



# CloudConnX

General Terms & Conditions

Issue Date: 1<sup>st</sup> January 2021

Version 1.7

## 1. Interpretation

1.1. In this Agreement, unless otherwise specified the following rules apply:

- a) words in one gender include all other genders;
- b) a person includes a natural person, firm, partnership, limited liability partnership, local authority, government, state, foundation and trust, corporate or unincorporated body (whether or not having separate legal personality) and any agency of any of the above;
- c) a "company" shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- d) words in the plural include the singular and vice versa;
- e) a reference to a party includes its personal representatives, successors or permitted assigns;
- f) words referring to the whole are treated as including reference to any part of the whole;
- g) references to Terms & Conditions, Schedules or Annexes are relevant to those found within this Agreement;
- h) references to this Agreement or to any other document are references to this Agreement or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced (in each case, other than in breach of the provisions of this Agreement) at any time;
- i) unless specifically stated otherwise, references to a Clause are relevant to the body of text that it resides within (inclusive of Service Terms & Conditions, Schedules or Annexes);
- j) unless specifically stated otherwise, reference to a paragraphs are relevant to the body of text that they reside within (inclusive of Service Terms & Conditions, Schedules or Annexes);
- k) reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- l) reference to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept, state of affairs or thing is deemed, in respect of any jurisdiction other than England, to include that which most approximates in that jurisdiction to the English legal term;
- m) the words "other" and "otherwise" are not to be construed ejusdem generis with any preceding words where a wider construction is possible;
- n) any phrase introduced by the words "including", "include", "in particular" or any similar expression is to be construed as illustrative only and is not to be construed as limiting the generality of any preceding words;
- o) Clause, Schedule paragraph headings and section summaries do not affect the formal interpretation of this Agreement;
- p) Words and phrases defined in any part of this Agreement bear the same meanings throughout this Agreement; and
- q) The Schedules and Annexes form part of this Agreement.
- r) "writing" or "written" includes faxes and email;
- s) a "month" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that, if there is no numerically corresponding day in the month in which that period ends, that period ends on the last day in that calendar month.

1.2. The Agreement between CloudConnX and the Customer comprises of the following documents:

- a) General Terms & Conditions (this document);
- b) Service Agreement
- c) Service Terms and Conditions referenced by the Service Agreement;
- d) Acceptable Usage Policy
- e) Partner Agreement (if applicable);
- f) Addendum (if applicable);

## 2. Definitions

2.1. The meanings of terms and phrases used in these Service Terms & Conditions are defined in Annex A of the CloudConnX GTC (this document).

### 3. Service Provision

- 3.1. The Customer may from time to time deliver a Service Agreement to CloudConnX. Any Service Agreement shall be in the format provided by CloudConnX and may be modified from time to time by CloudConnX and notified to the Customer. CloudConnX may, at the sole discretion of a duly authorised officer of CloudConnX, choose to accept requests for Services in other formats as delivered by the Customer. In such event, CloudConnX shall provide written notification within 48 hours of receipt of the Customer's request for Service of CloudConnX's intent to accept the request for Service. For the avoidance of doubt, should the Customer not receive any such notification from CloudConnX within the allotted 48 hour period, it shall not be construed as a tacit response on the behalf of CloudConnX.
- 3.2. Each Service Agreement shall only be deemed as accepted and binding to both the Parties upon CloudConnX counter signing the Service Agreement. Such acceptance includes CloudConnX's satisfaction of appropriate credit checks against the Customer. Except as otherwise agreed in writing by the Parties, the Customer shall not be obliged to submit, nor shall CloudConnX be obliged to accept, any Service Agreement.
- 3.3. CloudConnX shall provide and maintain each Service during the Term as specified in the Service Agreement.
- 3.4. CloudConnX may, for operational reasons, change the technical specification of a Service from time to time provided that any change does not materially affect the performance of the Service.
- 3.5. Ownership of CPE shall at all times be retained solely by CloudConnX, unless specifically stated otherwise within the applicable Service Agreement.
- 3.6. Support Services provided by CloudConnX are subject to availability as confirmed by CloudConnX to the Customer upon request.

### 4. Payments

- 4.1. In consideration of the provision of Services by CloudConnX, CloudConnX shall invoice the Customer and the Customer shall pay the Fees set out in the Service Agreement or in any other payment Schedule, Annex or supporting documentation that is agreed between the Parties.
- 4.2. All Service Charges, with the exception of the Service Charges in respect of the first period following the Service Commencement Date, shall be paid to CloudConnX's nominated bank account in accordance to Payment Method and Payment Profile agreed in the Service Agreement. Service Charges in respect of the first period following the Service Commencement Date and any NRC Fees as set out in the Service Agreement shall be paid by electronic transfer to CloudConnX's nominated bank account in advance of the provision of Service. CloudConnX shall not begin or progress any aspect of an accepted Service Agreement nor shall it request, reserve or pre-order any equipment components or Services with any third party or begin to perform any of the requirements of the Service Agreement without receipt of clear funds in respect of the Service Charges for the first period following the Service Commencement Date and any NRC's.
- 4.3. All Fees shall be paid by the Customer in cleared funds and without deduction or set-off. In the event that the Customer is required to make international transfers, the Customer shall be solely responsible in respect of any additional bank charges incurred.
- 4.4. Subject to Clauses 4.13, 4.14, 4.15, 4.16 and 4.17, the due date for payment of any Fees shall be made by the Customer in accordance with the Payment Profile of the applicable Service Agreement. If any Fees or costs become overdue or are wrongfully withheld after the due date for payment, such amount shall bear an interest rate of 8% over base in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 from the due date for payment to and including the date on which such Fees or costs are paid or discharged.
- 4.5. Subject to Clauses 4.18, 6.1, unless specifically stated to the contrary in the Service applicable Service Terms & Conditions CloudConnX shall not increase the Fees for a Service during the Initial Term.



- 4.6. CloudConnX shall be entitled, 30 days before and at any time after the expiry of the Initial Term, to increase Service Charges or Support Service Fees upon providing to the Customer 30 days prior written notification.
- 4.7. Pursuant of Clause 4.17, Service Charges for a Service shall accrue on the Service Commencement Date and may be invoiced on or at any time thereafter.
- 4.8. Services shall be invoiced to the Customer in accordance with one of the Payment Profiles listed in Clause 4.9, as confirmed in the Service Agreement of the applicable Service. For the avoidance of doubt, the Payment Profiles provided below are applicable to specific Services as advised from time to time by CloudConnX.
- 4.9. Payment Profiles
- |                            |   |
|----------------------------|---|
| a) Initial Term in Advance | Payment in advance of the Initial Term for Service Provision (included but limited to NRC Fees and the Service Charge). Subsequent Terms invoiced on 14 days terms prior to the beginning of the period.              |
| b) Annually in Advance     | Payment in advance of 1 year of Service provision. Subsequent Terms invoiced on 14 days terms prior to the beginning of the period.   |
| c) Quarterly in Advance    | Payment in advance of 3 calendar months of Service provision. Invoiced on 14 days terms prior to the beginning of the period. First invoice shall be pro-rata of the first month plus two additional calendar months  |
| d) Monthly in Advance      | Payment in advance of 3 calendar months of Service provision. Invoiced on 14 days terms prior to the beginning of the period. First invoice shall be pro-rata of the first month plus two additional calendar months. |
| e) Monthly in Arrears      | Payment in arrears of 1 month of Service delivery, invoiced on 14 days terms. All NRC costs shall be paid in advance of Service delivery.   |
- 4.10. Services shall be paid by the Customer in accordance with one of the Payment Methods listed in Clause 4.11 as confirmed in the Service Agreement of the applicable Service. For the avoidance of doubt, the payment methods provided below are applicable to specific Services as advised by CloudConnX from time to time.
- 4.11. Payment methods are:  
a) Direct Debit Mandate;  
b) BACS Transfer.
- 4.12. All Fees specified in any Agreement are exclusive of VAT or similar taxes, and the Customer shall, upon presentation of a valid VAT invoice, pay any such VAT or similar taxes as appropriate.
- 4.13. All invoicing provided by CloudConnX to the Customer shall be produced in accordance with the agreed Service Agreement. The invoice shall be deemed to be correct and properly due unless, acting reasonably and in good faith, the Customer disputes the invoice or parts thereof within 14 days of receipt.
- 4.14. The Customer shall pay any undisputed part of the invoice in accordance with the original invoice terms.
- 4.15. CloudConnX shall have 7 days to either confirm or correct the invoice in respect to the raised dispute.
- 4.16. If CloudConnX fails to resolve the disputed part of the invoice within 7 days it shall be held as not properly due until such time that the matter is reasonably resolved. Upon resolution of the dispute the correct amount shall become due for payment.
- 4.17. All Services provided by CloudConnX to the Customer shall be deemed to be functional and fit for purpose unless the Customer delivers written notification to CloudConnX that the Service has not been provided in accordance



with the agreed Service Agreement within 3 days of the Service Commencement Date. In the event that CloudConnX finds the Service not fit for purpose, CloudConnX shall aim to resolve the matter as soon as reasonably practicable and the Service Commencement Date shall be amended accordingly.

- 4.18. The Fees specified in an Service Agreement are exclusive of, and may be increased with 30 days written notice as a result of, the imposition by any relevant authority of any tax, impost, levy or charge including but not limited to any 'green levy' such as the carbon reduction commitment and the climate change levy or fibre tax. For the avoidance of doubt, only the actual proportional increase will be passed to the Customer.

## 5. Deposits

- 5.1. Where appropriate, CloudConnX shall perform a credit check on all Customers prior to the acceptance of any Service Agreement. At CloudConnX's sole discretion, CloudConnX may choose to request a deposit from the Customer prior to the acceptance of any Service Agreement. CloudConnX shall refund any balance of the deposit to the Customer where it ceases to provide the relevant Service, provided the Customer has paid any outstanding Fees. CloudConnX reserves the right to offset any undisputed outstanding amounts on the Customer account against the provided deposit, should the Customer fail to adhere by the agreed Payment Method or Payment Profile as defined in the Service Agreement.

## 6. Retail Price Index

- 6.1. CloudConnX reserves the right to increase cost of all Services provided to its Customers each April (or any point thereafter within the 12 month period) by the national released Retail Price Index ("RPI") per annum.

## 7. Term & Termination

- 7.1. The Customer hereby acknowledges that CloudConnX's pricing structure takes into account many factors, including without limitation, other carrier commitments, initial costs, where appropriate advance replacement equipment levels, spare parts stock, technical staffing, administrative staffing and insurance arrangements. Strict adherence to term commitments and notice periods are therefore of the essence.
- 7.2. The Initial Term of each Service (measured from the Service Commencement Date) shall be for a period as defined in the applicable Service Agreement and the Customer agrees to pay for the Services during the Term. After expiry of the Initial Term or any active Subsequent Term, the Term shall be immediately extended by the Subsequent Term unless terminated by either Party in accordance with the Notice Period defined within the applicable Service Terms & Conditions. For the avoidance of doubt, should neither Party terminate the Service in accordance with the Notice Period, it shall be accepted as a tacit response on behalf of both Parties of their intent to extend the Term by the Subsequent Term.
- 7.3. Upon delivery of the Service, CloudConnX will deliver to the Customer a Service Delivery Notice that shall confirm the Service Commencement Date. Upon receipt of such Service Delivery Notice the Customer shall have a period of 3 days to test the Service and confirm that the Service has been installed and is functioning properly.
- 7.4. The Service Commencement Date shall be the first to occur of the following:
- i. The date upon which Customer acknowledges in writing that the Service has been delivered and is functioning properly; or
  - ii. The date stipulated in the Service Delivery Notice, unless the Customer notifies CloudConnX that the Service is not functioning properly in accordance with Clause 0; or
  - iii. The date Customer begins using the Service.
- 7.5. Subject to Clauses 13, 19 and 20 the Customer may cancel this Agreement with immediate effect upon completion of all the following:
- i. providing reasonable prior written notice of the Customer's intent to terminate the Agreement.
  - ii. Full payment of all Early Termination Charges as defined in Clause 7.6 for Services agreed in a signed Service Agreement irrelevant of whether the Service is;
    - a) active; or
    - b) is due to be provided under an accepted Service Agreement; or
    - c) has been provided but payment has not been received.



- iii. strict adherence to any termination Customer obligation as defined within the applicable Service Terms & Conditions.
- 7.6. In the event that a Customer wishes to terminate all Services, or parts thereof, the Customer shall be liable to pay in full the following Early Termination Charges:
  - i. 100% of the NRC's agreed in the Service Agreement;
  - ii. 100% of the Service Charges for the remainder of the Initial Term, or any active Subsequent Term;
  - iii. Any outstanding Fees for use of Support Services during the Term.
- 7.7. In the event that CloudConnX fails to provide any specific part of a Service agreed within a Service Agreement by the TDD, the Customer shall be entitled to serve written notification of such failure. Upon receipt of such notification, CloudConnX shall use reasonable efforts to remedy such failure within 90 days. If CloudConnX has not provided the Service upon completion of the 90 day Period, the Customer may cancel the specific Service with immediate effect upon providing written notification. In such event, the Customer will not be liable for any Early Termination Charges but the Customer will liable to pay for any Services that have actually been provided.
- 7.8. The Customer may terminate a Service pursuant of Clause 7.7 at any point after the completion of the Cure period until such point where the Service is delivered. If the Customer does not terminate the Service pursuant of Clause 7.7 and subsequently CloudConnX then delivers the Service, the Initial Term of the Service shall apply and the Customer's ability to terminate the Service pursuant of Clause 7.7 shall be revoked.
- 7.9. Without prejudice to any other rights or remedies that CloudConnX may have in this Agreement, CloudConnX may terminate this Agreement without liability to the Customer immediately upon written notice if the Customer:
  - a) fails to pay any past due balance for a Service (other than amounts reasonably disputed under Clause 4.13) within 14 days after written notice from CloudConnX; or
  - b) fails to cure a breach of the terms and conditions of this Agreement within 30 days of written notification or, in relation to a specific Service, as stipulated otherwise in the applicable Service Terms & Conditions; or
  - c) repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify to CloudConnX that the Customer's conduct is inconsistent with having the intention or ability to give effect to the terms of the Agreement; or
  - d) makes a material misrepresentation in any submission of information in a Service Agreement or any other information submitted to CloudConnX; or
  - e) engages in conduct that in CloudConnX's reasonable opinion (acting in good faith) causes or is likely to cause damage to CloudConnX's network, facilities or third parties using such network or facilities; or
  - f) engages in any fraudulent use of Service; or
  - g) enters into any bankruptcy, insolvency, receivership or winding up proceeding is commenced.
- 7.10. Without prejudice to any other rights or remedies which the Parties may have, either party may terminate this Agreement without liability to the other immediately on giving notice to the other upon violation of any law, rule, regulation or policy of any government authority related to the Services.
- 7.11. Notwithstanding the foregoing, CloudConnX may cease providing Services if CloudConnX receives an order of any court or other government authority having jurisdiction which prevents CloudConnX from furnishing Services.

## 8. Service Terms & Conditions

- 8.1. The applicable Service Terms & Conditions for a Service provided by CloudConnX to a Customer can be obtained from CloudConnX on request. Each Service Agreement shall be governed by the most recent version of the Service applicable Service Terms & Conditions at the point of acceptance of the Service Agreement. For the avoidance of doubt any Service Agreement accepted by CloudConnX and governed by previous Service Terms & Conditions shall continue to be governed by the previous Service Terms & Conditions until terminated or superseded.
- 8.2. Pursuant of Clause 8.1, additional Service Terms & Conditions in respect of new categories of Services shall be incorporated into Schedule 2 of this Agreement from time to time upon acceptance by CloudConnX of a Service Agreement that is agreed with the Customer. For the avoidance of doubt, Service Terms & Conditions for Services that are not included within an accepted Service Agreement are not incorporated into this Agreement until such time that an Service Agreement acknowledging the Service type is agreed between the Parties.

## 9. Service Outages, SLA Payments & Priorities

- 9.1. Service Outages are measured (as confirmed by CloudConnX) from the earliest of the following circumstances:
  - a) The time and date stated of the Service Outage on the CloudConnX NOC; or
  - b) The time and date of the support ticket, that is provided by the Customer, via the Support Portal; or
  - c) The time and date recorded by CloudConnX's monitoring systems.
- 9.2. The Customer shall only be entitled to Service Credits if, at the point of the Service Outage, all correctly due invoices on the Customer account are paid in full.
- 9.3. Subject to Clause 9.2, the Customer must provide to CloudConnX, within 30 days of the completion of the Service Outage, written notification of the Customer's intent to claim a Service Credit. In the event that the Customer fails to request the Service Credit within the allotted 30 day period, the Customer forfeits the right to make any such claim.
- 9.4. In the event that more than one SLA is breached in a specific location of Service delivery, the Customer shall only be entitled to request Service Credits in relation to the highest payable SLA. For the avoidance of doubt, should the SLA of a subsidiary Service be breached due to the loss of an integral part of an interdependent Service, the Customer shall only be entitled to claim Services Credits for the one highest payable SLA and all other Service Credits shall become void. If two SLA's are breached in a specific location and both have equal value, only one SLA shall be payable and the second shall be deemed as void.

## 10. Warranties

- 10.1. In performing its obligations under this Agreement, CloudConnX shall at all times exercise the reasonable skill and care of a competent telecommunications operator and use Best Industry Practice.
- 10.2. CloudConnX does not warrant that the operation of any product or service shall be uninterrupted or error free. CloudConnX does not warrant non-infringement in relation to its products or services.
- 10.3. CloudConnX does not warrant that it monitors the content of customer data. To this extent CloudConnX is a mere conduit and all responsibility in relation to the content retained or used in conjunction with or on CloudConnX services resides solely with the customer (including without limitation licencing, data integrity, data content and data dissemination).
- 10.4. Excluding Clause 10.1, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.

## 11. Liability

- 11.1. Subject to Clause 11.3 but notwithstanding anything else in this Agreement, the Customer's sole and exclusive remedy and CloudConnX's sole liability for unavailability, delay in provision or unsatisfactory performance of a Service shall be Service Credits as defined within the SLA set out in Annex A of the applicable Service Terms & Conditions.
- 11.2. Subject to Clauses 11.1 and 11.3, CloudConnX's total aggregate liability in this Agreement due to tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of this Agreement shall be limited to the lesser of:
  - a) 100% of the Fees payable for the Services (excluding VAT or similar taxes) by the Customer during the 12 month period immediately preceding the date of the relevant claim; or
  - b) £50,000.
- 11.3. Nothing in this Agreement shall serve to limit either Party's liability in respect of death or personal injury caused by or arising from that Party's negligence, fraud or fraudulent misrepresentation.

- 11.4. Under no circumstance (whether it is before, during or after the termination of this Agreement) shall CloudConnX be liable to the Customer, any third party (including without limitation end users of the Service) for any failure to send, receive or record data, or for any loss of or corruption to data, programs or general content held or used by or on behalf of the Customer whilst utilising a CloudConnX Service. Furthermore, the Customer shall ensure at all times that it holds, maintains and secures adequate backupcopies of any general content, (including without limitation data or programs) held or used on or in relation to a CloudConnX Service. CloudConnX does not guarantee continuous Service at any particular time, or integrity of data stored or transmitted via its system, the Internet or the CloudConnX network.
- 11.5. The Customer shall be solely responsible for establishing and maintaining user-access security to Services provided.
- 11.6. Under no circumstances will CloudConnX be held liable for the corruption of data or systems that may occur as a result of a virus, hackers or cause generated from any unauthorised user or security breaches. All costs related to the securing of servers shall be borne by the Customer.
- 11.7. CloudConnX shall not be liable in relation to any damages caused to Customer equipment with the exception of negligence caused directly by CloudConnX.
- 11.8. Should any limitation or provision contained in this Clause 11 be held invalid under any applicable statute or rule of law it shall to that extent be deemed omitted from the Agreement.
- 11.9. Subject to Clause 11.3, CloudConnX shall not be liable for:
- a) loss of profit; or
  - b) loss of business; or
  - c) any loss or depletion of goodwill and/or similar losses; or
  - d) loss of goods; or
  - e) loss of contracts; or
  - f) loss of use; or
  - g) anticipated savings; or
  - h) corruption of data, software or general information;
  - i) any special, indirect, consequential or economic loss, costs or damages, charges or expenses.
- 11.10. The Customer shall indemnify CloudConnX for any direct loss incurred by CloudConnX due to the Customers (including the Customers representatives Service users) breach of this Agreement.
- 11.11. CloudConnX accepts no liability for, and the Customer will hold harmless and indemnify CloudConnX in the event that CloudConnX's staff (in good faith) act, or fail to act, in accordance with a telephone instruction which is given using a valid telephone verification password which was issued by the Customer to CloudConnX via the Customer Information form (or as updated in writing by the Customer from time to time).
- 11.12. CloudConnX accepts no liability for, and the Customer will hold harmless and indemnify CloudConnX in the event that CloudConnX's employees (in good faith) act, or fail to act, in accordance with an instruction given in a ticket which was issued using the Support Portal ticketing system either from an e-mail address which is, or from a person who is authorised in accordance with the Customer Information form (or as updated in writing by the Customer from time to time).
- 11.13. Nothing shall preclude the Customer from providing other Services derived from the Services to third parties, provided that any use of such Services shall be subject to the provisions of this Agreement. The Customer shall at all times remain solely liable for the obligations ascribed to under this Agreement and the Customer agrees to indemnify, defend and hold CloudConnX harmless against and assumes all liability for all actions, demands, damages or claims of any nature arising out of or resulting from a contractual or other relationship between the Customer and any such third parties as it relates to this Agreement or the use of the Services.
- 11.14. Notwithstanding any other provision of the Agreement, no proceedings shall be commenced against CloudConnX under the Agreement more than 6 months after the event giving rise to the proceedings has occurred (save in the event of fraud or deliberate concealment by CloudConnX).

## 12. Insurance

- 12.1. The Customer shall be solely responsible for, and shall ensure that it has adequate insurance levels in place with a reputable insurer, to cover any loss or damages of the Customer that may arise as a result of the provision or lack of provision of CloudConnX Services to the Customer. For the avoidance of doubt, any liability in relation to any short fall in Customer insurance levels shall be the sole responsibility of the Customer. Furthermore, the Customer waives all claims and rights of recovery by subrogation against CloudConnX and its representatives.
- 12.2. The Customer shall also ensure that it holds suitable insurance for (including but not limited to) any loss or damage caused to CloudConnX's Service Infrastructure, any facility that the Customer's equipment may reside in or to CloudConnX's employees due to an act of negligence or default of the Customer, its employees or agents or caused by any malfunctioning of Customer provided equipment.
- 12.3. CloudConnX hereby confirms that it maintains the following insurances as detailed below:
  - a) Employer's Liability insurance;
  - b) Public & Products Liability insurance;
  - c) Engineering insurance;
  - d) Professional indemnity insurance.

### 13. Intellectual Property Rights

- 13.1. All Intellectual Property Rights in relation to CloudConnX owned products and Services shall be retained by CloudConnX. For the avoidance of doubt, no Intellectual Property Rights shall be passed to the Customer. CloudConnX licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Services. If the Agreement terminates, this licence shall automatically terminate.

### 14. No Waiver

- 14.1. Failure by either Party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor to operator so as to bar the exercise of enforcement of any such or other right on any later occasion.

### 15. Severability

- 15.1. If any provision of this Agreement is held by a court or any governmental agency or authority to be invalid, void or unenforceable, the remainder of the Agreement shall, to the extent possible, remain legal, valid and enforceable.

### 16. Variation

- 16.1. Unless predetermined within this Agreement, no amendments shall be made to the Agreement.
- 16.2. CloudConnX may amend any part of this Agreement with immediate effect to comply with any law or a ruling or a decision of any governmental or regulatory body. CloudConnX shall ensure that it provides notification of any such amendment to the Customer as soon as reasonably practicable.
- 16.3. CloudConnX, acting reasonably and in good faith, may amend Schedule 4 or Annex B of any applicable Service Terms & Conditions at any time for the purpose of:
  - a) ensuring the health & safety of any Customer, CloudConnX employee or third party; or
  - b) taking preventative or corrective measures to protect the CloudConnX network, any facilities where CloudConnX provides Services, any Customer equipment or Service Infrastructure; or
  - c) ensuring the on-going provision of CloudConnX Services.

## 17. Force Majeure

- 17.1. Notwithstanding anything herein to the contrary, neither Party shall be liable for any delay or failure in performance of any of its obligations under this Agreement (other than payment obligations for Services provided as set out in Clause 4) to the extent that such delay or failure is attributable to a Force Majeure Event, and the Term of any Service rendered unavailable by the Force Majeure Event shall be extended by the time that the Service is rendered unavailable.

## 18. No Partnership

- 18.1. Subject to the agreed and accepted CloudConnX Partner Agreement and the terms and conditions therein, nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall constitute or be deemed to constitute between the Parties a partnership, association, joint venture, or other cooperative entity.

## 19. Non-solicitation

- 19.1. Neither Party shall knowingly solicit for employment, offer employment to or employ including but not limited to the other Party's employees, third party contractors, and/or representatives during the Term of this Agreement. In the event of a breach of this Clause then the Parties agree that the appropriate liquidated damages shall be the payment by the breaching Party of one hundred per cent (100%) of the new annual compensation of the employed individual. This Clause 19 shall survive the termination of this Agreement for a period of 5 years from the date of termination of this Agreement.

## 20. Confidentiality

- 20.1. Both Parties shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the one Party (the "Receiving Party") by the other Party (the "Disclosing Party"), its employees, agents, consultants or subcontractors and any other confidential information concerning the Disclosing Party's business or its Services which the Receiving Party may obtain.
- 20.2. The Receiving Party may disclose such information:
- a) to its employees, officers, representatives, advisers, agents or subcontractors on a 'need to know' basis for the purposes of carrying out the Receiving Party's obligations under the Contract;
  - b) as may be required by law, court order or any governmental or regulatory authority; or
  - c) in the event that it enters the public domain other than as a result of the act or omission of the Receiving Party.
- 20.3. The Receiving Party shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this Clause 20.
- 20.4. The Receiving Party shall not use any such information for any purpose other than to perform its obligations under the Contract.
- 20.5. All confidential information (including without limitation tools, drawings, specifications, data and other information as advised by CloudConnX from time to time) supplied by CloudConnX to the Customer shall, at all times, be and remain the exclusive property of CloudConnX. The Customer shall ensure the safe custody until returned to CloudConnX, and shall not be disposed of or used other than in accordance with CloudConnX's written instructions or authorisation.
- 20.6. Subject to obtaining the other party's prior written permission (such permission not to be unreasonably delayed or withheld), each party agrees that the other party may refer to a relevant description of the other party's business in any of its marketing material or on its website. Each party grants to the other party a royalty-free licence to use any of the other party's trade names and trademarks solely in connection with such marketing and subject to the other party's prior written approval.

## 21. Document Inconsistency

- 21.1. Any typographical, clerical or other error in any sales literature, marketing materials, quotations, price lists or other documents issued by CloudConnX or contained on any page of the CloudConnX website shall be subject to correction without any liability on the part of CloudConnX. For the avoidance of doubt, CloudConnX sales literature or marketing materials appearing on the CloudConnX website or in printed form are not incorporated into and do not form part of this Agreement.
- 21.2. Under no circumstance shall any amendments made to this Agreement be deemed to be valid and binding unless made by a member of CloudConnX staff and counter signed by a CloudConnX duly authorised officer.

## 22. Assignment

- 22.1. Neither Party may assign any of its rights under this Agreement without the written consent of the other (which consent shall not be unreasonably withheld or unduly delayed).

## 23. No Waiver

- 23.1. Failure by either Party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor to operate so as to bar the exercise of enforcement of any such or other right on any later occasion.

## 24. Notices

- 24.1. All notices provided under this Agreement, by the Customer to CloudConnX, shall be in writing and shall be delivered by hand or by prepaid recorded or registered post or by electronic transmission if immediately confirmed by post. Notice shall be deemed to have been served immediately if delivered by hand or 48 hours after such posting or such transmission.
- 24.2. All notices provided under this Agreement, by CloudConnX to the Customer, shall be in writing and shall be delivered by hand or by prepaid recorded or registered post or by electronic transmission. Notice shall be deemed to have been served immediately if delivered by hand or 48 hours after such posting or such transmission.
- 24.3. Posted communications are to be sent to the following address;  
CloudConnX Limited  
Town Hall  
Grove Road  
Eastbourne  
East Sussex BN21 4UG

## 25. CloudConnX Duly Authorised Officers

- 25.1. For the avoidance of doubt, the following members of staff are duly authorised to sign on behalf of CloudConnX;
  - a) Managing Director
  - b) Commercial Director
  - c) Technical Director

## 26. Entire Agreement

- 26.1. This Agreement and any documents referred to herein expresses the entire understanding of the Parties relating to its subject matter and supersedes all previous written or oral Agreements, understandings, or representations insofar as they relate to its subject matter.

## 27. Governing Law

- 27.1. This Agreement shall be governed by English law and the Parties shall submit to the exclusive jurisdiction of the English courts.

## Annex A- Definitions

<b>'AUP'</b>	means the Acceptable Usage policy as defined within CloudConnX's Master Acceptable Usage Policy document, plus service specific variations defined in the applicable Service Terms and Conditions.
<b>'A End'</b>	means the first of the Termination Site locations for the Leased Line Service.
<b>'Agreement'</b>	means the agreed terms and conditions of business between the Customer and CloudConnX as set out in the General Terms & Conditions, Addendum (if applicable), Partner Agreement (if applicable), the Service Agreement, the applicable Service Terms & Conditions for the Service that is provided and referenced by the Service Agreement and all Schedules and Annexes contained therein.
<b>'B End'</b>	means the second of the Termination Site locations for the Leased Line Service.
<b>'Best Industry Practice'</b>	means in relation to any undertakings or circumstances, the exercise of all the skill, care and performance that would be expected in those circumstances from a person skilled, trained and experienced in that undertaking.
<b>'Broadband'</b>	means a non-symmetric (unless otherwise stated) telecommunication connection between two points for the purpose of delivering IP Transit.
<b>'CDR'</b>	means Committed Data Rate which is the minimum amount of IP Transit that the Customer is committed to during the Initial Term or any Subsequent Term as defined in the Service Agreement.
<b>'CPE'</b>	means Customer Premises Equipment; any equipment provided to the Customer for the purpose of delivering a Service to the Customer.
<b>'CloudConnX'</b>	means CloudConnX Limited, a company registered in England and Wales with company number 07497266 whose principle place of business is Town Hall, Grove Road, Eastbourne, East Sussex, BN21 4TW.
<b>'Co-location'</b>	means the act of situating multiple related items, with multiple owners, in a single location.
<b>'Co-location AUP'</b>	means the Acceptable Usage Policy for the Connectivity Services as defined in Annex B of CloudConnX's Co-location Service Terms & Conditions.
<b>'Connectivity'</b>	means both the Interconnect and IP Transit services provided by CloudConnX.
<b>'Connectivity AUP'</b>	means the Acceptable Usage Policy for the Connectivity Services as defined in Annex B of CloudConnX's Connectivity Service Terms & Conditions.
<b>'Customer'</b>	means the business, organisation, partner or person as defined in the Service Agreement.
<b>'Customer Equipment'</b>	means any equipment used in conjunction with the Service as provided by the Customer.
<b>'Customer Execute Date'</b>	means the Service Commencement Date.
<b>'ETF'</b>	means Early Termination Fees which are billed to the Customer for the premature termination of Services prior to the end of the Initial Term or any Subsequent Term as further detailed in Clause 7.6 of the GTC.
<b>'Excess Construction Charges'</b>	means any additional Fees above that which has been quoted by CloudConnX (as advised to CloudConnX by the Provider upon completion of the Site Survey) that the Customer shall incur to proceed with a Leased Line order.



<b>'Excess Transit'</b>	means any IP Transit use above the CDR.
<b>'Excess Usage'</b>	means any usage of Services that exceeds the agreed amount stated within the Service Agreement.
<b>'Excused Outage'</b>	means a period of time during the Service Term where CloudConnX is not liable to provide Service Credits in lieu of the Customer's inability receive access to or gain use of the Service.
<b>'Fees'</b>	means any amount billed to the Customer for the provision of a Service, Support Service or usage that exceeds the agreed amounts stated within the Service Agreement.
<b>'Broadband Services'</b>	means the ADSL, FTTC or FTTP Service provided to you in accordance with these Terms and Conditions.
<b>'Force Majeure Event'</b>	means any cause beyond a Party's reasonable control affecting the performance of its obligations hereunder including but not limited to fire, flood, explosion, accident, act of terrorism, war or warlike operations, strike, embargo, acts of any governmental authority (including refusal or revocation of any licence or consent), Act of God, outbreak of hostilities, riot, civil disturbance, inability to secure materials and industrial disputes (excluding disputes involving the employees of either Party).
<b>'FTTC Service'</b>	means the Fibre to the Cabinet service which provides a fibre optic connection to the Internet from the telephone exchange to your local street cabinet and a copper cable connection from the cabinet to your Premises.
<b>'FTTP Service'</b>	means the Fibre to the Premises service which provides an end-to-end fibre optic connection to the Internet from the telephone exchange to your Premises.
<b>'GTC'</b>	means CloudConnX's General Terms & Conditions (this document).
<b>'Handover Document'</b>	means the document provided to the Customer upon handover of the active Service to the Customer.
<b>'Initial Term'</b>	means the minimum contracted period of a Service as defined within the Service Agreement as measured from the Service Commencement Date.
<b>'Intellectual Property Rights'</b>	means all patents, rights to inventions, utility models, copyright and related rights, documents, data, text, brands, logos, information, specifications, drawings, trademarks, Service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
<b>'IP Transit'</b>	means the act of passing IP traffic from one location to another via a layer 2 or layer 3 connection as measured in Mbps.
<b>'Leased Line'</b>	means a symmetric telecommunication connection between two or more points for the purpose of delivering Connectivity.
<b>'Leased Line AUP'</b>	means the Acceptable Usage Policy for the Leased Line Service as defined in Annex B of CloudConnX's Leased Line Service Terms & Conditions.
<b>'Line of Sight'</b>	means the ability to make a wireless point to point connection between equipment without any form of impairment between the locations.



<b>'NOC'</b>	means the Network Operations Centre where the CloudConnX network is managed.
<b>'Nodes'</b>	means the PoPs with Wireless connectivity that create the CloudConnX Wireless Network and allow for the delivery of Wireless Services.
<b>'Notice Period'</b>	means the minimum period of time that CloudConnX or the Customer must provide to the other Party prior to the end of the Initial Term or any Subsequent Term in order to cancel the Services as defined in the applicable Service Terms & Conditions.
<b>'NRC'</b>	means Non-Recurring Charges to be paid by the Customer to CloudConnX.
<b>'OCP'</b>	means the Order Confirmation Period of 10 days which shall only take effect and commence upon CloudConnX confirming to the Customer a requirement for Excess Construction Fees.
<b>'Office Hours'</b>	means the Order Confirmation Period of 10 days which shall only take effect and commence upon CloudConnX confirming to the Customer a requirement for Excess Construction Fees.
<b>'Parties'</b>	means CloudConnX and the Customer.
<b>'Payment Profile'</b>	means the period in which the Customer will make payment to CloudConnX for Services agreed as defined in the Service Agreement.
<b>'PoP'</b>	means Point of Presence.
<b>'Provider'</b>	means a third party Service provider (these may include but are not limited to BT, Virgin Media or TALKTALK).
<b>'Service'</b>	means the provision of a resource or product as described in the Services Ordered section of the Service Agreement.
<b>'Service Agreement'</b>	means the document that defines the services delivered by CloudConnX to the Customer.
<b>'Service Charge'</b>	means recurring charge to be paid by the Customer to CloudConnX for the agreed Services as defined in the Service Charges section of the Service Agreement.
<b>'Service Commencement Date'</b>	means the date from when the beginning of the Initial Term is measured, as defined under Term and Termination in the GTC.
<b>'Service Credit'</b>	means a credit applied to the Customer's account in respect of an event of a failure by CloudConnX to achieve the SLA's defined in Annex A of the applicable Service Terms & Conditions.
<b>'Service Delivery Notice'</b>	means formal notification of a Service being ready for Customer use and the beginning of the Service Commencement Date.
<b>'Service Equipment'</b>	means any equipment provided to the Customer for the purpose of delivering a Service to the Customer.
<b>'Service Outage'</b>	means a period of time in which an active Service, provided by CloudConnX to the Customer, is unavailable in such a manner as defined in the applicable Service Terms & Conditions.



<b>'Service Terms and Conditions'</b>	means the terms and conditions that form part of this Agreement that apply solely to the uptake of the applicable Service as defined by the Service Agreement.
<b>'Site Survey'</b>	means the act of CloudConnX or its appointed contractors attending the Termination Site and performing a survey to ensure that the Termination Site is viable for the provision of Wireless Services.
<b>'SLA'</b>	means Service Level Agreement as defined within Annex A of the applicable Service Terms & Conditions.
<b>'Subsequent Term'</b>	means the extension of the Term by a period as defined in the Service Agreement which shall commence in conjunction with the conclusion of the Initial Term or any other Subsequent Term.
<b>'Supplier Network'</b>	means the Provider's network.
<b>'Support Portal'</b>	means the CloudConnX online web portal that is found at <a href="http://support.cloudconnx.net">support.cloudconnx.net</a> .
<b>'Support Services'</b>	means services that are provided by CloudConnX or its representatives in support to a Service that is being delivered by CloudConnX.
<b>'TDD'</b>	means the date that the Customer has requested for the Service to be provided.
<b>'Term'</b>	means the Initial Term and any active Subsequent Term in which CloudConnX provides a Service to the Customer.
<b>'Termination Site(s)'</b>	means the A End and B End Termination Sites for point to point services.
<b>'Wayleave application'</b>	means the Provider's wayleave authorisation form as advised to the Customer from time to time.
<b>'Wireless'</b>	means the act of providing Connectivity over a wireless medium.
<b>'Wireless AUP'</b>	means the Acceptable Usage Policy for the Wireless Service as defined in Annex B of CloudConnX's Wireless Service Terms & Conditions.