



# Master Services Agreement

This Master Services Agreement governs your purchase and use of all Services offered by C-NEST, as may be further described in this Agreement or any Order. This Agreement applies to you and your employees, agents, contractors, or other users who obtain Services from C-NEST (each such person or entity being a “User”). You must register with C-NEST and accept the terms of this Agreement in order to use the Services. **BY REGISTERING FOR AND USING THE SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE THAT YOU AND YOUR USERS WILL BE BOUND BY ALL TERMS AND CONDITIONS OF THIS AGREEMENT.**

This Agreement is the complete and exclusive agreement between you and C-NEST regarding its subject matter and supersedes and replaces any prior agreement, understanding, or communication, written or oral.

Your use of C-NEST Services is governed by this Master Services Agreement, the Acceptable Use Policy, the Service Level Agreement, and the terms of your Order. When we use the term “**Agreement**” in any of the Master Services Agreement, the Acceptable Use Policy, the Service Level Agreement, or an Order, we are referring to all of them collectively. If there is any inconsistency or conflict between the provisions of any these documents, then the documents will be given precedence in the following order: (a) the Master Services Agreement, (b) the Acceptable Use Policy, (c) the Services Level Agreement, and (d) the terms of your Order.



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## Definitions

“**Acceptable Use Policy**” means C-NEST’s Acceptable Use Policy found at <http://www.c-nest.com/aboutus/legal.php> as of the date you sign or submit your Order.

“**ACH**” means Automated Clearing House.

“**Business Day**” means 8:30 a.m. – 8:00 p.m. South African Standard Time (SAST or (UCT +02)), Monday through Friday, excluding public holidays in Botswana.

“**Cancellation Date**” is defined based on the Cancellation Request, product line and contract term. Accordingly, for:

- (a) Managed Hosting Services – the Cancellation Date would be 14 days from the date the Cancellation Request was submitted to C-NEST;
- (b) Dedicated Hosting (ServerBeach) Services – for month-to-month Agreements, the Cancellation Date would be one day after the Cancellation Request was submitted to C-NEST;
- (c) Dedicated Hosting (ServerBeach) Services – for non-monthly Agreements, the Cancellation Date would be 14 days from the date the Cancellation Request was submitted to C-NEST; and
- (c) Colocation and Network Services – the Cancellation Date would be 30 days from the date the Cancellation Request was submitted to C-NEST.

“**Cancellation Request**” means a written based service cancellation request submitted via support ticket. To schedule your account for cancellation, please login to [www.c-nest.com](http://www.c-nest.com) and submit a ticket under the category “Cancellation Request” from the pull down menu. This will ensure that your account is processed for cancellation and will generate an email that will be sent to you regarding full details of your request as well as the offline date of your server. C-NEST is not responsible for continued invoicing if the above method is not followed. The following sets the Cancellation Request requirements based on the product line and contract term:

- a) Monthly contracts relating to:
  - (i) Managed Hosting Services – Cancellation Request should be submitted to C-NEST at least 14 days in advance of the requested Cancellation Date;
  - (ii) Dedicated Hosting (ServerBeach) Services – Cancellation Request should be submitted to C-NEST at least 24 hours in advance of the Cancellation Date; and

- (iii) Colocation and Network Services – Cancellation Request should be submitted to C-NEST at least 30 days in advance of the Cancellation Date.  
(b) Non-monthly contracts (quarterly, semi-annually, annually, 24 months, and other terms);
- (i) Managed Hosting Services – Cancellation Request should be submitted to C-NEST at least 14 days in advance of the requested Cancellation Date;
- (ii) Dedicated Hosting (ServerBeach) Services – Cancellation Request should be submitted to C-NEST at least 14 days in advance of the requested Cancellation Date; or
- (iii) Colocation and Network Services – Cancellation Request should be submitted to C-NEST at least 30 days notice in advance to the Cancellation Date.

“**Confidential Information**” means all information disclosed by either party to the other, whether before or after the effective date of the Agreement, that the recipient should reasonably understand to be confidential, including without limitation: (a) for you, all information transmitted to or from, or stored on, C-NEST’s systems, (b) for C-NEST, unpublished prices and other terms of service, audit and security reports, product development plans, datacenter designs (including without limitation non-graphic information you may observe on a tour of a datacenter), server configuration designs, and other proprietary information or technology, and (c) for both parties, information that is marked or otherwise conspicuously designated as confidential. Information that is developed by either party on its own, without reference to the other’s Confidential Information, or that becomes available to either party other than through breach of the Agreement or applicable law, will not be considered “Confidential Information” of the other party.

“**EFT**” means Electronic Fund Transfer.

“**Order**” means either: (a) the online order that you submit to C-NEST via the C-NEST Website, or (b) any other written order (either in electronic or paper form) provided to you by C-NEST for signature that describes the Services you are purchasing, and that is signed by you, either manually or electronically.

“**C-NEST Website**” means C-NEST’s websites located at <http://www.c-nest.com>

“**Services**” means those C-NEST products or services described in the Order.

“**Service Level Agreement**” means C-NEST’s Service Level Agreement located at <http://www.c-nest.com/whyC-NEST/sla.php> as of the date you sign or submit the Order.

“**Third Party Products**” means third party software or products that C-NEST may provide to you under this Agreement.

“Third Party Vendors” means certain reseller and other relationships that C-NEST has established with certain commercial vendors.

## 2 Obligations, Rights and Responsibilities

### 2.1 C-NEST Obligations

For all Orders accepted by C-NEST and subject to this Master Service Agreement, C-NEST agrees to provide the Services and the applicable support listed on your Orders, subject to and in accordance with C-NEST's Service Level Agreement.

### 2.2 Your Obligations

You agree to do each of the following:

- (a) pay when due the fees for the Services and applicable charges;
- (b) use reasonable security precautions in light of your use of the Services;
- (c) cooperate with C-NEST's reasonable investigation of outages, security problems, and any suspected breach of the Agreement;
- (d) keep your billing contact, information, and other account information up to date;
- (e) immediately notify C-NEST of any unauthorized use of your account or any other breach of the security of the Services; provided, that in the event of a dispute between the parties regarding the interpretation of applicable law or the Acceptable Use Policy, then C-NEST's reasonable determination will control;
- (f) pay all federal, state, and local sales, use, value added, surcharges, excise, franchise, property, gross receipts, license, privilege, and any other taxes assessed with respect to the Services; and
- (g) provide C-NEST with accurate factual information to help C-NEST determine if any tax is due with respect to the provision of the Services, and if C-NEST is required by law to collect taxes on the provision of the Services, then you must pay C-NEST the amount of the tax that is due or provide satisfactory evidence of your exemption from the tax.

### 2.3 Acceptable Use Policy

By agreeing to the terms and conditions of this Agreement, you agree to C-NEST's Acceptable Use Policy, which is expressly incorporated herein by reference.

### 2.4 Intellectual Property Rights

You warrant, represent, and covenant to C-NEST that:

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C-NEST, somewhere, Gaborone, Botswana  
+(267) 9999999, :http:www.C-NEST.com

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C-NEST is a registered trademark and service mark of C-NEST (Pty) and/or its affiliates, in Botswana and other countries. All other trademarks, service marks and company names in this document or website are properties of their respective owners. This document is for informational purposes only, and does not set forth any warranty, expressed or implied, concerning any equipment or service offered or to be offered by C-NEST.



- (a) you are at least 18 years of age if an individual;
- (b) you possess the legal right and ability to enter into this Agreement;
- (c) you and your Users will use the Services only for lawful purposes and in accordance with this Agreement, C-NEST's Acceptable Use Policy, and all applicable C-NEST policies and guidelines, as contained in this Agreement posted on the C-NEST Website; and
- (d) you and your Users have obtained all license or other rights necessary to install or use any software or products in conjunction with your use of the Services.

## 2.5 IP Numbers

C-NEST will maintain and control ownership of all Internet protocol numbers and addresses that it may assign to you. C-NEST may, in its sole discretion, change or remove any and all Internet protocol numbers and addresses.

## 2.6 Third Party Products.

For your convenience, C-NEST may provide you access to Third Party Products through certain Third Party Vendors. Neither C-NEST nor any Third Party Vendor makes any representations or warranties of any kind, express or implied, regarding any Third Party Products. You agree that will not (a) copy any license keys or otherwise decrypt or circumvent any license key, (b) run Third Party Products on a second system or through any other hosting provider, (c) remove, modify, or obscure any copyright, trademark, or other proprietary rights notices that appear on or during use of any Third Party Product, or (d) reverse engineer, decompile, or disassemble any Third Party Product, except to the extent that such activity is expressly permitted by the Third Party Vendor or applicable law. You agree to observe the terms of any license or applicable end user subscriber agreement for Third Party Products and C-NEST will not have any liability for your use of any Third Party Products or any violation of any license agreements or end user subscriber agreements that govern such Third Party Products. You will be solely responsible for any additional software or products that you install or use in conjunction with the Services.

## 2.7 Additional Requirements for Using Microsoft Software

If Microsoft software is provided to you as part of the Services, then additional restrictions may apply, including but not limited to limits on the number of authenticated users of the Microsoft Windows Server Operating Systems under Microsoft Corporation's licensing terms.

## 2.8 Security

C-NEST is not responsible for any security breaches affecting servers or accounts under your sole control. If your server is responsible for or involved in an attack on or unauthorized access into another server or system, then you will notify C-NEST immediately, and C-NEST will have the right to respond accordingly, including without limitation the right to identify, isolate, and block the source of the attack.

## 2.9 Confidentiality

Any Confidential Information disclosed by one party (“Disclosing Party”) to the other party (“Recipient”) in connection with this Agreement that is marked confidential or that due to its character and nature, a reasonable person under like circumstances would treat as confidential will be protected and held in confidence by the Recipient. Confidential Information will be used only for the purposes of this Agreement and related internal administrative purposes. Disclosure of the Confidential Information will be restricted to the Recipient’s employees, contractors, affiliates, or agents (including outside counsel and consultants) on a “need to know” basis in connection with the services, who are bound by confidentiality obligations no less stringent than these prior to any disclosure. Each party may disclose Confidential Information relating to the Services to providers of goods and services for the engagement to the extent such disclosure is necessary and reasonably anticipated. Confidential Information does not include information which: (i) is already known to Recipient at the time of disclosure; (ii) is or becomes publicly known through no wrongful act or failure of the Recipient; (iii) is independently developed by Recipient without benefit of Disclosing Party’s Confidential Information; or (iv) is received from a third party which is not under and does not thereby breach an obligation of confidentiality. Each party agrees to protect the other’s Confidential Information at all times and in the same manner as each protects the confidentiality of its own proprietary and confidential materials, but in no event with less than a reasonable standard of care. A Recipient may disclose Confidential Information to the extent required by law, but that disclosure does not relieve Recipient of its confidentiality obligations with respect to any other party.

## 3 Term and Payment for Services

### 3.1 Term

This Agreement will be for the “Initial Term” as further described in the Order. If no term is listed in the Order, then the Initial Term will be one month. At the end of the Initial Term, the Agreement will renew on a

month to month basis. If you do not wish to renew, then you must provide C-NEST the Cancellation Request as provided in this Agreement.

## 3.2 Termination

This Agreement may be terminated in one of the following ways:

- (a) by you without cause and for convenience by providing the Cancellation Request;
- (b) by C-NEST without cause by providing you with a written notice at least 30 days prior to the termination date.
- (c) by C-NEST in the event you do not pay any undisputed fees due hereunder within or after 10 days of the due date;
- (d) by you or C-NEST, if a party commits a material breach of or fails to perform any obligations under this Agreement and has not cured such breach or failure within 30 days of receiving written notice from the terminating party specifying such breach or failure; or
- (e) as otherwise provided in this Agreement or the Acceptable Use Policy.

## 3.3 Termination Liability

If you terminate this Agreement before the end of the Initial Term other than for C-NEST's material breach, then you will be required to pay:

- (a) actual amounts that have been invoiced for the Services provided to the date the Agreement is terminated as determined by the Cancellation Date, and
- (b) for non-monthly Agreements, the difference between the monthly rate for the Services listed on the Order at the time of the Order, and the rate the Services were discounted to based on the Term pricing grid including any and all promotions. For the discount calculation, your liability will be limited to the period from the commencement of the Initial Term to the Cancellation Date.

## 3.4 Payment

- (a) All charges under this Agreement are due and payable on the due date of the invoices unless otherwise agreed to in writing.
- (b) For recurring billing, Services are billed one month in advance and payments are due 30 days of the date of invoice.

- (c) for non-recurring fees (such as fees for initial set-up, backup overages, bandwidth overages, paid for support request and any other non-recurring service) on or around the date incurred, or on or around the first day of the billing cycle that follows the date incurred, at C-NEST's option; provided that C-NEST may wait to charge your credit card until the total aggregate fees due are at a minimum billable amount. Unless otherwise agreed in the Order or modified via request, your billing cycle will be monthly, beginning on the date that C-NEST first makes the Services available to you.
- (d) Unless you have made other arrangements, C-NEST will charge your credit card and/ or ACH or EFT on the due date. If you pay by credit card or ACH or EFT, then C-NEST will charge your credit card or bank account (as applicable) to pay for any charges that may apply to your account.
- (e) Charges that are not disputed within 60 days of the date charged are conclusively deemed accurate.
- (f) You also will be responsible for any costs C-NEST incurs in enforcing collection of any amounts due under this Agreement, including without limitation reasonable attorney's fees, court costs, or collection agency fees.
- (g) You will be responsible for costs due to insufficient funds and other charges that are incurred in connection with payment processing for your account.
- (h) Non Sufficient Funds Fees (NSF) – C-NEST has the right to charge you NSF fees if your payment method is check (cheque) and it was returned by the bank due insufficient funds. The fees are Thirty (USD\$ 30), Thirty (CAD\$ 30) and fifteen (GBP £ 15) in the United States, Canada and the United Kingdom respectively.
- (i) If you pay by credit card or ACH or EFT, then C-NEST will charge your credit card or bank account (as applicable) to pay for any charges that may apply to your account. You agree that you will notify C-NEST of any changes to your account, your billing address, or any information that C-NEST may reasonably require in order to process your payments in a timely manner.
- (j) Payment for invoices that are not formally and rightfully deemed as disputed may be subject to interest at a rate of one and one-half percent (1.5%) per month accruing from date the invoice was due.

### 3.5 Refund and Disputes

Except where expressly provided in this Agreement, all payments to C-NEST are nonrefundable. This includes but is not limited to any applicable setup fees and subsequent charges, regardless of usage. You must report any overcharges or billing disputes to C-NEST within 60 days of the time on which you became aware, or should have become aware, of the existence of the overcharge or dispute.

### 3.6 Data Retention / Server Reclaim Policy

C-NEST makes no guarantees about retaining any data stored on C-NEST's systems or servers following expiration or termination of this Agreement. C-NEST will typically delete such data (a) seven days following termination of any C-NEST Managed Hosting Services by either you or C-NEST or (b) on your next billing date following termination of any C-NEST Dedicated Hosting (ServerBeach) Services by either you or C-NEST. You will not have access to your data stored on C-NEST's systems or servers during a suspension or following a termination.

## 4 Modification

C-NEST may modify any of the terms and conditions contained in this Agreement at any time at its sole discretion. Any modifications are effective upon posting of the revisions on the C-NEST Website. Your continued use of the Services following C-NEST's posting of any modifications constitutes your acceptance of the modifications. If you do not agree to the terms of any modification, you may terminate the Agreement without any further liability by providing written notice to C-NEST within 30 days of the posting of any modifications of this Agreement by C-NEST.

## 5 Limitation of Liability and Indemnity

### 5.1 Monitoring User Activity

Users voluntarily engage in the activity of Internet use and bear the risks associated with that activity. C-NEST exercises no control over and expressly disclaims any obligation to monitor its customers and other Users with respect to breaches of this Agreement or any content of the information made available for distribution via the Services, including without limitation any information passing through C-NEST's host computers, network hubs and points of presence, or the Internet, or any content posted any User may post on any website. In no event will C-NEST, its parent company, and their affiliates and subsidiaries have any liability to you or any third party for unauthorized access to, or alteration, theft, or destruction of information distributed or made available for distribution via the Services through accident, or fraudulent means or devices.

### 5.2 Interruption of Service

Except as set expressly provided in C-NEST's Service Level Agreement, C-NEST will not be liable for any temporary delay, outages, or interruptions of the Services. Further, C-NEST is not liable for any delay or failure to perform its obligations under this Agreement, where the delay or failure results from any act of God or other cause beyond its reasonable control (including, without limitation, any mechanical, electronic, communications, or third-party supplier failure). C-NEST cannot guarantee that (a) access to the Services will be uninterrupted or error-free, (b) defects will be corrected, or (c) the Services will be secure.

### 5.3 Warranty Disclaimer

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICES, INCLUDING, WITHOUT LIMITATION, ALL INFORMATION, CONTENT, AND OTHER SERVICES MADE AVAILABLE BY C-NEST OR ANY THIRD PARTY VENDORS ARE PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS AND NEITHER C-NEST, ITS PARENT COMPANY, NOR THEIR AFFILIATES AND SUBSIDIARIES MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE SERVICES. C-NEST, ITS PARENT COMPANY, AND THEIR AFFILIATES AND SUBSIDIARIES HEREBY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTIES AND CONDITIONS OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES RELATED TO ANY COURSE OF DEALING, USAGE OR TRADE PRACTICE, OR IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 5.4 Limitation of Liability

EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR ANY USER OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS OR REVENUES OR COST OF REPLACEMENT SERVICES (WHETHER DIRECT OR INDIRECT) NOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES OF ANY KIND ARISING FROM THE USE OF THE SERVICES, EVEN IF SUCH PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR C-NEST'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, C-NEST'S LIABILITY TO YOU FOR ANY REASON AND UPON ANY CAUSE OF ACTION IS LIMITED TO THE AMOUNT YOU ACTUALLY PAID TO C-NEST UNDER THIS AGREEMENT DURING THE THREE MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM ACCRUED. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, OR OTHER TORTS. THE FEES FOR THE SERVICES SET BY C-NEST UNDER THIS AGREEMENT HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK. NOTHING IN THIS AGREEMENT IS INTENDED TO EXCLUDE OR LIMIT EITHER PARTY'S LIABILITY WITH RESPECT TO THOSE LIABILITIES THAT CANNOT BE LEGALLY EXCLUDED OR LIMITED EVEN IF ANY OTHER PROVISION MAY SUGGEST OTHERWISE.

## 5.5 Customer Indemnity

You agree to indemnify, defend, and hold harmless C-NEST, its parent company, and their affiliates and subsidiaries, and all employees, officers, directors, partners, representatives or any such entity, from and against any and all third party claims, damages, losses, liability, causes of action, judgments, costs, or expenses (including, without limitation, reasonable attorney's fees) asserted against or suffered by C-NEST arising out of any breach of this Agreement by you, your Users, or your customers.

## 5.6 C-NEST Indemnity

C-NEST agrees to indemnify, defend, and hold harmless Customer from and against any and all third party claims, damages, losses, liability, causes of action, judgments, costs, or expenses (including, without limitation, reasonable attorneys' fees) asserted against or suffered by Customer arising out of any claim alleging that the Services as provided by C-NEST infringe any third party's intellectual property rights.



## 6 Governing Law

### 6.1 Services Rendered in Canada

With respect to Services rendered by C-NEST in Canada, this Agreement will be governed by, and construed in accordance with, the laws of Canada and all disputes arising out of or related to this Agreement will be brought exclusively in the courts located in the Province of British Columbia; provided, however, that neither party will be prevented from enforcing any related judgment against the other party in any other jurisdiction.

### 6.2 Services Rendered in the United States

With respect to Services rendered by C-NEST in the United States of America, this Agreement will be governed by, and construed in accordance with, the laws of the state of Washington and all disputes arising out of or related to this Agreement will be brought exclusively in the courts located in the state of Washington; provided, however, that neither party will be prevented from enforcing any related judgment against the other party in any other jurisdiction.

### 6.3 Services Rendered in the United Kingdom

With respect to Services rendered by C-NEST in the United Kingdom, this Agreement will be governed by, and construed in accordance with, the laws of England and Wales and all disputes arising out of or related to this Agreement will be brought exclusively in the courts located in England; provided, however, that neither party will be prevented from enforcing any related judgment against the other party in any other jurisdiction.

## 7 Miscellaneous Provisions

You and C-NEST are independent contractors and this Agreement does not establish any relationship of partnership, joint venture, employment, franchise or agency between you and C-NEST. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party. You may not sell, assign or transfer your rights or delegate your duties under this Agreement either in whole or in part without the prior written consent of C-NEST, and any attempted assignment or delegation without such consent will be void. C-NEST and you agree that, except as otherwise expressly provided in this Agreement, the Order, or the terms and conditions of use of any Third Party Products, there will be no third party beneficiaries to this Agreement. To the extent any portion of this Agreement is determined to be unenforceable by a court of competent jurisdiction, such unenforceability will not invalidate this Agreement as a whole, but only that specific portion held to be unenforceable, and all other terms and conditions contained in this Agreement will remain in full force and effect. Any provision of this Agreement that, by its nature, is applicable to circumstances arising after the termination or expiration of this Agreement will survive such termination or expiration and remain in full force and effect, and no termination or expiration of this Agreement will relieve either party from any liability arising out of any breach of this Agreement occurring prior to said termination or expiration. Neither party will be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent such failures or delays are proximately caused by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, acts of God, government restrictions (including without limitation the denial or cancellation of any export or other necessary license), wars, insurrections, acts of terrorism, failure of suppliers, subcontractors, and carriers, or third party to substantially meet its performance obligations under this Agreement. Unless otherwise specified herein, all notices, demands, requests or other communications required or permitted under this Agreement will be deemed given when delivered personally, sent by facsimile upon confirmation, sent and received by return receipt email, or upon receipt of delivery of overnight mail.