



# NEVADA

C L O U D

## NEVADA CLOUD CALLISTO TERMS OF SERVICE

## Nevada Cloud Callisto EULA – Terms of service

This End User Licence Agreement (“Agreement”) is between you and Nevada Cloud. If you are entering into this Agreement on behalf of a company or other entity, then “End User” or “you” means that company or entity, and you warrant that you are authorised to do so.

By clicking on the “Register” button at the time of Callisto sign up, or placing your Order, or by accessing the Nevada Cloud Callisto Software (“Licensed Software”), you agree to be bound by the terms of this Agreement. If you do not agree to these terms, you must not register, nor install, nor make use of the Licensed Software.

### 1. Orders and authorised users

- 1.1 Our order form and process (“Order”) will, once submitted by you and accepted by us, specify the authorized scope of your use of the Licensed Software, which may include the number and type of authorized users (defined below) who may access and use the Licensed Software, or the number of copies of the Licensed Software that can be installed on your designated user devices.
- 1.2 Orders may also be placed for any additional support and maintenance services, or additional licences in respect of the Licensed Software you wish to purchase from us.
- 1.3 Only the specific individuals for whom you have paid the required licence fees and whom you have designated as the persons authorised by you to use the Licensed Software through your licence, will be authorised to access and use the Licensed Software (“Authorized Users”).

### 2. Grant of Licence

- 2.1 Subject to the terms of this Agreement, Nevada Cloud grants to you a non-exclusive, non-transferable, non-sublicensable object code license for you, and/or your Authorised Users, to access and use the Licensed Software (including any New Releases as defined in clause 9 below).
- 2.2 You and/or your Authorised Users are permitted to use the Licensed Software at any of your designated business premises, and for the sole purpose of offering Nevada Cloud services.
- 2.3 The Licensed Software may not be used at other locations or for any other business or field of activity unless we have been notified beforehand in writing

and we have given you our written approval; provided that the total number of user devices on which the Licensed Software is used does not exceed the number of permitted user devices as specified in the Order placed by you and accepted by us.

- 2.4 You have the right to reproduce one (1) copy of the Licensed Software and Documentation for back-up purposes.

### 3. Restrictions

- 3.1 Except as otherwise expressly permitted in this Agreement, you may not:

- 3.1.1 rent, lease, reproduce, modify, adapt, create derivative works of, distribute, sell, sublicense, transfer, perform, publish, display or otherwise provide access to the Licensed Software to an unauthorised third party, or use the Licensed Software for the benefit of any unauthorised third party;
- 3.1.2 incorporate the Licensed Software into any competing product or service you provide to third parties;
- 3.1.3 interfere with any security mechanism in the Licensed Software, or otherwise circumvent or attempt to circumvent any mechanisms in the Licensed Software which are intended to limit unauthorised use of the Licensed Software;
- 3.1.4 reverse engineer, disassemble, decompile, translate, or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs for the Licensed Software, except as permitted by law. If applicable Law does permit such activities, any information so discovered or derived shall be deemed to be Nevada Cloud's Confidential Information and you will be bound by the provisions of clause \_\_\_ in respect to your use of that Confidential Information;
- 3.1.5 remove or obscure any proprietary or other notices contained in the Licensed Software;

- 3.1.6 use the Licensed Software in conflict with the requirements or provisions of any Documentation we provide with the Licensed Software; or
- 3.1.7 otherwise use the Licensed Software in any way to violate the rights of others, or use the Licensed Software for any illegal purpose, or in violation of any applicable laws.

#### **4. Delivery**

- 4.1 Once your licence has been activated, we will deliver the Licensed Software to you electronically.
- 4.2 For the avoidance of doubt, you are responsible for the installation of the Licensed Software on your designated user devices unless our installation services form part of your Order.

#### **5. License Certifications and Audits**

- 5.1 At our request, you agree to provide us with a signed certificate that you are using the Licensed Software pursuant to the terms of this Agreement.
- 5.2 You shall allow us, or our authorized agent, to audit your use of the Licensed Software, provided we give you at least 10 days advance notice prior to the audit, and the audit is conducted during normal business hours.
- 5.3 We will bear the costs of the audit, unless the audit reveals that you are using the Licensed Software in a way that contravenes the provisions of this Agreement.
- 5.4 You will provide reasonable assistance, cooperation, and access to relevant information in the course of any audit at your own cost. If you exceed your authorised use of the Licensed Software, we shall invoice you for any past or ongoing excessive use, and you will pay the invoice promptly after receipt. This remedy is without prejudice to any other legal remedies available to us.

## 6. Payment

- 6.1 You agree to pay all fees in accordance with each Order. Unless otherwise specified in your Order, you will pay all amounts in South African Rands (ZAR) at the time you place your Order.
- 6.2 All amounts paid by you are non-refundable, non-cancellable and non-creditable. In making payments, you acknowledge that you are not relying on future availability of the Licensed Software beyond the current license period or any upgrades or feature enhancements.
- 6.3 If you add Authorized Users during your license term, we will charge you for the increased number of Authorized Users pursuant to our current rates applicable in your next billing cycle.
- 6.4 You agree that we may bill your credit card for renewals, additional users, and unpaid fees, as applicable.
- 6.5 Your payments exclude any taxes or duties payable in respect of the supply of the Licensed Software in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties are payable by us (including Valued Added Tax), you must pay to us the amount of such taxes or duties in addition to any licence fees owed under this agreement.

## 7. Documentation

- 7.1 The Documentation will accurately and completely describe the functionality and features of the Licensed Software.
- 7.2 The Documentation shall be understandable by a typical end user of the Licensed Software and shall provide sufficient instruction to allow an end user to become self-reliant with respect to access and use of the Licensed Software.
- 7.3 You may request additional copies of the Documentation at no additional charge for your internal use only.

## **8. Changes in Functionality**

- 8.1 During the term of this agreement, we may change certain features and functionality of the Licensed Software.
- 8.2 We shall use our best efforts to notify you of any expected changes, but we will always be entitled to make any changes we deem fit and in our sole discretion.
- 8.3 If you object to any changes made to the Licensed Software, your sole remedy will be to terminate this agreement and cease any further use of the Licensed Software. If you do so, you will not be entitled to claim any compensation from or repayment of any amounts already paid to us.
- 8.4 Similarly, if we improve or increase the features or functionality of the Licensed Software through changes that are made, you will not be charged any additional licence or other fees not stipulated in this agreement.

## **9. Technical support and New Releases**

- 9.1 Limited technical support via telephone or email will be made available for a limited period of 30 (thirty) days from the date that your licence has been activated, and provided you are a paid-for version of the Licensed Software.
- 9.2 Information regarding availability, nature and conditions of limited technical support may be found at [www.spectrumeyecaresoftware.com](http://www.spectrumeyecaresoftware.com).
- 9.3 We shall make any New Releases of the Licensed Software available to you. "New Releases" are bug fixes, patches, major or minor releases, or any other changes, enhancements, or modifications to the Licensed Software that we make generally commercially available.

## **10. No-Charge Products**

- 10.1 We may offer certain products to you at no charge, including free accounts, trial use, and access to Beta Versions of the Licensed Software or parts thereof ("No-Charge Products").

- 10.2 Your use of our No-Charge Products is subject to the terms of this Agreement and any additional terms that we specify.
- 10.3 Your use of our No-Charge Products is only for the limited period specified and we may terminate your right to use our No-Charge Products at any time and for any reason, without incurring any liability to you.
- 10.4 You acknowledge that any pre-release and beta products we make available ("Beta Versions") are still under development, may be inoperable or incomplete, and are likely to contain more errors and bugs than normally expected. We disclaim any and all liability arising from your use of any Beta Versions and your use is entirely at your own risk.

## 11. Third party software and services

You acknowledge that where third party software or services are used in conjunction with the Licensed Software, we do not have any control over that third party software and services, and that we shall have no liability or obligation whatsoever in relation to the use of any third party software or services when you or your Authorised Users access and use the Licensed Software.

## 12. Intellectual Property Rights

- 12.1 No license or other right is granted, by implication, estoppel or otherwise, to you in respect of the Licensed Software or to any intellectual property or other proprietary rights now or hereafter owned or controlled by us in relation to the Licensed Software, except for the licenses and rights expressly granted in this Agreement.
- 12.2 Except for any third party software which may be included as a part of or used in conjunction with the Licensed Software, we retain all rights, title, ownership and interest in and to the Licensed Software and the Documentation, including all intellectual property rights embodied therein.
- 12.3 We warrant that we own or hold the rights to the Licensed Software and that you and/or your Authorised Users' use of the Licensed Software pursuant to this agreement will not infringe the rights of any other person.
- 12.4 We hereby indemnify, agree to defend, and hold you and/or your Authorised Users' harmless against all claims, legal proceedings, losses, liabilities, penalties, fines, costs and expenses (including reasonable legal costs) arising from the infringement or alleged infringement of any person's rights in and to any intellectual property as a result of the use of the Licensed Software.
- 12.5 You undertake to immediately notify us in writing of any claims instituted against you in terms of clause 12.4. We will, at our cost, take all necessary steps to defend or have ourselves substituted as the defendant/respondent in any legal proceedings, provided that you give all reasonable assistance wherever necessary for the proper defence of such claims, including providing



us with any relevant information, documentation, or witness statements and contact details, as may be reasonably requested by us in this regard.

- 12.6 If we choose not to defend or oppose any claim referred to in terms of clause 12.4, or we are unsuccessful in our defence of such claims, then we will at our own cost:
- 12.6.1 Immediately replace the infringing item with a compatible, functionally equivalent and non-infringing item; or
  - 12.6.2 Make the necessary modifications to the Licensed Software to avoid the infringement; or
  - 12.6.3 Obtain a license for you to continue using the item.
- 12.7 We will have no liability for any claim of intellectual property infringement:
- 12.7.1 caused by you or your Authorised Users' use of the Licensed Software or any part thereof in a manner not authorised by us; or
  - 12.7.2 resulting from any unauthorised modification of the Licensed Software or any part thereof; or
  - 12.7.3 where the claim for infringement arises in respect of any modification specifically made on your request.

### 13. Data protection

We undertake to only provide, collect, use, store or process any of your data (including personal information about any identifiable individual) in compliance with all applicable laws, and only where it is necessary for the purposes of this Agreement or otherwise on your written instructions. Nevada Cloud has been independently certified as compliant with the Protection of Personal Information Act, 2013. Please review our Callisto Customer Privacy Notice (<http://www.spectrumeyecaresoftware.com/legal>) for details on how we process personal information.

### 14. Confidentiality

- 14.1 We may from time to time impart to each other certain confidential information and the we may otherwise obtain confidential information concerning each other's business and affairs, including information marked or identified by the disclosing party

as confidential or information which may be reasonably regarded as the confidential information of the disclosing party.

- 14.2 We each agree that we shall not disclose such confidential information (except to our respective employees, agents and professional advisers, and only then if they are bound by the same or no less stringent duties of confidentiality and non-disclosure as set out herein) whether directly or indirectly to any unauthorised person.
- 14.3 This clause shall not prevent the disclosure or use by either party of any information which is required to be disclosed by applicable law or regulation or order of a court of competent jurisdiction or is or hereafter through no fault of that party becomes public knowledge.

## **15. Disclaimer of warranties**

- 15.1 THE LICENSED SOFTWARE AND DOCUMENTATION IS PROVIDED "AS IS," AND WE MAKE NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE LICENSED SOFTWARE OR THE DOCUMENTATION, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR TITLE.
- 15.2 IN PARTICULAR BUT WITHOUT LIMITING THE GENERALITY OF CLAUSE 15.1, WE DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE LICENSED SOFTWARE WILL MEET YOUR SPECIFIC REQUIREMENTS, OR THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE FROM ANY MALICIOUS CODE.

## **16. Limitation of liability**

- 16.1 WE SHALL NOT BE HELD OR FOUND LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER SUFFERED BY YOU OR ANY AUTHORISED USER OR ANY OTHER PERSON.
- 16.2 OUR TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE LICENSED SOFTWARE, AND ANY DOCUMENTATION SUPPLIED, WHETHER IN CONTRACT OR DELICT OR OTHERWISE, WILL NOT

EXCEED THE TOTAL LICENCE FEES PAID BY YOU TO US FOR THE RELEVANT LICENCE PERIOD DURING WHICH THAT LIABILITY ARISES.

## 17. Force majeure

- 17.1 We shall not be held liable for failure or delay in performing any of its obligations under this agreement, if such failure or delay is caused by or results from an event of Force Majeure.
- 17.2 We shall promptly notify you of the occurrence of an event of Force Majeure and the estimated extent and duration of its inability to perform our obligations.
- 17.3 Upon the cessation of the event of Force Majeure, we shall promptly notify you of such cessation and resume performance of our obligations.
- 17.4 If we are unable to perform our obligations for a consecutive period of longer than 60 (sixty) days as a result of any Force Majeure, either of us may terminate this Agreement without incurring any liability to the other.

## 18. Breach

- 18.1 If:
  - 18.1.1 You fail to comply with any of your obligations or commit a breach of this Agreement and fail to remedy such default or breach within 7 (seven) days after having received a written notice from us to do so;
  - 18.1.2 You fail to pay any amount due in terms of this Agreement;
  - 18.1.3 You become insolvent, or for statutory purposes you are deemed to be unable to pay your debts as they become due, or the value of your assets is less than the amount of your liabilities; or
  - 18.1.4 You allow a civil judgment to be entered against you which affects your status as a going concern, and you fail to pay the amount due for such judgment within 10 (ten) days after the date on which the judgment became final (in the sense that all avenues for appeal, review or rescission have been exhausted or are no longer available);  
or

18.1.5 You have taken steps to propose any compromise or other arrangement with your creditors generally, or you have taken steps to obtain a winding-up order, or you have allowed such an order to be taken against you; or

18.1.6 You have allowed your business or assets to be placed under the control or custody of another person by operation of law.

then we shall be entitled, in addition to and without prejudice to any other right we may have in law or in terms of this Agreement, to enforce specific performance of the terms of this Agreement, or to cancel this Agreement; and in either event, recover such damages as we may have sustained.

18.2 You hereby indemnify and hold us harmless against all legal costs, charges, disbursement, and fees incurred by us in successfully enforcing or defending any provision of this agreement.

## **19. Right to suspend licence**

19.1 We reserve our right, without prejudice to any other rights and remedies we may have, to suspend your access and use of the Licensed Software without cancelling this Agreement should you fail to pay any amount due to us in terms of this Agreement.

19.2 No such suspension shall be deemed to be a termination or breach of this Agreement by us.

## **20. Termination**

20.1 Either of us may terminate this agreement at any time and for any reason by giving the other not less than 30 (thirty) days' written notice of its intention to do so.

20.2 If this agreement is terminated:

20.2.1 All outstanding sums payable by you to us will immediately become due and payable;

- 20.2.2 All rights and licences granted to you in terms of this Agreement will cease immediately on date of termination and you and/or your Authorised Users will cease all and any further use of the Licensed Software;
  - 20.2.3 You will promptly return all copies of the Documentation to us and confirm in writing to us that you have done so; or, if we so request, you will destroy all copies of the Documentation in your possession.
- 20.3 The termination of this agreement will be without prejudice to the provisions of this clause and to any rights of either party which may have accrued by, at, or up to the date of such termination.

## 21. Access to source code

Unless otherwise agreed, you will not be given access to any source code in respect of the Licensed Software.

## 22. Addresses for service

- 22.1 Any notices or process required or permitted to be given in terms of this agreement will be valid only if given in writing and delivered by hand, registered post, or email to your designated physical and email address given when you register as a licensee with us.
- 22.2 Any notice which is:
  - 22.2.1 delivered by hand, will be deemed, unless the contrary is proved, to have been received on the day of delivery;
  - 22.2.2 delivered by registered mail to its address will be deemed, unless the contrary is proved, to have been received on the 7th (seventh) day after date of posting;
  - 22.2.3 delivered by email to its address will be deemed, unless the contrary is proved, to have been received on the next business day following the date of transmission.

- 22.3 If you change your designated physical and/or email address, you must immediately notify us in writing of that change and it will only become effective 7 (seven) days after such notice has been received by us.

## 23. General

- 23.1 This agreement constitutes the entire agreement between the parties in relation to the subject matter and it supersedes all proposals, oral and written, between us.
- 23.2 Neither party shall have any claim or right of action arising from any undertaking or representation not included in this agreement.
- 23.3 No failure by a party to enforce any provision of this agreement shall constitute a waiver of such provision or affect in any way a party's right to require the performance of such provision at any time in the future, nor shall a waiver of a subsequent breach nullify the effectiveness of the provision itself.
- 23.4 No agreement to vary, add to or consensually cancel this agreement or any part thereof, including this clause, shall be of any force and effect unless reduced to writing and signed by both parties.
- 23.5 Any invalidity, in whole or in part, of any provision of this agreement shall not affect the validity of any other of its provisions.
- 23.6 This agreement shall be governed, construed and take effect in all respects in accordance with the laws of South Africa. The parties hereby consent to the jurisdiction of the Magistrates Court having competent jurisdiction over their person, regardless of whether the amount of any claim exceeds the jurisdiction of that court.
- 23.7 Any provision of this agreement which contemplates performance or observance subsequent to any termination or expiration of this agreement shall survive any termination or expiration of this agreement and continue in full force and effect, notwithstanding that the clause itself does not provide for such survival.

## 24. Changes to this Agreement

- 24.1 We may update or modify this Agreement from time to time, including any referenced policies and other documents.
- 24.2 If we modify the Agreement during your License Term, the modified version will be effective upon your next licence renewal.
- 24.3 If you object to any updated version of this Agreement, your exclusive remedy is to not renew your licence.
- 24.4 If you do not agree to the updated version of this Agreement after it becomes effective, you will no longer have a right to use the Licensed Software or any of our No-Charge Products.
- 24.5 For the avoidance of doubt, any Order is subject to the version of the Agreement in effect at the time of the Order.

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