

Connexus Networks – General Terms and Conditions

1. DEFINITIONS

In the Contract, the following expressions, where used, shall have the meanings respectively ascribed to them:

"Connexus's Commercial Contact" – commercial director or such other person whose identity and contact details may be notified to Customer's Commercial Contact from time to time.

"Customer"- means the person so named on the Order Form, its successors and assigns.

"Customer's Commercial Contact" – means the person who signs the Order Form or such other person whose identity and contact details may be notified to Connexus's Commercial Contact from time to time.

"Commencement Date" – means the date the customer signs the Order Form.

"Contract" - this contract, comprising the Conditions, the Schedule(s) and the Order Form(s).

"Contract Personnel" - Connexus's employees, Subcontractors and agents (and their employees, subcontractors and agents) engaged in the performance of the Contract.

"Design Information" - any Information provided by Customer concerning the purpose, manufacture, design or configuration of Supplies.

"Early Termination Charge" – an amount equal to the total of the recurring periodic charges (such as, but not limited to, monthly rental charges) that would otherwise have been payable by the Customer to Connexus over the remainder of the Initial Term.

"Equipment" - all components, materials, plant, tools, test equipment, documentation, firmware, Software, spares and parts and things comprised in the Supplies, but not Service Equipment.

"Good Industry Practice" - at any time, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected at such time from a skilled and experienced provider of the Supplies seeking in good faith to comply with its contractual obligations.

"Information" - information whether in tangible or any other form, including, without limitation, specifications, reports, data, notes, documentation, drawings, software, computer outputs, designs, circuit diagrams, models, patterns, samples, inventions, (whether capable of being patented or not) and know-how, and the media (if any) upon which such information is supplied.

"Initial Term" – the period of time so described in the Condition headed "Term".

"Intellectual Property Right(s)" - any patent, petty patent, copyright, design right, community design right, semiconductor topography right, registered design, rights in know-how, or any similar right in any part of the world and shall include any applications for the registration of any patents or registered designs or similar rights capable of registration in any part of the world.

"Order Form(s)" – the form(s) prepared by Connexus and signed by or on behalf of Customer, in which are set out details about the Supplies. Connexus shall be under no obligation to provide, nor shall it have any liability in respect of, any Supplies that are not the subject of an Order Form signed by or on behalf of the Customer and signed as accepted by Connexus.

"Renewal Term: - the period of one year following expiry of the Initial Term or any subsequent period of one year in accordance with paragraph 2 of the Condition headed Term.

"RPI Increase" - the percentage increase in the retail price index as most recently published by the UK Central Statistical Office (or any government department to which duties in connection with the retail price index shall be devolved) over the same period in the previous twelve months.

"Schedule(s)" – the schedule(s) to the Contract applying to each element of the Supplies in which are set out: (a) any Special Conditions, (b) a description and/or specification of the Supplies and (c) the price(s) payable for the Supplies.

"Service Equipment" – the equipment (if any) loaned by Connexus or a Subcontractor to the Customer necessary for the delivery of the Supplies (or element(s) of them).

"Service Level Agreement(s)" or "SLA(s)" – the service levels more particularly described in the Schedules.

"Service Level Guarantee(s)" or "SLG(s)" – the remedies for failure to meet the Service Level Agreements more particularly described in the Schedules.

"Site" – Customer locations or premises upon or to which Connexus is to deliver Supplies, as the same are identified in the Schedule(s).

"Software" - all computer programs including but not limited to all source code and object code whether in machine readable, optically readable or any other format comprised in Supplies and the media on which it is supplied.

"Special Conditions" – the additional terms and conditions (if any) applying to the particular element of the Supplies to which the Schedule detailing such terms and conditions applies.

"Subcontractor"- any person, partnership or corporation with whom Connexus places a contract and/or an order for the supply of any equipment, item, service or for any work in relation to the Contract, or with whom Connexus already

has a contract or has already placed an order, including (without limitation) Connexus's suppliers, and "Subcontract" shall be construed accordingly.

"Supplies" - all Services, Equipment, Service Equipment, Information and Work the Contract requires be supplied to or performed for Customer, as detailed in the Schedules and the Order Form.

"Term" – the period of time described in the Condition headed "Term".

"Work" - work the Contract requires to be undertaken for Customer.

2. TERM

2.1 The Contract shall commence on the Commencement Date and shall, unless determined in accordance with the Condition headed "Termination", remain in force for a minimum period as stated on the Order Form (the "Initial Term").

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2.2 Following the Initial Term, the Contract shall continue until it is terminated in accordance with the Condition headed "Termination".

3. SUPPLIES

3.1 Connexus will deliver and/or commence provision of the Supplies in accordance with the SLAs and the terms of this Agreement, on or commencing on (as the case may be) the date(s) set out in the relevant Schedule(s) or Order Form(s). If no relevant date is specified in the Schedule(s) or Order Form(s), Connexus shall deliver or commence provision of the Supplies (as the case may be) as agreed between the Parties or, in the absence of agreement, at such time as Connexus may specify.

3.2 Subject to Paragraph 3 of this Condition, where Customer has a requirement for new goods and/or services the same as, or similar to, the Supplies or any other goods and/or services offered by Connexus, Customer shall give Connexus first invitation to submit an offer to Customer for the supply of such goods and/or services. Having considered Connexus' offer or where no such offer is received within a reasonable time, Customer may in its sole discretion invite other suppliers, together with Connexus, to submit offers for the supply of such services.

3.3 The provisions of Paragraph 2 of this Condition shall not apply where either Party has given notice of termination of this Agreement to the other.

3.4 Time shall not be of the essence in relation to the delivery of the Supplies and the Customer's sole and exclusive remedy in relation to late delivery shall be the relevant Service Level Guarantee (if any) applicable to the relevant Supplies.

3.5 Connexus agrees that the Supplies shall be supplied in accordance with Good Industry Practice.

3.6 Connexus does not warrant that the Supplies will be uninterrupted, fault-free or error-free.

3.7 Customer may vary how many instances of each element of the Supplies it receives from Connexus, by:

- (a) completing an Order Form in respect of each additional requirement, which shall be subject to the terms and conditions of this Contract;
- (b) providing Connexus with written notice of any ceased requirement, in which event Connexus will terminate the relevant element(s) of the Supplies as soon as is reasonably practicable, provided that:
 - (i) Customer shall remain liable to pay for such elements of the Supplies until they are terminated by Connexus;
 - (ii) Customer continues to receive at least the stated minimum number of instances (if any) of the relevant element(s) of the Supplies (if any) following the termination.

4. ACCESS TO SITE BY CONNEXUS AND/OR SUBCONTRACTORS; SITE PREPARATION BY CUSTOMER

4.1. At a reasonable time agreed with Connexus and to enable Connexus and/or the Subcontractor to provide or facilitate the Service, the Customer will provide the Subcontractor's employees and anyone acting on the Subcontractor's behalf with access to any Site. The Subcontractor will normally only require access during its normal working hours but may, on reasonable notice (other than in an emergency), require the Customer to provide access at other times. The Subcontractor may agree to work outside Subcontractor's normal working hours but the Customer must pay Subcontractor's additional charges for doing so.

4.2 Connexus will observe, and shall procure that the Subcontractor observes, the Customer's reasonable Site safety and security requirements, provided always that Connexus shall not be liable for any breach of this Contract arising as a result of conflict between any Site regulations and the terms and conditions of this Contract.

4.3 The Customer will provide a suitable and safe working environment for Connexus and/or the Subcontractor at the Site. The Customer will indemnify Connexus against all loss, damages, costs and expenses arising or incurred in respect of:

- (a) any actions, claims or legal proceedings which are brought or threatened against Connexus where the Customer is in breach of this clause; and
- (b) any like indemnity given by Connexus to the Subcontractor.

The limitations and exclusions of liability contained in the Condition headed "Limitation of Liability" do not apply to this indemnity. Any liability arising out of this Condition which is for property damage is limited to £1 million for any one event or series of connected events and £2 million for all events (connected or unconnected) in any period of 12 calendar months. Connexus shall have a duty to mitigate its loss in the circumstances covered by this indemnity.

4.4 Connexus accepts responsibility for any property damage caused by Connexus's negligence subject to the Condition headed "Limitation of Liability" and, to the extent that such property damage is caused by the Subcontractor, subject also to Connexus's recovery in respect thereof from the Subcontractor.

4.5 It is the Customer's responsibility to carry out afterwards any making good or decorator's work required at its own cost.

4.6 The Customer must prepare the Site(s) in accordance with Connexus's and/or Subcontractor's instructions so that any necessary Equipment and/or Service Equipment can be installed, obtain any required consents in respect of any necessary alterations to buildings and provide an appropriate environment for the installation of the Equipment and/or Service Equipment in accordance with any requirements notified to Customer by Connexus and/or the Subcontractor.

4.7 The Customer will be responsible for the reasonable charges of Connexus and/or the Subcontractor in respect of any additional preparation work that is undertaken in default by them, including (but not limited to):

- (a) internal trunking and tray work;
- (b) breaking through walls;
- (c) additional poles, ducts and cabling;
- (d) radio charges
- (e) non-standard or specially requested items.

4.8 The Customer must provide adequate electricity supply and suitable earth connection, together with any required network connectivity, in the room for the operation of any Equipment and/or Service Equipment to be installed at the Site(s).

4.9 If the Customer fails to give Connexus and/or the Subcontractor access to the Site(s), prevents Connexus or the Subcontractor from delivering or installing Equipment and/or Service Equipment, including where the Site is unprepared, the Customer agrees to meet Connexus's and/or the Subcontractor's (as the case may be) reasonable costs in respect thereof.

5. DEPENDENCIES

Customer acknowledges and agrees that delivery of the Supplies may be subject to, and conditional on, factors

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beyond the control of Connexus, including (but not limited to) the availability (or lack of) existing Subcontractor network infrastructure of the correct specification serving the Site(s), the imposition of additional charges by Subcontractors for the installation of enabling network infrastructure and refusal of service by a Subcontractor. In the event of a Subcontractor refusing to provide services on which one or more element of the Supplies depends, such element(s) shall be deemed not to form part of the Supplies and the Contract shall cease to apply to them. Connexus shall not be obliged to provide prior notice to Customer of any such event, neither shall it have any liability to Customer in respect thereof.

6. COMPLIANCE WITH STATUTORY AND OTHER OBLIGATIONS

Connexus shall provide the Supplies throughout the Term in accordance with all applicable laws, regulations and standards. Customer shall comply with all applicable laws, regulations and standards, when using the Supplies.

7. ASSIGNMENT AND SUBCONTRACTING

7.1 Neither Party shall assign, novate, sub-contract or otherwise dispose of this Agreement or any part thereof without the previous consent in writing of the other Party (such consent not to be unreasonably withheld or delayed).

7.2 Customer hereby consents to Connexus sub-contracting to such Subcontractors as it so requires in order to deliver the Supplies.

7.3 Notwithstanding any subcontracting permitted hereunder, each Party shall remain wholly responsible for the acts and omissions of its Subcontractors as though they were its own.

8. MISTAKES IN INFORMATION

8.1 Connexus shall inform Customer in writing of any mistakes in Design Information that it identifies within a reasonable time of such mistake(s) coming to its attention, provided always that Connexus shall be under no duty or obligation to identify such mistakes and shall have no liability to Customer for any mistakes that it does not identify.

8.2 Mistakes in Design Information shall be Customer's responsibility to remedy at its cost whether such Design Information has been approved by Connexus or not. If such remedial work is undertaken by Connexus, Customer shall bear all costs.

9. SERVICE EQUIPMENT

9.1 All Service Equipment shall remain the property of Connexus or its Subcontractor and Customer shall:

- (a) return it to Connexus upon completion or termination of the Contract or earlier reasonable request by Connexus;
- (b) keep it securely and in good condition, clearly marked as Connexus property; and
- (c) be fully liable for any loss of or damage to it.

9.2 Customer shall not, without the prior written consent of Connexus:

- (a) use Service Equipment for any purpose other than as necessary for the performance of the Contract;
- (b) allow any third party to use, take possession of, or have any rights or lien over Service Equipment;
- (c) add to, modify or in any way interfere with it or allow anyone else (other than someone authorised by Connexus) to do so.

9.3 Customer will be liable to Connexus for any loss of or damage to the Service Equipment, except where such loss or damage is due to fair wear and tear or is caused by Connexus or anyone acting on Connexus's behalf.

9.4 If there is any threatened seizure of any Service Equipment, or if Customer goes into receivership, administration or liquidation (or the equivalent of any of these) Customer shall:

- (a) notify Connexus immediately;
- (b) draw to the attention of the relevant official that Service Equipment belongs to Connexus and does not form part of Customer's assets; and
- (c) allow Connexus to enter Customer's premises where Service Equipment is stored and take possession of it.

10. FORCE MAJEURE

10.1 Neither party shall be liable to the other party for any delay in the performance of the Contract directly caused by any event beyond its reasonable control ("the Delay Period") provided such party shall have first given the other party written notice within seven days after becoming aware that such delay was likely to occur.

10.2 If a Subcontractor is so delayed in performing its obligations under a contract with Connexus relating to the Services and exercises a contingent right of termination, Connexus shall have the option by written notice to Customer to terminate the part of the Contract so affected and have no liability in respect of it.

10.3 For the avoidance of doubt, the provisions of this Condition shall not affect any right to terminate the Contract under the Condition headed "Termination".

11. RELIEF

Each Party's liability to the other Party under this Contract shall be excluded to the extent that such liability arises as a result of an act or omission of the other Party in relation to that Party's obligations under this Contract.

12. PRICING

12.1 The price(s) payable by Customer for the Supplies as set out in the Schedule(s) and/or the Order Form(s) shall, unless otherwise expressly stated in the Contract, be inclusive (to the extent relevant) of all packing, delivery to Site, any licence fees, installation, testing and Commissioning and all other charges associated with the Supplies, but shall exclude VAT.

12.2 The parties agree that the Supplier may review and increase the price(s) set out in the Schedule(s) by an amount up to that calculated by reference to the RPI Increase, provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase one month before the proposed date of the increase.

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13. PAYMENT AND INVOICING

13.1 Customer shall pay in full (without any deduction, set-off or counterclaim) each due and valid invoice submitted in accordance with this Condition within fourteen (14) days of the date of each such invoice.

13.2 When payment becomes due, Connexus shall forward invoices to the billing address specified in the Order Form.

13.3 Each invoice shall specify: its date; the order reference; line reference; the relevant Customer item code(s) if appropriate; the correct price; the full description of the Supplies to which the invoice relates (as defined in the Contract); the portion of the Supplies for which payment is due and, if appropriate, the cumulative amount invoiced to date.

13.4 If the Customer fails to pay any amount due under this Contract in accordance with its terms, interest at the rate of 4% above the base lending rate of HSBC Bank PLC shall be payable on such sums from the date on which payment was due until the date on which payment is made. The provisions of the Late Payment of Commercial Debts (Interest) Act 1998 shall not apply to this Agreement.

13.5 Where a direct debit is unpaid due to insufficient funds a £10.00 administration charge will be included on the next Customer invoice. Where a Customer cancels a direct debit without informing Connexus a further £10.00 administration charge will apply.

13.6 If you do not pay an invoice before the due date, we may instruct a debt collection agency to collect payment from you (including any interest and/or late payment charges) on our behalf. If we engage a debt collection agency to collect your debt, you must pay the reasonable costs we have to pay to such agency, which will be added to the amount you owe.

13.6 Connexus may suspend delivery of the Supplies to Customer during any period in which any amount due under this Contract is more than forty-five (45) days overdue for payment, except where there is a bona fide dispute between the Parties in relation to such sum and Customer notified Connexus of its grounds for such dispute before such sum became due for payment.

13.7 Customer shall notify Connexus in writing of any disputed invoice or charge within 30 days of the relevant invoice date and Customer's failure to do so shall be deemed to operate as a waiver by Customer of any claim relating to the disputed invoice or charge.

14. FINANCIAL SECURITY

14.1 Customer shall provide to Connexus at the Customer's cost such security as Connexus may reasonably require from time to time, in a form acceptable to Connexus, in respect of any amounts which are due or will become due to Connexus under this Contract.

14.2 Failure to provide such security within the time period stipulated by Connexus shall be deemed to be a material breach of the Customer's obligations under this Contract.

15. CONFIDENTIALITY

15.1 Subject to the Condition headed "Intellectual Property", either party receiving Information ("the Recipient") from the other shall not without the other's prior written consent use such Information except for Contract purposes or disclose such Information to any person other than Customer's employees, agents and contractors or Contract Personnel who have a need to know and who are bound by equivalent obligations of confidentiality. Any breach of such obligations by Contract Personnel or Customer's employees, agents or contractors (as the case may be) shall be deemed to be a breach by Connexus or Customer respectively.

15.2 Paragraph 1 of this Condition shall not apply to Information that is:

- (a) published except by a breach of the Contract; or
- (b) lawfully known to the Recipient at the time of disclosure and is not subject to any obligations of confidentiality; or
- (c) lawfully disclosed to the Recipient by a third party without any obligations of confidentiality; or
- (d) replicated by development independently carried out by or for the Recipient by an employee or other person without access to or knowledge of the Information.

15.3 Notwithstanding the provisions of Paragraph 1 of this Condition the parties may disclose this Agreement to their professional advisers for the purpose of considering and/or enforcing its terms.

15.4 The Recipient may disclose Information where disclosure is required by law, by a court of competent jurisdiction or by a regulatory body with authority over its business, provided that (to the extent it is lawful to do so) the Recipient gives the Party who has provided the Information to it at least seven (7) days' prior notice of the disclosure.

15.5 Without limiting the generality of the foregoing, neither party shall produce, issue, publish or otherwise disseminate, or cause to be produced, issued, publish or otherwise disseminated, anything referring to the other party without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

15.6 Either party that has during the course of the Contract received Information in a recorded form from the other (or has recorded received Information) shall return or destroy (at the option of the disclosing party) such records upon:

- (a) expiry or termination of the Contract; or
- (b) upon earlier request unless such records are part of the Supplies.

15.7 This Condition shall survive the Contract.

16. DATA PROTECTION

16.1 Each Party warrants to the other that they have made the proper notification to the Office of the Information Commissioner in respect of their use and processing of "personal data" (as that term is defined in the Data Protection Act 1998 (the "DP Act")).

16.2 The Parties acknowledge and agree that, for the purposes of this Contract, Customer shall be the data controller and Connexus shall be a data processor (both as such terms are defined in the DP Act).

16.3 The Customer shall procure that it has all the necessary consents from the data subjects (as defined in the DP Act) to use and for Connexus to use (and for Connexus to disclose to its Subcontractors) the data for the purpose of delivering the Supplies and warrants to Connexus that it has such consents.

16.4 For any personal data (as defined in the DP Act) processed by a Party in connection with this Agreement, that Party warrants to the other that:

- (a) it has made all necessary registrations of particulars including sources and disclosures in line with the provisions of the DP Act;
- (b) it complies, and will continue to comply, with the DP Act, including the data protection principles (as set out in the DP Act);

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- (c) it will co-operate as far as is reasonable with the other party in complying with any subject access request; and
- (d) it will co-operate fully with the other party in dealing with any investigations carried out by the Information Commissioner.

16.5 Connexus will ensure that any such personal data is processed only for the purposes of this Contract and in accordance with the DP Act and the written instructions of the Customer. The Customer undertakes that any instructions given to Connexus will be in accordance with the DP Act

16.6 Both Parties agree that they will take appropriate technical and organisational measures to guard against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, having regard to the nature of the data and the processing to be undertaken.

16.7 The Customer will indemnify Connexus against all loss, damages, costs and expenses arising or incurred in respect of:

- (a) any actions, claims or legal proceedings which are brought or threatened against Connexus by a third party where the Customer is in breach of this Condition; and
- (b) any like indemnity given by Connexus to a Subcontractor.

The limitations and exclusions of liability contained in the Condition headed "Limitation of Liability" do not apply to this indemnity. The liability arising out of this Condition is limited to £1 million for any one event or series of connected events and £2 million for all events (connected or unconnected) in any period of 12 calendar months. Connexus shall have a duty to mitigate its loss in the circumstances covered by this indemnity.

Customer acknowledges and agrees that Connexus may use the personal data it holds about Customer's employees to provide information to them (in their capacity as such) about Connexus, its products and services, unless and until (in the case of Customer), Customer notifies Connexus that it does not wish such information to be sent to Customer and/or (in the case of Customer's employees) either Customer notifies or its individual employees so notify Connexus.

16.8 This Condition shall survive the Contract.

17. SERVICE LEVEL AGREEMENTS AND SERVICE LEVEL GUARANTEES

17.1 Connexus will aim to comply with the SLAs but Customer acknowledges and agrees that such SLAs are targets only and Connexus shall have no liability for any failure to meet such targets, save to the extent (if any) provided in any related SLGs.

17.2 Connexus liability under the SLGs shall be the Customer's sole and exclusive remedy in relation to the SLA failure(s) to which they relate.

18. VARIATIONS

18.1 Subject to Paragraph 3 of this Condition, the Contract may only be varied by written agreement between the Parties who shall each respond in writing within ten days of receipt of a proposal for a variation from the other.

18.2 If the Customer asks Connexus to make any change to the Supplies Connexus may ask the Customer to confirm the request in writing or to complete an Order Form. If Connexus agrees to a change, this Contract will be amended from the date when Connexus confirms the change in writing to the Customer or accepts the Order Form (as the case may be).

18.3 Notwithstanding Paragraph 1 of this Condition, Connexus may change this Contract at any time in order to:

- (a) comply with any legal or statutory obligation; or
- (b) comply with any applicable regulatory requirements; or
- (c) comply with any final order, provisional order, direction, notice, specification, designation or consent made by any body of competent jurisdiction relating to the Supplies; or
- (d) introduce new features to the Supplies provided by a Subcontractor (subject to such notice as is required under any applicable regulatory requirements); or
- (e) withdraw features to the Supplies provided by a Subcontractor (subject to such notice as is required under any applicable regulatory requirements); or
- (f) introduce new or improved SLAs or SLGs; or
- (g) maintain the integrity or security of the Supplies or a Subcontractor's network; or
- (h) introduce process changes, provided they are not to the Customer's material detriment; or
- (j) protect the use of the Connexus name and trade marks; or
- (k) give effect to any changes imposed by a Subcontractor in relation to a contract between Connexus and such Subcontractor relevant to the Supplies, provided that any such change by Connexus shall be limited strictly to the minimum that is commercially reasonable in the circumstances

provided that any change introduced for the reasons set out in paragraphs (d) to (i) inclusive, above, shall not materially affect the Supplies or the performance of the Supplies except insofar as it is reasonable to do so. Connexus will give the Customer notice of the changes at least 21 days before the changes are to take effect.

19. INTERRUPTION AND SUSPENSION OF SUPPLIES

19.1 Connexus shall be entitled at any time to interrupt the Supplies for the purpose of Connexus or its Subcontractors improving, modifying, suspending, changing, testing, maintaining or repairing the Supplies, without incurring any liability or obligation to the Customer. Connexus will give to the Customer as much notification of any interruption or material changes to the Supplies as practicable in the circumstances and will use its reasonable endeavours to disrupt the Supplies as little as practicable.

19.2 Notwithstanding Paragraph 1 of this Condition, Connexus or its Subcontractors shall be entitled to interrupt the Supplies at any time without notice in cases of emergency.

19.3 Without prejudice to any other rights that Connexus may have under this Contract, Connexus shall be entitled to interrupt the access of the Customer to the Supplies or any part thereof (including the right of disconnection), or cease the Supplies or any part of them, if:

- (a) the Customer is in material breach of any of its obligations (including, but not limited to, its payment obligations) or warranties contained in this Contract;
- (b) in the reasonable opinion of Connexus, the Customer fails to take or unreasonably delays in taking any necessary action in respect of any fraud, when the particular circumstances of such fraud have already been notified to the Customer by Connexus, or the Customer otherwise becomes aware of the fraud;
- (c) Connexus (or its Subcontractor) is instructed to do so by any body of competent jurisdiction.

19.4 Prior to any such interruptions or cessation, Connexus shall notify the Customer and will provide a reasonable time, being not less than 5 days, for the Customer to take corrective action except where

- (a) the provision of any service to another customer of Connexus or its Subcontractor is materially affected by such breach;

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- (b) in the reasonable opinion of Connexus or its Subcontractor, any delay may cause damage to the Supplies;
- (c) in the reasonable opinion of Connexus or its Subcontractor, prior notice is not reasonably practicable;

in which case Connexus or its Subcontractor shall be entitled to carry out such interruption or cessation without notice and with immediate effect.

19.5 If in Connexus's reasonable opinion Customer is using any of the Supplies for a fraudulent purpose or is otherwise in breach of its contract with Connexus then:

- (a) Connexus may suspend or terminate the Supplies or part of them; and
- (b) Customer shall pay to Connexus any applicable charges in relation to such suspension, termination or re-commencement of the Supplies as are reasonable in the circumstances.

20. RELATIONSHIP BETWEEN THE PARTIES

The relationship between the Parties shall be solely that of independent contractors. Nothing in this Contract shall be deemed to constitute, create or give effect to or otherwise recognise a joint venture, partnership or formal business entity of any kind and the rights and obligations of the Parties shall be limited to those expressly set forth in this Contract. Nothing contained in this Contract shall be construed as authorising either party to act as an agent or representative of the other.

21. INTELLECTUAL PROPERTY

21.1 Except as set out in this Condition or otherwise expressly provided by this Contract Connexus (or any relevant third party licensor including, without limitation, any Subcontractor) will own the Intellectual Property Rights in all Software, documents, data and other material or items produced or supplied by Connexus in connection with the Supplies (the "Service Materials").

21.2 In the event of Customer receiving notice of or being threatened with any actions, claims, or proceedings in relation to any actual or alleged infringement of Intellectual Property Rights or breach of confidentiality by Customer's possession or use of the Supplies or Service Materials:

- (a) Customer shall notify Connexus in writing of any such Indemnified Claim received by Customer and shall not make any admissions unless Connexus gives prior written consent;
- (b) at Connexus' request and expense, Customer shall permit Connexus to conduct all negotiations and litigation in relation to the Indemnified Claim;
- (c) Customer shall give all reasonable assistance and Connexus shall pay Customer's reasonable costs and expenses so incurred.

21.3 Connexus may, at its expense, modify or replace the Supplies to avoid any alleged or actual infringement or breach.

21.4 Except as expressly provided, nothing in this Contract entitles the Customer to use Connexus's or any Subcontractor's name, logo, or trademark or any Intellectual Property Right in connection with the Supplies without the prior written consent of Connexus or such Subcontractor(s). Any breach of this Condition will be a material breach of this Contract for the purposes of the Condition headed "Termination".

21.5 This Condition shall survive the termination or expiry of this Contract.

22. ESCALATION AND MEDIATION

22.1 If the parties' respective Commercial Contacts cannot resolve any dispute within 5 days, it shall be escalated by reference to the persons named or holding the positions (or their equivalents) at the first level stated below. If they are unable to resolve the dispute within 5 days, it shall be escalated to the next level and so on until the procedure is exhausted. During this time neither party shall resort to litigation unless the other party is unwilling or unable to engage in the escalation process.

	For Customer	For Connexus
Level 1	IT/Telecoms Manager	Advisor
Level 2	Director	Director

22.2 If a dispute is not resolved when the escalation process above has been exhausted and, if the parties agree, the dispute will be referred to a mediator and the following will apply:

- (a) The mediator will be appointed by agreement of the parties. If the parties fail to agree within 3 days of a proposal from one party, the mediator will be appointed by the Centre for Dispute Resolution (CEDR).
- (b) Within 14 days of the appointment of the mediator, the parties will meet the mediator to agree the procedure to be adopted for the mediation.
- (c) All negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the parties in any further proceedings.
- (d) If the parties agree on a resolution of the dispute, the agreement will be reduced to writing, and once signed by both parties, shall be binding upon them.
- (e) If the parties fail to resolve the dispute within 60 days of the mediator being appointed, or if either party withdraws from the mediation procedure, then either party may exercise any remedy it may have under or in connection with the Contract.

23. EQUIPMENT GUARANTEE

23.1 Connexus shall use all reasonable endeavours to pass on to Customer any guarantee or warranty given by the relevant Subcontractor in respect of Equipment, but gives no other guarantee or warranty in respect thereof.

23. This Condition shall survive the Contract.

24. TITLE AND RISK

24.1 Title in Equipment shall pass to Customer upon the later of delivery or the passing of risk or payment and shall be free from any claims or encumbrance whatsoever, with the exception of any Software for which a licence is granted in accordance with the Contract.

24.2 The risk of loss of or damage to Supplies and Service Equipment shall pass to Customer upon delivery.

25. SOFTWARE LICENCE

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Customer is granted a licence to use the Software on the Subcontractor's licence terms appended to the Schedule(s) or Order Form(s) relating to the Supplies of which such Software forms part. Customer acknowledges and agrees that Customer is responsible for complying with the terms of such licence and for its ongoing renewal (including any associated costs).

26. TERMINATION

26.1 If either party (the "Defaulting Party") commits a material breach or persistent breaches of the Agreement, and in the case of a breach which is capable of remedy, fails to remedy the breach within 14 days of written notice from the other party (the "Non-Defaulting Party") requiring it to do so then the Non-Defaulting Party shall have the right:

- (a) at any time to terminate the whole (or, at the Non-Defaulting Party's option) any part of the Agreement to be performed; and
- (b) to recover from the Defaulting Party all directly resulting losses and expenses.

26.2 The Non-Defaulting Party shall have the right at any time to terminate the Agreement immediately and to recover from the Defaulting Party all directly resulting losses and expenses if the Defaulting Party shall become insolvent or cease to trade or compound with its creditors; or a bankruptcy petition or order is presented or made against the Defaulting Party; or where the Defaulting Party is a partnership, against any one partner, or if a trustee in sequestration is appointed in respect of the assets of the Defaulting Party or (where applicable) any one partner; or a receiver or an administrative receiver is appointed in respect of any of the Defaulting Party's assets; or a petition for an administration order is presented or such an order is made in relation to the Defaulting Party; or a resolution or petition or order to wind up the Defaulting Party is passed or presented or made or a liquidator is appointed in respect of the Defaulting Party (except for reconstruction or amalgamation).

26.3 Following the termination (for any reason) of a contract between Connexus and a Subcontractor (the "Outgoing Subcontractor"), Connexus shall have the option by written notice to Customer to terminate the part of the Contract so affected and have no liability in respect of it if, within 30 days of such termination, Connexus has been unable to identify and enter into a contract acceptable to Connexus with a replacement Subcontractor in respect of the element(s) of the Supplies provided by the Outgoing Subcontractor, despite Connexus using its reasonable endeavours to do so.

26.4 The Customer may terminate this Agreement at any time upon 45 days' prior written notice to Connexus, provided that if the Agreement is terminated by the Customer prior to the end of the Initial Term, Connexus shall be entitled to charge the Customer an Early Termination Charge. The Customer agrees to pay any such charge and acknowledges it to be a fair assessment of the losses and damage that Connexus will suffer as a consequence of the early termination.

26.4 The Customer may terminate this Agreement at any time upon providing the notice period as listed in the Table below (Table 1), giving prior written notice to Connexus. If the Agreement is terminated by the Customer prior to the end of the Initial Term, Connexus shall be entitled to charge the Customer an Early Termination Charge as listed in Table 1. The Customer agrees to pay any such charge and acknowledges it to be a fair assessment of the losses and damage that Connexus will suffer as a consequence of the early termination.

Table 1

Service	Notice Period (Days)	Early Termination Charge Within Contract Term
Phone Lines (Business Line, ISDN2, ISDN30)	45	50% of Remaining Rental Charge
Call Charges & Call Plans	45	One Month's Call Charges
Broadband (ADSL, FTTC)	45	100% of Remaining Rental Charge + £45 One Off Termination Charge
Internet Leased Line (Ethernet, EFM, FTTC Ethernet, MPLS)	90	100% of Remaining Rental Charge
Ethernet Access Direct	90	100% of Remaining Rental Charge
Maintenance Agreement (Phone System, IT)	90	100% of Remaining Rental Charge
Horizon Hosted Telephony	45	100% of Remaining Rental Charge + £15 per number ported away to an alternative Wholesale provider
SIP Trunks	45	100% of Remaining Rental Charge + £45 One Off Termination Charge + £15 per number ported away to an alternative Wholesale provider
Mobile	45	100% of Remaining Rental Charge
Non Geographic Number	45	100% of Remaining Rental Charge

26.5 Without prejudice to any other right of termination of Connexus under this Agreement, Connexus may terminate this Agreement at any time upon 45 days' prior written notice, such notice not to expire before the end of the Initial Term.

26.6 Each right of a party under this Condition is without prejudice to any other right of that party under this Condition or otherwise.

27. INDEMNITY

27.1 Without affecting any other rights or remedies it may have each Party (the "Indemnifier") shall indemnify the other (the "Indemnified Party") against all loss of or damage to any of the other's property to the extent arising as a result of the negligence or wilful acts or omissions of the Indemnifier in relation to the performance of this Agreement; and all claims and proceedings, damages, costs and expenses arising or incurred in respect of:

- (a) death or personal injury of any person to the extent arising as a result of the negligence or wilful acts or omissions of the Indemnifier in relation to the performance of this Agreement;
- (b) any complaint made pursuant to the Employment Rights Act 1996 or any similar legislation in jurisdictions other than England and Wales (as amended, replaced, consolidated or re-enacted from time to time) by any employee or sub-contractor of the Indemnifier whether in the Employment Tribunal, civil courts, other tribunal or other body of competent jurisdiction, or, without limitation, as a result of any claim or demand by any employee or sub-contractor of the Indemnifier in respect of any other claim whatsoever within the jurisdiction of an Employment Tribunal, civil courts, other tribunal or other body of competent jurisdiction, or wrongful dismissal, breach of contract or any other claim arising at common law, sex, race or disability discrimination or equal pay (in all cases, whether arising under UK or European law) or, in relation to the entirety of the foregoing and as the case may be, the local equivalent in other relevant jurisdictions.

27.2 The Indemnified Party shall use its reasonable endeavours to minimise any loss, damage or claim under Paragraph 1 of this Condition.

27.3 The Indemnified Party shall promptly notify the Indemnifier if any claim or demand is made or action or proceeding brought against the Indemnified Party to which Paragraph 1 of this Condition may apply. The Indemnifier shall at its own expense conduct any litigation arising there from and all negotiations in connection therewith and the Indemnified Party hereby agrees to grant to the Indemnifier exclusive control of any such litigation and such negotiations.

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27.4 The Indemnified Party shall at the request of the Indemnifier afford to the Indemnifier all reasonable assistance for the purpose of contesting any claim or demand made or action or proceeding brought against the Indemnified Party to which Paragraph 1 of this Condition may apply. The Indemnifier shall reimburse the Indemnified Party for all reasonable costs and expenses incurred in so doing.

27.5 The Indemnified Party shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action or proceeding to which Paragraph 1 of this Condition may apply.

27.6 This Condition shall survive the Contract.

28. LIMITATION OF LIABILITY

28.1 Subject to Paragraph 3 of this Condition, neither party shall be liable to the other (whether in contract, tort (including without limitation negligence), breach of statutory duty or otherwise) for:

- (a) loss of profits, business, revenue, goodwill or anticipated savings; and /or
- (b) indirect or consequential loss or damage;

arising under or in connection with this Contract.

28.2 Subject to Paragraph 3 of this Condition the total liability of either Party (whether in contract, tort (including without limitation negligence), breach of statutory duty or otherwise) to the other under this

Agreement shall not exceed the total of all sums paid or due to Connexus for Supplies.

28.3 Paragraphs 1 and 2 of this Condition shall not apply to loss or damage arising out of or in connection with:

- (a) death or personal injury or loss or damage for which liability cannot be limited or excluded by law; or
- (b) a Party's fraudulent misrepresentation or
- (c) Paragraph (b) of the Condition headed "Indemnity"; or
- (d) the Condition headed "Confidentiality"; or
- (e) any indemnity set out in the Contract to which this Condition is expressly stated not to apply.

28.4 This Condition shall survive the Contract.

29. NOTICES

Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by prepaid first class post or by facsimile transmission to Customer's Commercial Contact or Connexus's Commercial Contact (as the case may be). Any such notice shall be deemed to have been given or received at the time of delivery (if delivered by hand) or received the first working day after the day of sending (if sent by facsimile transmission) and when received (if sent by post).

30. GENERAL

30.1 Each Party undertakes to the other that:

- (a) it has full capacity and authority and all necessary licences, permits and consents to enter into and to perform this Contract;
- (b) this Contract is executed by a duly authorised representative of Connexus.

30.2 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.

30.3 The invalidity or unenforceability for any reason of any provision of the Contract shall not prejudice or affect the validity or enforceability of its other provisions.

30.4 The headings to the Contract provisions are for reference only and shall not affect their interpretation.

30.5 No delay, neglect or forbearance by either party in enforcing any provision of the Contract shall be deemed to be a waiver or in any way prejudice any rights of that party.

30.6 No waiver by either party shall be effective unless made in writing or constitute a waiver of rights in relation to any later breach of the Contract.

30.7 In relation to its subject-matter, the Contract is the entire agreement between the parties and governs their relationship to the exclusion (to the extent permitted by law) of any other terms and conditions, including, without limitation, those upon which any quotation or tender response has been given to Customer.

30.8 The Contract is governed by English law and subject to the exclusive jurisdiction of the English courts.

30.9 Neither Party is, nor shall it in any way represent itself as, an agent of the other Party and shall have no authority to enter into any obligation on behalf of the other Party or to bind the other Party in any way.

30.10 Any estimated contract value stated on the front sheet of the Contract is for Customer administrative purposes only and shall not constitute or imply any commitment by Customer.

30.11 Except as expressly set out in the Contract no assignment of or licence under any Intellectual Property Right or trade mark or service mark (whether registered or not) is granted by the Contract.

30.12 A person who is not a party to the Contract may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

30.13 This Condition shall survive the Contract.