

**CLOUD SERVICE PROVIDER (CSP)  
SERVICE SPECIFIC TERMS AND CONDITIONS**

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### 1. RECITAL

**WHEREAS** CSP is an authorised supplier of cloud based services and products;

**WHEREAS** the Customer wishes to appoint CSP as a supplier of cloud based services and 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.

### 2. 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:

- 2.1. **Accounts:** means an account enabling Customer's Users to access and use the Online Products;

- 2.2. **Acceptable Use Policy:** means the Third Party Service Provider’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 Third Party Service Provider;
- 2.3. **Additional Terms:** means the additional terms and conditions applicable to the Online Products as identified and contained in each applicable service schedule, which may be changed, modified and amended, with or without notice in the sole discretion of the Third Party Service Provider;
- 2.4. **Agreement:** means this cloud services end-user agreement and all terms and conditions outlined herein, including all service schedules thereto;
- 2.5. **Consumption Based Product:** means cloud based products for which Customer is billed based on actual usage of the product;
- 2.6. **Customer Data:** means all data, works and materials uploaded to or stored by the Customer to an Online Product or exclusively generated by an Online Product as a result of the use of the Online Product by the Customer;
- 2.7. **Effective Date:** means the earlier date of subscription and/or consumption by a User or the date of signature agreement;
- 2.8. **Fees:** means the fees payable by the Customer to CSP for any Online Products and/or Support Services that are accessed and/or used and/or consumed by the Customer.
- 2.9. **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 Business Park, La Lucia, Durban 4001**.
- 2.10. **Online Products:** means any of the Third Party Service Provider’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 and Consumption Based Products. The availability and/or

specifications of the Online Products may be modified, added and/or deleted by the Third Party Service Provider in its sole discretion;

- 2.11. Product Terms:** means in relation to the Online Products, the documentation provided by the Third Party Service Provider including but not limited to operating manuals, user instructions, technical literature and all other related materials in any form or medium, which describe the capabilities and functionality of the Online Products. This will include any applicable warranties and/or guarantees in respect to the Online Products provided to the Customer by the Third Party Service Provider and detail the applicable refund and/or return policy of the Third Party Service Provider, which may be changed, modified and amended, with or without notice in the sole discretion of the Third Party Service Provider;
- 2.12. Parties:** means collectively CSP and Customer and “Party” means any one of them as the context may require;
- 2.13. Report:** means a report generated by CSP from Customer’s use of Consumption Based Products;
- 2.14. SLA:** means a separate service level agreement to be entered into by and between CSP and Customer that determines the agreed upon terms, conditions and service levels for any Support Services provided by CSP.
- 2.15. 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.
- 2.16. Support Services:** means non-cloud support services purchased or subscribed for by Customer and provided by CSP (e.g. consulting, implementation, training, etc.);
- 2.17. Subscription Term:** means the duration of a Subscription Based Product (e.g. 30 days, 12 months, etc.);
- 2.18. Third Party Service Provider/s:** means a vendor Company that creates, develops, provides and operates Online Products;

2.19. **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.

### **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 Users by the Third Party Service Provider, in accordance with the Product Terms, Acceptable Use Policy and Additional Terms, on a non-exclusive, 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 is limited to such rights that are provided by the Third Party Service Providers and are subject to the following limitations:
  - 4.2.1. It is the Customer's sole responsibility to ensure that the Customer and/or 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 Third Party Service Provider'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 Third Party Service Provider'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. THIRD PARTY SERVICE PROVIDERS**

Customer acknowledges and agrees that any Online Products purchased from CSP pursuant to this Agreement is provided to Customer by Third Party Service Providers and these transactions are managed by CSP. This Agreement contains the terms and conditions agreed to between Customer and CSP and/or the Third Party Service Provider, for Customer's access and/or use of the Online Products. Customer acknowledges that it has read, understood, and agrees to be bound by the Agreement, and any additional policies and future modifications, if any. 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. The Product Terms, Acceptable Policy and Additional Terms are prescribed by the Third Party Service Provider and may be amended in the Third Party Service Provider's sole and absolute discretion. Any amendments, modifications and/or variations to Product Terms, Acceptable Policy and Additional Terms by the Third Party Service Provider are incorporated herein by reference.

## **6. SUPPORT SERVICES**

Customer can purchase or subscribe for the Support Services from CSP, which services will be provided by CSP to Customer. The Parties acknowledge that they will have to enter into a separate SLA for the Support Services.

## **7. PRICING AND PAYMENT OF FEES**

- 7.1. All Fees in respect to the Online Products are determined by CSP in its sole discretion, and is based on pricing provided by the Third Party Service Provider. The Fees are therefore subject to change, with or without notice, from time to time based on price changes effected by the Third Party Service Providers.
- 7.2. All Fees are subject to rate of exchange fluctuations.
- 7.3. Customer will provide CSP with a purchase order in respect to the Online Products Customer wishes to purchase through CSP.
- 7.4. CSP shall submit invoices to Customer setting out the Fees in respect to Customer's access and/or usage of Online Products. 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.
- 7.5. In respect to Subscription Based Products:
- 7.5.1. 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 of statement.
- 7.6. In respect to Consumption Based Products:
- 7.6.1. 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 (statement/invoice).
- 7.7. If Customer fails to make full payment to CSP as outlined in this clause 7, the Customer shall pay interest to CSP on the outstanding amount at the prime lending rate as published by CSP's bankers, plus 3% (three percent) per annum calculated from the date on which payment falls due until the date on which payment is made by Customer in full.
- 7.8. In addition to clause 7.7 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 7, CSP shall be entitled to cancel this Agreement and/or suspend Customer's access and/or usage of the Online Products with immediate effect.



7.9. Should CSP take the action outlined in clause 7.8, the Customer indemnifies CSP against any and all loss and/or damage incurred or to be incurred by the Customer as a result thereof.

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

7.10.1. disputed invoice;

7.10.2. specific amount in dispute; and

7.10.3. alleged reasons or grounds for dispute.

7.11. Any amount disputed in terms of clause 7.10 shall not be regarded as payable in terms of this clause 7 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 with clause 18 of this Agreement.

## **8. TAXES**

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.

## **9. PRODUCT SUBSCRIPTION TERM**

Customer will not be entitled to terminate its subscription for Subscription Based Products prior to expiration of the Subscription Term. 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 notice of its intent not to renew its subscription for the Subscription Based Products. Customer will provide CSP with no less than 30 days' written notice before the expiry of a Subscription Term of its intention to cancel its subscription for the Subscription Based Products, failing which such Subscription Term shall auto renew as aforementioned.

## **10. CUSTOMER DATA**

- 10.1. Customer hereby grants CSP a non-exclusive license to process the Customer Data only to the extent reasonably required for the performance of CSP's obligations and exercise of its rights in terms of this Agreement.
- 10.2. Customer furthermore grants CSP a non-exclusive license to sub-license the right to process the Customer Data to any Third Party Service Provider only to the extent reasonably necessary for the performance of CSP's and/or the Third Party Service Providers obligations and the exercise of its rights in terms of this Agreement.
- 10.3. Customer warrants that the processing of the Customer Data by CSP in accordance with this Agreement will not breach the provisions of any 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.
- 10.4. Customer consents on its behalf and on behalf of its Users that, all Customer Data provided to CSP as a result of this Agreement will be processed strictly in accordance with CSP's External Data Privacy and Security Policy a copy of which will be made available to the Customer on written request.

## **11. CONFIDENTIALITY OBLIGATIONS**

- 11.1. Each Party undertakes to:
  - 11.1.1. Keep the other Party's Confidential Information confidential;
  - 11.1.2. Not disclose the other Party's Confidential Information to any person or third party without the other Party's prior written consent;
  - 11.1.3. 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;
  - 11.1.4. Not use any of the other Party's Confidential Information for any purpose other than for the purpose to perform its obligations in terms of the Agreement.
- 11.2. 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 or any of the Support Services, which officers and employees are obligated to protect the confidentiality of Customer's Confidential Information.

11.3. Information shall not be deemed Confidential Information where it:

- 11.3.1. Is authorised to be disclosed by the disclosing Party to that extent of the authority given;
- 11.3.2. Is made public by the disclosing Party or becomes part of the public domain;
- 11.3.3. Is in possession of or is known by the receiving Party prior to its receipt from the disclosing Party;
- 11.3.4. Becomes public other than by the default of the receiving Party; or
- 11.3.5. Is independently developed by the receiving Party.

## **12. ACKNOWLEDGEMENTS AND WARRANTY DISCLAIMER**

- 12.1. The Online Products purchased under this Agreement are made available by Third Party Service Providers that are not affiliated with 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 Third Party Service Provider, and is subject to that Third Party Service Provider's Acceptable Use Policy, Product Terms and Additional Terms.
- 12.2. The Customer indemnifies CSP from any liability to the Third Party Service Provider for any failure by the Customer to make payment for the subscription to and/or consumption of the Online Products.
- 12.3. The Customer acknowledges and agrees that, in relation to the above clause 7.8, 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.

12.4. Customer expressly agree 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 third-party service provider. 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. CSP and its affiliates do not warrant or make any representations about the third-party service providers or the third party service provider’s services and online products. Any warranty made regarding any third-party service provider’s service and online products is made directly by such third party service provider. The exclusions of warranties contained in this agreement apply to the customer to the fullest extent such limitations or exclusions are permitted under the laws of the republic of South Africa.

### **13. LIMITATION OF LIABILITY**

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 laws of the republic of South Africa.

### **14. BASIS OF THIS AGREEMENT**

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.

#### **15. OWNERSHIP AND PROPRIETARY RIGHTS**

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. CSP and/or Third Party Service Providers expressly reserves all of its intellectual property rights, and no licences are granted by implication, estoppel or otherwise to Customer except as expressly set forth in this Agreement.

#### **16. REFUND POLICY AND RISK OF LOSS**

All Fees and payments relating to Customer's access and/or usage of the Online Products are final, non-cancellable and non-refundable. The applicable Third Party Service Provider may have its own policies regarding refunds and/or returns which are available to Customer, which are set forth in the applicable Third Party Service Provider's Product Terms. 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 Third Party Service Providers Product Terms for any remedies available to Customer. The Customer has no remedy available to it against CSP.

#### **17. AVAILABILITY OF CONTENT**

CSP reserves the right to make changes to or discontinue any of the Online Products and/or Support Services available to Customer at any time.

#### **19. TERM AND TERMINATION**

19.1. 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:

19.1.1. By CSP immediately due to Customer's breach of the terms of this Agreement;

19.1.2. By either Party by giving 30 days' written notice to the other Party of its intention to terminate the Agreement.

19.2. The termination of this Agreement will only terminate Customer's right to place new orders for additional Online Products or to renew a Subscription Term of Online Products under this Agreement. For the sake

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

**20. NOTICES**

20.1. 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:

**FOR CSP**

Physical Address: 4 Sunbury Crescent,  
Sunbury Business Park,  
La Lucia, Durban, 4320.

Attention: Vaughan Gerson or Richard Hammond

Email: [vaughang@firstnet.co.za](mailto:vaughang@firstnet.co.za) /or [RichardH@firsttech.co.za](mailto:RichardH@firsttech.co.za)

**FOR CUSTOMER**

Physical Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Email: \_\_\_\_\_

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

20.2.1. By hand on the day of delivery;

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

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

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

## **21. GENERAL**

### **21.1. Entire Agreement**

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;

### **21.2. Severability**

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.

### **21.3. Waiver and Variation**

The failure of CSP 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 CSP.

### **21.4. Governing Law**

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.