

## 1. INTERPRETATION AND MEANINGS OF CERTAIN WORDS AND PHRASES

- 1.1. Words importing the singular shall include the plural and vice versa.
- 1.2. Words denoting persons shall include natural human beings, legal entities and unincorporated associations of persons, and vice versa.
- 1.3. The headings in these terms and conditions shall not affect their interpretation.
- 1.4. Unless inconsistent with the context, the words and phrases set out below shall mean as follows:
  - 1.4.1. **"Affiliate"** of a Party shall mean a company or other legal entity which controls, is controlled by or is under common control with such Party, but any such company or other legal entity shall be deemed to be an Affiliate only as long as such control exists, and for this definition, "control" shall mean direct or indirect ownership of more than fifty per cent (50%) of the voting rights of the controlled or commonly controlled entity;
  - 1.4.2. **"Anticipatory Charges"** are charges levied to recover the amounts that Nymbis Cloud Solutions would have billed for a Fixed Term Agreement if the Contract had run its full term;
  - 1.4.3. **"Activation Date"** means when a Service is configured and made available to the Customer.
  - 1.4.4. **"Applicable Law"** means any of the following to the extent that it applies to the provision of the Services:
    - a) any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time.
    - b) the common law;
    - c) any binding court order, judgment or decree;
    - d) any applicable industry code, policy or standard enforceable by law;
    - e) any relevant direction, rule, pronouncement, policy or order a regulator gives.
  - 1.4.5. **"Business Day"** means Monday to Friday, excluding Saturday, Sunday or a public holiday as defined under the Public Holiday Act, 36 of 1994;
  - 1.4.6. **"Consumer"** means a Customer who is a consumer as defined in the CPA. **"Individual Consumer"** means a Consumer who is a natural person;
  - 1.4.7. **"Contract"** means collectively, the documents with headings 'Subscriber Agreement', 'Quote' and 'General Terms and Conditions', together with any Product Terms, service level agreements and product rules concluded between Customer and Nymbis Cloud Solutions;
  - 1.4.8. **"CPA"** means the Consumer Protection Act, 68 of 2008 and regulations published in terms thereof, as amended or replaced from time to time;
  - 1.4.9. **"Commencement Date"** means the date when Nymbis Cloud Solutions has accepted and processed the Subscriber Agreement or notified the Customer that it has agreed to provide the Customer with the Services set out in a Subscriber Agreement;
  - 1.4.10. **"Customer"** means the person described in the Subscriber Agreement;
  - 1.4.11. **"Customer Equipment"** means the equipment used with the Services but not managed by Nymbis Cloud Solutions;
  - 1.4.12. **"Customer Portal"** any Nymbis Cloud Solutions approved extranet(s) or system(s) with web-based access (or a combination thereof) where Customer and its authorised employees, agents and representatives may access to, amongst other things and where applicable:
    - a) view measurement data of selected Services;
    - b) have access to control panels and management interfaces to provision, upgrade, downgrade, increase, decrease (in general to manage) the Services;
    - c) process termination of Services;
  - 1.4.13. **"Due Date"** means the date on which any amounts owed by Customer to Nymbis Cloud Solutions in respect of the Services become due and payable, as reflected on Nymbis Cloud Solutions's invoice;
  - 1.4.14. **"Fixed Term Agreement"** refers to a Subscriber Agreement in terms of which the provision of Services is for a duration greater than one month;
  - 1.4.15. **"General Terms"** means these general terms and conditions without the Subscriber Agreement, Quote or the Product Terms, but including any addendum to these terms;
  - 1.4.16. **"Initial Period"** means the number of months applicable to the Fixed Term Agreement;
  - 1.4.17. **"Interest Rate"** means an annual rate equal to 5% above the prime lending rate charged by Nymbis Cloud Solutions' bankers, calculated daily and capitalised monthly;
  - 1.4.18. **"Managed Service Equipment"** means equipment managed by Nymbis Cloud Solutions in the provision of the Service;
  - 1.4.19. **"Office Hours"** means 8h00 to 17h00 on Business Days;
  - 1.4.20. **"Parties"** means Nymbis Cloud Solutions and the Customer, and **"Party"** means either Nymbis Cloud Solutions or Customer, as the context requires;
  - 1.4.21. **"Personal Data"** means all identifiable personal details conveyed to Nymbis Cloud Solutions by the Customer for lawful processing;
  - 1.4.22. **"Product Terms"** means the specific terms and conditions applicable to Services provided to the Customer.
  - 1.4.23. **"Renewal Period"** means 12 (twelve) months, which period will

- start on the day following the last day of the Initial Period;
  - 1.4.24. **"Services"** means the Services as listed in the Subscriber Agreement, and where applicable, includes the Managed Service Equipment;
  - 1.4.25. **"Software"** means any computer program provided to the Customer through Nymbis Cloud Solutions acting as the software licensor's principal, agent or distributor. Software may be embedded into Managed Service Equipment or Nymbis Cloud Solutions Platforms, supplied as a stand-alone application, or accessed via the Internet or other web browsing;
  - 1.4.26. **"Subscriber Agreement"** means the document describing the Customer, the Services to be provided, and other administrative data;
  - 1.4.27. **"Nymbis Cloud Solutions"** means Nymbis Cloud Solutions (Pty) Ltd, Registration number 2022/238723/07, a private company incorporated in terms of the laws of the Republic of South Africa;
  - 1.4.28. **"Nymbis Cloud Solutions Platforms"** means systems of Software and hardware accessible via the Internet. Nymbis Cloud Solutions Platforms can be owned by, or licenced by third parties to, Nymbis Cloud Solutions.
- 1.5. When several days are provided between the happening of one event and another, the number of days must be calculated by:
    - 1.5.1. excluding the day on which the first such event occurs;
    - 1.5.2. including the day on or by which the second event is to occur; and
    - 1.5.3. excluding any public holiday, Saturday or Sunday.
  - 1.6. In the event of a conflict between a Subscriber Agreement, Product Terms or the General Terms, the dispute shall be resolved by applying the following order of preference:
    - 1.6.1. A Subscriber Agreement; thereafter
    - 1.6.2. Product Terms; thereafter
    - 1.6.3. General Terms.

## 2. NATURE OF THE GENERAL TERMS AND CONDITIONS

- 2.1. These General Terms govern the provision of all services and the relationship between Customer and Nymbis Cloud Solutions.
- 2.2. If Nymbis Cloud Solutions and Customer concludes multiple Subscriber Agreements but only one set of General Terms, then that set of General Terms will apply to all Subscriber Agreements, regardless of whether the system-generated contract numbers on the documents are not the same.
- 2.3. If Nymbis Cloud Solutions and Customer concludes multiple Subscriber Agreements, each with its version of General Terms, then the General Terms will apply only to the relevant Subscriber Agreement as evidenced by the system-generated contract number.

## 3. DURATION, RENEWAL AND TERMINATION FOR CONVENIENCE

- 3.1. **Commencement and duration of the Contract, billing start dates and renewal**
  - 3.1.1. The Contract will become binding on the Parties on the Commencement Date. It will continue to be binding on each Party until the end of the Initial Period or any Renewal Period unless this Contract is terminated earlier by either of the Parties for cause on the grounds set out in the Contract.
  - 3.1.2. The Initial Period will commence on the Activation Date of each Service.
  - 3.1.3. If Customer is a juristic person, then Customer must:
    - a) give Nymbis Cloud Solutions written notice of its election not to renew the Contract at least 90 (ninety) days before the expiration of the Initial Period; or
    - b) conclude a revised Subscriber Agreement,failing which the agreement shall automatically renew for the Renewal Period.
- 3.2. **Cancellation or variation of the Services before the Connection / Activation date**
  - 3.2.1. Where the Customer cancels or varies any of the Nymbis Cloud Solutions services before the Activation Date for any reason other than a breach on the part of Nymbis Cloud Solutions or Nymbis Cloud Solutions terminates the Contract (or part thereof) for cause. Nymbis Cloud Solutions will have the right to charge the Customer Anticipatory Charges, which amount shall be payable by the Customer on demand.
- 3.3. **Termination of a Fixed Term Agreement by an Individual Consumer for no cause**
  - 3.3.1. Where an Individual Consumer has concluded a Fixed Term Agreement, the Individual Consumer will have the right to terminate the Fixed Term Agreement, for no particular reason or cause, at any time, provided the Individual Consumer gives Nymbis Cloud Solutions at least 20 (twenty) Business days written notice of its election to terminate the Contract. Such termination will be subject to payment of a reasonable cancellation fee that will be determined and calculated when the notice to terminate is given by the Individual Consumer, using the guidelines set out under section 14 and regulation 5(2) of the CPA. Unless otherwise determined in any relevant Product Terms, such cancellation fee

shall equal the value of the Anticipatory Charges.

3.3.2. Upon receipt of the termination notice, Nymbis Cloud Solutions will advise the Individual Consumer of the amounts still owed to it, namely all the arrear amounts owing to Nymbis Cloud Solutions in terms of the Contract up to date of termination and the cancellation fee. The Individual Consumer will pay Nymbis Cloud Solutions such amounts by the Due Date.

#### 3.4. Early cancellation of the Services

3.4.1. Where the Customer cancels the Contract (or part thereof) before the end of the Initial Period or a subsequent Renewal Period for any reason other than a breach on the part of Nymbis Cloud Solutions, or Nymbis Cloud Solutions terminates the Contract (or part thereof) for cause, Nymbis Cloud Solutions will have the right to charge the Customer Anticipatory Charges, which amount shall be payable by the Customer on demand.

## 4. INSTALLATIONS AND PROVISION OF THE NYMBIS CLOUD SOLUTIONS SERVICES

### 4.1. Installation of Services, Managed Service Equipment, Customer Equipment and use of unauthorised devices

4.1.1. Unless agreed to the contrary in a Subscriber Agreement, the Nymbis Cloud Solutions Service excludes any required Customer Equipment. The Managed Service Equipment and, where applicable, the Customer Equipment will be leased or sold to the Customer at the prices, fees or rates set out in the Subscriber Agreement.

4.1.2. Where Customer has agreed to purchase Customer Equipment from Nymbis Cloud Solutions, Customer shall not be entitled to withhold payment for the sale of Customer Equipment for trivial reasons.

4.1.3. If the Customer requests that an installation be attended to after Office Hours, Nymbis Cloud Solutions may, if it can perform such after-hours work, charge an after-hours maintenance charge on a time-and-material basis as determined by Nymbis Cloud Solutions from time to time.

4.1.4. Nymbis Cloud Solutions' duty to install the Managed Service Equipment or Customer Equipment will terminate once the Managed Service Equipment or Customer Equipment have been supplied and the Customer can receive the Services.

4.1.5. The Customer must, at its own cost and expense, ensure that optimum environmental conditions required for the proper management and/or functioning of the Managed Service Equipment or Customer Equipment are provided, such as adequate power supply, ventilation, lighting and lighting and wall/rack space.

### 4.2. Use of the Services, Managed Service Equipment and related equipment

4.2.1. The provision of any Service to the Customer does not confer on the Customer any right to resell the Service unless the Customer has entered into a reseller agreement with Nymbis Cloud Solutions.

4.2.2. The service may not be used to:

- a) knowingly create, store or disseminate any illegal content;
- b) infringe on any third party's intellectual property or copyright; and
- c) send unsolicited electronic communications.

4.2.3. For Nymbis Cloud Solutions to ensure the provision of the Service, to protect the integrity of the Nymbis Cloud Solutions Platforms or to deal with emergencies, the Customer must always whilst this Contract is in place:

- a) comply with any instructions issued by Nymbis Cloud Solutions which concern the Customer's use of the Services;
- b) provide Nymbis Cloud Solutions with all information relating to the Customer's use of the Services that Nymbis Cloud Solutions may reasonably require from time to time; and
- c) allow Nymbis Cloud Solutions free access to the Customer's premises during reasonable hours to install, inspect, maintain or remove Managed Service or Customer Equipment.

### 4.3. Failure and unavailability of the Services, Managed Service Equipment or Customer Equipment obtained from Nymbis Cloud Solutions

4.3.1. The Customer recognises that the data networks comprising the Internet are owned by multiple participating networks and are not subject to Nymbis Cloud Solutions' control.

4.3.2. Because of the position set out in clause 4.3.1 above, Nymbis Cloud Solutions can not warrant that the Customer can access Nymbis Cloud Solutions Platforms on a 24 (twenty-four) hour 365 (three hundred and sixty-five) days per year basis.

4.3.3. Furthermore, Nymbis Cloud Solutions expressly advises, and the Customer acknowledges and accepts that Nymbis Cloud Solutions do not manufacture the Customer Equipment but by third parties. Nymbis Cloud Solutions will not be able to open Customer Equipment or to test or operate the selected Customer Equipment to ensure that they are fit for purpose and/or are intact before they are handed to the Customer.

4.3.4. **Considering the disclosures housed under clauses 4.3.1 - 4.3.3 Nymbis Cloud Solutions expressly stipulates, and the Customer acknowledges that Nymbis Cloud Solutions cannot warrant or guarantee that the Services and/or the Customer Equipment will:**

- a) be free of errors or interruptions;
- b) be available;
- c) be fit for any purpose;
- d) not infringe on any third-party rights;
- e) be secure and reliable,

**except where the Services and/or Customer Equipment are found to be defective and such defect has been solely caused by Nymbis Cloud Solutions under sections 54, 55 and 56 of the CPA, where applicable.**

4.3.5. Considering the above disclosures, the Customer agrees that it will not be allowed to withhold any amounts due and owing to Nymbis Cloud Solutions, deduct any monies, or allege a breach of contract regarding any temporary unavailability of the Services.

4.3.6. Notwithstanding the provisions of clause 4.3.4 above, Nymbis Cloud Solutions will use its best endeavours where Nymbis Cloud Solutions can do so to notify the Customer of any failure of, or interruption to the Services and, where applicable, any required maintenance and repairs which may result from such failure, interruption or unavailability.

4.3.7. Where the Managed Service Equipment or, where relevant, the Customer Equipment is defective, then in such an event, the Consumer's rights will be limited to those set out under clause 9.

### 4.4. Theft and Loss of Nymbis Cloud Solutions Managed Service Equipment and Customer Equipment provided by Nymbis Cloud Solutions

4.4.1. Whenever any Managed Service Equipment or Customer Equipment purchased from Nymbis Cloud Solutions has been delivered but is not yet paid for in full is lost, stolen or destroyed, the Customer must immediately notify Nymbis Cloud Solutions in writing and report to a police station that the Managed Service Equipment and or any other Nymbis Cloud Solutions equipment has been lost, stolen, misplaced or destroyed.

4.4.2. Risk in the loss, theft or damage of the Managed Service Equipment and, where relevant, the Customer Equipment will pass to the Customer on the delivery date to the Customer's premises. Nymbis Cloud Solutions reserves the right to hold the Customer liable for the total replacement cost of the Managed Service Equipment or the relevant Customer Equipment and or any other Nymbis Cloud Solutions equipment (and where the same equipment has been discontinued, then the total replacement cost of the most comparable available equipment).

### 4.5. Maintenance of the Services and Managed Service Equipment

4.5.1. Throughout the term of the Contract the Service, any Managed Service Equipment used by the Customer will be deemed in good working order until Nymbis Cloud Solutions is advised otherwise.

4.5.2. Unless clauses 4.5.5 or 4.5.6 apply or expressly stated to the contrary, the costs for any repair and/or maintenance of the Service will be incurred and covered by Nymbis Cloud Solutions.

4.5.3. Nymbis Cloud Solutions will attend to faults reported by the Customer during Office Hours and apply its reasonable endeavours to restore the affected Service quickly.

4.5.4. The Customer is responsible for maintaining all Customer Equipment.

4.5.5. If the Customer requests that a fault be attended to immediately and requires repair work be carried out after Office Hours, Nymbis Cloud Solutions may if it can perform such after-hours work, charge an after-hours maintenance charge on a time-and-material basis as determined by Nymbis Cloud Solutions from time to time.

4.5.6. If Nymbis Cloud Solutions determines that the fault reported by the Customer was caused by the Customer or by any Customer Equipment or by any other equipment that Nymbis Cloud Solutions has not agreed to cover, the Customer will be liable for payment of the applicable call-out charges, as determined by Nymbis Cloud Solutions from time to time.

## 5. USE OF SOFTWARE

- 5.1. The Customer shall use any Software only for its intended purposes.
- 5.2. The Customer shall not nor permit anyone else to reverse engineer, decompile, modify, tamper with, amend, enhance, copy, sell, lease, license, sub-license or otherwise deal with the software or any part, variation, modification, release or enhancement thereof or have any software or any program written or developed for it based on the Software.
- 5.3. All rights of whatever nature in and to the Software and all upgrades, updates, modifications and variations to it from time to time shall vest in Nymbis Cloud Solutions or its licensors, and no rights in and to the Software, its upgrades, updates, modifications and variations to it are granted or assigned to the Customer. The Customer shall not, at any time in any way, question or dispute the ownership of the Software and undertakes not to infringe or prejudice any rights of Nymbis Cloud Solutions or its licensors in and to the Software.
- 5.4. Nymbis Cloud Solutions shall upgrade any Software provided to the Customer under the Subscriber Agreement (and if not explicitly dealt with in the Subscriber Agreement at its sole discretion).

## 6. CUSTOMER PORTAL

- 6.1. Nymbis Cloud Solutions grants the Customer a non-exclusive, non-transferable right to Customer Portal(s).
- 6.2. Access to any such Customer Portal shall be through an approved User ID or other authentication mechanism provided by Nymbis Cloud Solutions to the Customer.
- 6.3. Any adjustments by Customer to Services on Customer Portal are binding, and Customer assumes full responsibility for payment obligations arising out of modifications made on Customer Portal.
- 6.4. Customer acknowledges that the documentation and information made available to the Customer through Customer Portal shall be classified as Confidential Information of Nymbis Cloud Solutions and, as such, disclosure and use of such documentation and information shall be governed by the terms of this Agreement relating to Confidential Information.
- 6.5. The Customer shall take all necessary steps to maintain the security and integrity of all User IDs in accessing the Customer Portal.
- 6.6. Customer shall inform Nymbis Cloud Solutions if Customer has any reason to believe that a User ID used in connection with accessing Customer Portal has or is likely to become known to someone not authorised to use it or is being or is expected to be used in an unauthorised way.
- 6.7. Nymbis Cloud Solutions reserves the right to suspend User ID access to the Customer Portal of Customer if Nymbis Cloud Solutions reasonably considers, after consulting with Customer whenever practicable, that there has been or is likely to be a breach of security in respect of a User ID. Nymbis Cloud Solutions may issue replacement User IDs or cease suspension when Nymbis Cloud Solutions is satisfied that the security breach or threat of breach of security is resolved.
- 6.8. The Customer understands that Nymbis Cloud Solutions may amend User IDs periodically to prevent unauthorised access to Customer Portal. The Customer will appoint an employee to whom Nymbis Cloud Solutions may communicate any amended IDs.

## 7. GENERAL OBLIGATIONS OF EACH PARTY

- 7.1. In addition to its obligations as set out in the rest of these General Terms, Nymbis Cloud Solutions undertakes to:
  - 7.1.1. adhere to the Applicable Law;
  - 7.1.2. deal with Customer employees and designated contractors in a courteous, respectful and professional manner and not in any manner act in an abusive way; and
  - 7.1.3. exercise the reasonable skill and care of a competent provider of the Services.
- 7.2. In addition to the Customer's specified obligations as set out in the rest of these General Terms, Customer undertakes that it, or where relevant, its employees will:
  - 7.2.1. adhere to the Applicable Law;
  - 7.2.2. deal with Nymbis Cloud Solutions employees and designated contractors in a courteous, respectful and professional manner and not in any manner act in an abusive way; and
  - 7.2.3. raise any issues it is experiencing through a trouble ticket using the relevant telephonic, email or online facilities and provide Nymbis Cloud Solutions with any pertinent information it may require to resolve the trouble ticket.

## 8. CHARGES AND PAYMENT

- 8.1. In return for the supply of and access to the Services, the Customer agrees and undertakes to pay Nymbis Cloud Solutions the Charges.
- 8.2. **Billing**
  - 8.2.1. Nymbis Cloud Solutions will periodically provide the Customer, usually monthly, with a statement and an invoice for the amounts payable by the Customer. The invoice will be sent to the Customer by email.
  - 8.2.2. Where there is an event which prevents an accurate determination of the number of units on which variable charges are determined for a billing period, the charges for the period in question shall be set as the average for the preceding 6 (six) billing periods (or lesser billing periods if the Service has been provided for a shorter time).
  - 8.2.3. The invoice sent by Nymbis Cloud Solutions to the Customer is on the face of it, and until the contrary is proved, proof of the amount due to Nymbis Cloud Solutions. The Customer is, however, entitled to query or dispute any part of the invoice per the provisions set out under clause 12. However, all undisputed portions of the invoice must be paid by the Due Date.
  - 8.2.4. If Nymbis Cloud Solutions determines that the disputed amount is in error, Nymbis Cloud Solutions shall credit the amount incorrectly debited. Should Nymbis Cloud Solutions determine and inform the Customer that the disputed amount was billed correctly, such payment and interest at the Interest Rate shall be paid by no later than the Due Date of the next invoice.
- 8.3. **Payments**
  - 8.3.1. Unless Nymbis Cloud Solutions expressly agrees to the contrary in writing, invoices are payable on presentation through a monthly debit order or using a credit card. The first service invoice is issued upon service activation and payable on presentation.
  - 8.3.2. Invoices and statements are available for download in Customer Portal. Non-receipt of an invoice by the Customer shall, therefore, not be considered a valid reason for late or non-payment.
  - 8.3.3. The Customer shall be liable and responsible for payment until payment has been received into Nymbis Cloud Solutions' bank

account.

- 8.3.4. The Customer shall be in breach of the Contract by cancelling any debit order without the prior written consent of Nymbis Cloud Solutions or where any debit order is returned unpaid or stopped or should any charge card account or credit card account of the Customer be rejected. In such a case, Nymbis Cloud Solutions will have the right to suspend the Customer's account until such arrears amounts and interest have been received and paid in full.

## 8.4. Changes to Charges

- 8.4.1. Nymbis Cloud Solutions shall be entitled to increase any amounts reflected in the Subscriber Agreement, which will be relative to the Consumer Price Index. Increases linked to the Consumer Price Index usually are done once per year between January and July.
- 8.4.2. If there is a price increase on components of the Services beyond the control of Nymbis Cloud Solutions (for example, foreign exchange fluctuations, increased pricing on third-party products or services like software license fees, surcharges, taxes, import duties, rates or levies, increased charges from other network operators or delay caused by any instruction of Customer), then Nymbis Cloud Solutions shall be entitled to increase the Charges of the affected Service in proportion to the increase in cost.
- 8.4.3. Any increase per clauses 8.4.1 and 8.4.2 will be given to the Customer in writing.

## 8.5. Unpaid accounts – Suspension of Services

- 8.5.1. Where any amounts due to Nymbis Cloud Solutions by the Customer are not paid on the Due Date, Nymbis Cloud Solutions shall give the Customer 7 (seven) days' notice to pay all arrears/outstanding amounts and start charging interest at the Interest Rate.
- 8.5.2. If the Customer's account remains unpaid or no written agreement is concluded to settle the arrears, Nymbis Cloud Solutions shall suspend the Customer's services. The suspension will stay in place until the Customer has paid all arrear amounts, interest and any applicable reconnection charges or the Contract is terminated by Nymbis Cloud Solutions.
- 8.5.3. If the Customer's account is in arrears, Nymbis Cloud Solutions shall be entitled to suspend all Services linked to the Customer's account, regardless of whether the suspended Services are delivered according to multiple Subscriber Agreements or not.

## 8.6. Credit Limit and payment terms

- 8.6.1. Nymbis Cloud Solutions reserves the right to impose a monetary limit on the maximum value of Charges incurred by the Customer during each billing period. Nymbis Cloud Solutions shall be entitled, after the Customer has been given 20 (twenty) days' notice of such overspend to which the Customer has not responded, to suspend the Services should the Customer exceed the maximum amount.
- 8.6.2. If Nymbis Cloud Solutions and Customer agrees on payment terms that are different to those set out in clause 8.3 and Nymbis Cloud Solutions has to provide Customer with a notice in terms of clause 8.5.1 twice in any rolling 12 (twelve) calendar month period, Nymbis Cloud Solutions shall be entitled to revert to the default payment terms set out in this clause 8.

## 9. SUSPENSION, WITHDRAWAL OR TERMINATION OF THE NYMBIS CLOUD SOLUTIONS SERVICE

- 9.1. Nymbis Cloud Solutions may, from time to time, and on notice where this is possible, suspend the Nymbis Cloud Solutions Service in any of the following circumstances:
  - 9.1.1. for routine maintenance, modifications to, or unplanned maintenance of the Nymbis Cloud Solutions Platforms and/or any other Platforms involved in the delivery of the Services;
  - 9.1.2. to mitigate against fraudulent or suspected fraudulent use of the Customer's Service;
  - 9.1.3. per clause 8.5 or 8.6.1 above;
  - 9.1.4. because of problems with third parties' infrastructure which has affected or disrupted the Nymbis Cloud Solutions Service;
  - 9.1.5. where the Customer is abusing certain Services; and/or
  - 9.1.6. where the Nymbis Cloud Solutions Service is found to contain a security risk or shortcoming which enables the Customer to exploit the Nymbis Cloud Solutions Service to the detriment of Nymbis Cloud Solutions;
- 9.2. The Customer accepts that the right to suspend the Services is necessary to maintain the quality of Services, the integrity of the Nymbis Cloud Solutions Platforms, and to protect the interest of both the Customer and Nymbis Cloud Solutions and that it will remain liable for all Charges which Nymbis Cloud Solutions may levy during the period of suspension.
- 9.3. Nymbis Cloud Solutions may, from time to time, and on notice where this is possible, and without prejudice to any other claims or remedies which Nymbis Cloud Solutions may have in terms hereof or in law, discontinue and/or terminate any part of the Contract, in any of the following circumstances:
  - 9.3.1. where the Nymbis Cloud Solutions Service has reached the end of its lifespan and is uneconomical to maintain or continue;
  - 9.3.2. where there has been an insignificant interest in the use of a Service;

- 9.3.3. in response to an instruction from a law enforcement agency or any authority competent to issue such instruction;
- 9.3.4. if the Customer has received the Service because of fraud or misrepresentation;
- 9.3.5. if the Customer makes or offers to make any arrangement or composition with its creditors or commits any act of insolvency in terms of the Insolvency Act or any other applicable legislation;
- 9.3.6. if the Customer is using or permitting the use of the Service or any element thereof for any illegal purpose or in contravention of Applicable Law;
- 9.3.7. for any other reason incidental to 9.3.1 - 9.3.6 inclusive.

## 10. BREACH AND TERMINATION

- 10.1. Should the Customer breach:
  - 10.1.1. its payment obligations and have been suspended for non-payment for a period longer than 7 (seven) days; or
  - 10.1.2. any other term of this Contract and fails to rectify the breach within the notice period provided by Nymbis Cloud Solutions (which shall be a reasonable period given the circumstances of the breach);
  - 10.1.3. then Nymbis Cloud Solutions will have the right to either suspend or cancel the Contract(s) without diminishing its right to claim any Anticipatory Charges or early termination penalties.
- 10.2. Should Nymbis Cloud Solutions breach any material term of this Contract, the Customer will have the right to provide Nymbis Cloud Solutions with a letter requiring Nymbis Cloud Solutions to rectify the breach within 20 (twenty) Business Days. Should Nymbis Cloud Solutions neglect or fail to remedy such breach within the 20 (twenty) Business Days' notice period, the Customer may cancel the Contract without penalty.
- 10.3. The Customer shall be liable for all costs, including legal costs on an attorney and client scale, tracing cost and collection commission incurred by Nymbis Cloud Solutions in respect of the enforcement of any obligations of the Customer in terms of this Contract.
- 10.4. Without diminishing any other claims or remedies which Nymbis Cloud Solutions may have against the Customer in terms of this Contract or law, Nymbis Cloud Solutions may terminate the Contract if the Customer has delayed the installation of the Service for longer than 3 (three) months and hold the Customer liable for Anticipatory Charges incurred by Nymbis Cloud Solutions in this regard.

## 11. SUPERVENING IMPOSSIBILITY

- 11.1. Except as expressly provided under the Contract, Nymbis Cloud Solutions shall not be liable to the Customer for failure to perform any obligation because of any acts of God, government restrictions or prohibitions or any other Government act or omission, any act or default of any supplier, industrial disputes, strikes, lockouts or work stoppages of any kind or any other similar or dissimilar cause, in so far as these were not foreseeable and beyond Nymbis Cloud Solutions' reasonable control. Should any event contemplated in this clause prevent uninterrupted Service for a period exceeding four weeks, the Customer shall be entitled to terminate the affected Service without penalty.

## 12. CUSTOMER ASSISTANCE, DISPUTES OR COMPLAINTS

- 12.1. Technical Complaints and Billing Queries
  - 12.1.1. Nymbis Cloud Solutions can be contacted for technical support and account queries at the details provided at [support@nymbis.cloud](mailto:support@nymbis.cloud).
  - 12.1.2. If the Customer experiences any trouble with any Services or Charges, it must bring the problem to Nymbis Cloud Solutions' attention by raising a trouble ticket with Nymbis Cloud Solutions by telephone, email or in the Customer Portal. The issue will then be logged and detailed, and the Customer will be provided with a reference number.
  - 12.1.3. Nymbis Cloud Solutions will try to attend to the trouble tickets as soon as possible, depending on the problem's complexity, nature, and resource availability.

## 13. CONSEQUENCES OF TERMINATION

- 13.1. After termination of the Contract for whatever reason:
- 13.2. The Customer will remain liable for and will pay on demand all charges and/or costs outstanding at the time of termination or accrued after that because of the termination.

## 14. LIMITED LIABILITY AND INDEMNITY

- 14.1. The Customer is responsible for maintaining the security of its internal network from unauthorised access through the Internet. Nymbis Cloud Solutions shall not be liable for unauthorised access to the Customer's network or other breaches of the Customer's network security.
- 14.2. Nymbis Cloud Solutions assumes no responsibility for the integrity, correctness, retention or content of electronic data transported via the Nymbis Cloud Solutions Platforms.
- 14.3. Subject to the provisions of clause 14.6 below, Nymbis Cloud Solutions shall not be liable to the Customer or to any third party for claims that arise or occur because of the Customer's use of the Services, whether such claim, action or damage is direct or indirect, consequential or contingent. Nymbis Cloud Solutions shall not be liable for any loss of life; injury; medical expenses; support; financial loss or financial support; loss of

earnings; loss of profit and/or income; loss of revenue; loss of business or goodwill; any other special damages; or any general damages – regardless of whether it was foreseeable or flowed naturally from the use of the Services.

- 14.4. Nymbis Cloud Solutions' maximum liability to the Customer for any proven, direct damages caused solely by the negligence of Nymbis Cloud Solutions shall be limited to payments received in the three (3) months immediately preceding the cause of action.
- 14.5. Customer indemnifies Nymbis Cloud Solutions against any claim or action brought by any third party arising from Customer's use of the Services.
- 14.6. Where a Consumer suffers any loss or damages because of the use of the Nymbis Cloud Solutions Service, the Consumer, in this case, will be allowed to avail itself to the provisions housed under section 61 of the CPA but subject always to the defences and exceptions permissible and available to Nymbis Cloud Solutions and its service providers under section 61 of the CPA.
- 14.7. The limitation on liability set out above is in addition to any limitation of liability set out elsewhere under the Contract.

## 15. PROCESSING OF PERSONAL INFORMATION, RIGHTS TO PRIVACY

- 15.1. Nymbis Cloud Solutions reserves the right to make general credit reference enquiries about the Customer and to check the correctness of the information that has been supplied. Nymbis Cloud Solutions shall also be entitled to furnish any information relating to the Customer's account and compliance with these conditions to any registered credit bureau.
- 15.2. The Customer warrants and represents that all information it supplies is accurate, correct and complete.
- 15.3. The Customer acknowledges that Nymbis Cloud Solutions may share data, including but not limited to Personal Information of the Customer ("Customer Data"), with its Affiliates, subcontractors and the persons specified in its Privacy Policy ("Permitted Persons") to enable the performance of the Services ("Permitted Purpose").
- 15.4. Nymbis Cloud Solutions undertakes to and shall procure that its Permitted Persons use the Customer Data for the Permitted Purpose only, except with written consent of the Customer, or as may be required or permitted by law.
- 15.5. If disclosure of the Customer Data is required by law, Nymbis Cloud Solutions shall notify the Customer before making any such disclosure unless such prior notification is not reasonably practicable or is not permitted by applicable laws.
- 15.6. In respect of any Customer Data, Nymbis Cloud Solutions warrants and undertakes that:
  - 15.6.1. it shall comply with Nymbis Cloud Solutions' Privacy Policy;
  - 15.6.2. it shall only Process the Customer Data for the Permitted Purpose (other than to comply with any applicable laws to which Nymbis Cloud Solutions is subject);
  - 15.6.3. it shall have in place appropriate technical and organisational security measures to protect the Customer Data and to prevent the damage to, unauthorised destruction to and unlawful Processing of Customer Data;
  - 15.6.4. it shall restrict access to Customer Data to employees, individuals, subcontractors or agents who are appropriately authorised to process such Customer Data and who, by their office or binding contract, are subject to appropriate confidentiality obligations;
  - 15.6.5. it shall retain and delete Customer Data in the manner outlined in clauses 15.7 to 15.10;
  - 15.6.6. it shall not transfer or permit the transfer of Special Personal Information or Personal Information relating to children to, or access to from, a country or territory outside of South Africa, that does not have adequate data protection laws similar to the provisions of POPIA, without first obtaining prior authorisation from the relevant data protection authority, where required;
  - 15.6.7. it shall not transfer Customer Data outside of South Africa to recipients in locations that do not have adequate data protection laws unless there is a justification under POPIA to do so and subject to obtaining prior authorisation from the Information Regulator in circumstances where required; and
  - 15.6.8. it shall comply with all applicable data protection laws in relation to the Personal Information.
- 15.7. It is recorded that Nymbis Cloud Solutions shall only subcontract its Processing of any Personal Information contained in the Customer Data to the Subcontractor through a written agreement with the Subcontractors, which imposes the same obligations on the Subcontractors as are imposed on Nymbis Cloud Solutions in these terms. Where the Subcontractor fails to fulfil its data protection obligations under these terms, Nymbis Cloud Solutions shall remain fully liable to you for performing the Subcontractor's obligations.
- 15.8. The Customer agrees that, unless otherwise requested by it in writing for Nymbis Cloud Solutions to delete the Customer Data, Nymbis Cloud Solutions shall retain Customer Data subject to appropriate security safeguards being implemented to safeguard the information from unauthorised access or destruction.
- 15.9. The Customer agrees that, apart from information being deleted by the written request contemplated in clause 15.8, the Customer Data may be

retained by Nymbis Cloud Solutions.

- 15.10. Subject to applicable laws, Nymbis Cloud Solutions agrees that it shall delete, de-identify, or hand over any of the Customer Data in its possession or control by such date as specified in the written request by the Customer requesting the deletion or handing over of such information or such later date which is reasonable and practicable in the circumstances, together with written confirmation that no copies of such information remain in its possession unless Nymbis Cloud Solutions is required or permitted to retain the Customer Data by Applicable Law.

## 16. NON-SOLICITATION

- 16.1. From the Commencement Date up to twelve (12) months after termination of all Services under this Agreement, the Customer shall not, directly or indirectly, solicit for employment or employ any employee of Nymbis Cloud Solutions without obtaining Nymbis Cloud Solutions's prior written consent. The term "solicit for employment or employ" shall not – subject to the balance of the provisions of this clause 16 – include any general solicitation of employment not specifically directed towards employees of Nymbis Cloud Solutions.
- 16.2. It is anticipated that during dealings between the Parties, Nymbis Cloud Solutions may reveal to Customer specific names of sub-contractors, networks, service providers etc. ("Designated Parties"), which is proprietary, confidential information. Customer agrees not to circumvent or permit any other party or persons on their respective behalf to avoid Nymbis Cloud Solutions in any way, manner, or form regarding any transactions, agreements or arrangements, discussions or negotiations during the term of this Agreement.
- 16.3. Customer agrees to notify Nymbis Cloud Solutions in writing of all inquiries about proposed transactions, any agreement or arrangement, discussions or negotiations from a Designated Party of Nymbis Cloud Solutions. Should a Designated Party attempt to make any introductions or approach Customer directly for any sales opportunity, marketing strategy, or business relationship, Customer hereby agrees to notify Nymbis Cloud Solutions in writing immediately.

## 17. GENERAL

- 17.1. **Cession, delegation, assignment:** The Customer may not cede, delegate, assign, charge, transfer or otherwise dispose of this Contract or any rights or obligations therein in whole or in part, without the written consent of Nymbis Cloud Solutions. Such consent shall be reasonable and timely. Nymbis Cloud Solutions may assign some or all of its rights and obligations hereunder to any third party of its choice, in its sole discretion, and without the Customer's consent. Nymbis Cloud Solutions shall notify the Customer of such assignment as soon as reasonably possible after such assignment.
- 17.2. **Applicable laws and Jurisdiction:** This Contract will be interpreted and governed by the laws of South Africa.
- 17.3. **Variation and Amendment:** Subject to and save where the right to amend the Contract has been mentioned explicitly under the Contract, neither Party may vary the terms of the Contract unless the other Party agrees to such variation and the variation is reduced to writing and signed by both Parties.
- 17.4. **Consumer status:** Certain rights have been granted to Consumers. Nymbis Cloud Solutions reserves the right to withhold any of these rights and/or resultant benefits until the Customer can prove to Nymbis Cloud Solutions, which proof may be in the form of a set of financial statements or an identity document, that it is a Consumer (and in the case of a right which it wants to exercise under section 14 of the CPA, that it is an Individual Consumer). Where the Customer cannot show that it is a Consumer or Individual Consumer, Nymbis Cloud Solutions reserves the right to reverse or call for a refund of any rights or benefits permitted under the CPA and which the Customer has unlawfully taken advantage of.
- 17.5. **Customer details and changes to it:** The Customer agrees to supply Nymbis Cloud Solutions with such information, documentation and signatures that Nymbis Cloud Solutions may reasonably require at the time that the Contract is concluded to give effect to the payment arrangements of the Contract. Any subsequent changes that affect the information supplied to Nymbis Cloud Solutions, such as bank account or legal service address, must be brought to the immediate attention of Nymbis Cloud Solutions in writing.
- 17.6. **Whole Contract:** The Contract contains the sole and entire record of the agreement between the Parties. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded in writing and signed by both Parties or otherwise created by operation of law. For clarity, where it appears from the context of multiple Subscriber Agreements concluded between the Parties that they are intended to be read as one Contract, the Subscriber Agreements shall not be considered separate and divisible Contracts. In such event, conflicting provisions of General Terms shall be resolved with the ordinary rules of interpretation.
- 17.7. **Indulgences:** No indulgence, leniency or extension of time which either Party ("the grantor") may grant or show to the other shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future. Any indulgence or the relaxing of the Contract's provisions by the grantor shall not prejudice the right of the grantor to insist on the strict compliance by the defaulting Party of its undertakings and obligations in terms of the Contract.
- 17.8. **Severability:** If any of these terms and conditions are unenforceable, the offending clauses will be severed from the remainder of the Contract, which will continue to be binding and enforceable.

## 18. LEGAL ADDRESS FOR SERVICE

- 18.1. The Parties choose the addresses set out below as their chosen place to receive legal notices:
- 18.1.1. Nymbis Cloud Solutions at Block D, Rutherford Estate, 1 Scott Street, Waverley, Johannesburg. Notices must also be emailed to [legalnotification@nymbis.cloud](mailto:legalnotification@nymbis.cloud); and
- 18.1.2. The Customer at the residential or email address specified in the Subscriber Contract.
- 18.2. Where the Customer has entered into multiple Subscriber Contracts, then the physical address specified in the Subscriber Contract most recently signed by the Customer or its authorised representative.
- 18.3. All notices given in terms of this Contract shall be in writing. General notices that do not commence legal proceedings shall be sufficiently provided to either Party via email or, where applicable, by any other electronic messaging service.

## 19. CANCELLATION PROCESS

- 19.1. Unless Nymbis Cloud Solutions expressly agrees to the contrary in writing, Customer must cancel services on at least 90 (ninety) days' advance notice to take effect at the end of the Initial Period or the Renewal Period, failing which Nymbis Cloud Solutions may charge the Customer a cancellation fee.
- 19.2. Cancellations must be processed through the cancellation request form in the Customer Portal, or the Customer must send a cancellation request to [cancellations@nymbis.cloud](mailto:cancellations@nymbis.cloud). The online cancellation request form will reflect the duration left for each Service and the cancellation fee (if any) for each Service. Cancellations received by email will be followed up with a quote setting out the cancellation fee (if any) for each Service.
- 19.3. Email cancellations must contain at least the following information:
- 19.3.1. The Customer's account number; and
- 19.3.2. The Service/s to be cancelled is described on the Customer's invoice.
- 19.4. Nymbis Cloud Solutions will only be deemed to have received a cancellation notice if it has issued the Customer with written confirmation of receipt and a unique reference number. If the Customer is not furnished with a unique reference number within 48 hours of transmitting its cancellation notice, the Customer must escalate to [talk2us@nymbis.cloud](mailto:talk2us@nymbis.cloud).
- 19.5. Nymbis Cloud Solutions's processing of a cancellation request shall be without prejudice to its right to any claim it may have in terms of this Contract. The Customer acknowledges that in many instances, cancellation of Services is not reversible or may attract financial penalties. Therefore Nymbis Cloud Solutions may delay the actual termination of Services after acknowledging receipt of a cancellation notice to communicate to Customer the consequences of termination and to allow Customer to withdraw a cancellation notice.
- 19.6. Customer shall remain liable for any Charges raised by Nymbis Cloud Solutions against the Customer's account after the Customer has sent Nymbis Cloud Solutions a cancellation notice not processed in the manner set out herein.