FIRSTFOCUS

STANDARD TERMS & CONDITIONS

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Master Service Agreement

This MASTER SERVICE AGREEMENT (the "Agreement") defines the Standard Terms & Conditions associated with the delivery of any products and services from the date of commencement (**"Effective Date"**)

BETWEEN:

(1) First Focus IT (NZ) Pty Limited, with NZBN 9429033175751 ("**First Focus**"), and;

(2) The person or entity receiving and/or paying for the products and/or services ("**Customer**")

(Each a "Party" and together the "Parties")

RECITALS

WHEREAS First Focus is in the business of providing certain information technology services in infrastructure management, cloud computing, network security services; internet professional services; network or data centre management; client server services; IT help desk services, consulting and other allied activities.

AND WHEREAS the Parties have agreed that First Focus will provide certain Services to the Customer as defined in Statement(s) of Work to be entered into pursuant to this Agreement on the terms and conditions of this Agreement.

This Agreement is intended to operate in accordance with the laws of New Zealand. References throughout this Agreement to applicable law include, where relevant, the:

- Privacy Act 2020;
- Health and Safety at Work Act 2015;
- Goods and Services Tax Act 1985;
- Contract and Commercial Law Act 2017;
- Consumer Guarantees Act 1993 (to the extent applicable and subject to any lawful exclusion under this Agreement); and
- Fair Trading Act 1986 (including any lawful contracting out by the Parties).

1. Definitions

1.1. Approved Quote means a quote for any service, hardware or software items that has been electronically or physically signed and accepted by the Customer

1.2. Agreement means this Master Service Agreement including its Schedules and Statements of Work entered into hereunder, and incorporating any Variations agreed by the Parties.

1.3. Commencement Date means for a given Service Item, the date on which First Focus correctly provisioned that Service Item and made it available for use by the Customer.

1.4. Introduced Candidate means any employee or ex-employee of First Focus who was directly involved in providing the Service to the Customer within the last 12 months, or any individual who is interviewed by First Focus at the customer's request.

1.5. Introduction Fee is the greater of $25,000 ex GST, or 25% of the Introduced Candidate's existing or proposed total remuneration unless agreed otherwise.

1.6. Minimum Term means the shortest duration for which the Customer agrees to pay First Focus for a Service Item following the Commencement Date.

1.7. Recurring Service Item means a set of services provided by First Focus to the Customer for a specified minimum duration ("Term") and charged to the Customer by First Focus on a periodic basis as set out within a Statement of Work.

1.8. Service Item means a set of services provided by First Focus to the Customer as set out within a Statement of Work, Project Scope Document or Accepted Quote.

1.9. Statement of Work means a collection of Service Items to be delivered by First Focus to the Customer along with associated fees, charges and Minimum Terms.

1.10. The Service means the complete set of Service Items provided to the customer under a Statement of Work.

1.11. Trading Terms are 20 days from the date of invoice

2. Interpretation

In this Agreement, unless the context otherwise requires:

2.1. Words denoting persons shall include all legal entities;

2.2. Headings do not affect interpretation;

2.3. Singular includes plural and plural includes singular;

2.4. "includes", "including" and similar words are not to be taken as words of limitation;

2.5. Any reference to a clause, appendix, or attachment is a reference to that item as it relates to this Agreement and as may be subsequently amended;

2.6. The recitals, Schedules, appendices, and attachments to this Agreement form an integral part of this Agreement;

2.7. If there is inconsistency between any of the documents that form part of this Agreement, those documents will be interpreted with the following order of priority to the extent of any inconsistency:

a. the Variations to this Agreement;
b. the Statements of Work;
c. the Schedules to this Agreement;
d. this Master Services Agreement.

3. Governing Law

3.1. This Agreement is governed by the laws of New Zealand. Each Party submits to the non-exclusive jurisdiction of the courts of New Zealand.

3.2. If any provision or part of a provision of these Terms shall be, or shall be found by any court of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of these Terms, all of which shall remain in full force and effect.

3.3. The Customer is acquiring the Services for business purposes. Where the law allows, the Consumer Guarantees Act 1993 will not apply, and the Parties agree that the Fair Trading Act 1986 will apply only to the extent it cannot lawfully be excluded.

4. Notices

4.1. All notices under this Agreement will be in writing, signed by authorised signatories, and deemed received:

a. Upon receipt, if hand delivered, or sent by courier or postal service;
b. On the date sent when sent by email.

4.2. Notices sent to First Focus shall either be delivered via email to accounts@firstfocus.co.nz, or via post to First Focus IT, Level 7, 189 O'Riordan St, Mascot, NSW, 2020.

4.3. Notices sent to the Customer shall be delivered to the customer's nominated IT Liaison Officer unless agreed otherwise.

5. Privacy Act & Confidentiality

5.1. All written, digital and oral Confidential Information, communicated by one Party to another shall be held in strict confidence by both Parties and be used only for purposes of this Agreement. No such information, including the provisions of this Agreement, shall be disclosed by the recipient without the prior written consent of the other Party, except as required by law or to comply with any regulatory or similar requirement. If either Party is required to disclose any Confidential Information of the other Party under law, the Party so required shall notify the other Party immediately and shall co-operate in seeking a reasonable protective order.

5.2. This Clause 5 shall not apply to information which is (i) in the public domain, (ii) already known to the recipient and the recipient can show that it was in possession of such information prior to receipt of such information from the disclosing Party, (iii) developed independently by the recipient without the benefit of any confidential information of the disclosing Party, (iv) received from a third party without similar restriction and without breach of this Agreement or a similar agreement, (v) required to be disclosed by an order of a court or regulatory authority of competent jurisdiction, or (vi) required to be disclosed by Customer to its Clients or its authorized agents or representatives in strict confidence subject to the terms of a non-disclosure agreement between Customer and its Client or Customer and its authorized agents or representatives as the case may be, under which it shall not be disclosed to any other party except to its employees, consultant and advisors.

5.3. The Intellectual Property of either Party remains theirs during and at the conclusion of the Agreement and will not at any time be transferred to either party.

5.4. The Customer consents to First Focus obtaining a credit report for the purpose of assessment by First Focus of an application by the Customer for credit and/or for the purpose of the collection by First Focus of payments which are overdue. The Customer further authorises and consents to First Focus disclosing information about its credit worthiness to credit

reporting agencies or collection agencies (including identity particulars and details of overdue payments).

5.5. The Confidentiality obligation under this Agreement shall survive for a period of five (5) years after the expiry of this Agreement except that the confidentiality obligation with respect to either Party's Confidential Information, trade secrets and source codes shall survive the expiry/termination of this Agreement without any limitation.

6. Liability

6.1. Waiver: In no event, whether in contract or in tort (including breach of warranty, negligence and strict liability in tort), shall a Party be liable for indirect or consequential, exemplary, punitive or special damages (including lost profit, lost revenue, lost business opportunity, lost data and loss of use) even if such Party has been advised of the possibility of such damages in advance.

6.2. Limitation of Liability: First Focus' total aggregate liability to the Customer for all claims under this Agreement, whether in contract or in tort (including breach of warranty, negligence and strict liability in tort) shall be limited to an amount equal to the lesser of 3 Month's Base Fee (for Recurring Service Items), and the costs of and resupply of the Services.

7. Facilities and Access

7.1. The Customer authorises First Focus to access their equipment for the purpose of providing the Services

7.2. The Customer shall provide any reasonable desk space, software licenses, warehouse space, or other reasonable on-site infrastructure and reasonable work environment as may be required for the proper provision of the Service.

7.3. Where services are to be provided from the Customer's premises or on any occasion where First Focus personnel are required to perform work at the Customer's premises, the Customer will ensure that First Focus personnel have received an appropriate safety briefing in accordance with the prevailing OH&S legislation.

8. Non-Solicitation of Employees

8.1. Neither Party shall directly or indirectly solicit or seek to procure (other than by general advertising), without the prior written consent or instruction of the other Party, the employment of the other Party's employees and contractors engaged in the provision of the Service during the Term of this Agreement and for 12 months thereafter.

8.2. For the avoidance of doubt, nothing in this Agreement prevents either Party from employing the other Party's employees as a result of the employee responding to a public notice in the absence of any solicitation, however if this occurs then the Introduction Fee may be payable in accordance with the terms of this Agreement.

8.3. The Customer acknowledges that First Focus is in the business of providing recruitment and staff introduction services.

8.4. Should an Introduced Candidate be employed by the Customer or by any third party to deliver similar services, the Customer agrees to pay the Introduction Fee to First Focus.

9. Term

9.1. This Agreement commences on the earlier of:

a. the Effective Date set out in this Agreement,
b. the first Commencement Date of a Service Item, and
c. the date a quote is approved

9.2. This Agreement will continue unless terminated via the Termination Provisions contained herein

9.3. The Minimum Term for all Recurring Service Items is 1 month, unless otherwise specified within the Statement of Work.

10. Termination

10.1. The Customer may terminate this Agreement with 60 days written notice, subject to:

a. Paying the Early Termination Fee for any Recurring Service Items within the Minimum Term
b. Paying any unpaid portion of all Approved Quotes

10.2. First Focus may terminate this Agreement with 90 days written notice.

10.3. Upon Notice of Termination of this agreement, the Customer agrees to pay all outstanding balances to First Focus in full within 20 days.

10.4. Upon receipt of payment, First Focus shall provide the Customer with all Customer owned information and materials including documentation, media, license keys and other information in its possession, and shall work reasonably with the Customer to facilitate a transition to a new IT supplier or staff member at the Customer's request.

11. Dispute Process

11.1. Should the Customer wish to dispute an invoice, the Customer must notify First Focus in writing within the Trading Terms, otherwise the invoice will be deemed payable in full.

11.2. Dispute Notices must describe the invoice number, disputed amount, and reason for the disputed amount.

11.3. In the event of a disputed invoice, duly appointed representatives of each party must make a reasonable good faith effort to resolve the dispute within 20 days of the notification of the dispute. If an agreement cannot be reached within this timeframe, First Focus reserves the right to appoint a third party debt collection agency to collect invoiced amounts plus any applicable penalties.

12. Payment

12.1. Any undisputed amounts must be paid within Trading Terms to avoid late payment penalties.

12.2. First Focus reserves the right to enforce penalties of 2% per month for late payments and these rights may be transferred to a third party debt collection agency. Should any costs be incurred in debt recovery action for overdue accounts, these costs will be passed to the Customer in full

12.3. First Focus reserves the right to suspend services to a customer where an invoice remains unpaid after the Trading Terms. Should any costs be incurred in suspension and re-activation actions, these costs will be passed to the Customer in full.

13. Changes

13.1. The Customer acknowledges the Master Service Agreement and Included Schedules may be updated by First Focus from time to time and agrees to be bound by the most current version.

INCLUDED SCHEDULES

Additional Terms & Conditions for Recurring Service Items
Additional Terms & Conditions for Offshore Staffing Services

ADDITIONAL SCHEDULES

Service Catalogue
Service Level Agreement
Acceptable Use Policy

Additional Schedules are regularly updated are accessible via the following URL: https://firstfocus.co.nz/msa/

Additional Terms & Conditions for Recurring Service Items

The Additional Terms & Conditions for Recurring Service Items are issued under and subject to the terms and conditions of the First Focus Master Services Agreement (the 'MSA') which together with any current or future Statements of Work issued under the MSA are to be referred to collectively as the Agreement (the 'Agreement') by and between First Focus and the Customer.

1. Definitions

1.1. Agreement means this Master Service Agreement including its Schedules and Statements of Work entered into hereunder, and incorporating any Variations agreed by the Parties.

1.2. Base Fee means the minimum combined monthly recurring fee for the Service

1.3. Commencement Date means for a given Service Item, the date on which First Focus correctly provisioned that Service Item and made it available for use by the Customer.

1.4. Minimum Term means the shortest duration for which the Customer agrees to pay First Focus for a Service Item following the Commencement Date.

1.5. Project Commencement Date means for a given Service Item, the date on which First Focus begins the project to deploy, install or configure that Service Item

1.6. Recurring Service Item means a set of services provided by First Focus to the Customer for a specified minimum duration ("Term") and charged to the Customer by First Focus on a periodic basis as set out within a Statement of Work.

1.7. Service Item means a set of services provided by First Focus to the Customer as set out within a Statement of Work, Project Scope Document or Accepted Quote.

1.8. Statement of Work means a collection of Service Items to be delivered by First Focus to the Customer along with associated fees, charges and Minimum Terms.

1.9. The Service means the complete set of Service Items provided to the customer under a Statement of Work.

2. Scope and Usage

2.1. Where a Service Item includes the provision of unlimited support, the scope and exclusions of the unlimited support is as defined within the Service Catalogue.

2.2. Service Level targets, breaches and penalties are as specified within the Service Level Agreement.

2.3. By using any First Focus Service Item the Customer agrees to be bound by the terms of First Focus Acceptable Use Policy as published on First Focus' website at https://firstfocus.co.nz/msa/

2.4. The Customer acknowledges the Acceptable Use Policy may be updated by First Focus from time to time with 60 days' notice and agrees to be bound by the most current published version.

3. Reservation of Title

3.1. The title of goods supplied under this Agreement will remain with First Focus.

3.2. The Customer must separately identify and distinguish the goods that belong to First Focus, and not dispose of the goods in any way without written consent.

3.3. In the event the Customer becomes insolvent or does not pay amounts due within the Trading Terms, then First Focus may do any one or more of the following:

a. Require the customer to immediately return the goods
b. Invoice the Customer for the replacement value of the goods
c. Enter the premises where the goods are held and recover possession without liability for trespass
d. Dispose of the goods

4. Invoicing

4.1. The Base Fee will be invoiced monthly in advance and payable via automatic direct deposit in accordance with the Agreement Trading Terms. If the Customer elects to not pay the Base Fee via automatic direct debit, then a $15 fee will be added to each Base Fee invoice. Customers on an Ignite Support plan may not opt out from using automatic direct debit.

4.2. Any changes to Service Item quantities may result in corresponding changes to the Base Fee.

4.3. First Focus shall not invoice for any work performed more than 6 months prior to invoice date.

5. Term

5.1. The Minimum Term for all Recurring Service Items is 1 month, unless otherwise specified within the Statement of Work.

5.2. Service Items will be charged to the customer from the date upon which that service item is first allocated or made available for use by the customer in any capacity, whether for testing, migration, or production usage.

5.3. For clarification per type of Service Item, the Commencement Date is as follows:

a. CloudCOMPUTE, CloudDESKTOP, CloudBACKUP, CloudEXTEND and Disaster Recovery: All Service Items commence from the Project Commencement Date.
b. WAN: Each WAN Service Item and associated router commences billing from the carrier installation date. All other WAN Service Items commence billing from the date the first WAN Service Item commences.
c. CloudCALL: Call costs commence billing from the go-live or cutover date. All other Service Items commence billing from the Project Commencement Date.
d. Office 365, Azure and other Licensing or SaaS products: All Service Items commence billing from the date the licenses are procured.
e. HaaS and Hardware Rental: All Service Items commence billing from the date that the hardware is at a First Focus office, or Customer site if delivered directly from a supplier.
f. Managed Security Services: All Service Items commence from the Project Commencement Date.
g. Support & Staffing Services: All Service Items commence billing from the go-live date

6. Pricing

6.1. Unit prices for Recurring Service Items may be updated beyond the Minimum Term by providing the Customer with at least 60 days' notice.

6.2. Unit prices for the following Recurring Service Items may be updated prior to the Minimum Term by providing the Customer with at least 60 days' notice:

a. Office 365, Azure and other Licensing or SaaS products: Pricing changes from vendors will be passed through to the Customer
b. Managed Security Services: Pricing may be updated due to changes in standard inclusions, vendor pricing and/or labour costs.
c. Support & Staffing Services: Pricing may be updated due to changes in standard inclusions, vendor pricing and/or labour costs. and will be limited to CPI or 3%, whichever is greater.

7. Termination

7.1. The Customer may terminate any Statement of Work in whole or in part beyond the Minimum Term by providing First Focus with 60 days' notice.

7.2. The Customer may terminate any Statement of Work in whole or in part prior to the Minimum Term by providing First Focus with 60 days' notice, and paying an Early Termination Fee,

7.3. The Early Termination Fee is calculated in accordance with the following formula:

The number of part or whole months remaining
in the Minimum Term of the terminated Service Item,
multiplied by the current monthly fee for the Service Item

7.4. The customer acknowledges that the Early Termination Fee is equivalent to the remaining unpaid value of the Service Item, and is a genuine estimate of First Focus' loss for early termination.

Additional Terms & Conditions for Offshore Staffing

The Additional Terms & Conditions for Offshore Staffing is issued under and subject to the terms and conditions of the First Focus Master Services Agreement (the 'MSA') which together with any current or future Statements of Work issued under the MSA are to be referred to collectively as the Agreement (the 'Agreement') by and between First Focus and the Customer.

1. Recruitment

1.1. In consultation with the Customer, First Focus will recruit and engage suitable staff that will be dedicated to the Customer.

1.2. A one-off recruitment and setup fee is payable upon employment of a staff member.

2. Responsibilities

2.1. Employees will be expected to comply with the terms of their corresponding client contract in addition to First Focus policies and procedures.

2.2. The Customer may also provide policies and procedures with which the staff must comply. First Focus policies and procedures take precedence over the Customer's if a conflict occurs.

2.3. The Customer must comply with all applicable governing laws in force in the Philippines as they relate to any staff engaged by First Focus to provide services. Philippine law takes precedence over any internal or Customer policies and procedures.

3. Probation

3.1. All employees recruited for a Customer will be subject to a probationary period of up to six months.

3.2. During the probationary period the Customer may:

a. Request termination of the staff member's employment for non-performance with a 2 week notice period

b. Request termination of the staff member's employment for other reasons subject to standard Termination clauses

3.3. If employment is terminated for non-performance within the probationary period, the Customer may request the recruitment of a replacement employee, subject to:

a. A maximum of 1 replacement employee will be provided for a role

b. This will be provided at no cost within the first 90 days

c. A 50% discount on the recruitment fee will be applied for the remainder of the probationary period

d. Should a replacement employee also not pass probation, their replacement will be considered a new role.

3.4. At the end of the probationary period an employee is automatically regularised unless action has been taken in accordance with item 3.2.

4. Employee Costs

4.1. All costs relating to the employee's remuneration will be passed on to the Customer in full. This includes but is not limited to base salary, bonuses, allowances, overtime, shift loading, severance pay, taxes, government benefits, health insurance costs and 13th month pay.

4.2. Any one-off costs such as equipment, travel, work visas and social expenses will be provided on a cost + 15% basis.

4.3. All amounts for items 4.1 and 4.2 are based on actual costs incurred by First Focus in Australian Dollars, at the relevant exchange rate when the transaction occurred.

4.4. The employee's remuneration and associated on-costs will be invoiced in advance at the start of the month.

4.5. One-off costs and any adjustments to employee remuneration will be added to the invoice for the following month.

5. Admin Costs

5.1. The monthly admin fee covers human resource, finance, payroll and management services.

5.2. The admin fee will be invoiced in advance at the start of the month.

6. Place of Employment

6.1. Staff will work from their home unless otherwise specified.

6.2. A P1,500 per month allowance is bundled into the remuneration package to employees who work from home to contribute to electricity and internet charges.

6.3. A Dedicated Desk option is available which provides:

a. A dedicated desk within our Ortigas office

b. Access to shared meeting room facilities

c. Access to KMC serviced offices at an additional day rate

6.4. First Focus will work with the Customer to ensure appropriate Business Continuity Plans are in place should access to the office not be available.

6.5. Termination of the Dedicated Desk option is in line with other Termination clauses in Sections 7 and 8.

7. Social & Engagement

7.1. For staff that work from home, the Customer can opt whether their employees participate in social and engagement activities.

7.2. Staff with the Dedicated Desk option are included in social and engagement activities.

7.3. All costs for social and engagement activities will be passed on to the Customer as per item 4.2.

8. Equipment

8.1. IT and other equipment can be purchased on behalf of the Customer and invoiced as per item 4.2.

8.2. Alternatively, equipment can be rented as required and added to the monthly service fee.

8.3. Employees that supply their own device should be provided an allowance by the Customer as part of the remuneration package.

9. Termination for Non-Performance

9.1. Termination of non-performing staff must follow the First Focus performance management process.

9.2. Terminating probationary employees must be completed in accordance with Section 3.

9.3. Regularised employees are entitled to a 30-day notice period

10. Termination Without Cause

10.1. The Customer may end their engagement with any or all employees without cause by providing 45 days' written notice.

10.2. Staff will only be terminated in compliance with First Focus policies and procedures, and Philippines law.

10.3. Any severance pay required under Philippines law will be payable by the Customer in accordance with Section 4.