

## General Terms and Conditions

### 1. Application of Terms

- 1.1. Any Equipment or Services supplied by us to you shall be subject to these Terms unless we agree in writing to change them. If you accept Equipment and/or Services from us, that action by you will be deemed to be acceptance of these Terms, despite anything that may be stated to the contrary in your enquiries or your order.

### 2. Definition and Interpretation

- 2.1. In these Terms, the following words and expression shall have the following meanings except where the context otherwise requires:

"**Additional Charge**" means a charge payable by the Customer for any Additional Services in accordance with our prevailing rates for such services;

"**Additional Services**" means the services described in clauses 5, the Critical Spare Parts described in clause 10, and any further equipment or services which fall outside of the Equipment and Services;

"**Agreement**" means the Services & Maintenance Agreement for the Services entered into by Connexionz and the Customer, or an order form and/or software licence with respect to any Equipment and includes these Terms;

"**Connexionz**", "**us**", "**we**" and "**our**" means Connexionz Limited;

"**Critical Spare Parts**" has the meaning given to it in clause 10;

"**Customer**", "**you**" or "**your**" means the person or persons, firm or company names on the cover page of the Agreement;

"**Equipment**" means any hardware or other equipment listed in the Agreement, and/or other Equipment supplied or licensed by us from time to time, including spare parts, goods and materials supplied by us to you at any time as part of the Services;

"**Fees**" shall have the meaning given to it in clause 7, plus any Additional Charges;

"**Intellectual Property Rights**" means all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights, rights in software and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for them, anywhere in the world;

"**Party**" means the Customer or Connexionz, and "Parties" means both of them;

"**Period**" means the term of this Agreement, if any, stated in the Services and Maintenance Agreement;

"**Service Levels**" means any resolution times and service levels described in the Services & Maintenance Agreement;

"**Services**" means the Preventative Maintenance Services, Repair Services and any other services provided in respect of the Equipment detailed in the Agreement;

"**Site**" means the premises where the Services are provided;

"**Terms**" mean these General Terms and Conditions which are incorporated into and form part of the Agreement; and

"**Warranty**" means any warranty applicable to the relevant Equipment as published on our website (as amended from time to time).

- 2.2. **General provisions of interpretation** - In the construction and interpretation of the Agreement unless inconsistent with the context or otherwise specified:

- (a) references to statutes or statutory provisions include those statutes or statutory provisions as amended, extended, consolidated, re-enacted or replaced from time to time and any orders, regulations, instruments or other subordinated legislation made under them.
- (b) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (c) words importing the singular number include the plural and vice versa, references to any gender include every gender and references to persons include corporations and unincorporated bodies of persons, government or semi-government bodies or agencies or political subdivisions of them;
- (d) references to any party include that party's successors and permitted assigns;
- (e) references to "dollars" and "\$" are references to New Zealand dollars' NZD
- (f) referring to anything after the word "including", "include" or "includes" does not limit what else might be included and any

such reference is without limitation to what else might be included;

- (g) references to "written" and "in writing" include any means of permanent visible representation (including email); and
- (h) In the event of any inconsistency between these Terms and the Services & Maintenance Agreement (including its Schedules), the Services & Maintenance Agreement shall prevail.

### 3. Supply of Services

- 3.1. We will carry out the Services with all reasonable care and skill, and make every effort to supply the Equipment and/or Services on time and, if applicable, in accordance with the Service Levels. However, we shall not be liable to you for any delays in performance, however that failure was caused.
- 3.2. Unless otherwise agreed with you, the Services shall be supplied during our normal business hours.
- 3.3. In supplying the Services, it may be necessary for us to engage subcontractors. However, we will take full responsibility for their work, as if it had been done by us under this Agreement.

### 4. Modification, Changes and Enhancements

- 4.1. During the Term, we shall at our discretion undertake such modifications, changes or enhancements to the Equipment and/or implement any practice, procedure or measure, which is deemed by us to be necessary and/or to prevent or minimise damage to the Equipment.
- 4.2. We will before under taking any such modification, change or enhancement etc as mentioned in 3.1. Above, explain to the Customer, if we deem necessary, the need and cost (where applicable) of such modification, change or enhancement. The Customer shall pay any Additional Charges for such modification, change or enhancement according to Clause 7.2.

### 5. Additional Services

- 5.1. The Services do not include:
  - (a) repair of damage arising from the act, error, fault, neglect, misuse, improper operation or omission of the Customer or its servants, agents, contractors or invitees or any person whether or not that person is under the control or direction or authority of the Customer;
  - (b) repair of damage arising from changes, alternations, additions or modifications of the equipment by a person other than Connexionz;
  - (c) repair of damage caused by incorrect power supply, failure of electrical power, air-conditioning, humidity control or any environmental factor;
  - (d) repair of damaged caused by the operation of the equipment other than in accordance with the specification or otherwise than in accordance with the direction, instruction or recommendations of Connexionz or its personnel.
  - (e) repair of damage arising from the re-installation, moving or removing of the Equipment by a person other than Connexionz or its personnel;
  - (f) repair of damage cause by circumstances beyond Connexionz reasonable control;
  - (g) furnishing or supplying maintenance of accessories, attachments, supplies, spare parts, consumables or items associated with the Equipment unless otherwise agreed.
  - (h) transportation charges, whether for air, sea or land transport for Services carried on within or outside New Zealand;
  - (i) the cost of any Equipment or part whether spare part, consumable or otherwise supplied, unless otherwise agreed or provided for under a Warranty;
  - (j) the upgrading of or retrofitting of improvements or major modification to the Equipment.
- 5.2. The Customer may request that Connexionz provide any of the services referred to in clause 5.1, or other services requested from time to time ("**Additional Services**"). Connexionz may agree to provide the Additional Services its discretion, subject to the Customer paying the relevant Additional Charge as notified by Connexionz.

## 6. Customer's Responsibilities

- 6.1. You shall provide us and our personnel with full, safe and uninterrupted access including remote access to your Premises and the Equipment as may reasonably be required for the purpose of performing the Services. Where the Services are to be performed at your Premises, you shall provide adequate working space and office (including telephone) facilities for our personnel's use and take reasonable care to ensure their safety in accordance with all health and safety laws.
- 6.2. You shall ensure that appropriate environmental conditions are maintained for the Equipment and shall take all reasonable steps to ensure that the Equipment is operated in a proper manner in accordance with our instructions.
- 6.3. You shall:
  - (a) co-operate with Connexionz in performing the Services and provide any assistance or information as may reasonably be required by us;
  - (b) report faults promptly to us; and
  - (c) keep full back-up copies of all of your data.
- 6.4. All assistance to be provided by you under this Agreement shall be at your sole cost and expense.
- 6.5. You shall not (and shall not permit any other person to):
  - (a) carry out or attempt to carry out modification to, repair of, experiments on, or maintenance of the Equipment without our prior written approval;
  - (b) copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to any of our software; or
  - (c) do or omit to anything which diminishes our Intellectual Property Rights in the Equipment or Services or impairs any registration of the same.
- 6.6. You agree to indemnify us against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against us as a result of your breach of this Agreement or any negligent or wrongful act by you, your officers, employees, contractors or agents.

## 7. Pricing and Payment

- 7.1. The price for the Equipment or Services shall be the price quoted to you in writing or otherwise set out in the Agreement ("**Fees**"). All Fees are exclusive of transport, freight, insurances, all duties, levies or taxes (including goods and services, state and federal taxes), packing, crating or storage recovery, and other rates and charges and are payable in the currency set out in our invoice or in the Services and Maintenance Agreement. If no currency is specified, in New Zealand dollars.
- 7.2. The Customer shall pay all Fees in full, without deduction or set off, in the manner described in the Services and Maintenance Agreement or otherwise within (30) days from the date of our invoice.
- 7.3. If the Customer fails to make full payment on the due date, then without prejudice to any other rights or remedy available to us, we shall be entitled to:
  - (a) terminate the Agreement or suspend any further supply of Equipment or Services or other obligations to the Customer under the Agreement (without being liable to Customer for any losses so caused);
  - (b) at its sole discretion, apply any monies received from the Customer in relation to the Agreement or any other contract or agreement between the Customer and Connexionz;
  - (c) charge interest on overdue monies on a daily basis at 5% per annum above the current NZ overdraft rate charged by our bankers at that time, and interest shall continue to accrue both before and after judgment and you will be responsible for all costs (including legal costs on a solicitor/client basis) incurred by us in recovering such monies; and/or
  - (d) withdraw any discount offered to you, and you will be liable for the full invoice price.
- 7.4. The Customer shall not be entitled to withhold from, set off against or otherwise reduce any payments due to us unless agreed in writing by Connexionz.
- 7.5. We shall be entitled to adjustment of the Fees in the event of changes in law or engineering standards, or other circumstances outside of our control, applicable to or affecting the Equipment and/or Services after the execution of the Agreement.

- 7.6. Despite the above or any agreement to the contrary, all payments shall become immediately due and payable if we reasonably believe that the information which you have given us is not correct or no longer correct, or if you breach the Agreement (and in the case of any default which may be remedied, fails to remedy the same within 7 days of receiving notice specifying the default), become insolvent or commit any act of bankruptcy, a receiver, liquidator or statutory manager is appointed over any of your assets or undertaking or you make or attempt to make an arrangement or composition with your creditors.

## 8. Ownership

- 8.1. Ownership in the Equipment/Software shall not pass to you at the time of delivery, but will remain with us until we have received full payment, in cash or cleared funds, of all monies owing by you to us.
- 8.2. Until all such monies have been paid:
  - (a) you will keep the Equipment separate from any other goods in your possession, and properly stored, protected and insured, and identified as our property;
  - (b) all sums received from any insurance claim made in respect of loss of or damage to the Equipment shall be treated as if they were proceeds of sale and held by you on trust for us, and pay them into a separate bank account without mixing them with other monies, and you will also hold on trust for us and, if required by us, forthwith assign to us the benefit of any insurance claim made in respect of the Equipment;
  - (c) we may, at any time, require you to deliver the Equipment (which have not been resold) to us and, if you fail to do so forthwith, our employees and agents may enter any premises where the Equipment might be stored and recover them, and you agree to indemnify us, on demand, against any liability incurred by us in our exercise of this right.

## 9. Risk and delivery

- 9.1. Delivery of the Equipment will take place on receipt by or on behalf of the Customer. We will make every effort to ensure delivery of Equipment is on time. However, we shall not be liable to you for any failure to deliver on a specified date or within a specified period, however that failure was caused.
- 9.2. Despite clause 8 above, risk in respect of the Equipment shall pass to you on delivery in accordance with clause 9.1 above. You are responsible for insurance of the Equipment from that time.

## 10. Critical Spare Parts

- 10.1. Connexionz may from time to time require the Customer to purchase and store such spare parts as Connexionz considers necessary for the provision of effective Services ("**Critical Spare Parts**").
- 10.2. Connexionz will not be liable for any failure or delay in providing the Services where such failure or delay is the direct or indirect result of the failure of the Customer to comply with clause 10.1.
- 10.3. The cost of maintaining the Critical Spare Parts (including replacement of any which are used, replaced or otherwise become obsolete) shall be met by the Customer as an Additional Charge.

## 11. Orders and cancellation

- 11.1. An order for Equipment and/or Services is not binding unless accepted by us in writing.
- 11.2. You may not cancel an order for Equipment and/or Services, wholly or partly, without our written consent. As a condition of giving our consent, we may require reimbursement of any costs (including materials, handling fees and labour) incurred by us in connection with the order up to the date of our consent.
- 11.3. In addition to our rights under clause 7.3(a) above, we may cancel or suspend an order for Equipment, wholly or partly and without liability to you, in any of the circumstances set out in clause 7.6 above or if fulfilling the order becomes impractical or uneconomic due to any cause beyond our control.

## 12. Intellectual Property Rights

- 12.1. The Customer acknowledges that all Intellectual Property Rights in the Equipment and/or arising from the Services (including, to avoid doubt, ownership of any software belongs and shall belong to Connexionz, and the Customer shall have no rights in or to the

Equipment or Services other than the right to use them in accordance with the terms of this Agreement. Neither we nor our suppliers transfer to you any Intellectual Property Rights in or relating to the Equipment or Services. You agree to do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as we may from time to time require to give us the full benefit of the provisions of this clause 12.1.

12.2. You warrant that any designs, drawings or specifications which you provide to us will not infringe any Intellectual Property Rights of any third party, and you agree to indemnify us, on demand, against any liability we may suffer as a result of our use of those designs, drawings and specifications.

### 13. Consumer Guarantees Act 1993 ("CGA")

13.1. If the CGA applies, these Terms shall be read subject to your rights under the CGA.

13.2. Where you are acquiring the Equipment or Services for the purposes of a business (as provided in sections 2 and 43 of the CGA), the CGA shall not apply.

### 14. Warranties and liability

14.1. We warrant:

- (a) with respect to the Services, that they will be carried out with all reasonable skill and care; and
- (b) with respect to the Equipment, that it will comply with the terms of the Warranty applicable to the particular Equipment as published on our website at the time of acceptance of your order.

14.2. Your remedy for a breach of the warranty at clause:

- (a) 14.1(a) will be the re-performance of the Services; and
- (b) 14.1(b) will be as outlined in the terms of the Warranty.

14.3. We reserve the right to vary the terms of the Warranty from time to time by publishing revised terms on our website.

14.4. To the fullest extent permitted by law:

- (a) our liability under these Terms is in substitution for, and to the exclusion of, all other warranties, representations, conditions or obligations imposed or implied by law, statute or otherwise in relation to the Equipment and Services (including, without limitation, under the CGA); and
- (b) all liability for any other direct or indirect cost, loss, liability or damage (including special or consequential loss or loss of profits) of any kind is expressly excluded.

14.5. In all circumstances, including to the extent that our liability cannot be limited or excluded by law, our liability under the Agreement shall in no event exceed, in the aggregate, the amount paid by the Customer for Equipment and/Service in the 3 months prior to such liability arising.

### 15. Personal Property Securities Act 1999 ("PPSA")

15.1. You acknowledge and agree that, by accepting these Terms, you grant us a security interest over the Equipment and their proceeds (by virtue of the retention of title in clause 4 above).

15.2. You undertake to:

- (a) do all acts and provide us on request all information we require to register a financing statement or financing change statement on the Personal Property Securities Register; and
- (b) advise us immediately in writing of any proposed change in your name or other details on the Personal Property Securities Register.

15.3. You:

- (a) waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest;
- (b) waive your rights and, with our agreement, contract out of your rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA; and
- (c) agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and, with our agreement, contract out of such sections.

15.4. Unless the context otherwise requires, the terms and expressions used in this clause 15 have the meanings given to them in, or by virtue of, the PPSA.

### 16. Privacy Act

16.1. You and any guarantor (if relevant) authorise us to collect and hold personal information from any source we consider appropriate to be used for credit, administration, service and marketing purposes. You further authorise us to disclose personal information held by us for these purposes to any other person.

16.2. You understand that you have a right of access to, and may request correction of, personal information held by us about you.

### 17. Maintenance Hardware

Connexionz shall provide all the necessary tools, equipment, testing and diagnostic apparatus which Connexionz requires in order to carry out the Services unless otherwise agreed.

### 18. Customer Records and Reports

18.1. The Customer shall keep such records relating to the use and performance of the Equipment as may be directed by Connexionz from time to time.

18.2. The Customer shall permit Connexionz to have access to such records at all reasonable times, including all periods during which the Services are being performed or preparations are being made for the Services to be performed.

### 19. Force Majeure

19.1. We are not liable for delay in performing or failure to perform our obligations under the Agreement if that delay or failure results from anything beyond our reasonable control. Any such delay or failure will not be a breach of the Agreement and the time for performance of our obligations will be extended by a period equal to that during which performance is prevented.

19.2. If such delay or failure continues for at least one (1) month, we may terminate this Agreement immediately with written notice. In such event, you agree to pay us for the Equipment delivered and a reasonable sum in relation to Services already rendered and costs and expenses incurred prior to termination.

### 20. Termination and/or Suspension of Services.

20.1. The Agreement will continue in force for the Period (if any) and (unless otherwise agreement) shall continue afterwards until terminated by one party giving to the other party not less than one month's written notice to that effect, such notice only to be given so as to expire after the end of the Period. If no such Period is given, the Agreement shall continue unless terminated in accordance with this clause 20.

20.2. In addition to Connexionz' right to terminate the Agreement under Clause 7.3, Connexionz shall be entitled to (i) terminate the Agreement or suspend any further Services under the Agreement without any liability to the Customer, and (ii) demand that the Fees, or balance thereof, shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, and (iii) retain any security given or monies paid by the Customer and apply the said security or monies against the assessed loss and damages, if any, suffered by Connexionz, in the event that:

- (a) the Customer is in breach of the Agreement; or
- (b) the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or has an order made or resolution passed for such winding-up or shall otherwise become insolvent or make such proposals, assignment or arrangement for the benefit of its creditors or have a receiver or manager appointed over its affairs or have an application made to court for the appointment of a judicial manager to be placed under a judicial management order; or
- (c) an encumbrance takes possession of, or a receiver is appointed over, any of the property or assets of the Customer; or
- (d) the Customer ceases, or threatens to cease, to carry on business; or
- (e) there is a change in control of the Customer which in the reasonable opinion of Connexionz adversely affects the position, rights or interests of the Customer (for the purpose of this sub-clause, "control" means the ability to direct the affairs of another whether by virtue of Agreement, ownership of shares, or otherwise howsoever); or

- (f) in the reasonable opinion of Connexionz, there occurs a material change in the financial position of the Customer which is likely to affect the Customer's ability to perform its obligations under the Agreement; or
  - (g) Connexionz reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 20.3. Termination of the Agreement by us shall not discharge you from any existing obligation accrued due on or prior to the date of termination and in particular, clauses 6.6, 7, 8, 12, 13, 14.4, 20.2 and 21.7 and any other clause intended by their nature to continue shall survive termination of this Agreement.
- 20.4. The rights and remedies granted to Connexionz pursuant to the Agreement are in addition to, and shall not limit or affect, any other rights or remedies available at law or in equity.

## 21. General

- 21.1. Any notice required or permitted to be given by either Party to the other under the Agreement shall be in writing and signed by the authorised representatives of the Party addressed to that other Party at its registered office or principal place of business or such other address as may at the relevant time have been notified to the Party giving the notice. Notices may be delivered by hand, or by prepaid registered post or by email and shall be deemed to have been served:
- (a) if by hand, at time of delivery;
  - (b) if by prepaid registered post, if sent within New Zealand or at 10.00 am (local time at the place of destination) on the seventh Business Day after the day it was put in the post if sent internationally;
  - (c) If by email, on the date printed on the email.
- In proving service of notice it shall be sufficient to prove that delivery was made or that the envelope containing the notice was properly addressed and posted by prepaid post or that the email was despatched from the sender's email server without the sender receiving any "out of office" auto-reply or other indication of non-receipt.
- 21.2. No waiver by either party of any breach of the Agreement by the other Party shall be considered as a waiver of any subsequent breach of the same or any other provision. If either Party delays, neglects or chooses not to enforce its right under the Agreement, it shall not affect its right to do so at a later date.
- 21.3. If a court decides that part of the Agreement is unenforceable, the part concerned shall be deleted from the rest of the Agreement, which will then continue in force.
- 21.4. We may amend these Terms from time to time by notice to you in writing.
- 21.5. The Agreement and the documents referred to in it constitute the entire agreement between the Parties relating to their subject matter, and supersede all previous understandings and agreements between the Parties relating to that subject matter (whether written, oral or both).
- 21.6. Nothing in the Agreement constitutes a partnership, joint venture or relationship of employer and employee between the Parties. Except as otherwise provided in the Agreement or expressly authorised by a Party in writing, neither Party may act or hold itself out as an agent or representative of the other Party, nor assume or create any obligations on behalf of that other Party.
- 21.7. The Agreement (including these Terms) shall be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand Courts.
- 21.8. The Agreement may be executed in any number of counterparts and all the counterparts when taken together will constitute one agreement. Each Party may enter into the Agreement by executing a counterpart. The Parties acknowledge that the Agreement may be executed by an exchange of facsimile and/or scanned and emailed PDF copies and execution of the Agreement by that means is valid and sufficient execution.