

## 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Charges:** the charges payable for the Supplies as set out in the Order Form and/or the Schedule(s).

**Commencement Date:** the date the customer signs the Order Form.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 18.

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

**Connexus:** Connexus Networks Limited registered in England and Wales with company number 05454004 and its registered office at Unit 202 Stonehouse Business Park, Sperry Way, Stonehouse, Gloucestershire GL10 3UT.

**Contract:** the contract between Connexus and the Customer for the supply of Supplies in accordance with these Conditions, including the Schedule(s) and the Order Form. Where the Customer signs more than one Order Form, each Order Form, together with these Conditions and the applicable Schedule(s) shall form a separate contract between the parties.

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

**Customer:** means the person or firm who purchases Supplies from Connexus.

**Customer Premises Equipment (CPE):** any equipment necessary to use any the Supplies (or any of them) that is supplied by Connexus or Relevant Subcontractors, which is provided for the express use of provisioning those Supplies.

**Customer's Commercial Contact:** 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.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

**Design Information:** any Information provided by Customer concerning the purpose, design, specification or configuration of the Supplies.

**Domestic or Small Business Customer:** a Customer of ours who is neither a communications provider nor a customer in respect of an undertaking carried on by him or it for which more than ten individuals work (whether as employees or volunteers or otherwise).

**Early Termination Charge:** the charges for termination within the Initial Term or any Renewal Term, as set out in clause 26.4.

**Equipment:** all components, materials, plant, tools, test equipment, documentation, firmware, Software, spares, parts and things comprised in the Supplies, but excluding Service Equipment.

**Force Majeure Event:** has the meaning set out in clause 10.1.

**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 referred to in clause 2.32.3.

**Intellectual Property Right(s):** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order Form:** the form 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.

**Party:** a party to the Contract (**Parties** shall be construed accordingly).

**Relevant Subcontractor:** any person, firm, company or other legal entity with whom Connexus places a contract and/or an order for the supply of any equipment, item, service or work in relation to the Supplies or the Contract, or with whom Connexus already has a contract or has already placed an order in relation to the Supplies or the Contract, including (without limitation) Connexus's suppliers, and "Subcontract" shall be construed accordingly.

**Renewal Term:** the period of one year following expiry of the Initial Term or any subsequent period of one year in accordance with clause 2.4.

**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) a description and/or specification of the Supplies, (b) the price(s) payable for the Supplies, (c) any applicable Service Level Agreements and Service Credits, (d) any applicable Special Conditions, (e) any applicable Software licences, and (f) the information referred to in clause 16.3 in relation to any processing of personal data by Connexus.

**Service Credits:** the remedies for failure to meet the Service Level Agreements more particularly described in the Schedules.

**Service Equipment:** the equipment (if any) loaned by Connexus or a Relevant 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.

**Site:** Customer location(s) or premises upon or to which Connexus is to deliver Supplies, as identified in the Order Form.

**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.

**Specification:** the description or specification of the Services provided in writing by Connexus to the Customer or as set out in the Schedule(s) or Order Form (as the case may be).

**Supplies:** the services, Equipment, Service Equipment, Information and Work that Connexus supplied by Connexus to the Customer, as detailed in the Order Form and the Schedule(s).

**Term:** the term of the Contract, comprising the Initial Term and any Renewal Term, as described in clauses 2.3 and 2.4.

**Third-Party Processor(s):** Connexus' third-party processors (which includes third-party processors who may process Personal Data outside of the European Economic Area), as detailed in any applicable Schedule(s).

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**Work:** work the Contract requires to be undertaken for Customer.

## 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a Party includes its successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes email.

## 2. Basis of contract and term

2.1 The Order Form constitutes an offer by the Customer to purchase Supplies in accordance with these Conditions.

2.2 The Order Form shall only be deemed to be accepted when Connexus issues written acceptance of the Order Form at which point and on which date the Contract shall come into existence (**Commencement Date**).

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- 2.3 The Contract shall commence on the Commencement Date and shall, unless terminated in accordance with clause 26, remain in force for the minimum period as stated on the Order Form (**Initial Term**).
- 2.4 **If the Customer is not a Domestic or Small Business Customer**, at the end of the Initial Term or any prior Renewal Term, the Contract shall automatically renew for the Renewal Term and shall continue in force for the Renewal Term unless terminated in accordance with clause 26 or the Customer gives Connexus written notice of non-renewal at least 90 days prior to the end of the Initial Term or then current Renewal Term, as the case may be. **If the Customer is a Domestic or Small Business Customer**, then in respect of Supplies that are not subject to the Ofcom prohibition on automatically renewable contracts, at the end of the Initial Term or any prior Renewal Term, the Contract shall automatically renew for the Renewal Term and shall continue in force for the Renewal Term unless terminated in accordance with clause 26 or the Customer gives Connexus written notice of non-renewal at least 90 days prior to the end of the Initial Term or then current Renewal Term, as the case may be. **If the Customer is a Domestic or Small Business Customer**, then in respect of Supplies that are subject to the Ofcom prohibition on automatically renewable contracts the Contract will automatically continue after the end of the Initial Term unless and until terminated in accordance with clause 26.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by Connexus, and any descriptions or illustrations contained in Connexus' website, catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Supplies described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7 Any quotation given by Connexus shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

### 3. Supplies

- 3.1 Connexus will deliver and/or commence provision of the Supplies in accordance with these Conditions, on or commencing on (as the case may be) the date(s) set out in the relevant Schedule(s) or Order Form. If no relevant date is specified in the Schedule(s) or Order Form, 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 clause 3.3, 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 Clause 3.2 shall not apply where either Party has given notice of termination of the Contract to the other.

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- 3.4 Time shall not be of the essence in relation to the delivery of the Supplies or any performance dates specified in the Order Form, Schedule(s) or otherwise, and the Customer's sole and exclusive remedy in relation to late delivery or performance shall be the relevant Service Credits (if any) applicable to the relevant Supplies.
- 3.5 Connexus shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.6 Connexus does not warrant that the Supplies will be uninterrupted, fault-free or error-free, and the Customer's sole and exclusive remedy in relation to any interruptions, outages, faults or error in respect of the Supplies shall be the relevant Service Credits (if any) applicable to the relevant Supplies.
- 3.7 The 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 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.
- 3.8 Connexus reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Supplies, and Connexus shall notify the Customer as soon as is reasonably practicable in any such event.
- 3.9 Connexus warrants to the Customer that the Services will be provided using reasonable care and skill.
- 4. Access to Site by Connexus and/or Relevant Subcontractors; Site preparation by Customer**
- 4.1 At a reasonable time agreed with Connexus, and to enable Connexus and/or the Relevant Subcontractor to provide or facilitate the Service, the Customer will provide Connexus' and/or the Relevant Subcontractor's employees and/or anyone acting on the Relevant Subcontractor's behalf (**On-site Personnel**) with access to any Site. On-site Personnel will normally only require access during their normal working hours but may, on reasonable notice (other than in an emergency), require the Customer to provide access at other times. Following the Customer's reasonable request and with adequate prior notice, Connexus may be able to arrange for On-Site Personnel to work outside their normal working hours, subject to the Customer paying any applicable additional charges.
- 4.2 Connexus will observe, and shall procure that On-site Personnel observe, the Customer's reasonable Site safety and security requirements, provided always that Connexus shall not be liable

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for any breach of this Contract arising as a result of conflict between any Site regulations and the Conditions of this Contract.

- 4.3 The Customer will provide a suitable and safe working environment for Connexus and any On-Site Personnel at the Site. The Customer shall 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 a Relevant Subcontractor.

This clause 4.3 shall survive the Contract.

- 4.4 Connexus accepts responsibility for any property damage caused by Connexus's negligence subject to clause 28 and, to the extent that such property damage is caused by a Relevant Subcontractor, subject also to Connexus's recovery in respect thereof from the Relevant 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 shall prepare the Site(s) in accordance with Connexus's and/or any Relevant 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 a Relevant Subcontractor.
- 4.7 The Customer will be responsible for the reasonable charges of Connexus and/or the Relevant 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) unrelated configuration work;
  - (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 On-Site Personnel access to the Site(s), prevents Connexus or the On-site Personnel 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 Relevant Subcontractor's (as the case may be) reasonable costs in respect thereof.

## **5. Dependencies and Customer's obligations**

5.1 Customer acknowledges and agrees that delivery of the Supplies may be subject to, and conditional on, factors beyond the control of Connexus, including (but not limited to) the availability (or lack of) existing Relevant Subcontractor network infrastructure of the correct specification serving the Site(s), the imposition of additional charges by Relevant Subcontractors for the installation of enabling network infrastructure and refusal of service by a Relevant Subcontractor. In the event of a Relevant 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.

5.2 The Customer shall:

- (a) ensure that the terms of the Order Form are complete and accurate and that they reflect the Customer's requirements;
- (b) co-operate with Connexus in all matters relating to the Supplies;
- (c) provide Connexus with such information and materials as Connexus may reasonably require in order to supply the Supplies, and ensure that such information is complete and accurate in all material respects;
- (d) comply with all applicable laws, including health and safety laws;
- (e) keep all Service Equipment, other equipment, materials, documents and other property of Connexus (**Connexus Property**) at the Customer's premises in safe custody at its own risk, maintain Connexus Property in good condition until returned to Connexus, and not dispose of or use Connexus Property other than in accordance with Connexus' written instructions or authorisation; and
- (f) provide such access to the Customer's premises as is necessary to enable the Supplies to be delivered and installed.

## **6. Compliance with statutory and other obligations**

6.1 Connexus shall provide the Supplies throughout the Term in accordance with all applicable laws, regulations and standards.

6.2 Customer shall comply with all applicable laws, regulations and standards, when using the Supplies.

## **7. Assignment and subcontracting**

7.1 The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of Connexus.

7.2 Connexus may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Contract.

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

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

## **8. Mistakes in Design Information**

8.1 Connexus shall inform the 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 the Customer for any mistakes that it does not identify.

8.2 Mistakes in Design Information shall be the 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 or a Relevant Subcontractor, the Customer shall bear all costs and shall pay such costs to Connexus immediately on demand.

## **9. Service Equipment**

9.1 All Service Equipment shall remain the property of Connexus or its Relevant 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 for use of the Supplies;
- (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 the Service Equipment belongs to Connexus and does not form part of Customer's assets; and
- (c) allow Connexus or its nominated representative to enter Customer's premises where Service Equipment is stored and take possession of it.

## **10. Force majeure**

10.1 Neither Party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract (other than an obligation to pay) if such delay or



failure result from events, circumstances or causes beyond its reasonable control (**Force Majeure Event**). For the avoidance of doubt, the following events affecting Connexus shall (without limitation or prejudice to the generality of the foregoing) constitute a Force Majeure Event:

- (a) a delay in performing, or failure to perform, or breach of contract, by a Relevant Subcontractor;
- (b) failures of third party suppliers;
- (c) failures of technology; or
- (d) non-availability or withdrawal or fault in respect of any third party communications service or other service.

10.2 If a Relevant Subcontractor is delayed in performing, or fails to perform, 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 clause 10 shall not affect any right to terminate the Contract under clause 26.

## 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 the 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 Customer agrees that Connexus may review and increase the price(s) set out in the Schedule(s) and/or the Order Form(s) annually each April by an amount up to that calculated by reference to the RPI Increase. Connexus will give the Customer written notice of any such increase one month before the proposed date of the increase.

12.3 Connexus may vary the price(s) payable by the Customer for the Supplies at any other time by giving the Customer written notice of any such change one month before the proposed date of the increase.

## 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 clause 13 within fourteen (14) days of the date of each such invoice.

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

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- 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 make any payment due to Connexus under the Contract by the due date for payment, then, without limiting Connexus' remedies under clause 26:
- (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the base lending rate of HSBC Bank PLC from time to time, but at 4% a year for any period when that base rate is below 0%;
  - (b) Connexus may suspend all Supplies until payment has been made in full, in accordance with clause 13.7.
- 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 the Customer does not pay an invoice by the due date, Connexus may instruct a debt collection agency to collect payment from the Customer (including any interest and/or late payment charges) on Connexus' behalf. If Connexus engages a debt collection agency to collect a debt from the Customer, the Customer shall pay the reasonable costs that Connexus has to pay to such agency, which will be added to the amount owed by the Customer.
- 13.7 Connexus may suspend the provision of the Supplies to the 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 the Customer notified Connexus of its grounds for such dispute in writing before such sum became due for payment.
- 13.8 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 Each Party undertakes that it shall not at any time during the Term, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party, except as permitted by clause 15.2.

15.2 Each Party may disclose the other Party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the Party's obligations under the Contract. Each Party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other Party's confidential information comply with this clause 15; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

15.3 Neither Party shall use the other Party's confidential information for any purpose other than to perform its obligations under the Contract.

15.4 This clause 15 shall survive the Contract.

## 16. Data protection

16.1 This clause 16 only applies to the extent that Connexus is processing Personal Data on behalf of the Customer (where **Personal Data**, **Controller**, **Processor**, **Data Subject**, **Personal Data Breach**, **processing** and **appropriate technical and organisational measures** each have the meanings as defined in the Data Protection Legislation). In relation to Personal Data for which Connexus is the Controller, Connexus will process such Personal Data in accordance with its privacy notice which can be found on Connexus' website at [www.connexusuk.com](http://www.connexusuk.com).

16.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 16 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation. In this clause 16, **Applicable Laws** means (for so long as and to the extent that they apply to Connexus) the law of the European Union, the law of any member state of the European Union and / or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

16.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Connexus is the Processor. The privacy notice that can be found on Connexus' website at [www.connexusuk.com](http://www.connexusuk.com) sets out the scope, nature and purpose of processing by Connexus, the duration of the processing and the types of Personal Data and categories of Data Subject.

16.4 Without prejudice to the generality of clause 16.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Connexus for the duration and purposes of the Contract.

16.5 Without prejudice to the generality of clause 16.2, Connexus shall, in relation to any Personal Data processed in connection with the performance by Connexus of its obligations under the Contract:

- (a) process that Personal Data only on the documented written instructions of the Customer unless Connexus is required by Applicable Laws to otherwise process that Personal Data. Where Connexus is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Connexus shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Connexus from so notifying the Customer;

- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (c) ensure that all personnel who have access to and / or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - (i) the Customer or Connexus has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) Connexus complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) Connexus complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Applicable Laws to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 16 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of Connexus, an instruction infringes the Data Protection Legislation.

16.6 The Customer consents to Connexus appointing the Third-Party Processors, to assist Connexus in providing the Supplies, as third-party processors of Personal Data under the Contract. If Connexus intends to change any of the Third-Party Processors, it shall notify the Customer of such proposed change, thereby giving the Customer the opportunity to object to the change. Connexus confirms that it has entered or (as the case may be) will enter with each Third-Party Processor into a written agreement substantially on that third party's standard terms of business. As between Connexus and the Customer, Connexus shall remain liable for the acts and omissions of any Third-Party Processor appointed by it as if they were Connexus's own.

## **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 Service Credits.

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

## **18. Variations**

18.1 This clause 18 applies to all changes to the Contract, except changes to prices under clause 12.2.

18.2 Connexus may vary these Conditions at any time by giving the Customer notice at least 30 days before such changes come into effect or, where the variation arises due to changes imposed by a Relevant Subcontractor or changes to laws or regulation, as much notice as is reasonably practicable. Connexus will only vary these Conditions where it has a valid reason to do so, for example to reflect changing arrangements with any Relevant Subcontractor or changing legal, regulatory or business requirements. If any variation of these Conditions is likely to cause material detriment to the Customer in circumstances where Ofcom's rules in relation to such changes apply, then:

- (a) Connexus will also give the Customer at least 30 days' prior notice of the variation in writing or via email; and
- (b) the Customer will have the right to terminate the Contract in respect of the specific Supplies affected by the variation (but not any other Supplies) by giving Connexus 30 days' notice in writing and no Early Termination Charge will be payable in respect of such terminated Supplies.

18.3 The Customer agrees that, if it continues to use any Supplies after any such variation(s) have taken effect, it will be bound by the Conditions as varied.

18.4 If Connexus increases prices pursuant to clause 12.3 in relation to the Supplies and that increase is to the Customer's material detriment in circumstances where Ofcom's rules in relation to such increases apply, then the Customer will have the right to terminate the affected Supplies (but not any other Supplies) by giving Connexus 30 days' written notice, provided always that any Charges increases that would not have increased the Customer's immediately previous monthly total bill for the Supplies to which the increase relates (if the increase(s) had applied for the whole of that month) by more than the greater of:

- (a) the Retail Price Index (RPI) annual inflation rate at the date Connexus notifies the Customer of the applicable price increase; or
- (b) the Consumer Price Index (CPI) annual inflation rate at the date Connexus notifies the Customer of the applicable price increase,

shall not constitute a material detriment under this clause 18.4.

## **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 Relevant 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 prior notice of any interruption or material changes to the Supplies as is practicable in the circumstances and will use its reasonable endeavours to disrupt the Supplies as little as is practicable.

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- 19.2 Notwithstanding clause 19.1, Connexus or its Relevant 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 Relevant 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 Relevant Subcontractor is materially affected by such breach;
  - (b) in the reasonable opinion of Connexus or its Relevant Subcontractor, any delay may cause damage to the Supplies;
  - (c) in the reasonable opinion of Connexus or its Relevant Subcontractor, prior notice is not reasonably practicable,

in which case Connexus or its Relevant 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 the Customer is using any of the Supplies for a fraudulent purpose or is otherwise in breach of the terms of the Contract 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 Rights**

- 21.1 Except as set out in this clause 21 or otherwise expressly provided by this Contract, Connexus (or any relevant third party licensor including, without limitation, any Relevant 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 (**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 (**Infringement Claim**):

- (a) Customer shall notify Connexus in writing of any such Infringement 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 Infringement 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 Relevant 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 Relevant Subcontractor(s). Any breach of this clause 21.4 will be a material breach of this Contract for the purposes of clause 26.

21.5 This clause 21 shall survive the termination or expiry of this Contract.

## 22. Escalation, mediation and complaints

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.

	<b>For Customer</b>	<b>For Connexus</b>
<b>Level 1</b>	IT/ telecoms manager or adviser	IT/ telecoms manager or adviser
<b>Level 2</b>	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.

22.3 Where a Customer has a complaint or query regarding any aspect of the Supplies (including in relation to a Connexus invoice), it should contact Connexus' customer services team between the hours of 8.30 am and 5.00 pm Monday to Friday (excluding bank and public holidays in England) on 01453 827700 or by writing to Connexus Networks Limited, Unit 202, Stonehouse Business Park, Stonehouse, Gloucestershire GL10 3UT. The Customer must include both its telephone and customer account numbers in any correspondence.

22.4 If the Customer is a Domestic or Small Business Customer and is not happy with Connexus' response to any complaint or query that it makes, the Customer may refer its complaint to Ombudsman Services: Communications at [www.ombudsman-services.org/communications](http://www.ombudsman-services.org/communications), email [osenquiries@os-communications.org](mailto:osenquiries@os-communications.org), telephone 0330 440 1600.

### **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.

23.2 This clause 23 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 Equipment and Service Equipment shall pass to Customer upon delivery.

### **25. Software licence**

Customer is granted a licence to use the Software on the Relevant Subcontractor's licence terms referred to in the Schedule(s) relating to the Supplies of which such Software forms part or included with Equipment or Service Equipment. 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 (**Defaulting Party**) commits a material breach or persistent breaches of the Contract, 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 (**Non-Defaulting Party**) requiring it to do so then the Non-Defaulting Party shall have the right:

- (a) terminate the whole (or, at the Non-Defaulting Party's option) any part of the Contract to be performed; and
- (b) subject to clause 28, 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 Contract immediately and, subject to clause 28, 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



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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 Relevant Subcontractor (**Outgoing Relevant Subcontractor**), or if any authorisation or licence to operate required by Connexus to provide the Supplies is revoked or terminated for any reason, 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 Relevant Subcontractor in respect of the element(s) of the Supplies provided by the Outgoing Relevant Subcontractor, despite Connexus using its reasonable endeavours to do so.
- 26.4 The Customer may terminate this Contract at any time upon providing prior written notice to Connexus as set out in the Table below. If the Contract is terminated by the Customer prior to the end of the Initial Term or any Renewal Term, Connexus shall be entitled to charge the Customer an Early Termination Charge as set out in the Table below. 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**

<b>Service</b>	<b>Notice Period (Days)</b>	<b>Early Termination Charge within Initial Term or Renewal Term</b>
Phone Lines (Business Line, ISDN2, ISDN30)	90	50% of remaining monthly rental charges for the Initial Term or Renewal Term
Call Charges & Call Plans	90	One month's call charges
Broadband (ADSL, FTTC, FTTP)	90	100% of remaining rental charges for the Initial Term or Renewal Term plus £45 one-off termination charge
Internet Leased Line (Ethernet, EFM, FTTC Ethernet, MPLS)	90	100% of remaining rental charges for the Initial Term or Renewal Term
Ethernet Access Direct	90	100% of remaining rental charges for the Initial Term or Renewal Term
Maintenance Agreement (Phone System, IT)	90	100% of remaining rental charges for the Initial Term or Renewal Term
Horizon Hosted Telephony	90	100% of remaining rental charges for the Initial Term or Renewal Term, plus £15 per number ported away.
SIP Trunks	90	100% of remaining rental charges for the Initial Term or Renewal Term plus £45 one-off termination charge, plus £15 per number ported away.
Non Geographic Number	90	100% of remaining rental charges for the Initial Term or Renewal Term

- 26.5 Without prejudice to any other right of termination of Connexus under this Contract, Connexus may terminate this Contract 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 clause 26 is without prejudice to any other right of that Party under this clause 26 or otherwise.

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26.7 Termination of the Contract howsoever arising will be without prejudice to the rights, duties and liabilities of the Parties that accrued prior to termination.

26.8 Those clauses of the Contract that are intended (expressly or by implication) to have effect after termination will remain binding on the parties notwithstanding termination.

26.9 This clause 26 shall survive the Contract.

### 27. Indemnity

27.1 The Customer shall indemnify Connexus against any third party claims, proceedings or threatened proceedings, and against any loss or damage suffered by Connexus arising from any breach by the Customer of its obligations under the Contract (including, for the avoidance of doubt, the Schedule(s)), and for all costs and expenses reasonably incurred by Connexus in investigating and defending ourselves in relation to any such claims, proceedings or threatened proceedings, including (but not limited to) legal and other professional costs and expenses.

27.2 This clause 27 shall survive the Contract.

### 28. Limitation of liability – the Customer’s attention is particularly drawn to this clause

28.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

28.2 Subject to clause 28.1, Connexus’ Total Liability to the Customer in respect of all breaches of duty occurring within any Contract Year shall not exceed the Cap.

28.3 In clause 28.2:

- (a) **Cap:** the greater of £2,500 (two thousand five hundred pounds) and one hundred per cent (100%) of the Total Charges in the Contract Year in which the breaches occurred;
- (b) **Contract Year:** the 12-month period preceding the event giving rise to Connexus’ liability;
- (c) **Total Charges:** all sums paid by the Customer and all sums payable under the Contract in respect of goods and services actually supplied by Connexus, whether or not invoiced to the Customer; and
- (d) **Total Liability:** Connexus’ total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

28.4 This clause sets out specific heads of excluded loss. Subject to clause 28.1 and clause 28.7 the following types of loss are wholly excluded by the Parties:

- (a) Loss of profits;
- (b) Loss of sales or business;
- (c) Loss of revenue;
- (d) Loss of agreements or contracts;
- (e) Loss of anticipated savings;

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- (f) Loss of use or corruption of software, data or information;
- (g) Loss of or damage to goodwill;
- (h) Indirect or consequential loss or damage.

28.5 Connexus has given commitments as to compliance of the Supplies with relevant specifications in clause 3.5. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

28.6 Unless the Customer notifies Connexus that it intends to make a claim in respect of an event within the notice period, the Connexus shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

28.7 This clause 28 shall not apply to the indemnity set out in clause 4.3 or to the indemnity set out in clause 27.

28.8 This clause 28 shall survive the Contract.

### **29. Notices**

29.1 Any notice given to a Party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Order Form.

29.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt; and
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 10.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume (business hours means 8.30 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt).

29.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

### **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 that Party.

30.2 Except as expressly stated in this Contract, 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.

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- 30.3 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 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 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 30.7 The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each Party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 30.8 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with, the law of England and Wales.
- 30.9 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 30.10 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.
- 30.11 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 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 30.13 This clause 30 shall survive the Contract.