You or Your Users. You are responsible and liable for all activities that occur under Your and Your Users’ usernames, passwords or accounts or as a result of Your or Your Users’ access to the Cloud Service and/or Locally Installed Components, whether such access or use is permitted by or in violation of this Agreement. You shall use reasonable

efforts to make all Users aware of this Agreement's provisions as applicable to such User's use of the Cloud Service, and shall cause all Users to comply with such provisions. You agree to notify Us immediately of any unauthorized use.

- 4.2 You shall not use or permit use of the Cloud Service for any purpose or in any way that (a) violates any local, state, national or international law or Our guidelines for use of AP Service integration API:s available at <https://success.mediusflow.com/documentation/integration-documentation>, (b) menaces or harasses any person or causes damage or injury to any person or property, (c) violates privacy rights (including but not limited to the General Data Protection Regulation) or promotes racism, hatred or harm, (d) constitutes an infringement of intellectual property or other proprietary rights, (e) interferes with the operation of the Cloud Service, including without limitation by (i) taking any action that imposes or may impose an unreasonable or disproportionately large load on Our or Our third party providers' infrastructure, or (ii) interfering with or disrupting any networks, equipment or servers connected to or used to provide the Cloud Service, or (f) constitutes fraudulent activity, including impersonating any person or entity, claiming false affiliation, misrepresenting the source, identity or content of information transmitted via the Cloud Service.
- 4.3 Notwithstanding anything to the contrary in this Agreement, We may temporarily suspend Your (including Your Affiliates') access to any portion or all of the Cloud Service if We reasonably determine that (a) there is a threat to, or attack on, any of our IP Rights; (b) Your use of Our IP Rights disrupts or poses a security risk to Our IP Rights or to any other customer or vendor of Ours; (c) You are using Our IP Rights for fraudulent or illegal activities; (d) You otherwise violate the obligations and restrictions in this Section 4; or (e) subject to applicable law, You have ceased to continue Your business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding ("Service Suspension"). We shall use commercially reasonable efforts to provide written notice of any Service Suspension to You and to provide updates regarding resumption of access to the Cloud Service following any Service Suspension. We shall use commercially reasonable efforts to resume providing access to the Cloud Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. We will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that You (or any Affiliate) may incur as a result of a Service Suspension.

## 5 Professional Services

- 5.1 We shall provide to You the Professional Services as specified in each Order Form or SDA (as applicable) subject to Your payment of all applicable fees. The Professional Services shall be provided with all reasonable skill and care and in all material aspects conform to any specification agreed.

- 5.2 **Intellectual property rights.** All ownership rights, IP Rights and other proprietary rights relating to the Professional Services belong to Us and no such rights or property is assigned to You. You do not grant Us any right in or to Your intellectual property except such licenses as may be required for Us to provide You with the Professional Services. Subject to the terms and conditions of this Agreement and the due payment of all applicable fees, We grant You a perpetual, non-exclusive, worldwide, non-transferable license to use and maintain any Deliverable under associated SDAs or Order Forms, subject to the restrictions set out under this Agreement.

- 5.3 The "**Actual Delivery Date**" for a Deliverable is the day the Deliverable (i) is accepted by You according to Section 5.4, or (ii) the Deliverable satisfies the agreed-upon acceptance criteria. Deviations which are insignificant for the intended use of the Deliverable ("**Minor Deviations**") shall not affect the determination of the Actual Delivery Date and the Deliverable shall be regarded as having met the acceptance criteria even with the existence of Minor Deviations.

- 5.4 Upon completion of each Deliverable, We will as applicable, (a) submit a complete copy to You and (b) at Your request, demonstrate its functionality to You. You are responsible for reviewing and testing the Deliverable in accordance with the SDA or Order Form pursuant to the acceptance criteria or test plans mutually agreed upon in writing by the Parties for such Deliverable (if any). You shall provide Us with written notification of acceptance for each Deliverable promptly upon acceptance. Failure to reject a Deliverable, as set forth below, will be deemed as an acceptance by You.

- 5.5 If any submitted Deliverable does not satisfy the agreed-upon acceptance criteria as specified in the applicable SDA or Order Form or as mutually agreed upon in writing by the Parties for such Deliverable, You must so notify Us in writing within ten (10) business days after Our submission of the Deliverable, specifying any defects in the Deliverable (with the exception of Minor Deviations), failure of which will constitute Your acceptance thereof. We will use commercially reasonable efforts to correct any defects and deficiencies (with the exception of Minor Deviations) at Our cost and expense, and resubmit the Deliverable to You as soon as practicable. You shall thereafter perform an additional review and test of the Deliverable against the agreed-upon acceptance criteria in accordance with the procedure described in this Section 5.5. The Deliverable shall in any event be deemed accepted if You continue to use a Deliverable in Your business after the review and testing period. If the Parties jointly determine that a Deliverable's functional requirements specified in a SDA or Order Form require modification (for example, due to incorrect assumptions or changed requirements), the Parties will cooperate in good faith to execute a Change Order for such revised requirements in accordance with Section 5.9.

- 5.6 **Delay of delivery.** Delay in delivery occurs when the date of the Actual Delivery Date occurs after the Agreed Delivery Date. The "Agreed Delivery Date" is the delivery date for the Deliverable agreed between the Parties in (as applicable):

a) Change Order and/or

- b) Project plan and/or
- c) SDA and/or
- d) Order Forms

If either Party is in delay, the Parties shall jointly negotiate in good faith a new Agreed Delivery Date.

If a delay lasts more than four (4) months, the Party not responsible for the delay may terminate this Agreement and get a refund of any subscription fees paid thereunder. The right to termination set out in this Section 5.6 is only applicable in respect of delays in performance of Professional Services related to the initial production deployment of the Cloud Service and not for any other Professional Services.

- 5.7 Where the Professional Services are to be delivered in stages (phases) or as separate deliveries, the Actual Delivery Date shall be determined for each stage or delivery.
- 5.8 **Cancellation policy.** You may cancel or reschedule a previously planned Activity up to five (5) days prior to the scheduled start date. If the Activity is cancelled or rescheduled by You within five (5) days we will make commercially reasonable efforts to reallocate our work and together with you reschedule the Activity. For the situation where we're not able to reallocate our work we will charge the full price for the planned Activity and You have the choice to 1) not schedule the Activity again or 2) schedule the Activity at a new date which is then charged at full price in addition to the cancelled Activity.
- 5.9 **Change orders.** Changes to a SDA or Order Form will require a written Change Order signed by the Parties prior to implementation of the changes. Such changes may include, for example, changes to the scope of work and any corresponding changes to the estimated fees and schedule.
- 5.10 **Your cooperation.** For each SDA or Order Form referencing this Agreement You shall assign a project lead being Our primary contact. You shall provide Us with necessary information and documentation reasonably requested in order for Us to fulfill the Professional Services. You shall ensure that the personnel used by You for the co-operation with Us has appropriate competence and training for assigned tasks and the necessary power of authority in order for Us to receive the requested information and/or documentation. If any services by a third party vendor contracted by You are necessary for the execution of Activities or Deliverables, You shall manage and coordinate them at Your own cost.
- 5.11 Our obligations in relation to Deliverables are conditional on You providing us with remote access capabilities, via VPN or corresponding technology, to Your infrastructure in a timely fashion, in particular in the presence of Locally Installed Components. If applicable, You are responsible for ensuring the existence of and Our access to test environments of Your systems, including but not limited to, Your financial system or ERP system.

## 6 Fees and Payments

- 6.1 All fees and prices stated in this Agreement are exclusive of taxes, carriage costs, customs, duties and other similar taxes

and You are responsible for paying all such taxes, costs, customs duties or expenses. Except as expressly set forth in this Agreement, all fees are non-cancellable and non-refundable.

- 6.2 Payment term is thirty (30) days net after date of invoice. Unless otherwise agreed, payment by check is not permitted. Unless otherwise set forth in the Order Form fees for the initial twelve (12) months of the Subscription Term will be invoiced upon execution of the Order Form and thereafter upon the anniversary of each twelve-month period of the Subscription Term.
- 6.3 In the event of late payment by You, where such late payment is not subject to a good faith dispute, We shall, without prejudice to any other rights or remedies that We may have, be entitled to late payment interest at the rate of eight (8) percent per annum ("**Late Fees**"). We shall further be entitled to discontinue the performance of Our obligations and suspend the Cloud Service in the event You have not paid an outstanding invoice not subject to a good faith dispute within thirty (30) days from when it was due, provided that We have sent You a written reminder thereof, until all due and outstanding invoices have been paid. If an arbitration award provides that You are obliged to pay the disputed fees, We shall also be entitled to receive the Late Fees in respect of the previously disputed fees.
- 6.4 Unless otherwise agreed in writing, Professional Services shall be provided on a time and materials basis at the rates set out in the from time to time applicable pricelist. Hourly rates, fixed prices and maximum prices exclude cost for travel time, travel costs, accommodation and similar costs and You shall reimburse Us for reasonable travel, accommodation and similar costs incurred in connection with Professional Services. Additional terms and conditions in respect of fees, invoicing and payment are set out in the Order Form.
- 6.5 Notwithstanding the foregoing, the following shall apply if You order the Cloud Service from an authorized partner of Ours. In such an event, the partner will set Your pricing, payment terms and late fees for that order and You will pay the amount due to the partner. In the event of late payment by the partner to Us, We shall, without prejudice to any other rights or remedies that We may have, be entitled to discontinue the performance of Our obligations and suspend the Cloud Service, until all due and outstanding invoices have been paid to Us.
- ## 7 Confidentiality
- 7.1 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 7;
  - 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).

7.2 Each Party shall take all such steps as shall from time to time be necessary to ensure compliance with the provisions of this 7 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. This Section 7 shall survive expiry or termination of this Agreement for a period of five (5) years.

## 8 Assignment and subcontracting

8.1 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 an Affiliate of Us and/or (ii) transfer and assign Our right to receive payment under this Agreement or any part thereof to any third party.

8.2 We may use subcontractors for performance of Our obligations under this Agreement, provided that any such subcontracting shall not diminish Our liability under this Agreement. Any Affiliate of Us may perform any of Our obligations or exercise any of Our rights under an Order Form, save that We shall be responsible for any acts or omissions of any of Our Affiliates. You acknowledge that any right or remedy You may have under an Order Form rests solely with Us.

## 9 Intellectual Property Indemnification

9.1 Notwithstanding the limitation of liability set out in Section 10.2, We shall pay those costs and direct damages finally awarded against You in connection with any claim by a third party that the Cloud Service, Documentation, the Deliverables or any Locally Installed Component used by You directly infringes such third party's intellectual property rights (or those costs and damages agreed to by Us in a written monetary settlement) and the reasonable costs of defense incurred by You in connection therewith, including reasonable attorneys' fees and court costs, provided that:

- a) You promptly notify Us in writing, no later than thirty (30) days after You receive notice of the claim (or sooner if required by applicable law);
- b) You will give Us sole control of the defense and any settlement negotiations (at Our sole cost and expense and provided that We shall not settle any action without Your consent, unless such settlement provides for the unconditional release of You from all liabilities and obligations);
- c) You will not prejudice the defense of the action or claim nor will You make any admission as to liability nor compromise or agree to any settlement of any such action or claim without the prior written consent of Us; and
- d) You will provide Us with such assistance, documents, authority and information as We may reasonably require in relation to the action or claim and defense or settlement thereof.

Notwithstanding the foregoing, We shall have no liability to You for any claim that:

- e) arises out of any unauthorized use, reproduction, or distribution of the Cloud Service, Documentation, the Deliverables or any Locally Installed Component;
- f) arises out of any modification or alteration of the Cloud Service, Documentation, the Deliverables or any Locally Installed Component by anyone other than Us;
- g) arises out of the use of the Cloud Service, the Deliverables or any Locally Installed Component in combination with any other software or equipment not approved in writing by Us
- h) is based on any information, design, specification, instruction, software, service, data, hardware or material not furnished by Us; or
- i) would have been avoided by use of the then-current version of any Locally Installed Component or if You had followed Our reasonable written instructions.

Further, We shall have no liability to You if You continue to use the Cloud Service, Documentation, the Deliverables or Locally Installed Components after the end of Your right to use such material.

If the Cloud Service, Documentation, the Deliverables or any Locally Installed Component becomes, or in Our opinion is likely to become, the subject of an infringement or misappropriation claim, We may, at Our own expense and option, elect to either:

- a) procure the right for You to continue using the Cloud Service, Documentation, Deliverables or any Locally Installed Component in accordance with the provisions of this Agreement;
- b) make such alterations, modifications or adjustments to the Cloud Service, Documentation, Deliverables or any Locally Installed Component so that it becomes non-infringing without incurring a material diminution in performance or function;
- c) replace the Cloud Service, Documentation, Deliverables or any Locally Installed Component with a non-infringing substantially similar substitute; or
- d) if neither (a), (b) nor (c) can be achieved after the exercise of commercially reasonable efforts, terminate the right of use and refund to You any unused, prepaid fees with respect to the affected part of the Cloud Service, Documentation, Deliverables or any Locally Installed Component.

If We modify or replace the Cloud Service, Documentation, Deliverables or any Locally Installed Component, You shall have the same rights in respect thereof as You have under this Agreement.

This Section 9 states Our entire liability, and Your sole remedies, for any infringement or alleged infringement of third-party intellectual property rights in relation to the Cloud Service, Documentation, Deliverables or any Locally Installed Component.

## 10 Limitation of Liability

10.1 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.

- 10.2 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 10.2 shall not apply to Our indemnification obligations under Section 9 or for any other liability where the exclusion of liability is not permitted under applicable law.
- 10.3 We shall have no liability to You in respect of any default or claim 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 or claim.
- 10.4 Each party represents that it has validly entered into this Agreement and that it has the authority to do so. We warrant that during the Subscription Term, We will perform (i) the Cloud Service using commercially reasonable care and skill in all material respects as described in the Documentation, and (ii) any Professional Services in a professional manner consistent with industry standards (collectively, the “Services Warranty”). If you contend that the Cloud Service provided to You does not perform as warranted, You must promptly provide Us with a written notice that describes the deficiency in the Cloud Service. With respect to Professional Services, You must notify Us of any warranty deficiencies within 60 days from performance of the deficient Professional Services.
- 10.5 WE DO NOT WARRANT THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, THAT WE WILL CORRECT ALL SERVICES ERRORS, OR THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS. WE ARE NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CUSTOMER DATA OR THIRD PARTY APPLICATIONS OR SERVICES PROVIDED BY THIRD PARTIES.
- 10.6 FOR ANY BREACH OF THE SERVICES WARRANTY, YOUR EXCLUSIVE REMEDY AND OUR ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF WE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, YOU MAY TERMINATE THE DEFICIENT SERVICES AND WE WILL REFUND TO YOU ANY FEES FOR THE TERMINATED SERVICES THAT YOU PRE-PAID FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.
- 10.7 TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 11 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 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.

## 12 Term & Termination

- 12.1 **Agreement term.** This Agreement shall enter into force upon execution of the Order Form and shall continue in force until terminated. The term of each ordered product subscription is set out in the Order Form.
- 12.2 **Automatic renewal.** Unless a product subscription is terminated by written notice three (3) months prior to the end of each Subscription Term, the relevant Subscription Term shall be automatically renewed by additional twelve (12) month periods.
- 12.3 We may increase the subscription fees for any renewal term by an amount not to exceed 5% above the average of the International Monetary Fund’s (IMF) country specific Consumer Price Index (All items) available at <https://data.imf.org/?sk=4FFB52B2-3653-409A-B471-D47B46D904B5&slid=1485878802128> over the preceding six months. Except as expressly provided in the applicable Order Form, any right for You to call for options to acquire additional licenses, volume extensions or add-on products or services to committed prices will not apply for a longer period than the initial subscription term referred to in the Order Form.
- 12.4 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 in a way that is not capable of remedy, (ii) the other Party has committed a material breach of this Agreement that is capable of remedy and fails to remedy such breach within thirty (30) days after receipt of written notice from the non-breaching Party specifying the breach, or (iii) 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 (otherwise than for reconstruction or amalgamation) or compulsory, or if a receiver or administrator is appointed over its assets.
- 12.5 Upon termination or expiration of this Agreement, You shall no longer have the right to access or use the Cloud Service and each Party shall immediately return to the other Party all goods, documents and other items received from the other Party.
- 12.6 **Data retrieval.** Upon the expiration or termination of this Agreement, We shall upon request provide You with the

Customer Data in standardized format at Your cost. If You require the Customer Data in another format, We undertake to investigate the possibilities to perform such export. We undertake to store the Customer Data one (1) month after this Agreement's expiration or termination or until any requested transfer of Customer Data has been performed, and the Data will be deleted not later than ninety (90) days thereafter.

- 12.7 Without prejudice to any other rights or remedies that We may have, if this Agreement is terminated (irrespective of the reason therefore), We shall always be entitled to charge You for work performed and costs incurred up to the date of termination.
- 12.8 Any termination of this Agreement shall not affect (i) any accrued liabilities and rights of the Parties prior to such termination and (ii) any provision of this Agreement that is expressed to survive its expiration or termination.



### 13 Deliberation, Notices, Governing Law and Arbitration

**General.** 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.

This Agreement shall be governed by the respective laws as set out below in this Section 13, which also sets out how claims or disputes arising out of or in connection with this Agreement shall be handled and any additional provisions which apply in different jurisdictions. If You are contracting with a Medius group company that is not referred to in the table below, the notice information, governing law and dispute resolution procedures applicable for Medius Sverige AB shall apply.

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	Medius Aps Delta Park 46 DK-2655 Vallenbæk Denmark  Email: salesoperations@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	Medius Business Process Software B.V Velperplein 23 6811 AH Arnhem The Netherlands  Email: salesoperations@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	Medius AS Rådhusgata 23 NO-0158 Oslo Norway  Email: salesoperations@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.
MediusGo AB	MediusGo AB Armégränd 5 831 32 Östersund Sweden  Email: salesoperations@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 Sverige AB	Medius Sverige AB Platensgatan 8	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

	<p>SE-582 20 Linköping Sweden</p> <p>Email: salesoperations@medius-group.com</p>		<p>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.</p>
<p>Medius Software Inc or OnPay Solutions Inc</p>	<p>Medius Software Inc or Onpay Solutions Inc 12 E 49th St FL 11 New York, NY 10017 USA</p> <p>Email: salesoperations@medius-group.com</p>	<p>Internal laws of the State of New York</p>	<p>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 of the Parties). There shall be one sole arbitrator agreed to by the Parties within twenty (20) days of receipt by respondent of the request for arbitration or in default thereof appointed by the AAA in accordance with its Commercial Rules. The seat of arbitration shall be New York, NY, and the language to be used in the arbitral proceedings shall be English. To the extent practicable, the arbitration shall commence within thirty (30) days of the designation of the arbitrator. The decision of the arbitrator 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 a court of law or 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. BOTH PARTIES ACKNOWLEDGE AND AGREE THAT BY ENTERING INTO THIS AGREEMENT, THEY GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY. OTHER RIGHTS THAT EITHER PARTY WOULD HAVE IF IT WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION. Except as may be required by law, neither a Party nor the arbitrator may disclose the existence, content or results of any arbitration without the prior written consent of both Parties, unless to protect or pursue a legal right.</p>
<p>Medius Software Pty Ltd</p>	<p>Medius Software Pty Ltd 240/117 Old Pittwater Road Brookvale NSW 2100 Australia</p> <p>Email: salesoperations@medius-group.com</p>	<p>Laws of New South Wales, Australia</p>	<p>If a dispute arises out of or relates to this Agreement, or the breach, termination, validity of this Agreement, or as to any claim in tort, in equity or pursuant to any domestic or international statute or law, the parties to the Agreement and to the dispute expressly agree to endeavor in good faith to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (“ACDC”) before having recourse to arbitration or litigation.</p> <p>A party claiming that a dispute has arisen, must give written notice to the other parties to the dispute specifying the nature of the dispute.</p> <p>On receipt of the notice specified in (a), the parties to the dispute must within seven (7) days of receipt of said notice seek to resolve the dispute.</p> <p>If the dispute is not resolved within seven (7) days or within such further period as the parties agree then the dispute is to be referred to ACDC.</p> <p>The mediation shall be conducted in accordance with ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and which terms are hereby deemed incorporated.</p>

			Additional terms apply to customers located in Australia as set out in appendix 1, section 6.
Medius Software Ltd	Medius Software Ltd Grafton House, Grafton Street, Hyde, Cheshire, SK14 2AX, United Kingdom  Email: salesoperations@medius- group.com	Laws of England	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 English Courts.

## 14 Export

Export laws and regulations of the United States of America and any other relevant local export laws and regulations apply to the services performed by Us under this Agreement. You agree that such export laws govern Your use of the Cloud Service and any Deliverables provided under this Agreement, and You agree to comply with all such export laws and regulations (including “deemed export” and “deemed re-export” regulations). You agree that no data, information, software programs and/or materials resulting from the services will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology. In addition, each Party represents that it is not named on any U.S. government denied-party list. Neither Party will access or use any deliverables or Confidential Information provided to it under this Agreement in a U.S.-embargoed country.

## 15 Processing of Personal Data

15.1 As part of the performance of Our obligations under this Agreement, We may process data, which directly or indirectly relates to a physical person (personal data) on Your behalf. All terms related to processing of personal data in this Section shall have the meaning ascribed to them in the European General Data Protection Regulation.

To the extent we will process personal data on Your behalf, We will be considered a data processor and You will be considered the data controller and all personal data will be processed in accordance with the Data Processing Addendum available at <https://www.medius.com/legal/data-processing-addendum/> which forms an integral part of this Agreement.

You shall ensure that the personal data that You supply or disclose to Us has been obtained fairly and lawfully and that You will obtain all necessary approvals from persons whose personal data is being processed and registrations with authorities (as applicable) to permit You to transfer the personal data to Us.

15.2 Section 15.1 shall apply, including the data processing obligations contained in the Data Processing Addendum, where We process personal data, which includes personal information as defined in and subject to the California Consumer Privacy Act (“CCPA”). To the extent We will process Customer Data that is personal information subject to the CCPA, We do so as a service provider (as the term is defined in the CCPA) and acknowledge the following restrictions:

- a) We will process, retain, use, and disclose personal information, including Customer Data, for the sole purpose of providing the Cloud Service or as otherwise permitted under this Agreement;
- b) We will not process, retain, use, or disclose, including to a third party for valuable consideration, personal information, including Customer Data, for any other purpose;

- c) We will not process, retain, use, or disclose personal information, including Customer Data, for any purpose outside of the direct business relationship between You and Us; and
- d) We shall provide reasonable support and response to inquiries from You regarding Our data processing obligations.

15.3 You may not provide Us access to health data or similarly sensitive personal data that impose specific data security obligations for the processing of such data unless specifically agreed between the Parties in writing.

## 16 Miscellaneous

16.1 The Parties agree that this Agreement, including information which is incorporated into this Agreement by written reference (such as reference to information contained in a URL) 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.

16.2 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.

16.3 You and We are contractors independent of one another. Nothing in this Agreement is intended to or shall constitute either Party as an agent, legal representative, partner, joint venture, franchise, employee or servant of the other Party for any purpose. Neither Party shall make any contract, commitment, warranty, or representation on behalf of the other Party, or incur any debt or other obligations in the other Party’s name, or act in any manner which has the effect of making that Party the apparent agent of the other, and neither Party shall assume liability for, or be deemed liable hereunder as a result of, any such action by the other Party. Neither Party shall be liable by reason of any act or omission of the other Party in the conduct of its business or for any resulting claim or judgment.

16.4 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.

16.5 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 in the Order Form. 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.

**APPENDIX 1 TO MEDIUS MASTER CLOUD SUBSCRIPTION AND SERVICES AGREEMENT**

**1 Definitions**

Definitions of terms used in this appendix 1 are set out in clause 1 of the Agreement.

**2 Availability for the Cloud Service**

2.1 We shall provide the Cloud Service with an Availability of 99% or higher as measured per calendar quarter.

2.2 In the event We fail to meet 99% Availability, You shall be entitled to receive a credit in the form of an adjustment in the following billing period (a "Service Credit"). The Service Credit shall be equal to two (2) percent of the total Cloud Service subscription fee for the affected quarter for each percentage below 99%. The maximum amount of a Service Credit per calendar quarter shall be twenty (20) percent of such fee. Service Credits shall apply to future invoices only and are forfeit upon termination of the Agreement. The Service Credit is Your sole remedy for Our failure to meet the Availability. In order to receive service credits, You must submit a written request to finance@medius.com within thirty (30) days after the end of the calendar quarter in which We failed to meet 99 % Availability. In the event of any overdue invoices under the Agreement, service credits will not be issued until all due invoices have been paid.

The 99 % Availability is only applicable to production tenants (i.e. not test, training or other non-production tenants). We shall provide You with one (1) production tenant and one (1) QA tenant for the period referred to in the Order Schedule.

2.3 **Scheduled and Unscheduled Maintenance.** Scheduled maintenance does not count as Downtime and shall not occur during Business Hours. Scheduled maintenance for the purposes of releasing updates of new functionality shall be communicated by Us at least 7 days in advance. Scheduled maintenance for the purposes of securing business continuity (for example virus protection, security updates or third party release service packs) may however be communicated by Us with less than 7 days' notice, if it is reasonably expected to be in the interest of Cloud Service users in general. We may in Our sole discretion take the Cloud Service down for unscheduled maintenance in which case We will strive to notify You in advance. Such unscheduled maintenance will be counted as Downtime.

**3 Provision of Support for the Cloud Service**

3.1 We shall provide You with support services in relation to the Cloud Service and/or Locally Installed Components in accordance with what is set out herein.

3.2 The online helpdesk and other self-service tools are available 24 hours a day 365 days a year for issue logging and resolution tracking. Other support service are available through the Medius Service Center during Business Hours.

3.3 Support Events will be classified by Us as an Incident, a Service Request or a Change Request, as applicable. Incident support shall, provided the Incident was not caused by You

and unless otherwise set out herein, be free of charge. Service Requests and Change Requests will be subject to additional charges, unless otherwise provided in any support plan agreed separately between the Parties.

3.4 Incidents are classified by Us according to the below definitions.

PRIORITY LEVEL	DESCRIPTION
1	The Cloud Service has significantly reduced functionality which prevents the utilization of the Cloud Service as a whole. The reduced functionality is critical to Your business and no workaround is available.
2	The Cloud Service has significantly reduced functionality which does not affect the Cloud Service as a whole. The reduced functionality is critical to Your business and there is no acceptable workaround available.
3	The Cloud Service has reduced functionality which does not impact wider core functionality and a workaround is available.
4	Minor defects or remarks from You suggesting changes in the Cloud Service in order to improve usability, to correct insignificant faults (i.e. minor faults not significantly affecting the daily use of the Cloud Service).

3.4 In respect of Incidents, We undertake to adhere to the Response Times applicable to the subscription You have subscribed for as further detailed below. Response times are measured from receipt of Your report according to Section 4.3 and 4.4.

Support Level	Standard	Enterprise	Enterprise+
Response times in Business Hours (Priority 1-3)	3; 6; 12	2; 4; 8	1; 2; 4
Online Support	Included	Included	Included
Phone Support	Excluded	Included	Included
Named contacts	3	5	10
Extended Business Hours (8 am CET – 8 pm ET)	N/A	N/A	Included (minimum \$5K ACV)

3.5 We shall, after having made reasonable efforts to resolve an Incident, have the right to cancel or delay handling of an Incident without any liability to You if:

- a) the Cloud Service or any other product or service provided by Us to You under this Agreement have not been correctly used, or have been used in conflict with any instructions, oral or written, from Us;
- b) the Incident cannot be reproduced by Us;
- c) the Incident is caused by circumstances beyond Our responsibility or reasonable influence or control including circumstances related to updates or changes of Your ERP system or related to a version of Your ERP system no longer supported by Your ERP system supplier. Such circumstances may include, but is not limited to, providing corrections to Ordered Third Party Product/Service;
- d) the Incident has not been timely reported in accordance with Sections 4.3 and 4.4.

#### 4 Your Cooperation

4.1 You shall timely provide Us with necessary and accurate information and documentation reasonably requested in order for Us to fulfill Our obligations hereunder. We will not be responsible for any deficiency in performing Our obligations if such deficiency results from Your failure to provide cooperation as set out herein. Should Our ability to fulfill Our obligations be affected by any products or services rendered by a third party to You, You are responsible to retain the information and documentation as requested by Us.

4.2 You shall ensure that the personnel used by You for the cooperation with Us has appropriate competence and training for assigned tasks in order for Us to receive the requested information and/or documentation.

You are allowed to appoint a certain number of individuals in Your organization with the appropriate power of authority to a) issue Service Requests and/or Change Requests and b) approve any changes to Your configuration as a consequence of resolving an Incident.

The maximum number of individuals You may appoint depend on Your subscription as further detailed above in clause 3.4.

4.3 You shall notify Us of Incidents without undue delay following detection thereof. Such notification shall be made in accordance with Section 4.4

4.4 When reporting an Incident You shall, where applicable, provide Us with information from time to time reasonably requested by Us, including the following information in English;

- a) the name of the person reporting the Incident;
- b) a short description of the Incident and how it is manifested;
- c) how the Incident can be reproduced or verified;
- d) in what situations the Incident occurs;
- e) the type of browser or device used (PC, smart phone etc.);
- f) the effects of the Incident: and
- g) any other relevant information (screen-prints, logs etc.).

Incidents may only be reported for production tenants (i.e. not test, training or non-production tenants).

4.5 If the Cloud Service is dependent on any Locally Installed Components You are obliged to:

- a) provide the necessary infrastructure reasonably requested by Us from time to time.
- b) provide Us with remote access capabilities, via VPN or corresponding technology, to the Locally Installed Components.
- c) Implement any new versions of the ERP Integration released by us in accordance with Our instructions.

If either of a), b) or c) is not fulfilled, (i) any Downtime resulting therefrom will not be included in the calculation of Availability, (ii) Response Times will not start to be measured until duly fulfilled and (iii) any additional costs associated with a), b) and/or c) to fulfill any request by You will be charged.

#### 5 Product specifics terms

##### 5.1 Specifics for the AP Service

- a) **Breaking Changes.** If We have not provided the ERP Integration to You under this Agreement, We may with ninety (90) days prior notification to You introduce Breaking Changes and You are obliged to make changes to any integration with the AP Service not provided by Us accordingly in a timely fashion. Notwithstanding the aforesaid, We may introduce Breaking Changes immediately if We deem it necessary due to security, performance or changes to embedded third party software and We shall in such case inform You as soon as possible of the reasons for introducing the Breaking Changes and We will, upon Your request, promptly provide You information related to the new integration API(s) or the FX Integration to the extent reasonably necessary for You to introduce changes to Your integrations to secure continued services.

##### 5.2 Specifics for Medius Pay

- a) Your right to use the Third Party Payment Services is subject to Your acceptance of the applicable payment service provider(s) terms of use referenced in the Order Form, thereby creating an independent relationship between You and the applicable payment service provider(s) governing all aspects of the payment service provider's provision of the Third Party Payment Services.
- b) Section i) and ii) below are only applicable for A) Third Party Payment Services provided from North America and B) if the Order Form explicitly grants You a right to receive Dividend.

i) Any agreed Dividend is fixed for the duration of this Agreement. We reserve the right to adjust the Annual Dividend up or down at any time after the first 12 months following Subscription Start Date For Medius Pay if We in Our reasonable discretion determines that a) payments processed through Medius Pay are more than ten (10)% higher (Annual Dividend may increase) or ten (10)% lower (Annual Dividend may decrease) than the Annual Dividend Base, or b) You do not comply with Our standard enrollment process and pay Your vendors using Our virtual card optimized and recommended payment method, or c) You dictate the payment method for more than ten (10)% of

supplier payments by value. Dividends will be paid quarterly in arrears from the first full quarter (the “**Dividend Quarter**”) after full commencement of the Payment Services, excluding any period of production testing with small payment batches, as agreed by both parties. The first Dividend payment will include a pro rata payment for any days in the calendar month preceding the first Dividend Quarter. For the purposes of this Agreement “**Annual Dividend Base**” means the Annual Dividend Base value set out in the Order Form which is based on the payments data provided by You for a period of twelve (12) months trading preceding the Order Form Effective Date.

ii) We reserve the rights to adjust the Dividend in case of changes of applicable law and regulations affecting the Third Party Payment Services, subject to giving You notice in writing about the new Dividend. In the event You object to such new Dividend, You may terminate this Agreement with respect only to those services which are impacted by the adjusted Dividend by written notice to Us not later than thirty (30) days after receipt of information about the new Dividend and such services will be terminated three (3) months after receipt of Your notice. Failure to give Us notice of termination as set forth herein will be deemed as an acceptance of the new Dividend and the new Dividend will become effective immediately upon the expiry of the notice period.

- c) If required for Your use of Medius Pay, You are responsible for entering into bank connectivity agreements with Your banks in due time.

### 5.3 Specifics for Procurement Module and Supplier Portal

- a) We encourage You to interact with suppliers and carry out Your transactions and to trade on-line by using the Procurement Module and the Supplier Portal. However, We are not liable or responsible for any transactions (including any commercial transactions) or activities between You and any third party, including Your suppliers, via the Procurement Module or the Supplier Portal. The Procurement Module and the Supplier Portal provides a means for You to conduct business electronically with Your trading partners but it is Your responsibility to ensure that it complies with any local legislation applicable to Your use of the Procurement Module. The Supplier Portal contains information about suppliers and other third parties provided by such third parties. We make no warranty, express or implied, with respect to the content, information, or services or the accuracy, completeness or correctness of any information available in the Supplier Portal and disclaims liability for any errors, delays or failures arising from the use of such information.

## 6 Country Specific Terms for Australia

6.1 This section 6 applies to the Cloud Services and Professional Services if You are located in Australia. Section 6 shall prevail of any inconsistency between this section 6 and the remainder of this Agreement.

6.2 **Definitions.** In this section 6, the terms defined below have the following meanings:

**Data Breach** means the loss of, unauthorised use, modification or disclosure of, unauthorised access to or unauthorised interference with Personal Information;

**Personal information** has the meaning given in the Privacy Laws;

**Privacy Law** means:

- a) the *Privacy Act 1988* (Cth) including the Australian Privacy Principles; and
- b) any legislation (to the extent that such legislation applies to the You, Us or any of Our permitted subcontractors) from time to time in force in any:
  - i. Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); or
  - ii. non-Australian jurisdiction (to the extent that the Licensor is subject to the laws of that jurisdiction), affecting privacy or Personal Information.

### 6.3 Privacy A new clause 15.3 is inserted into the Agreement:

Both parties must use their reasonable commercial endeavours to comply with all Privacy Laws.

You must:

- a) not use or disclose, or permit Your personnel to use or disclose any Personal Information obtained in connection with this Agreement, other than in accordance with this Agreement;
- b) comply with Our privacy policy located at <https://www.medius.com/legal/privacy/>; and
- c) reasonably co-operate with Us, and comply with all reasonable directions given by Us, to rectify or minimise any breach of Privacy Laws, Data Breach or any privacy complaint, including the provision of any information or assistance reasonably requested for the purposes of investigating such breach or complaint.

You consent (and will procure such consent from all individuals whose Personal Information is being transferred by Us) to the transfer by Us to our group companies or third parties, outside of Australia (including to the European Union, Norway, United States of America and the United Kingdom), of any Personal Information held by Us in connection with this Agreement.

You acknowledge and agree that, while we make reasonable efforts to procure compliance with Privacy Law by such overseas recipients, they are not subject to the Privacy Law and neither You nor individuals may be able to seek redress against such third parties under the Privacy Law.

You will notify Us immediately in writing if You become aware of a suspected or actual:

- d) material Data Breach affecting You; or
- e) material breach of this clause by You or your personnel.

This clause, will survive the termination or expiry of this Agreement and remain in effect.

**Australian Consumer Law.** Any references to a warranty in the Agreement are references to the warranties We provide and are given in addition to rights and remedies You have under law, including under the Australian Consumer Law

**(Statutory Rights).** Nothing in this Agreement restricts, excludes or modifies your Statutory Rights. Any exclusion of or limitation of warranties expressed in this Agreement does not apply to any warranty or guarantee or remedy You are entitled to under Statutory Rights.

To the extent permitted by applicable law, our liability for breach of any condition, warranty or guarantee imposed by Statutory Rights which cannot be excluded is limited only to the extent permitted under applicable law at Our option to:

- f) in the case of goods:
  - i. replacement or repair of the goods or supplying the equivalent goods again; or
  - ii. paying the cost of replacing or repairing the goods or of acquiring equivalent goods; and
- g) in the case of services:
  - i. supplying the services again; or
  - ii. paying the cost of having the services supplied again.

6.4 **GST.** In this clause 6, **GST Law** has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth), and terms used which are not defined in this Agreement, but which are defined in the GST Law, have the meanings given in the GST Law. Unless stated otherwise, all consideration provided under this document is exclusive of GST. If and the extent any supply under this Agreement is a taxable supply within the meaning under the GST Law, and GST is payable by the supplier of that taxable supply, the recipient must, upon receipt of a tax invoice from the supplier, pay the supplier an amount equal to the GST payable on that supply.