

CLOUD SERVICE PROVIDER (CSP) SERVICE SPECIFIC TERMS AND CONDITIONS

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RECITAL

WHEREAS CSP warrants it is an authorised reseller of the Online Products;

WHEREAS the Customer wishes to appoint CSP as a supplier of the Online Products;

NOW THEREFORE in consideration of the mutual covenants contained in this Agreement, and for good and valuable consideration, CSP and the Customer agree on the terms and conditions outlined in this Agreement and applicable Annexures.

1. **DEFINITIONS**

In this Agreement, unless the context indicates a contrary intention, the following words and expressions shall bear the meanings assigned to them hereunder and cognate expressions shall bear corresponding meanings:

- 1.1. **“Accounts”** means an account enabling Customer’s Users to access and use the Online Products.
- 1.2. **“Acceptable Use Policy”** means the Software Vendor’s acceptable use policy applicable to Users, purchasing, accessing and/or using its Online Products, which may be changed, modified and amended, with or without notice in the sole discretion of the Software Vendor.
- 1.3. **“Additional Terms”** means (where applicable) the additional terms and conditions applicable to the Online Products as identified and contained in each applicable Annexure to this Agreement, which may be changed, modified and amended, with or without notice in the sole discretion of the Software Vendor.
- 1.4. **“Agreement”** means this cloud services customer agreement and all terms and conditions outlined herein, including all annexures hereto.
- 1.5. **“Applicable Laws”** means, in relation to any relevant jurisdiction: (i) any law, statute, regulation, policy, bylaw, directive, notice or subordinate legislation; (ii) any applicable direction, policy or order that is given by a relevant authority having the force of law; or (iv) any judgment, order, arbitration award or similar award, and includes any law insofar as it relates to the interpretation of any law.

- 1.6. **“Business Day”** means any day other than a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa.
- 1.7. **“Consumption Based Product”** means cloud-based products for which Customer is billed based on actual usage of the product;
- 1.8. **“Confidential Information”** means all information, including where applicable intellectual property, whether written (incl. information in an electronic format) oral and whether whole or part shall for the purpose of this Agreement include, without limitation, any technical, commercial or scientific information, know-how, trade secrets, processes, methodologies, machinery, designs, drawings, technical specifications, and data in whatever form, disclosed to or assessed by either Party during the course of its relationship with the other Party. For the purposes of this Agreement the Party who discloses Confidential Information shall be referred to as “the Disclosing Party” and the Party who receives the Confidential Information shall be referred to as “the Receiving Party”.
- 1.9. **“CSP”** means FirstNet Technology Services (Pty) Ltd, registration number: 2006/031608/07, a private company duly incorporated in terms of the laws of the Republic of South Africa with its principal place of business being 4 Sunbury Crescent, Sunbury Office Park, La Lucia Ridge, Durban
- 1.10. **“Customer”** means the person and/or entity who purchases the Online Products from the CSP;
- 1.11. **“Customer Data”** means all data, including personal information, collected by the CSP for the purpose of business communications, administration and transacting with the Customer in order to fulfil the CSP’s obligations in terms of this Agreement. This shall include Customers and/or Users name, company details, address, contact details, emails and account details, which will enable CSP to respond to queries or requests submitted by the Customer, process orders placed by the Customer or applications submitted.
- 1.12. **“Effective Date”** means the earlier date of either subscription and/or consumption by a User or the date of signature of this Agreement.
- 1.13. **“Fees”** means the fees payable by the Customer to CSP for any Online Products that are accessed and/or used and/or consumed by the Customer.
- 1.14. **“Online Products”** means any of the Software Vendor’s online services and/or cloud-based products subscribed to and/or purchased by Customer from CSP under this agreement, including but not limited to Subscription Based Products, Consumption Based Products and Perpetual Based Products. The availability and/or specifications of the Online Products may be modified, added and/or deleted by the Software Vendor in its sole discretion.

- 1.15. **“Product Terms”** means in relation to the Online Products, any documentation provided or made available by the Software Vendor including but not limited to operating manuals, user instructions, technical literature, terms of use and all other related materials in any form or medium, which relate to the Online Products. This will include any applicable warranties and/or guarantees in respect to the Online Products provided to the Customer by the Software Vendor and detail the applicable refund and/or return policy of the Software Vendor, which may be changed, modified and amended, with or without notice in the sole discretion of the Software Vendor.
- 1.16. **“Parties”** means collectively CSP and Customer and **“Party”** means any one of them as the context may require.
- 1.17. **“Perpetual Based Products”** means a type of software license that authorizes the Customer to use the Software Vendor’s online services and/or cloud-based products indefinitely.
- 1.18. **“Report”** means a report generated by CSP from Customer’s use of Consumption Based Products.
- 1.19. **“Software Vendor”** means a vendor company that creates, develops, provides and operates Online Products.
- 1.20. **“Subscription Based Products”** means a specific quantity of cloud offerings, to which Customer commits in advance to purchase for use during a pre-defined Subscription Term and for which Customer pays upfront or on a periodic basis.
- 1.21. **“Subscription Term”** means the duration of a Subscription Based Product (e.g. 30 days, 12 months, etc).
- 1.22. **“Users”** means one or more of the Customer’s officers, employees or personnel appointed as an authorised user of the Online Products and/or one or more of the Customer’s officers, employees or personnel who is granted authorisation to purchase Online Products from CSP on behalf of the Customer.

2. **INTERPRETATION**

- 2.1. The headings to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 2.2. If any provision in a definition in this Agreement is a substantive provision conferring rights or imposing obligations on any parties, then notwithstanding that it is only in the definition (interpretation) clause of this Agreement, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 2.3. Any number of days prescribed in this Agreement excludes the first day and includes the last day.

- 2.4. Unless the context indicates otherwise if the day for payment of any amount or performance of any obligation falls on a day which is not a Business Day, that day will be the next Business Day.
- 2.5. This Agreement shall be binding on and enforceable by the estates, heirs, executors, administrators, trustees, successors-in-title, assigns or liquidators of the parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any party shall be deemed to include such party's estate, heirs, executors, administrators, trustees, successors-in-title, assigns or liquidators, as the case may be.
- 2.6. Each paragraph, clause, term, and provision of this Agreement and any portion thereof shall be considered severable and if, for any reason any part of this Agreement is held to be invalid, contrary to, or in conflict with any applicable present or future law or regulation or in terms of a final, binding judgment issued by any arbitrator or court, it shall not impair the operation of, or have any other effect upon, such other portions of this Agreement as may remain otherwise intelligible, which shall continue to be given full force and effect and bind the parties hereto.
- 2.7. Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause.
- 2.8. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.9. In this Agreement, the rule of construction that the agreement shall be interpreted against the party responsible for the drafting or preparation of the agreement shall not apply.

3. **REPRESENTATION**

- 3.1. Each Party hereby represents and warrants to the other Party the following:

3.1.1. Authority

Each Party has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder without any further ratification or approval. This Agreement constitutes the legal, valid and binding obligations of each Party.

3.1.2. No Conflicts

Neither the execution nor delivery of this Agreement by the Party nor the consummation of the transactions contemplated hereby will violate or conflict with any obligation, contract or license of such Party which could reasonably be expected to interfere with the consummation of the transactions contemplated hereby.

4. **TERMS OF USE**

4.1. All access to, licensing of and use of the Online Products are granted to the Customer by the Software Vendor, in accordance with the Product Terms, Acceptable Use Policy and Additional Terms, on a nonexclusive, non-transferable basis, for the internal business purposes of the Customer. Customer and its Users shall not use the Online Products for resale, distribution, leasing, rental, loaning, sales, sublicensing, the provision of services and/or otherwise.

4.2. All rights granted to the Customer and/or its Users under this Agreement are limited to such rights that are provided by the Software Vendor s and are subject to the following limitations:

4.2.1. Customer will have control and access to the Online Products, the use of Online Products is the sole responsibility of the Customer and as such it is the Customer's sole responsibility to ensure that the Customer and its Users comply with the Product Terms, Acceptable Use Policy and Additional Terms;

4.2.2. It is Customer's sole responsibility to ensure that only authorized employees and personnel of the Customer make use of the Online Products. It is the Customers sole responsibility to provide its Users with such authorisation as may be required, to use the Online Products on behalf of the Customer;

4.2.3. The Customer may not allow Users to use the Online Products for more than the number of permitted users as prescribed by the Acceptable Use Policy, Product Terms and Additional Terms of the applicable Online Product;

4.2.4. The Customer may not assign its right to access and/or use the Online Products to third parties without first obtaining CSP's and/or the Software Vendor 's prior written consent;

4.2.5. Customer must ensure that the Online Products are only accessed by authorized Users and Customer must not permit unauthorized access or use of the Online Products.

4.2.6. Customer is responsible for its Users use of the Online Products in accordance with Software Vendor 's Acceptable Use Policy and/or Product Terms and/or Additional Terms.

4.2.7. Customer is responsible for maintaining the confidentiality of any authentication credentials associated with Customer's and/or its Users use of the Online Products. Customer shall implement reasonable security measures to ensure that no unauthorized employees, personnel or third parties gain access to the Online Products.

4.2.8. Customer must promptly notify CSP about any possible misuse of Customer's Accounts or authentication credentials or any security incident related to the Online Products. Notwithstanding the aforesaid, Customer takes full responsibility and liability for unauthorized access to and/or usage of the Online Products including, without limitation, access and usage of Online Products by unauthorized employees, personnel or third parties, through Customer's Accounts;

4.2.9. Customer and/or its Users may not copy, reverse engineer, disassemble, decompile, translate, or try to modify the Online Products or the source code of the Online Products;

4.2.10. Customer and/or Users will not access and/or use the Online Products:

4.2.10.1. In any way that causes or may cause damage to the Online Products; or

4.2.10.2. In any way that is unlawful, illegal, fraudulent or harmful.

5. SOFTWARE VENDORS

5.1. Customer acknowledges and agrees that any Online Products purchased from CSP pursuant to this Agreement are provided to Customer by the Software Vendor and these transactions are managed by CSP.

5.2. This Agreement contains the terms and conditions agreed to between Customer and CSP and/or the Software Vendor, for Customer's access and/or use of the Online Products. Customer acknowledges that it has read, understood, and agrees to be bound by this Agreement, and any additional Software Vendor policies and future modifications.

5.3. If at any time Customer does not agree to the terms and conditions applicable to its access and/or usage of the Online Products, Customer must cease to access and/or use the Online Products and terminate this Agreement, subject to all applicable Fees being paid in full.

5.4. The Product Terms, Acceptable Use Policy and Additional Terms are prescribed by the Software Vendor and may be amended in the Software Vendor's sole and absolute discretion. Any amendments, modifications and/or variations to Product Terms, Acceptable Use Policy and Additional Terms by the Software Vendor are incorporated herein by reference.

5.5. The Customer accepts that should the CSP be required to install any Online Product(s) and accept any associated Product Terms and/or Acceptable Use Policy terms on behalf of the Customer, then any such installation and acceptance by the CSP shall be deemed to have been installed and accepted by the Customer notwithstanding that the CSP may have installed or accepted the same on the Customers behalf.

6. PRICING AND PAYMENT OF FEES

6.1. CSP reserves the right to determine all Fees in respect to the Online Products. Fees are based on pricing provided to the CSP by the Software Vendor. The Fees are therefore subject to change from time to time based on price changes effected by the Software Vendor.

6.2. All Fees are subject to change based on rate of exchange fluctuations.

6.3. Ordering process

6.3.1. Customer will provide CSP with a purchase order in respect to the Online Products provided under this Agreement.

6.3.2. CSP shall submit invoices to Customer setting out the Fees in respect to Customer's access and/or usage of Online Products.

6.3.3. Payments made by Customer to CSP will be made in South African Rand only (ZAR) and shall be free of any deduction or set-off.

6.4. In respect to Subscription Based Products:

6.4.1. Customer will make payment of all Subscription Based Products in advance by either paying the applicable Fees upfront or on a periodic basis. CSP will provide Customer with a tax invoice at the time Customer subscribes for any Subscription Based Products, or when Customer renews its subscription for such Subscription Based Products, and Customer will make payment of such invoice within 30 days from date of invoice

6.5. In respect to Consumption Based Products:

6.5.1. CSP will provide Customer with a valid tax invoice, on a monthly basis, based on the Customer's access and/or use of any Consumption Based Products in the immediately preceding month. Customer will make payment of such invoices within 30 days from date of invoice.

6.6. In respect to Perpetual Based Products:

6.6.1. Customer will make payment of all Perpetual Based Products in advance by paying the applicable Fees upfront. CSP will provide Customer with a tax invoice at the time Customer purchases any Perpetual Based Products, and Customer will make payment of such invoice within 30 days from date of invoice.

6.7. If Customer fails to make full payment to CSP as outlined in this clause 6, the Customer shall pay interest to CSP on the outstanding amount at the prime lending rate as published by CSP's bankers, plus 2% (two percent) per annum calculated from the date on which payment falls due until the date on which payment is made by Customer in full.

6.8. In addition to clause 6.6 above and any other legal rights or remedies CSP may have in this Agreement or in law, should the Customer fail to make payment as outlined in this clause 6 and this is not remedied within 48 (forty eight) hours of written notice, CSP shall be entitled to terminate this Agreement and/or suspend Customer's access and/or usage of the Online Products with immediate effect.

6.9. Should CSP take the action outlined in clause 6.8, the Customer indemnifies CSP against any and all loss and/or damage incurred or to be incurred by the Customer as a result thereof.

6.10. Should Customer dispute any amount appearing on an invoice submitted by CSP pursuant to this Agreement, Customer shall, within 10 (ten) Business Days of receipt of the affected invoice, notify CSP, in writing, of such dispute, specifying the;

6.10.1. disputed invoice;

6.10.2. specific amount in dispute; and

6.10.3. alleged reasons or grounds for dispute.

6.11. Any amount disputed in terms of clause 6.11 shall not be regarded as payable in terms of this clause (provided the undisputed portion shall be paid without delay) and if the Parties are unable to resolve such dispute within 5 (five) Business Days from the date on which the dispute arose, it shall be referred to the financial manager of the Parties or their representatives for determination. If these representatives are unable to resolve the dispute within 7 (seven) Business Days from the date of referral, such dispute shall be referred for resolution in accordance clause 16 of this Agreement.

7. **TAXES**

7.1. Each Party acknowledges and agrees that each Party is liable for its own taxes that each Party is legally obliged to pay and which are incurred or arise in connection with or related to the transactions contemplated under this Agreement, and all such taxes will be the financial responsibility of the Party who is obligated by operation of law to pay such tax.

7.2. To the extent that any amounts payable by the Customer are subject to withholding tax or similar tax in the applicable jurisdiction ("Taxes"), the amount payable shall be grossed up by the Customer when remitting payment such that the amount paid net of Taxes equals the amount invoiced by the CSP .

8. **PRODUCT SUBSCRIPTION TERM**

8.1. Customer will not be entitled to terminate its subscription for Subscription Based Products prior to expiration of the Subscription Term.

8.2. Customer's subscription for Subscription Based Products will automatically renew at the end of the Subscription Term for a period equal to the previous subscription term, unless Customer provides CSP with no less than 60 days prior written notice of its intent not to renew its subscription for the Subscription Based Products.

8.3. **In respect to Perpetual Based Products**

8.3.1. Where the Customer purchases any Perpetual Based Products, the Customer acknowledges and accepts that upgrades, updates, maintenance and support are not included.

9. **CUSTOMER DATA**

9.1. Customer hereby consents, and grants CSP a non-exclusive license, to process the Customer Data, subject to any Applicable Laws, only to the extent reasonably required for the performance of CSP's obligations and exercise of its rights in terms of this Agreement.

9.2. Customer furthermore consents, and grants CSP a non-exclusive license, to sub-license the right to process the Customer Data to any Software Vendor only to the extent reasonably necessary for the performance of CSP's and/or the Software Vendor's obligations and the exercise of its rights in terms of this Agreement.

9.3. Customer warrants that the processing of the Customer Data by CSP in accordance with this Agreement will not breach the provisions of any Applicable law, statute or regulation, infringe intellectual property rights or other legal rights of any person or entity, or give rise to any cause of action against CSP, save where CSP processes the Customer Data in a manner that constitutes a breach of any Applicable Laws.

9.4. Customer warrants that it has obtained all necessary consents in respect of any personal information it provides to the CSP. All Customer Data provided to CSP as a result of this Agreement will be processed strictly in accordance with any Applicable Laws and CSP's External Data Privacy and Security Policy a copy of which will be made available to the Customer on written request.

10. **CONFIDENTIALITY OBLIGATIONS**

10.1. **Each Party undertakes to:**

10.2. Keep the other Party's Confidential Information confidential;

10.2.1. Not disclose the other Party's Confidential Information to any person or third party without the other Party's prior written consent;

- 10.2.2. Use the same degree of care to protect the confidentiality of the other Party's Confidential Information as each Party uses to protect its own Confidential Information of a similar nature, being at least a reasonable degree of care;
- 10.2.3. Not use any of the other Party's Confidential Information for any purpose other than for the purpose of performing its obligations in terms of the Agreement.
- 10.3. CSP may disclose Customer's Confidential Information to its officers and employees who have a need to access the Customer's Confidential Information for the performance of their work with respect to providing Customer with access and/or use of the Online Products, which officers and employees are obligated to protect the confidentiality of Customer's Confidential Information.
- 10.4. The obligations of the Receiving Party pursuant to the provisions of this Agreement shall not apply to any Confidential Information that:
- 10.4.1. is known to, or in the possession of the Receiving Party prior to disclosure thereof by the Disclosing Party;
- 10.4.2. is or becomes publicly known, otherwise than as a result of a breach of this Agreement by the Receiving Party;
- 10.4.3. is developed independently of the Disclosing Party and/or the Confidential Information, by the Receiving Party in circumstances that do not amount to a breach of the provisions of this Agreement;
- 10.4.4. is disclosed by the Receiving Party to satisfy an order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time; provided that in these circumstances, the Receiving Party shall (to the extent legally permissible) advise the Disclosing Party of such requirement to disclose, to enable the Disclosing Party to take whatever steps it deems necessary to protect its interests in this regard. In addition the Receiving Party will disclose only that portion of the Confidential Information which it is legally required to disclose and the Receiving Party will use its reasonable endeavors to protect the confidentiality of such information to the greatest extent possible in the circumstances;
- 10.4.5. is disclosed to a third party pursuant to the prior written authorization of the Disclosing Party.
- 10.4.6. is received from a third party in circumstances that do not result in a breach of the provisions of this Agreement.

11. ACKNOWLEDGEMENTS AND WARRANTY DISCLAIMER

- 11.1. CSP has concluded this Agreement in reliance upon the warranty disclaimers and the limitations of liability set forth herein, that the warranty disclaimers and the limitations of liability set forth herein reflect a reasonable and fair allocation of risk between Customer and CSP, and that the warranty disclaimers and the limitations of liability set forth herein form an essential basis of this Agreement between Customer and CSP. CSP would not be able to provide Customer with the Online Products on an economically reasonable basis without these limitations.
- 11.2. The Online Products purchased under this Agreement are made available by Software Vendors that are independent of the CSP and, as such, Customer agrees that CSP is not responsible for such Online Products. CSP will have no direct or indirect responsibility for or in relation to the performance or delivery, in any manner whatsoever, of the Online Products. Customer's purchase of, access to, performance of and use of the Online Products are regulated directly between the Customer and the applicable Software Vendor and is subject to that Software Vendor's Acceptable Use Policy, Product Terms and Additional Terms.
- 11.3. The Customer acknowledges and agrees that, in relation to the above clause 6.9 should the Customer fail to make payment to CSP for its subscription to and/or consumption of the Online Products, CSP shall be entitled to suspend and/or terminate provision of the Online Products to the Customer. The Customer is aware that any such suspension and/or termination of the Online Products may result in core business functionalities required by the Customer's business being rendered unavailable. Accordingly, the Customer expressly indemnifies CSP against any and all direct and/or indirect losses suffered by the Customer as a result of such suspension and/or termination.
- 11.4. Customer expressly agrees that the access and/or use of the Online Products is at its sole risk, any Online Products, data, information, third party software, user submissions, or services made available in conjunction with or through the Online Products are provided by CSP on an "as is" and "as available", "with all faults" basis and without warranties or representations of any kind either express or implied. Customer may, however, have additional warranty rights directly from the applicable Software Vendor.
- 11.5. To the fullest extent permissible pursuant to the applicable laws of the Republic of South Africa, CSP and its affiliates disclaim all warranties, statutory, express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, and non-infringement of proprietary rights. CSP and its affiliates do not warrant that the Online Products, data, user submissions, features, functions, or any other information offered on or through the Online Products or any reference materials will be uninterrupted, accurate, useful, or free of errors, viruses or other harmful components and do not warrant that any of the foregoing, if encountered, will be corrected.

11.6. CSP and its affiliates do not warrant or make any representations about the Software Vendors or the Software Vendor's services and Online Products. Any warranty made regarding any Software Vendor's Online Products is made directly by such Software Vendor. The exclusions of warranties contained in this Agreement apply to the Customer to the fullest extent such limitations or exclusions are permitted under Applicable Laws.

12. LIMITATION OF LIABILITY

12.1. Under no circumstances, will CSP or its affiliates, contractors, employees, agents, or third party service providers, partners, licensors, or suppliers be liable for, including but not limited, to any special, indirect, incidental, consequential, punitive, reliance, or exemplary damages (including without limitation damages arising from any unsuccessful court action or legal dispute, lost business, lost revenues or loss of anticipated profits) arising out of or relating to this Agreement or that result from Customer's use or Customer's inability to use and/or access the Online Products, or from any other interactions with CSP, even if CSP has been advised of the possibility of such damages. Applicable Law may not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to Customer. In such cases, CSP's liability will be limited to the fullest extent permitted by Applicable Law.

13. OWNERSHIP AND PROPRIETARY RIGHTS

13.1. Customer's access and/or use of the Online Products does not confer to Customer any right, title, and/or interest (of whatsoever nature and howsoever arising) worldwide, in any intellectual property rights vesting in the Online Products.

13.2. The CSP and/or Software Vendor expressly reserves all its intellectual property rights, and no licences are granted by implication, estoppel or otherwise to Customer except as expressly set forth in this Agreement.

14. REFUND POLICY AND RISK OF LOSS

14.1. All Fees and payments relating to Customer's access and/or usage of the Online Products are final, noncancellable and non-refundable.

14.2. The applicable Software Vendor may have its own policies regarding refunds and/or returns which are available to Customer, which are set forth in the applicable Software Vendor's Product Terms.

14.3. If Customer has paid for access to Online Products that are later disabled, non-functioning, modified, or otherwise interfered with before the end of the period for which Customer purchased access, Customer may rely on the applicable Software Vendor's Product Terms for any remedies available to Customer., in these circumstances the Customer has no remedy available to it against CSP.

15. **AVAILABILITY OF CONTENT**

15.1. The Software Vendor reserves the right to make any changes and/or discontinue any of the Online Products available to Customer at any time. In these circumstances the CSP will provide the Customer with as much reasonable notice, based to the notice period provided to CSP by the Software Vendor.

16. **DISPUTE RESOLUTION**

16.1. A dispute in the widest sense in connection with this Agreement or which relates in any way to any matter affecting the interests of the Parties, in regard to the Agreement (“Dispute”), shall be deemed to have arisen when either Party notifies the other Parties in writing to that effect.

16.2. Should any Dispute (other than a Dispute in respect of which urgent or interim relief may be obtained from a court of competent jurisdiction) arise, the Parties shall first use reasonable endeavours to resolve such Dispute through good faith negotiations. This entails one of the Parties inviting the other in writing to meet, either in person or by means of telephone or video conferencing facilities, and to attempt to resolve the Dispute within 10 Business Days from date of written invitation. In the event that such negotiations do not result in a mutually acceptable resolution within 10 Business Days of the commencement thereof, the Dispute shall be handled in accordance with the below.

16.3. Any Dispute shall be referred to arbitration on notice by one Party to the other and be finally resolved in accordance with the rules of the Arbitration Foundation of the Republic of South Africa. Such arbitration shall be held in Johannesburg and conducted in the English language before one arbitrator appointed in accordance with the said rules.

16.4. Any arbitration award will be final and not subject to appeal. This agreement to arbitrate shall be enforceable, and judgement upon any award may be entered in any court of any country having appropriate jurisdiction.

16.5. These provisions shall not prevent either Party from approaching any court or other judicial forum in any country having appropriate jurisdiction to obtain timely interim or other relief in cases of urgency.

16.6. The provisions of this clause shall constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.

17. TERM AND TERMINATION

17.1. The terms and conditions contained in this Agreement will commence on the Effective Date and will continue to be in force and effect until the Agreement is terminated:

17.1.1. by either Party should the other Party commit a material breach of any provision of this Agreement and fail to remedy such breach within 14 (fourteen) business days (or such period as may be reasonable in the circumstances) of written notice to do so;

17.1.2. By either Party on 30 days' written notice to the other Party of its intention to terminate the Agreement.

18. CONSEQUENCES OF TERMINATION

18.1. *Subscription based online products*

18.1.1. Should either Party terminate this Agreement in accordance with clause 17 above, termination will not affect the Customer's access to perpetual Online Products paid for,

18.1.2. Termination of this Agreement will only terminate Customer's right to place new orders for additional Online Products and/or to renew the Subscription Term for Subscription Based Products under this Agreement.

18.1.3. The Customer will be liable for payment of all outstanding Fees as at the termination date of the Agreement and for the remaining term of any Subscription Based Product.

18.2. *Consumption Based online products*

18.2.1. Should either Party terminate this Agreement in accordance with clause 17 above, Consumption Based Products billed periodically based on usage will terminate immediately. The Customer will be liable for payment of all Fees for unpaid usage as of the date of termination.

19. NOTICES

19.1. The Parties choose as their *domicilium citandi et executandi* for all purposes under this Agreement, whether in respect to court process, notices or other documents or communications of whatsoever nature, at the following addresses:

19.1.1. FOR CSP

Physical Address: 26 Augrabies Road,
Waterfall Office Park,

Midrand, 1686.

Attention: Arnold Sharp and Richard Hammond

Email: ArnoldS@firsttech.co.za and RichardH@firsttech.co.za

19.1.2. FOR **CUSTOMER**

The business address of the Customer as submitted by the Customer to the CSP.

19.2. Any notice required or permitted to be given under this Agreement shall be deemed given when delivered:

19.3. By hand on the day of delivery;

19.4. When a party receives the notice, notwithstanding the method or address of delivery;

19.4.1. By overnight courier, on the date of delivery;

19.4.2. By email at the time that same is transmitted and delivered.

20. **GENERAL**

20.1 This document contains the entire Agreement between the Parties with regard to the matters dealt with herein and no representations, terms, conditions or warranties not contained in this Agreement shall be binding on any of the Parties, unless agreed to in writing by the Parties;

20.2. Notwithstanding anything to the contrary contained in this Agreement, the CSP shall be entitled to subcontract, delegate, assign or cede any or all of the CSP's rights and/or obligations under this Agreement to any entity forming part of its group of companies (as defined in the South African Companies Act, 2008) without notice or the Customer's prior consent.

20.3. No latitude, relaxation, indulgence or extension of time which may be allowed on a Party or any of its employees by the other Party in respect of any performance or breach or any other matter in terms of this contract shall in any circumstances be deemed as a waiver by the other Party of any rights it may have.

20.4. In the event of any one or more of the provisions of this Agreement being held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not a part of this Agreement, and the agreement shall be carried out as nearly as possible in accordance with its original terms and intent.

20.5. Notwithstanding anything to the contrary, and notwithstanding the termination of this Agreement for any reason whatsoever, those provisions of this Agreement which expressly or by their nature are intended to

survive the termination of this Agreement, shall survive such termination and shall continue to be of force and effect.

20.6. The failure of either Party to exercise or enforce any right or provision contained in the Agreement will not constitute a waiver of such right or provision. Any waiver or amendment of any of the provisions contained in the Agreement will be effective only if reduced to writing and signed by the Parties.

20.7. Except for the Customer’s obligation to pay CSP, neither Party shall be liable for any failure to perform due to unforeseen circumstances or to causes beyond the Party’s reasonable control, including, but not limited to, acts of God, epidemics, pandemics, war, riot, acts of civil or military authorities, fire, flood, earthquake, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labour, or materials.

20.8. This Agreement shall be governed by the laws of the Republic of South Africa. Any action instituted in respect to the terms hereof, shall be instituted in Johannesburg, Gauteng, South Africa.

20.9. Each Party shall pay its own costs of and incidental to the preparation, drawing, finalising and execution of this Agreement, including incidental negotiations, consultations and attendances.

20.10. The Customer shall be liable for all costs incurred by the CSP in the recovery of any amounts or the enforcement of any rights which it has in terms of this Agreement, including collection charges and costs on an attorney and own client scale and costs of counsel.

ANNEXURE “A” TO CLOUD SOLUTIONS CUSTOMER AGREEMENT – MICROSOFT SPECIFIC ADDITIONAL TERMS AND CUSTOMER AGREEMENT

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1. RECITAL

The following terms and conditions apply to the Cloud Solutions Customer Agreement (“Agreement”) to which this Annexure “A” is attached. Any terms and definitions outlined in the Agreement apply *mutatis*

mutandis to this Annexure “A”, provided that in the event of any conflict the terms of this Annexure “A” shall prevail.

Where applicable, this Annexure “A” supersedes and replaces any previous Microsoft specific Additional Terms and Customer Agreement Annexure “A” agreed to by the Customer.

Microsoft makes various products available through its CSP program, which products (as may be updated by Microsoft from time to time) include but are not limited to the following:

- License-based services (Legacy)
(Office 365, Enterprise Mobility + Security E3, and Dynamics 365)
- License-based services (New Commerce Experience)
(Modern commerce versions of Office 365, Enterprise Mobility + Security E3, and Dynamics 365)
- Usage-based services
(Microsoft Azure and Visual Studio.)
- Microsoft Azure Reserved Instances
(Microsoft Azure and Visual Studio)
- Software subscriptions
(Term based software subscriptions)
- Perpetual software
(Perpetual software products)
- Azure plan pricing
(Azure plan consumption resources and Azure plan reservations)
- Marketplace
(ISV solutions from Microsoft's commercial marketplace)

Additional information regarding the available Microsoft product sets can be found at www.microsoft.com.

2. SPECIFIC REQUIREMENTS FOR MICROSOFT LICENSE BASED SERVICES

- 2.1. The Customer must at the time of purchase select:
 - 2.1.1. the relevant SKU for the applicable Microsoft Subscription Based Products that are License Based Services (“Licenses”);
 - 2.1.2. the quantity of Licenses required; and
 - 2.1.3. the committed Subscription Term for such Licenses.
- 2.2. Unless otherwise permitted by Microsoft, the Customer may not cancel, downgrade or decrease any Licenses during the Subscription Term or any renewal Subscription Term, and shall not be entitled to change their Microsoft partner during the Subscription Term or any renewal Subscription Term.
- 2.3. Should the Customer be provided with trial Licenses, then Customer is obligated to notify the CSP of intention to cancel the trial Licenses prior to expiration of the trial period, failing which the applicable trial Licenses will automatically be converted into paid Licenses which will be for the Subscription Term indicated in the initial trial License subscription.

- 2.4. The Subscription Term for Licenses will automatically renew for further periods equal to the preceding Subscription Term unless prior to expiration of the Subscription Term the Customer explicitly elects otherwise in accordance with the standard operating procedure applicable at the time of renewal.
- 2.5. The Customer will become liable for the new Subscription Term on renewal and each renewal will be subject to the pricing and other terms applicable at the date of the renewal.
- 2.6. If the Customer does not explicitly communicate their intention not to renew then the Customer accepts liability for the cost of that renewal and will be bound for the full Subscription Term of such renewal.
- 2.7. The Customer's access to and use of the Licenses will at all times be subject to the Microsoft rules relating to License-Based Services which can be found at <https://docs.microsoft.com/en-us/partnercenter/newcommerce-license-based> and <https://docs.microsoft.com/>, as well as any applicable Microsoft Customer Agreement as may be updated and amended from time to time, a recent copy of which is attached hereto.
- 2.8. The Customer will be liable for payment for the full Subscription Term of any Licenses (both for the initial Subscription Term and any renewal), which shall be invoiced and paid for in accordance with the payment terms and at the payment frequency agreed to between the Parties.
- 2.9. Microsoft defines the rules in terms of which a License subscription's start and end date are calculated.
- 2.10. Where the Customer has Licenses across more than one Microsoft tenant, the Customer acknowledges that it is not permitted to reallocate Licenses across different Microsoft tenant's and every License is strictly allocated to a specified Microsoft tenant.
- 2.11. Where applicable, the Customer authorizes the CSP and/or its indirect provider to have delegated administration rights on its tenant.
- 2.12. In circumstances where the Customer is the administrator of its License portal, the Customer will be required to notify the CSP of any Licenses it purchases on the portal, and shall be liable for any purchases it makes on the portal.

3. MICROSOFT CUSTOMER AGREEMENT



Microsoft Customer Agreement

This Microsoft Customer Agreement (the "Agreement") is between Customer and Microsoft and consists of these General Terms, the applicable Use Rights and SLAs, and any additional terms Microsoft presents when an order is placed. This Agreement takes effect when the Customer accepts these General Terms. The individual who accepts these General Terms represents that he or she is authorized to enter into this Agreement on behalf of the Customer.

General Terms

These General Terms apply to all of Customer's orders under this Agreement. Capitalized terms have the meanings given under "Definitions."

License to use Microsoft Products

- a. **License grant.** Products are licensed and not sold. Upon Microsoft's acceptance of each order and subject to Customer's compliance with this Agreement, Microsoft grants Customer a nonexclusive and limited license to use the Products ordered as provided in the applicable Use Rights and this Agreement. These licenses are solely for Customer's own use and business purposes and are nontransferable except as expressly permitted under this Agreement or applicable law.
- b. **Duration of licenses.** Licenses granted on a subscription basis expire at the end of the applicable subscription period unless renewed. Licenses granted for metered Products billed periodically based on usage continue as long as Customer continues to pay for its usage of the Product. All other licenses become perpetual upon payment in full.
- c. **Applicable Use Rights.** For perpetual licenses, the Use Rights in effect when Customer orders a Product will apply. For subscriptions, the Use Rights in effect at the start of each subscription period will apply. Customers with subscriptions for Software may use new versions released during the subscription period subject to the Use Rights in effect when those versions are released. For metered Products billed periodically based on usage, the Use Rights in effect at the start of each billing period will apply during that period. Microsoft may update the Use Rights periodically, but material adverse changes for a particular version will not apply during the applicable license, subscription, or billing period.
- d. **End Users.** Customer will control access to and use of the Products by End Users and is responsible for any use of the Products that does not comply with this Agreement.
- e. **Affiliates.** Customer may order Products for use by its Affiliates. If it does, the licenses granted to Customer under this Agreement will apply to such Affiliates, but Customer will have the sole right to enforce this Agreement against Microsoft. Customer will remain responsible for all obligations under this Agreement and for its Affiliates' compliance with this Agreement.
- f. **Reservation of Rights.** Microsoft reserves all rights not expressly granted in this Agreement. Products are protected by copyright and other intellectual property laws and international treaties. No rights will be granted or implied by waiver or estoppel. Rights to access or use a



Product on a device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.

- g. **Restrictions.** Except as expressly permitted in this Agreement or Product documentation, Customer must not (and is not licensed to):
- (1) reverse engineer, decompile, or disassemble any Product, or attempt to do so;
 - (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms;
 - (3) work around any technical limitations in a Product or restrictions in Product documentation;
 - (4) separate and run parts of a Product on more than one device;
 - (5) upgrade or downgrade parts of a Product at different times;
 - (6) transfer parts of a Product separately; or
 - (7) distribute, sublicense, rent, lease, or lend any Products, in whole or in part, or use them to offer hosting services to a third party.
- h. **License transfers.** Customer may only transfer fully-paid, perpetual licenses to (1) an Affiliate or (2) a third party solely in connection with the transfer of hardware to which, or employees to whom, the licenses have been assigned as part of (a) a divestiture of all or part of an Affiliate or (b) a merger involving Customer or an Affiliate. Upon such transfer, Customer must uninstall and discontinue using the licensed Product and render any copies unusable. Customer must notify Microsoft of a License transfer and provide the transferee a copy of these General Terms, the applicable Use Rights and any other documents necessary to show the scope, purpose and limitations of the licenses transferred. Attempted license transfers that do not comply with this section are void.
- i. **Customer Eligibility.** Customer agrees that if it is purchasing academic, government or nonprofit offers, Customer meets the respective eligibility requirements (<https://aka.ms/eligibilitydefinition>). Microsoft reserves the right to verify eligibility and suspend product use if requirements are not met.

Non-Microsoft Products.

Non-Microsoft Products are provided under separate terms by the Publishers of such products. Customer will have an opportunity to review those terms prior to placing an order for a Non-Microsoft Product through a Microsoft online store or Online Service. Microsoft is not a party to the terms between Customer and the Publisher. Microsoft may provide Customer's contact information and transaction details to the Publisher. Microsoft makes no warranties and assumes no responsibility or liability whatsoever for Non-Microsoft Products. Customer is solely responsible for its use of any Non-Microsoft Product.

Verifying compliance.



Customer must keep records relating to Products it and its Affiliates use or distribute. At Microsoft's expense, Microsoft may verify Customer's and its Affiliates' compliance with this Agreement at any time upon 30 days' notice. To do so, Microsoft may engage an independent auditor (under nondisclosure obligations) or ask Customer to complete a self-audit process. Customer must promptly provide any information and documents that Microsoft or the auditor reasonably requests related to the verification and access to systems running the Products. If verification or self-audit reveals any unlicensed use, Customer must, within 30 days, order sufficient licenses to cover the period of its unlicensed use. Without limiting Microsoft's other remedies, if unlicensed use is 5% or more of Customer's total use of all Products, Customer must reimburse Microsoft for its costs incurred in verification and acquire sufficient licenses to cover its unlicensed use at 125% of the then-current Customer price or the maximum allowed under applicable law, if less. All information and reports related to the verification process will be Confidential Information and used solely to verify compliance.

Privacy.

- a. **Personal Data.** Customer consents to the processing of Personal Data by Microsoft and its Affiliates, and their respective agents and subcontractors, as provided in this Agreement. Before providing Personal Data to Microsoft, Customer will obtain all required consents from third parties (including Customer's contacts, Partners, distributors, administrators, and employees) under applicable privacy and data protection laws.
- b. **Location of Personal Data.** To the extent permitted by applicable law, Personal Data collected under this Agreement may be transferred, stored and processed in the United States or any other country in which Microsoft or its Affiliates, or their respective agents and subcontractors, maintain facilities. Microsoft will abide by the requirements of European Economic Area and Swiss data protection law regarding the collection, use, transfer, retention, and other processing of Personal Data from the European Economic Area and Switzerland.

Confidentiality.

- a. **Confidential Information.** "Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand is confidential, including, but not limited to, Customer Data, the terms of this Agreement, and Customer's account authentication credentials. Confidential Information does not include information that (1) becomes publicly available without a breach of a confidentiality obligation; (2) the receiving party received lawfully from another source without a confidentiality obligation; (3) is independently developed; or (4) is a comment or suggestion volunteered about the other party's business, products or services.
- b. **Protection of Confidential Information.** Each party will take reasonable steps to protect the other's Confidential Information and will use the other party's Confidential Information only for purposes of the parties' business relationship. Neither party will disclose Confidential Information to third parties, except to its Representatives, and then only on a need-to-know basis under nondisclosure obligations at least as protective as this Agreement. Each



party remains responsible for the use of Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party. The Online Services Terms may provide additional terms regarding the disclosure and use of Customer Data.

- c. **Disclosure required by law.** A party may disclose the other's Confidential Information if required by law, but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.
- d. **Residual information.** Neither party is required to restrict work assignments of its Representatives who have had access to Confidential Information. Each party agrees that the use of information retained in Representatives' unaided memories in the development or deployment of the parties' respective products or services does not create liability under this Agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly.
- e. **Duration of Confidentiality obligation.** These obligations apply (1) for Customer Data, until it is deleted from the Online Services; and (2) for all other Confidential Information, for a period of five years after a party receives the Confidential Information.

Product warranties.

a. Limited warranties and remedies.

- (1) **Online Services.** Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Customer's use. Customer's remedies for breach of this warranty are described in the SLA.
- (2) **Software.** Microsoft warrants that the Software version that is current at the time will perform substantially as described in the applicable Product documentation for one year from the date Customer acquires a license for that version. If it does not, and Customer notifies Microsoft within the warranty term, Microsoft will, at its option, (a) return the price Customer paid for the Software license or (b) repair or replace the Software.

The remedies above are Customer's sole remedies for breach of the warranties in this section. Customer waives any warranty claims not made during the warranty period.

- b. **Exclusions.** The warranties in this Agreement do not apply to problems caused by accident, abuse, or use inconsistent with this Agreement, including failure to meet minimum system requirements. These warranties do not apply to free, trial, preview, or prerelease products, or to components of Products that Customer is permitted to redistribute.
- c. **Disclaimer.** Except for the limited warranties above and subject to applicable law, Microsoft provides no other warranties or conditions for Products and disclaims any other express, implied or statutory warranties for Products, including warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.



Defense of third-party claims.

The parties will defend each other against the third-party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the right to control the defense and any settlement of it. The party being defended must provide the defending party with all requested assistance, information, and authority. The defending party will reimburse the other party for reasonable out-of-pocket expenses it incurs in providing assistance. This section describes the parties' sole remedies and entire liability for such claims.

- a. **By Microsoft.** Microsoft will defend Customer against any third-party claim to the extent it alleges that a Product made available by Microsoft for a fee and used within the scope of the license granted under this Agreement (unmodified from the form provided by Microsoft and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party. If Microsoft is unable to resolve a claim of misappropriation or infringement, it may, at its option, either (1) modify or replace the Product with a functional equivalent or (2) terminate Customer's license and refund any license fees (less depreciation for perpetual licenses), including amounts paid in advance for unused consumption for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Customer's continued use of a Product after being notified to stop due to a third-party claim.
- b. **By Customer.** To the extent permitted by applicable law, Customer will defend Microsoft and its Affiliates against any third-party claim to the extent it alleges that: (1) any Customer Data or Non-Microsoft Product hosted in an Online Service by Microsoft on Customer's behalf misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party; or (2) Customer's use of any Product, alone or in combination with anything else, violates the law or harms a third party.

Limitation of liability.

For each Product, each party's maximum, aggregate liability to the other under this Agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the Products during the term of the applicable licenses, subject to the following:

- a. **Subscriptions.** For Products ordered on a subscription basis, Microsoft's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Product during the 12 months before the incident.
- b. **Free Products and distributable code.** For Products provided free of charge and code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US\$5,000.
- c. **Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, or loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.
- d. **Exceptions.** No limitation or exclusions will apply to liability arising out of either party's (1) confidentiality obligations (except for liability related to Customer Data, which will remain



subject to the limitations and exclusions above); (2) defense obligations; or (3) violation of the other party's intellectual property rights.

Partners.

- a. **Selecting a Partner.** Customer may authorize a Partner to place orders on Customer's behalf and manage Customer's purchases by associating the Partner with its account. If the Partner's distribution right is terminated, Customer must select an authorized replacement Partner or purchase directly from Microsoft. Partners and other third parties are not agents of Microsoft and are not authorized to enter into any agreement with Customer on behalf of Microsoft.
- b. **Partner Administrator privileges and access to Customer Data.** If Customer purchases Online Services from a Partner or chooses to provide a Partner with administrator privileges, that Partner will be the primary administrator of the Online Services and will have administrative privileges and access to Customer Data and Administrator Data. Customer consents to Microsoft and its Affiliates providing the Partner with Customer Data and Administrator Data for purposes of provisioning, administering and supporting (as applicable) the Online Services. Partner may process such data according to the terms of Partner's agreement with Customer, and its privacy commitments may differ from Microsoft's. Customer appoints Partner as its agent for purposes of providing and receiving notices and other communications to and from Microsoft. Customer may terminate the Partner's administrative privileges at any time.
- c. **Support and Professional Services.** Customer's Partner will provide details on support services available for Products purchased under this agreement. Support services may be performed by Partner or its designee, which in some cases may be Microsoft. If Customer purchases Professional Services under this agreement, the performance of those Professional Services will be subject to the terms and conditions in the Use Rights.

Pricing and payment.

If Customer orders from a Partner, the Partner will set Customer's pricing and payment terms for that order, and Customer will pay the amount due to the Partner. Pricing and payment terms related to orders placed by Customer directly with Microsoft are set by Microsoft, and Customer will pay the amount due as described in this section.

- a. **Payment method.** Customer must provide a payment method or, if eligible, choose to be invoiced for purchases made on its account. By providing Microsoft with a payment method, Customer (1) consents to Microsoft's use of account information regarding the selected payment method provided by the issuing bank or applicable payment network; (2) represents that it is authorized to use that payment method and that any payment information it provides is true and accurate; (3) represents that the payment method was established and is used primarily for commercial purposes and not for personal, family or household use; and (4) authorizes Microsoft to charge Customer using that payment method for orders under this Agreement.



- b. **Invoices.** Microsoft may invoice eligible Customers. Customer's ability to elect payment by invoice is subject to Microsoft's approval of Customer's financial condition. Customer authorizes Microsoft to obtain information about Customer's financial condition, which may include credit reports, to assess Customer's eligibility for invoicing. Unless the Customer's financial statements are publicly available, Customer may be required to provide their balance sheet, profit and loss and cash flow statements to Microsoft. Customer may be required to provide security in a form acceptable to Microsoft to be eligible for invoicing. Microsoft may withdraw Customer's eligibility at any time and for any reason. Customer must promptly notify Microsoft of any changes in its company name or location and of any significant changes in the ownership, structure, or operational activities of the organization.
- c. **Invoice Payment terms.** Each invoice will identify the amounts payable by Customer to Microsoft for the period corresponding to the invoice. Customer will pay all amounts due within thirty (30) calendar days following the invoice date.
- d. **Late Payment.** Microsoft may, at its option, assess a late fee on any payments to Microsoft that are more than fifteen (15) calendar days past due at a rate of two percent (2%) of the total amount payable, calculated and payable monthly, or the highest amount allowed by law, if less.
- e. **Cancellation fee.** If a subscription permits early termination and Customer cancels the subscription before the end of the subscription or billing period, Customer may be charged a cancellation fee.
- f. **Recurring Payments.** For subscriptions that renew automatically, Customer authorizes Microsoft to charge Customer's payment method periodically for each subscription or billing period until the subscription is terminated. By authorizing recurring payments, Customer authorizes Microsoft to process such payments as either electronic debits or fund transfers, or as electronic drafts from the designated bank account (in the case of Automated Clearing House or similar debits), as charges to the designated card account (in the case of credit card or similar payments) (collectively, "Electronic Payments"). If any payment is returned unpaid or if any credit card or similar transaction is rejected or denied, Microsoft or its service providers reserve the right to collect any applicable return item, rejection or insufficient funds fee to the maximum extent permitted by applicable law and to process any such fees as an Electronic Payment or to invoice Customer for the amount due.
- g. **Taxes.** Microsoft prices exclude applicable taxes unless identified as tax inclusive. If any amounts are to be paid to Microsoft, Customer shall also pay any applicable value added, goods and services, sales, gross receipts, or other transaction taxes, fees, charges, or surcharges, or any regulatory cost recovery surcharges or similar amounts that are owed under this Agreement and that Microsoft is permitted to collect from Customer. Customer shall be responsible for any applicable stamp taxes and for all other taxes that it is legally obligated to pay including any taxes that arise on the distribution or provision of Products by Customer to its Affiliates. Microsoft shall be responsible for all taxes based upon its net income, gross receipts taxes imposed in lieu of taxes on income or profits, and taxes on its property ownership.



If any taxes are required to be withheld on payments invoiced by Microsoft, Customer may deduct such taxes from the amount owed and pay them to the appropriate taxing authority, but only if Customer promptly provides Microsoft an official receipt for those withholdings and other documents reasonably requested to allow Microsoft to claim a foreign tax credit or refund. Customer will ensure that any taxes withheld are minimized to the extent possible under applicable law.

Term and termination.

- a. **Term.** This Agreement is effective until terminated by a party, as described below.
- b. **Termination without cause.** Either party may terminate this Agreement without cause on 60 days' notice. Termination without cause will not affect Customer's perpetual licenses, and licenses granted on a subscription basis will continue for the duration of the subscription period(s), subject to the terms of this Agreement.
- c. **Termination for cause.** Without limiting other remedies it may have, either party may terminate this Agreement on 30 days' notice for material breach if the other party fails to cure the breach within the 30-day notice period. Upon such termination, the following will apply:
 - (1) All licenses granted under this Agreement will terminate immediately except for fully-paid, perpetual licenses.
 - (2) All amounts due under any unpaid invoices shall become due and payable immediately. For metered Products billed periodically based on usage, Customer must immediately pay for unpaid usage as of the termination date.
 - (3) If Microsoft is in breach, Customer will receive a credit for any subscription fees, including amounts paid in advance for unused consumption for any usage period after the termination date.
- d. **Suspension.** Microsoft may suspend use of an Online Service without terminating this Agreement during any period of material breach. Microsoft will give Customer notice before suspending an Online Service when reasonable.
- e. **Termination for regulatory reasons.** Microsoft may modify, discontinue, or terminate a Product in any country or jurisdiction where there is any current or future government regulation, obligation, or other requirement, that (1) is not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue offering the Product without modification; or (3) causes Microsoft to believe these terms or the Product may conflict with any such regulation, obligation, or requirement. If Microsoft terminates a subscription for regulatory reasons, Customer will receive, as its sole remedy, a credit for any subscription fees, including amounts paid in advance for unused consumption for any usage period after the termination date.

Miscellaneous.

- a. **Independent contractors.** The parties are independent contractors. Customer and Microsoft each may develop products independently without using the other's Confidential Information.



- b. **Agreement not exclusive.** Customer is free to enter into agreements to license, use, and promote the products and services of others.
- c. **Amendments.** Microsoft may modify this Agreement from time to time. Changes to the Use Rights will apply as provided in this Agreement. Changes to other terms will not apply until Customer accepts them. Microsoft may require Customer to accept revised or additional terms before processing a new order. Any additional or conflicting terms and conditions contained in a purchase order or otherwise presented by Customer are expressly rejected and will not apply.
- d. **Assignment.** Either party may assign this Agreement to an Affiliate, but it must notify the other party in writing of the assignment. Customer consents to the assignment to an Affiliate or third party, without prior notice, of any rights Microsoft may have under this Agreement to receive payment and enforce Customer's payment obligations, and all assignees may further assign such rights without further consent. Any other proposed assignment of this Agreement must be approved by the non-assigning party in writing. Assignment will not relieve the assigning party of its obligations under the assigned Agreement. Any attempted assignment without required approval will be void.
- e. **U.S. export.** Products are subject to U.S. export jurisdiction. Customer must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end use and destination restrictions by U.S. and other governments related to Microsoft products, services, and technologies.
- f. **Severability.** If any part of this Agreement is held to be unenforceable, the rest of the Agreement will remain in full force and effect.
- g. **Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.
- h. **No third-party beneficiaries.** This Agreement does not create any third-party beneficiary rights except as expressly provided by its terms.
- i. **Survival.** All provisions survive termination of this Agreement except those requiring performance only during the term of the Agreement.
- j. **Notices.** Notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier or fax confirmation of delivery. Notices to Microsoft must be sent to the following address:

Microsoft Ireland Operations Limited
One Microsoft Place
South County Business Park
Leopardstown
Dublin 18, Ireland



Notices to Customer will be sent to the individual at the address Customer identifies on its account as its contact for notices. Microsoft may send notices and other information to Customer by email or other electronic form.

- k. **Applicable law.** This Agreement will be governed by and construed in accordance with the laws of Ireland. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement.
- l. **Dispute resolution.** When bringing any action arising under this Agreement, the parties agree to the following exclusive venues:
- (1) If Microsoft brings the action, the venue will be where Customer has its headquarters.
 - (2) If Customer brings the action against Microsoft or any Microsoft Affiliate located outside of Europe, the venue will be the state or federal courts in King County, State of Washington, USA.
 - (3) If Customer brings the action against Microsoft or any Microsoft Affiliate located in Europe, and not also against Microsoft or a Microsoft Affiliate located outside of Europe, the venue will be the Republic of Ireland.
- The parties consent to personal jurisdiction in the agreed venue. This choice of venue does not prevent either party from seeking injunctive relief in any jurisdiction with respect to a violation of intellectual property rights or confidentiality obligations.
- m. **Order of precedence.** These General Terms will take precedence over any conflicting terms in other documents that are part of this Agreement that are not expressly resolved in those documents, except that conflicting terms in the Use Rights take precedence over these General Terms as to the applicable Products. Terms in the Online Services Terms take precedence over conflicting terms in the Product Terms. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- n. **Microsoft Affiliates and contractors.** Microsoft may perform its obligations under this Agreement through its Affiliates and use contractors to provide certain services. Microsoft remains responsible for their performance.
- o. **Government procurement rules.** By accepting this agreement, Customer represents and warrants that (i) it has complied and will comply with all applicable government procurement laws and regulations; (ii) it is authorized to enter into this Agreement; and (iii) this Agreement satisfies all applicable procurement requirements.

Definitions.

“Administrator Data” means the information provided to Microsoft or its Affiliates during sign-up, purchase, or administration of Products.

“Affiliate” means any legal entity that controls, is controlled by, or is under common control with a party. “Control” means ownership of more than a 50% interest of voting securities in an entity or the power to direct the management and policies of an entity.

“Confidential Information” is defined in the “Confidentiality” section.



"Customer" means the entity identified as such on the account associated with this Agreement.

"Customer Data" means all data, including all text, sound, software, image or video files that are provided to Microsoft or its Affiliates by, or on behalf of, Customer and its Affiliates through use of Online Services.

"End User" means any person Customer permits to use a Product or access Customer Data.

"Licensing Site" means <http://www.microsoft.com/licensing/contracts> or a successor site.

"Microsoft" means Microsoft Ireland Operations Limited.

"Non-Microsoft Product" means any third-party-branded software, data, service, website or product, unless incorporated by Microsoft in a Product.

"Online Services" means Microsoft-hosted services to which Customer subscribes under this Agreement. It does not include software and services provided under separate license terms.

"Online Services Terms" means the additional terms that apply to Customer's use of Online Services published on the Licensing Site and updated from time to time.

"Partner" means a company Microsoft has authorized to distribute Products to Customer.

"Personal Data" means any information relating to an identified or identifiable natural person.

"Product" means all Software and Online Services identified in the Product Terms that Microsoft offers under this Agreement, including previews, prerelease versions, updates, patches and bug fixes from Microsoft. Product availability may vary by region. "Product" does not include Non-Microsoft Products.

"Product Terms" means the document that provides information about Products available under this Agreement. The Product Terms document is published on the Licensing Site and is updated from time to time.

"Publisher" means a provider of a Non-Microsoft Product.

"Representatives" means a party's employees, Affiliates, contractors, advisors and consultants.

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