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## **WEBSITE HOSTING TERMS OF SERVICE**

### **MATCHBOX MEDIA'S GENERAL TERMS**

These are the general terms of our relationship that include the duration of the Agreement, fees payable by you, Matchbox Media's right to monitor communications and content in specific circumstances, steps to protect the security of your data and Matchbox Media's systems, when Matchbox Media is authorised to suspend or terminate your services, and the resolution of disputes between us.

Summary of our General Terms:

- The Agreement will commence when Matchbox Media provides you with a username and password.
- By submitting an application form and placing an order online via our website, you confirm that you are prepared to accept electronic invoices from Matchbox Media for purposes of claiming input tax.
- The Agreement is binding unless and until you or we give notice to terminate.
- We may change the features or functionality of any Service over time.
- You must comply with the Acceptable Use Policy that applies to your use of the Services.
- We can prevent your access to the Service/s if you breach the Agreement or for technical reasons.
- You accept that you will get no rights to the intellectual property in Matchbox Media's computer systems.
- Subject to your right to withdraw your consent in certain instances, we may obtain your personal information and use it, for certain specified purposes, including for, internal Matchbox Media marketing and contract administration as well as to enable us to collect your debit order payment.
- Our liability to you is substantially limited.
- The Agreement is subject to South African law.
- We will use your given address as your address for service.

Read the full text of Matchbox Media's General Terms

### **MATCHBOX MEDIA'S SPECIFIC TERMS**

Matchbox Media's Specific Terms go into more detail and address specific issues around our hosting packages (Web Hosting,

Managed Dedicated, and TruServ Dedicated), e-mail and domain names. These terms must be viewed as an extension of our General Terms.

Read the full text of Matchbox Media's Specific Terms

Matchbox Media Hosting Terms (General Terms)

(Last updated: 1 March 2011)

(Previous versions: 1 August 2007)

Health IT Solutions CC T/A Matchbox Media (Registration No. 2001/047989/23) ("Matchbox Media") is a South African web hosting service provider that provides a range of web hosting Services to its Customers. Matchbox Media provides the Services to its Customers subject to the Matchbox Media Hosting Terms.

## 1. INTERPRETATION

This clause will apply to the Matchbox Media Hosting Terms, unless a contrary intention appears.

- 1.1 The clause headings in the Matchbox Media Hosting Terms have been inserted for purposes of convenience only and will not be taken into consideration in its interpretation.
- 1.2 Any reference to
  - (i) the singular includes the plural and vice versa,
  - (ii) any gender includes the other genders and
  - (iii) a natural person includes a juristic person and vice versa.
- 1.3 The rule of construction that a contract must be interpreted against the party responsible for the drafting or preparation of the contract, will not apply to this Agreement and the Parties waive any rights they have to rely on the rules.
- 1.4 Unless the context indicates a contrary intention, the words and expressions defined in clause 2 will, throughout the Matchbox Media Hosting Terms, bear the meanings assigned to them in that clause 2 and similar expressions will bear corresponding meanings.
- 1.5 Any reference to "days" will be construed as being a reference to calendar "days" unless qualified by the word "business" in which instance a "business day" will be any day other than a Saturday and a Sunday or a public holiday as gazetted by the Government of the Republic of South Africa from time to time. Any reference to "business hours" will be construed as being the hours between 08h00 and 17h00 on any business day.
- 1.6 Whenever "including" or "include", or "excluding" or "exclude", together with specific examples or items follow a term, they will not limit its ambit.
- 1.7 Terms other than those defined within these General Terms will be given their plain English meaning, and those terms, acronyms, and phrases known in the Information Technology industry will be interpreted in accordance with their generally accepted meanings.
- 1.8 Defined terms appearing in these General Terms in title case will be given the meaning as defined, while the same terms appearing in lower case will be interpreted in accordance with the ordinary meaning as qualified by clause 1.7 and will, unless the context otherwise indicates, include the term as defined.

## 2. DEFINITIONS

In the Matchbox Media Hosting Terms, unless inconsistent with or otherwise indicated by the context, the following terms will have these meanings:

- 2.1 "Agreement" means the contract entered into between Matchbox Media and the Customer consisting of, amongst others, the Matchbox Media Hosting Terms and any application form or addendum completed by the Customer;
- 2.2 "Application Form" means the application form completed by the Customer using Matchbox Media's online order form for the initiation of the individual Service/s as may be amended from time to time under the Agreement and specifically includes any offline and paper versions of the Application Form;
- 2.3 "Business Day" means any day other than a Saturday, a Sunday or a public holiday in the Republic of South Africa;
- 2.4 "Commencement Date" means the date when a customer profile is created and Matchbox Media furnishes the Customer with the Customer Data;
- 2.5 "Customer" means: i. the person identified on the application form or in any addendum, relating to the relevant Service subscribed for by the Customer and in the case of a Domain Name, ii. a Reseller enrolled under the Matchbox Media Reseller programme who hosts directly with Matchbox Media;
- 2.6 "Customer Data" means any username, password, or e-mail address provided by Matchbox Media to the Customer as part of the Services, but expressly excluding Customer Domains managed by Matchbox Media as part of the Services;
- 2.7 "General Terms" means these terms and conditions;
- 2.8 "Matchbox Media Hosting Terms" means the General Terms, the Specific Terms, the Acceptable Use Policy, and Privacy Policy, all of which are published at [www.matchboxmedia.co.za/pdf/matchboxmedia-terms of use.pdf](http://www.matchboxmedia.co.za/pdf/matchboxmedia-terms%20of%20use.pdf) under their respective headings;
- 2.9 "Intellectual Property Rights" means all patents, trademarks, service marks, design rights, copyright, trade or business name, know-how, concepts, ideas, methods, procedures, processes, techniques, models, reports, templates, or software (or any changes or additions and other similar rights or obligations) whether or not registerable, registered or application for registration has been made in any part of the world;
- 2.10 "ISPA" means the Internet Service Providers' Association of South Africa;
- 2.11 "Marks" means any trademarks, logos, brand names, domain names or other marks of either of the Parties;
- 2.12 "Party" and "Parties" means Matchbox Media and the Customer;
- 2.13 "Services" means the services provided by Matchbox Media to the Customer;
- 2.14 "Service Fees" means fees and charges payable by the Customer to Matchbox Media in respect of the Services, which Service Fees are dealt with in clause 7 and are set out in the application form/s, and any addenda, completed by the Customer in respect of the Services;
- 2.15 "Specific Terms" mean the terms and conditions which supplement the General Terms and govern the use of individual Services selected by the Customer;
- 2.16 "Website" means the website from which the Services are provided, currently being <http://www.matchboxmedia.co.za>

## 3. MATCHBOX MEDIA HOSTING TERMS

- 3.1 Matchbox Media provides the Services to its Customers subject to the Matchbox Media Hosting Terms.
- 3.2 These General Terms govern the contractual relationship between the Parties, duly supplemented by the Specific Terms.
- 3.3 To the extent that:
  - 3.3.1 any individual Service selected by the Customer is not dealt with in the Specific Terms, the individual Service will be

governed by the General Terms and Acceptable Use Policy;

3.3.2 any Specific Terms are binding upon the Customer, those Specific Terms are deemed included in the Matchbox Media Hosting Terms.

3.4 The Acceptable Use Policy represents the terms and conditions pertaining generally to the Customer's use of the Services and specifies the activities prohibited by the Customer and is intended to enhance the use of the Internet by preventing unacceptable use. The Customer is required at all times to comply with the Acceptable Use Policy, which is deemed to form part of the Matchbox Media Hosting Terms. The Acceptable Use Policy, as amended from time to time, is posted on the Website.

3.5 Save as expressly provided to the contrary in the Matchbox Media Hosting Terms, if there is a conflict in meaning, the following precedence ranking will apply (from highest to lowest): i. these General Terms; ii. the Specific Terms; iii. the Acceptable Use Policy; iv. the Privacy Policy; v. (v) other policies that may be introduced from time to time and notified to the Customer; vi. (vi) any documents incorporated by reference in this Agreement.

#### **4. AMENDMENT TO MATCHBOX MEDIA HOSTING TERMS**

This clause will apply to the Matchbox Media Hosting Terms, unless a contrary intention appears.

4.1 Matchbox Media reserves the right, at any time, to amend any of the Matchbox Media Hosting Terms to which the Customer is bound without specific notice to the Customer. An updated version of the Matchbox Media Hosting Terms will be posted on the Website.

4.2 It is the Customer's responsibility as a diligent user to peruse any amended Matchbox Media Hosting Terms posted on the Website and the Customer undertakes to regularly visit the Website so as to remain advised of the amended Matchbox Media Hosting Terms.

4.3 If the Customer objects to any amended Matchbox Media Hosting Terms that are binding upon it or are to become binding upon it, the Customer is entitled to terminate its relationship with Matchbox Media under clause 14.2.

#### **5. CUSTOMER STATUS**

5.1 The Customer may be an incorporated entity (such as a company or close corporation), trust, partnership, or individual.

5.2 If a person enters into the Agreement in a representative capacity on behalf of a Customer who is an incorporated entity or on behalf of an unincorporated entity, or in any other representative capacity recognised in South African law, the person warrants that: i. they are legally authorised to do so and indemnifies Matchbox Media against any loss or damage that Matchbox Media may sustain resulting from the person's lack of authority; ii. all the information supplied to Matchbox Media at any time relating to the entity, trust, partnership, association or other person who they represent is true, accurate, and complete.

5.3 Matchbox Media reserves the right to treat all misrepresentations by the Customer or the person representing it as fraud and the person indemnifies Matchbox Media against any loss or damage that Matchbox Media may sustain resulting from the person's lack of authority.

5.4 If Matchbox Media discovers that the Customer has fraudulently contracted for the receipt of Services or that its representative has contracted without contractual capacity to do so, Matchbox Media may terminate the Matchbox Media Hosting Terms or Service/s immediately without any further liability to the Customer and the Customer may not claim any restitution or refund of any amount already paid, regardless of whether the Customer has used the Services or not.

5.5 The Customer will, if requested by Matchbox Media, furnish Matchbox Media with sufficient evidence of the authority of the person who will, on behalf of the Customer, take any action or execute any documents required or permitted to be taken or executed by the person under the Agreement. This would include providing proof of permission to debit from the authorised signatory of the Customer's bank account.

5.6 If a dispute arises between individuals or entities involved with the Customer (including partners, shareholders, trustees, employees), Matchbox Media may act on the representation of a person claiming to be duly authorised to represent the Customer, without being obliged to obtain independent verification of the authority. The Customer indemnifies Matchbox Media from any action or inaction based on the representation. However, if Matchbox Media, in its sole and absolute discretion, requires independent verification of the authority of any individual, the Customer must provide it in a format reasonably acceptable to Matchbox Media.

#### **6. COMMENCEMENT AND DURATION**

6.1 The application form submitted by the Customer to Matchbox Media will be treated as an offer by the Customer to make application for the Service/s. The Customer's offer will only be deemed to have been received by Matchbox Media once this has been confirmed to the Customer by Matchbox Media. Although the Website is configured to confirm receipt of any offer ("Confirmation"), technical or other problems may delay or prevent the Confirmation. The Customer should contact Matchbox Media if it does not receive Confirmation from Matchbox Media shortly after having sent the offer. Confirmation will not mean that a transaction has been concluded. It merely serves to confirm that the application has been received by Matchbox Media. Confirmation is deemed to have been sent by Matchbox Media as soon as this is reflected in Matchbox Media's log files.

6.2 The Matchbox Media Hosting Terms will commence and become binding on the Customer with effect from the Commencement Date.

6.3 The Matchbox Media Hosting Terms will endure for an indefinite period until terminated under clause 14.

6.4 Port Elizabeth, Eastern Cape will be deemed to be the place where the Parties have concluded the Agreement (or any part).

#### **7. SERVICE FEES**

7.1 All Service Fees payable by the Customer are payable in advance.

7.2 Where applicable, Matchbox Media will furnish the Customer with a VAT invoice in electronic format. The Customer agrees that by submitting an application form to Matchbox Media when making application for the Service/s, that the application constitutes confirmation by the Customer to accept electronic invoices for purposes of claiming input tax.

7.3 The Service Fees will be payable either on a monthly, quarterly, bi-annual, or annual basis as specified on the Website and are calculated in accordance with the rate schedule on the Website.

7.4 The Service Fees will be paid by way of debit order and the Customer authorises Matchbox Media to effect the necessary transfers from the Customer's designated bank account at the beginning of each and every month for the continued duration of the Matchbox Media Hosting Terms. The Customer must put the debit order in place within seven days of the Commencement Date. A rejected debit order will accrue a handling fee of R50 per rejection.

7.5 Where the Customer fails to supply a valid and current credit card or cheque account number when paying Matchbox Media via Debit Order for the Services, the Customer will be held liable for all fines and penalties resulting from the failed transaction.

7.6 The Customer may only pay cash for the Services in circumstances where the Service Fee is payable on an annual basis.

This would exclude any incremental over-usage charges

7.7 Where the Customer's use of any service commences during a month rather than at the start of that month, the Customer will be charged on a pro rata basis for those Services provided during that month.

7.8 Matchbox Media reserves the right to amend or vary the Service Fees from time to time and any amendment or variation of the Service Fees will be deemed to be an amendment of the Matchbox Media Hosting Terms. If Matchbox Media does amend its Service Fees, it will give the Customer at least 30 days prior notice. If the Customer objects to any amended Service Fees that affect it, it may terminate its relationship with Matchbox Media under clause 14.2.

7.9 The Customer may not withhold any payment of any amount due to Matchbox Media for any reason, including any alleged breach of the Matchbox Media Hosting Terms by Matchbox Media. In addition, the Customer may not:

(i) set-off against; or

(ii) demand any discount, refund (other than under clause 7.10), or reduction in respect of, any Service Fees owed to Matchbox Media.

7.10 The Service Fees are inclusive of value added tax. The Customer will pay any increase in Value Added Tax.

7.11 If a dispute arises between the parties, the Customer must continue paying the Service Fees as and when they become due and payable under the Matchbox Media Hosting Terms.

7.12 The Customer may terminate the Service within:

7.12.1 seven days after the Commencement Date if the Customer decides not to continue subscribing for the Service/s; or

7.12.2 within thirty days after the Commencement Date if Matchbox Media fails to meet the service levels for hosting services and e-mail services as specified in the Specific Terms, provided that the Customer's right to terminate must be exercised by notice from the Customer to Matchbox Media transmitted via e-mail to [billing@matchboxmedia.co.za](mailto:billing@matchboxmedia.co.za). If the Customer terminates the Service for one of these reasons, the Customer may receive a refund of any Service Fees from Matchbox Media. Matchbox Media may refund the Customer for any third party costs already incurred by Matchbox Media directly or indirectly as a result of the initial request for the Service. The Customer remains responsible for any third party costs.

## 8. MONITORING

8.1 Whilst Matchbox Media monitors its Services to determine that its facilities are operating satisfactorily, Matchbox Media does not, as a general practice, monitor its Customers activities. Where Matchbox Media is required to intercept communications in accordance with the Regulation of Interception and Provision of Communication-Related Act, 70 of 2003 ("the Monitoring Act"), any interception of communications must be strictly carried out in accordance with the requirements of the Monitoring Act, as and when required under the Monitoring Act.

8.2 With specific regard to the monitoring of content that is found on a website belonging to a Customer and which is hosted by Matchbox Media, Matchbox Media has no knowledge of, nor interest in, Customer content hosted by Matchbox Media or published by Matchbox Media on the Customer's behalf using the Services and further that Matchbox Media does not in any way contribute or approve the content.

8.3 Despite this, if Matchbox Media, in its sole and unfettered discretion, determines that any content is in violation of any law (including the Films and Publications Act 65 of 1996) or of the Acceptable Use Policy, or if Matchbox Media receives a takedown notice from ISPA, as contemplated in section 77 of the Electronic Communications and Transactions Act 25 of 2002, it may: i. request or require the Customer to remove, amend, or modify the content forthwith; ii. terminate access to any Services or suspend or terminate any Services without notice; iii. delete the offending content without notice; or iv. notify the relevant authorities of the existence of any content, make any back-up, archive, or other copies of any content, or take any further steps as required or requested by any authorities without notice.

8.4 Matchbox Media may disclose any content, material, or data (including any data of the Customer) if: i. required by law; ii. lawfully requested to do so by any authorities, including the South African Police Services pursuant to a subpoena under section 205 of the Criminal Procedure Act 51 of 1977; or iii. in accordance with a judicial, administrative or governmental order. Matchbox Media does not have to give the Customer notice.

8.5 The Customer will have no recourse against Matchbox Media if Matchbox Media acts under this clause and accordingly waives its right to make any claim or demand, or to institute any legal proceedings against Matchbox Media.

## 9. SECURITY

9.1 All Customer Data allocated to the Customer is personal to the Customer and the Customer will be liable for any loss or damage sustained by the Customer, Matchbox Media or any third party as a result of any actions by the Customer or any other person to whom the Customer has disclosed its Customer Data.

9.2 The Customer authorises Matchbox Media to act on any instruction given by or purporting to originate from the Customer, even if it transpires that both Matchbox Media and the Customer have been defrauded by someone else, unless the Customer has notified Matchbox Media under clause 9.3 prior to Matchbox Media acting on a fraudulent instruction.

9.3 If any security violations are reasonably believed to have occurred in connection with the Customer's account, Matchbox Media will investigate forthwith and, if necessary, change the relevant Customer Data, including access codes and passwords, and give the Customer immediate notification. A copy of the results of any investigation will be provided to the Customer at no cost.

9.4 The Customer must advise Matchbox Media immediately if any other person gains access to its Customer Data following the Matchbox Media procedures relating to reporting misuse [abuse@matchboxmedia.co.za](mailto:abuse@matchboxmedia.co.za) and must give its full co-operation to Matchbox Media in any investigation carried out by Matchbox Media.

9.5 The Customer indemnifies Matchbox Media against any claim from:

(i) the Customer's disclosure of its Customer Data to a third person;

(ii) the use of the Customer Data by a third person; or

(iii) any resulting action by the Customer or third party.

9.6 Matchbox Media reserves the right to take any action it may deem necessary at any time to preserve the security and reliable operation of its infrastructure. The Customer will not do anything (or permit anything to be done) that will compromise Matchbox Media's security.

9.7 Although Matchbox Media applies reasonable endeavours to provide disaster recovery, Matchbox Media does not specify any recovery time, nor is Matchbox Media liable for any loss or damage incurred or suffered by the Customer arising from or in connection with any cause as a result of its failure to provide, or delay in providing, or providing only partial disaster recovery. The Customer is required to make back-ups of its data. Nothing contained in the Matchbox Media Hosting Terms will be construed as a representation that any back-ups of data implemented by Matchbox Media will be successful or in any way will avoid disaster.

## 10. WARRANTIES

10.1 Matchbox Media warrants that it has the facilities, infrastructure, capacity, and capability to provide the Services.

10.2 Despite this warranty, the Services are provided "as is" and "as available" and without any further warranty of any kind, whether express or implied, including warranties of merchantability, fitness for purpose, title, or non-infringement.

10.3 Under no circumstances will any advice or information furnished by Matchbox Media (its agents or employees) be construed as a warranty of any kind.

## 11. INTELLECTUAL PROPERTY RIGHTS

11.1 The Customer is obliged to comply with all laws applicable to any Intellectual Property Rights in respect of any data or information created, accessed, retrieved, stored, or disseminated by the Customer through the Customer's use of the Services.

11.2 The Customer is prohibited from using any of the Matchbox Media Marks without the prior written approval of Matchbox Media.

11.3 The Customer grants Matchbox Media a non-exclusive licence to use its Marks for the limited purposes of enabling Matchbox Media to exercise its rights or to fulfil its obligations under the Matchbox Media Hosting Terms.

11.4 Other than as specifically provided for in the Matchbox Media Hosting Terms, Matchbox Media will wholly and exclusively retain all existing, and become the exclusive and unencumbered owner of all Intellectual Property Rights employed in or otherwise related to its network infrastructure, business and the provision of any of the Services under the Matchbox Media Hosting Terms.

## 12. CUSTOMER INDEMNITIES

12.1 The Services are provided subject to all applicable laws and the Customer accordingly indemnifies Matchbox Media from any liability attributable to any regulatory body or civil or criminal proceedings instituted against Matchbox Media or for any loss or damage suffered by the Customer or any third party as a consequence of any interruption or unavailability of the Services.

12.2 The Customer unconditionally and irrevocably indemnifies Matchbox Media and holds Matchbox Media free from and harmless against all losses suffered or incurred by the Customer or Matchbox Media or instituted against Matchbox Media by any third party as a direct or indirect result of the Customer's use of the Services, the Customer's failure to comply with any Matchbox Media Hosting Terms, or any downtime, outage, degradation of the network, interruption in or unavailability of the Services. Included within the ambit of downtime, outage, degradation of the network, interruption, or unavailability of the Services is any of the following:

- (i) software or hardware service, repairs, maintenance, upgrades, modification, alterations, replacement or relocation of premises affecting the Services,
- (ii) non-performance or unavailability of any of the services provided by a electronic communications network or service provider, including, line failure, or in any international services or remote mail servers,
- (iii) non-performance or unavailability of external communications networks to which the Customer or Matchbox Media's network infrastructure is connected, and
- (iv) repairs, maintenance, upgrades, modifications, alternations or replacement of any hardware forming part of the Services, or any faults or defects in the hardware.

12.3 The Customer will defend Matchbox Media against any claim against which Matchbox Media is indemnified under clause 12.2 and elsewhere in the Matchbox Media Hosting Terms ("indemnified claim") and pay any and all costs, damages and expenses (including attorneys fees on the attorney and own client scale) finally awarded against Matchbox Media by a court of competent jurisdiction or agreed to in a written settlement agreement signed by the Customer directly arising from the indemnified claim, provided that:

- (i) Matchbox Media will notify the Customer in writing as soon as Matchbox Media becomes aware of the indemnified claim to enable the Customer to take steps to contest it,
- (ii) the Customer may assume sole control of the defence of the claim or related settlement negotiations and
- (iii) Matchbox Media will provide the Customer, at the Customer's expense, with the assistance, information, and authority necessary to enable the Customer to perform its obligations under this clause.

12.4 The Customer must pay to Matchbox Media the amount of an indemnified claim forthwith upon request for payment. If the Customer contests the indemnified claim, the Customer must pay to Matchbox Media the amount of the indemnified claim forthwith after any judgment or order is granted, provided that in those circumstances where the Customer does not at any time proceed with the contest of the claim timeously and promptly, Matchbox Media may require the Customer either to pay the amount of the claim in question in trust to its attorneys pending the outcome of the proceedings, or Matchbox Media may require the Customer to give proper and adequate security therefore.

## 13. SUSPENSION OF THE SERVICES

13.1 Matchbox Media is entitled to temporarily suspend its obligations under the Matchbox Media Hosting Terms: i. to give effect to clauses 8.3 or 9.5, ii. to service, repair, maintain, upgrade, modify, alter, replace, or improve any of the Services; or iii. where third parties have alleged that the Customer has engaged in unlawful activities arising from or connected to the Services.

13.2 Where circumstances permit, Matchbox Media will use its best endeavours to provide prior notice of any the suspension to the Customer. Matchbox Media will not be liable for any resulting loss or damage incurred or suffered by the Customer arising from or in connection with or from any cause.

## 14. TERMINATION

14.1 Termination by Matchbox Media: Matchbox Media may terminate the Matchbox Media Hosting Terms together with any Services on three days written notice to the Customer at its address provided for the giving of notice in clause 18.

14.2 Termination by the Customer: The Customer may terminate the Matchbox Media Hosting Terms together with any Services on 30 days written notice to Matchbox Media in one of three ways:

- (i) via e-mail to [billing@matchboxmedia.co.za](mailto:billing@matchboxmedia.co.za),
- (ii) to Matchbox Media via fax at 086 668 4672 and to Matchbox Media at its address provided for the giving of notice in clause 18; or
- (iii) via the Matchbox Media Website's "Contact Us" facility.

14.3 All purported terms of termination communicated to Matchbox Media in any manner other than as specified may, at Matchbox Media's sole discretion, be deemed to have been invalidly given and without force and effect.

14.4 Breach: If the Customer breaches any of the Matchbox Media Hosting Terms, Matchbox Media may, without prejudice to any other rights that Matchbox Media may have and without notice to the Customer,;

- (i) claim immediate payment of all outstanding charges due to Matchbox Media,
- (ii) terminate or suspend the Customer's use of any or all of the Services,
- (iii) terminate its relationship with the Customer or
- (iv) list the Customer with any credit bureau, Internet service provider list, or the South African Fraud Prevention Service and- the Customer expressly consents to this.

In all instances, Matchbox Media may retain all Services Fees already paid by the Customer and recover all of its costs associated (including legal costs on an attorney and own client scale) with the Customer's breach, whether incurred prior to the institution of or during legal proceedings, or if judgment has been granted, in connection with the satisfaction of the judgment.

14.5 Retention of hardware or software: Where Matchbox Media is in possession of any hardware or software belonging to the Customer as a result of Matchbox Media's provision of the Services to the Customer, and the Customer is in default of its payment obligations to Matchbox Media, Matchbox Media may retain the hardware or software pending the Customer's settlement of all amounts owed by the Customer to Matchbox Media. Where the Customer fails to make payment of all amounts owed to Matchbox Media within 60 days of any notice by Matchbox Media to the Customer, Matchbox Media may dispose of the property to defray any expenses as well as any amounts owed by the Customer to Matchbox Media.

14.6 Return of hardware or software: Where the Customer is in possession of any Matchbox Media hardware or software in consequence of the provision of a Service and the related Service terminates, the Customer will immediately return the hardware or software to Matchbox Media and may not retain it for any reason.

## 15. FORCE MAJEURE

15.1 On the happening of a Force Majeure Event, any delay or failure in performance or resulting breach by Matchbox Media will not be a breach of the Matchbox Media Hosting Terms by Matchbox Media, nor will Matchbox Media be liable.

15.2 For purposes of this clause, a "Force Majeure Event" means any act of God, of public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strike, riot, blockage, embargo, sanctions, epidemics, act of any Government or other authority, compliance with Government orders, failure of any supplier of electricity, including Eskom, and telecommunications infrastructure or telecommunications lines provided by any third party, including the Telkom Limited group of companies, or any circumstances of like or different nature beyond Matchbox Media's reasonable control.

## 16. DISPUTE RESOLUTION

16.1 A dispute concerning this Agreement exists once a Party notifies the others in writing of the nature of the dispute and requires it to be resolved under this clause. The Parties must refer any dispute to be resolved by: • negotiation; failing which • mediation; failing which • arbitration.

16.2 Within ten business days of notification, the Parties must seek an amicable resolution to the dispute by referring it to designated and authorised representatives of each of the Parties to negotiate and resolve it by the Parties signing an agreement resolving it within 15 business days.

16.3 If negotiation fails, the Parties must refer the dispute for resolution by mediation under the rules of the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead) ("AFSA").

16.4 If mediation fails, the Parties must refer the dispute within 15 business days for resolution by arbitration (including any appeal against the arbitrator's decision) by one arbitrator (appointed by agreement between the Parties) as an expedited arbitration in Port Elizabeth under the then current rules for expedited arbitration of AFSA. If the Parties cannot agree on any arbitrator within a period of ten business days after the referral, the arbitrator will be appointed by the Secretariat of AFSA.

16.5 The periods for negotiation or mediation may be shortened or lengthened by written agreement between the Parties.

16.6 This clause will not preclude any Party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or mandamus pending finalisation of this dispute resolution process, for which purpose the Parties irrevocably submit to the jurisdiction of a division of the High Court of the Republic of South Africa. This clause is a separate, divisible agreement from the rest of this Agreement and must remain in effect even if the Agreement terminates, is nullified, or cancelled for any reason or cause.

16.7 Any award made by the arbitrator

- (i) will be final and binding,
- (ii) will be carried into effect, and
- (iii) may be made an order of any Court to whose jurisdiction the Parties are subject.

16.8 This clause constitutes an irrevocably consent by the Parties to any proceedings and no Party may withdraw or claim that it is not bound by this clause.

## 17. EXCLUSION AND LIMITATION OF LIABILITY

17.1 Matchbox Media (and its directors, employees, agents, consultants or advisers) are not liable for any indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage (whether arising, or may arise out of (or the use of) the Services, under contract, delict including negligence or gross negligence or otherwise), sustained by the Customer (its directors or servants), including any loss of profits, loss of operation time, corruption or loss of information, loss of contracts, or loss of profits.

17.2 Matchbox Media's total liability to the Customer will accordingly be limited to the payment of direct damages only, which direct damages will be limited to a maximum amount of

- (i) three months of the Customer's base hosting fee or
- (ii) R2,500, whichever is the lesser.

17.3 Matchbox Media's liability for direct damages under clause 17.2 will be excluded where the liability results or may result from the Customer's use of any third party services or products accessible or used in conjunction with the Services, but which are not provided by Matchbox Media.

17.4 This clause will apply even if Matchbox Media may have been advised of the possibility of the loss or damage being incurred prior to its occurrence.

## 18. NOTICES

18.1 Addresses: All notices to Matchbox Media, whether in respect of court process, notices or other documents or communications, must be given to Matchbox Media at 23 Lionel Road, Walmer Downs, Port Elizabeth, Eastern Cape, South Africa, 086 668 4672 (fax).

18.2 All notices that Matchbox Media is required to give may be given via e-mail to the e-mail address furnished to Matchbox Media on the application form when the Customer first subscribed for the Services.

18.3 Notice or communication to be in writing: Any notice or communication required or permitted to be given under this

Agreement will be valid and effective only if in writing.

18.4 Requirements for notices by the Customer: Any notice from the Customer to Matchbox Media

(i) sent by prepaid registered post will be deemed to have been received,

(ii) delivered by hand will be delivered during ordinary business hours at the physical address and will be deemed to have been received on the day of delivery.

## **19. GENERAL**

19.1 Whole Agreement: The Agreement constitutes the entire agreement between the Parties in respect of its subject matter. Each Party will only be bound by any undertakings, representations, warranties, or promises recorded in the Agreement.

19.2 No Variation: No variation, consensual cancellation, or addition to the Agreement will be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.

19.3 Waiver: No waiver of any of the terms of the Agreement will be binding or effectual for any purpose unless expressed in writing and signed by the Party giving the waiver, and any the waiver will be effective only in the specific instance and for the purpose given. No failure or delay by either Party in exercising any right, power, or privilege will operate as a waiver, nor will any single or partial exercise of any right, power, or privilege preclude any other or further exercise of any other right, power, or privilege.

19.4 Severability: If any term is held to be invalid, unlawful, or unenforceable, the term will be severable from the remaining terms, which will continue to be valid and enforceable. If any term held to be invalid is capable of amendment to render it valid, the Parties will negotiate an amendment to remove the invalidity.

19.5 Applicable Law: The Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all related disputes, actions, and other matters will be determined in accordance with that law.

19.6 Survival: Despite termination of the Agreement, any clause, which, from the context, contemplates ongoing rights and obligations of the Parties, will survive the termination and continue to be of full force and effect.

## **ACCEPTABLE USE POLICY**

Users of Matchbox Media services are required to agree and conform to the Terms of Service and Acceptable Use policies as defined in the topics below.

Violations of these policies may result in loss of service or other disciplinary action.

### **ABUSE AND SPAM**

We have a strong position against unsolicited e-mail.

### **ADULT CONTENT**

Certain content is better suited for hosting elsewhere.

### **MISUSE OF ACCOUNT FEATURES**

Your account features are for use with your sites only.

### **INTERACTIVE CHAT**

These systems are restricted for technical reasons.

### **RESOURCE USAGE**

Excessive resource usage will cause performance and stability problems.

### **DATABASE RESOURCE USAGE**

Certain database usages will require a dedicated server.

### **CRON USAGE**

Automated tasks may run subject to these conditions.

### **TRAFFIC USAGE**

Traffic consumption is monitored with monthly automated billing for over-usage.

### **SERVER SIDE PROCESSES**

Daemons and other resident programs are not welcome for Web Hosting.

### **SECURITY AND CRACKING**

These abuses are taken very seriously.

### **DOMAIN REGISTRATIONS**

Lame delegations are not welcome.

### **DISK USAGE**

Disk space usage is monitored with monthly automated billing for over-usage.

## **1. ABUSE AND SPAM**

1.1 Spamming is forbidden. "Spamming" includes, without limitation, the transmission of unsolicited communications through the Matchbox Media e-mail, instant messaging, SMS, chat rooms, discussion boards and similar facilities used for the purposes of communicating with other persons, creating false accounts for the purpose of sending Spam, sending unauthorized e-mail via open, third party servers, sending e-mails to users who requested to be removed from the mailing list and selling or exchanging the e-mail address of any person without that person's consent. Matchbox Media reserves the right to suspend or terminate the services in accordance with its General Terms should you breach this policy.

1.2 As a Matchbox Media customer, should you infringe this policy, you will be held liable for any costs incurred by Matchbox Media, both monetary and in reputation.

1.3 The use of any other service to make such a mailing or posting, with any reference to Matchbox Media services (including but not limited to mailboxes, autoresponders, and Web pages), shall also be grounds for account termination as described above.

1.4 This is our first and most stringently enforced policy. Abusive behaviour can severely damage an online reputation and business. We will not tolerate such incidents of abuse.

## **2. ADULT CONTENT**

2.1 Our services are tuned for general purpose use. It is in the interest of efficiency and reliability to restrict these sites, in order to provide the best service for the majority of our customers.

2.2 Exceptions are made for educational sites.

2.3 Adult-oriented sites, designed for entertainment or commercial purposes, are not allowed on Matchbox Media servers. Forbidden sites include those that provide access to pornographic materials or nudity, whether for free or for payment, regardless of whether adult verification is used or not. For purposes hereof "pornographic materials" is assigned the meaning in the Films and Publications Act 65 of 1996 and "nudity" refers to a person's intimate parts, but excludes nakedness in a natural and non sexual context, such as breastfeeding.

2.4 If Matchbox Media in its sole and unfettered discretion determines that any customer content violates any law, including the Film and Publications Act, 65 of 1966 or this policy, it may:

2.4.1 Request the customer to immediately remove such content; and/or

2.4.2 Require the customer to amend or modify such content; and/or

2.4.3 Without notice, terminate access to any services and/or suspend or terminate any services; and/or

2.4.4 Without notice, delete the offending content; and/or

2.4.5 Notify the relevant authorities of the existence of such content (if required by law or otherwise), make any backup, archive or other copies of such material as may be required by such authorities, disclose such elements of the customer's data as may be requested by the authorities and take such further steps as may be required by such authorities.

## **3. MISUSE OF ACCOUNT FEATURES**

3.1 Operating any service which makes an account feature available to third parties for any use other than normal access to that account's Web site is forbidden. Operating any service which enables or assists anonymous or abusive behavior by third parties is forbidden. Operating any service which affects the stability or reliability of any Matchbox Media server or network component, impacts other users or the company negatively, or degrades quality of service is forbidden.

3.2 This includes but is not limited to third party access to CGI services, database hosting, counters, banner exchanges, autoresponders, mailboxes, mail forwarding, mail filtering, and content publishing systems. All account features are to be used solely in order to develop and implement the Web site(s) associated with that account. Resellers may make reasonable use of account features shared between multiple accounts they are being billed for.

3.3 This means that, for example, you cannot:

3.3.2 resell autoresponders to third parties

3.3.3 run a service like hotmail.com or gmail.com

3.3.4 run a service like pobox.com

3.3.5 run a service like linkexchange.com

3.3.6 run a service like thecounter.com

3.3.7 run CGI scripts for other sites

3.3.8 host a remailer.

3.4 Certain usages are acceptable on our dedicated server options. Those exceptions will be made on a case-by-case basis only, and Matchbox Media reserves the right to discontinue service for any system whose maintainer is unable or unwilling to control abuse or related problems.

## **4. INTERACTIVE CHAT**

4.1 Interactive Web applications, of the specific type commonly known as "chat", are not allowed on Matchbox Media servers, unless the server is a Fully Managed dedicated server and provided that it does not interfere with Matchbox Media's ability to manage the server on the customer's behalf.

4.2 For the purposes of this policy, a "chat" system is defined as a Web site or portion thereof that encourages visitors to post messages in order to engage in "real-time" conversation with other visitors at the same site.

4.3 Interactive Web applications are not suitable for Matchbox Media's shared hosting environment due to the high levels of resource usage that they require.

4.4 Matchbox Media, does permit its Users to host forums provided that they are moderated in accordance with Matchbox Media's Forum Rules published from time which inter alia require that the moderators filter out all unlawful, adult or explicit content.

4.5 Matchbox Media permits its users to host their own personal web logs (blogs) on the following basis:

4.5.1 you accept and understand that any content that you provide to a blog enters an open, public forum, and is not confidential;

4.5.2 by disclosing personal information such as your name and email address in a blog, you acknowledge and understand that this information may be collected and used by other persons to communicate with you;

4.5.3 you may be held legally liable for the content that you provide in a blog;

4.5.4 Matchbox Media does not generally monitor or moderate blogs run on servers it hosts and therefore does not have knowledge of the content on the blog;

4.5.5 Matchbox Media does not condone, approve, endorse or support any content on the blog;

4.5.6 You use the blog at your own risk and indemnify Matchbox Media against any liability, loss or damage resulting therefrom.

4.6 Matchbox Media reserves the right to remove any offending content or stop or suspend your use of a blog or hosting a forum.

## 5. RESOURCE USAGE

- 5.1 Where the volume or resource usage negatively impacts on other clients in our hosting environment - this may result in immediate suspension of hosting services. This may be due to excessive server hits, excessive bandwidth usage, inefficient scripts or database queries along with any other items for which system administrators deem a misuse of server resources.
- 5.2 Users may not, through a cron job, CGI script, interactive command, or any other means, initiate the following on our servers:
- 5.2.1 Run any process that requires more than 16Mb of memory space.
  - 5.2.2 Run any program that requires more than 30 CPU seconds.
  - 5.2.3 Use 'Find' anywhere except in their own directories.
  - 5.2.4 Have more than 32 open files.
  - 5.2.5 Run more than 8 simultaneous processes.
  - 5.2.6 Send out mail to more than 500 recipients (email addresses) within one hour. 500 recipients represent one of the following: 500 recipients for one email, 500 individual emails or a combination of the two.
  - 5.2.7 Send or receive, through mail, any file larger than 10MB. This limit is enforced in our software.
  - 5.2.8 Accumulate more than 2000 mail messages in a single pop mailbox. If the message count is exceeded, new messages will bounce to the original sender.
  - 5.2.9 Run their own mailing list software.
  - 5.2.10 Run an interactive chat application.
  - 5.2.11 Run a banner exchange, remotely accessible web counter, or any other services that perform CGI processes for sites outside our network.
- 5.3 These limits are subject to change and variation as necessary, at the sole discretion of Matchbox Media.
- 5.4 The restrictions on mail delivery exist for a very simple reason: We run Web servers, not mail servers. Processing large amounts of mail adversely affects Web server performance.
- 5.5 If we find that you are performing bulk mail runs, regardless of whether it is Spam or not, we will have to deactivate your account and investigate. Please send such mailings through your local ISP's mailserver, or any other mailserver which you are authorized to use. Many such mailservers are configured especially to handle an extremely high volume of mail.
- 5.6 CGI scripts are to be run only by users with the appropriate account types -Basic or higher account levels for custom CGI scripting. No user may run CGI scripts for the benefit of external sites or services. This includes in particular all variations of "free Web counter" services.
- 5.7 The use of system resource limits is intended to prevent runaway CGI scripts on an unattended server. Also, processes with large memory footprints or hungry CPU requirements will incur swapping and other slowdowns that cause problems for every site on the server.
- 5.8 Resource limits are enforced by automatic monitoring systems. This is not applicable to Fully Managed dedicated servers, providing that it does not interfere with Matchbox Media's ability to manage the server on the customer's behalf.

## 6. DATABASE RESOURCE USAGE

- 6.1 MySQL databases are provided free-of-charge, subject to the conditions and restrictions below, to holders of the account types designated Basic and above.
- 6.1.1 Each qualifying individual account is limited to the allocated quota as published in the price matrix.
  - 6.1.2 Each individual database is allotted up to 20 MB (megabytes) of disk space. Extra disk usage within reason is allowed, and may be charged for at our normal disk overusage rate if deemed appropriate.
  - 6.1.3 Databases may not be used for circumventing account disk allowances by storing web sites within the database.
  - 6.1.4 Databases may only be used in conjunction with Matchbox Media hosted accounts. Access to databases from outside our local network is provided strictly for site and database development.
  - 6.1.5 Databases may not be used to store binary files (including but not limited to image and application files). These files should be stored within the user account and referred to in the database by a "pointer," if needed.
  - 6.1.6 Matchbox Media reserves the right to require changes to databases and database usage that has an adverse impact on a database server and/or other user databases on that server. Matchbox Media may move the database to a new server, or in extreme cases, Matchbox Media reserves the right to disable any database determined to be unacceptably harming performance of a database server.
- 6.2 Matchbox Media reserves the right to implement further allowances for database usage in the future, as new tools for determining a database's server impact are developed.
- 6.3 This policy exists in order to protect the integrity and performance of the database servers for all users. Accounts that acquired more than 5 databases before this policy went in to effect will be allowed to operate them for the lifetime of that account.
- 6.4 This is not applicable to Fully Managed dedicated servers, providing that it does not interfere with Matchbox Media's ability to manage the server on the customer's behalf.