



GENERAL CONDITIONS FOR NETCONN SERVICES

1. Structure of the Agreement

1. Customer may order services from NetConn by signing and submitting NetConn's Order Form ("**Order Form**" or "**SOF**").
2. An Agreement shall be formed in respect of each NetConn service particularized in an Order Form ("**Service**") duly signed by Customer and accepted by NetConn.
3. In the event of any discrepancies among the documents or terms and conditions constituting the Agreement, the following order of precedence will apply:
 - (a) (highest precedence) any supplemental terms and conditions referenced in and/or attached to the Order Form.
 - (b) Order Form.
 - (c) any terms and conditions referenced in Specific Conditions.
 - (d) Specific Conditions.
 - (e) (lowest precedence) General Conditions.
4. Customer agrees that NetConn may appoint an Affiliate of NetConn or any other party (as specified in the Order Form) to be its billing and/or collection agent.

2. Term

1. Customer must specify in the Order Form an initial term for each Service commencing on the Service Commencement Date for that Service (the "**Initial Term**", which expression will be used interchangeably with "**Minimum Committed Term**" or "**Minimum Term**"). If no term is specified in the Order Form, the Initial Term of the Agreement will be twelve (12) months from the Service Commencement Date for the relevant Service. The Agreement will be effective as from the Effective Date and will remain in force until the expiry of the Initial Term or Renewal Term (as defined in "6.2") unless terminated earlier.

3. Implementation

1. Prior to any requested ready-for service date ("**RRFS Date**") stated in an Order Form for the Service at any location, Customer may postpone the RRFS Date for that location by giving NetConn prompt written notice to such effect. If the rescheduled RRFS Date is more than thirty (30) days following the original RRFS Date, NetConn will have the right to invoice Customer for any charges or expenses incurred by NetConn as a result of the rescheduling. Such expenses may include local access charges. Customer may not postpone the RRFS Date for any location by more than sixty (60) days from the original RRFS Date.
2. Any requested RRFS Date set forth in the Order Form or otherwise specified by NetConn is subject to NetConn's standard and expedited delivery intervals for the applicable Service. These intervals may change from time to time. Although NetConn will use reasonable efforts to install the Service on or before the RRFS Date, NetConn's inability to do so or to meet any other target date will not constitute a breach by NetConn under any Agreement. However if NetConn fails to make any Service available to Customer within ninety (90) days of the applicable RRFS Date, upon ten (10) days' prior written notice to NetConn, Customer may cancel the Service so delayed and the Agreement will be terminated at the end of the ten (10) day period without liability to either Party.

4. Charges and Payment

1. Generally NetConn's charges for Service are: (a) one-time installation charges specified in the SOF (an "**Initial Charge**"); (b) monthly recurring charges specified in the SOF ("**Monthly Service Charges**"); and (c) any other Service-specific charges specified in the SOF as well as any site-specific provisioning charges notified to Customer at any time up till the Service Commencement Date (collectively, "**Other Charges**").
2. All charges are exclusive of any and all applicable taxes including value added and general sales tax (if any) and regulatory surcharges (if any). These amounts will be charged separately in Customer's invoices. Customer must pay all taxes, duties, fees, levies and other similar charges and any related interest penalties however designated or imposed by any taxing or governmental authority whether imposed directly on Customer or indirectly on NetConn as a result of the existence or operation of each Agreement or otherwise relating to the Service. If Customer is required to withhold or pay such taxes from amounts that NetConn



has invoiced Customer for, Customer must pay such additional amounts so that the net amount received by NetConn after such payment or withholding is equal to the amount invoiced.

3. After the expiration of the Initial Term or Renewal Term, NetConn may vary the Monthly Service Charges. NetConn will give Customer thirty (30) days prior written notice of such changes.
4. Monthly Service Charges and monthly recurring Other Charges (if applicable) under the Agreement or Amendment (as defined in "6.3") will begin to accrue on the day following the Service Commencement Date.
5. NetConn will invoice Customer for its charges for Services as follows:
 - (a) Monthly Service Charges and monthly recurring Other Charges (if applicable) will be invoiced in advance on a monthly basis except for usage-based components which will be invoiced in arrears or if otherwise specified in the SOF;
 - (b) Initial Charge and one-time Other Charges (if applicable) will be invoiced in the first invoice NetConn sends to Customer; and
 - (c) NetConn will invoice in the currency specified in the Order Form or in US Dollars if there is no currency specified in the Order Form.
6. Customer must pay NetConn's invoices in full within thirty (30) days of the invoice date ("**Due Date**"). Notwithstanding any *bona fide* dispute that Customer may have under the Agreement, Customer shall not be entitled to withhold, set off (whether in law or in equity) or deduct any portion of the amount due, but shall pay all amounts due on or by the applicable Due Date. If Customer fails to pay any invoice in full by its Due Date:
 - (a) any sum that is not paid when due will incur an interest charge of one point five percent (1.5%) per month, or the maximum amount permitted by law, if less, commencing on the Due Date and compounded daily until payment in full, which default interest rate may be changed by NetConn in the event of significant fluctuations in applicable interest rates and other economic conditions, and
 - (b) Customer shall be responsible for all collection charges and/or any reasonable solicitor, attorney and agent fees incurred by NetConn in collecting the relevant amount from the Customer. Customer will be deemed to have accepted any invoiced amounts which Customer does not dispute in writing prior to the applicable Due Date.
7. Customer may be required to give NetConn an advanced security deposit for future payment obligations. Customer's use of the Service may also be subject to credit limits. In each case the applicable details will be set forth in the Order Form.

5. Modification and Maintenance

1. NetConn may modify the network or technical specifications applicable to any Service so long as such modifications do not result in any significant changes to the features and functionalities of the Service at the time Customer contracted for it.
2. NetConn may in its sole discretion wholly or partially suspend the Service in connection with network or equipment modification, repair, preventive or emergency maintenance, or as may be required by laws of the Applicable Jurisdiction. Whenever possible, NetConn will give Customer advance notice of any planned intention to suspend the Service for any period and will provide such reasonable details as are available concerning the expected schedule and duration of such a suspension. To the extent practicable, NetConn will discuss expected suspensions with Customer in advance and implement them in a manner which minimises their impact on Customer and Customer's users.
3. NetConn will provide a coordinated, single point of contact maintenance function for Customer on a 24/7 basis. NetConn will notify Customer of the details of this point of contact.

6. Amendments

1. (a) Each Agreement (or any part thereof) will continue in effect indefinitely until terminated by either Party by giving written notice specifying all the relevant details (including without limitation, the relevant circuit ID) in accordance with clause "15.11"; and (b) the effective date of termination of Service will be later of: (i) the date of expiry of the Initial Term or Renewal Term, (ii) 45 days from the date of receipt of the notice of termination; and (iii) date of termination specified in the notice of



termination (please see "9.3" for certain payments, penalties and other conditions that apply to termination in certain circumstances).

2. The Customer shall submit a new Order Form in accordance with "1" if it wishes to:
 - (a) extend the term of an Agreement beyond the Initial Term for a further period ("**Renewal Term**"); and/or
 - (b) upgrade, downgrade, move or otherwise change an Agreement.
3. An amendment agreement ("**Amendment**") shall be formed in respect of a Service and effective when the Order Form duly signed by Customer, is Accepted by NetConn.

7. NetConn Responsibilities

1. NetConn must supply the Customer with the Service on the terms and conditions set out in the Agreement.
2. NetConn will use reasonable care and skill in providing the Service. However, given the nature of the Service (including our Services' reliance on systems and services that NetConn does not necessarily own or control), NetConn does not warrant or agree that the Service will be continuous and fault free.

8. Customer Responsibilities

1. In addition to Customer's other obligations under the Agreement,
 - (a) Customer must procure for NetConn and its subcontractors and agents access (where necessary, escorted access) to the premises and points of contact at all Circuit Location Addresses;
 - (b) If NetConn's agents or subcontractors attend any premises at the Customer's request, Customer must ensure that the premises are safe and free of risks to life, health and welfare of such visitors;
 - (c) Customer must upgrade Customer-provided equipment as necessary to support the Service and provide environmentally suitable equipment rooms that comply with laws of the Applicable Jurisdiction and other requirements as may be applicable to the relevant equipment or otherwise reasonably specified by NetConn;
 - (d) Customer must participate in any testing procedures required for purposes of installation, testing or maintenance;
 - (e) Customer must supply, set-up, configure and maintain your own computer and communications equipment; and
 - (f) Customer must be responsible for all data that that the Customer retrieves, stores, transmits or uses in any other way. The Customer must back up all of the Customer's data.
 - (g) Customer shall follow reasonable instructions regarding the use of the Service and will only use the Service for the purposes for which it is designed and provided;
 - (h) Customer must possess or obtain and maintain in force all necessary licences and permits, and comply with any laws, directives, regulations and conventions which may be applicable to the possession or use of the Service by Customer or permitted third parties using it through Customer;
 - (i) Customer must not use the Service or permit third parties using it through Customer to do so in a manner which:
 - i. violates any applicable law (including all applicable anti-bribery and anti-corruption laws), regulation, treaty or tariff, provided that NetConn may suspend or terminate the Service if NetConn has any reason to believe that Customer is in breach of this provision;
 - ii. violates NetConn's published at <http://www.netcsv.com/terms/> or the acceptable usages of any networks, equipment or services which are accessed through NetConn's network including do anything which will damage or interfere with NetConn's network or facilities;
 - iii. infringes on the intellectual property rights of others, provided that NetConn reserves the right to take down or disable the contents or suspend the Service or any part thereof immediately without notice and without liability if NetConn receives any written complaint from any third party alleging infringement by Customer, the customer of Customer, or other users through the Service;
 - iv. is fraudulent, deceptive, or misleading;

- v. results in network interruptions or service degradation of any kind;
- vi. involves illegal or unauthorized access, exploitation, interruptions or monitoring.

Any failure to comply with its obligations under this "8.1(i)" will be a material breach of the Agreement by Customer and Customer agrees to indemnify, defend and hold harmless NetConn and its Affiliates for and from all liabilities and costs (including reasonable legal fees) arising its failure to comply with its obligations under this "8.1(i)".

- (j) To the extent that NetConn has agreed to provide any network terminating or other equipment in connection with the Service, Customer must:
 - i. acknowledge that title to any equipment placed by NetConn or NetConn's subcontractor on Customer's premises in connection with the Service remains with NetConn or such subcontractor;
 - ii. be responsible for equipment placed by NetConn, or a subcontractor or agent and not move, add to, modify or in any way interfere with the equipment, nor allow anyone else (other than those authorised by NetConn) to do so. The Customer will be liable to NetConn for any loss of or damage to the equipment, except where the loss or damage is due to fair wear and tear or is caused by NetConn or anyone acting on behalf of NetConn;
 - iii. not mortgage or encumber the equipment or, loan, rent or assign or part with possession of the equipment;
 - iv. be responsible for preparing the location for installation, including providing adequate space, heating and cooling and electrical power;
 - v. provide NetConn and NetConn's agents with reasonable access to the location for installation and maintenance;
 - vi. use reasonable care in protecting the equipment from damage or loss and repair or replace any equipment that is damaged or lost due to theft, negligence, intentional acts, unauthorised acts or other causes that are within Customer's reasonable control;
 - vii. upon termination of the Service or any Agreement for any reason, make available all equipment for removal or return in the same condition as originally installed (fair wear and tear expected) or pay a mutually negotiated restoration or retention fee; and
 - viii. hold NetConn harmless for any interruption of or inability to use the Service where such event is caused by Customer's failure to comply with any of the foregoing.
- (k) Customer must comply with Customer's other obligations that are specified in the Specific Conditions.

9. Termination; Consequences of Termination

1. Termination for Breach by Customer. If: (i) Customer fails to pay any outstanding charges due under any Agreement within five (5) days from the applicable Due Date; (ii) Customer commits a material breach of the Agreement (other than violation of any applicable anti-bribery or anti-corruption laws) and in the case of a remediable breach, fails to remedy such breach after receiving thirty (30) days' written notice to do so or (iii) Customer violates any applicable anti-bribery or anti-corruption laws, Customer will be in default of the Agreement. Once Customer is in default of any Agreement, NetConn may at NetConn's sole discretion (without any notice or liability) do any or all of the following with or without any prior written notice: (a) terminate or temporarily suspend all or part of the relevant Service under any Agreement that is the subject of the default; (b) terminate all or any part of any Agreement between NetConn and Customer, (c) attach, distrain, take possession of and/or remove any equipment Customer has in NetConn's facilities in connection with the Services and, subject to laws of the Applicable Jurisdiction, sell or otherwise dispose of it in full or partial satisfaction of amounts Customer owes NetConn under the Agreement; and (d) exercise such other remedies as are available to NetConn or NetConn's Affiliates at law or in equity. In addition to all charges accruing in respect of the applicable Service up to and including the termination date, Customer must also pay NetConn the termination charges described in "9.3". In the event NetConn suspends a Service, charges will continue to accrue during the period of suspension until (1) NetConn terminates the Service or the Agreement; or (2) Customer cures the applicable default and NetConn reactivates the Service (which NetConn is not obliged to do).
2. Termination for Breach by NetConn. If NetConn commits a material breach of any Agreement and does not remedy the material breach within thirty (30) days of

Customer notifying NetConn (which notice must be addressed to the General Counsel of NetConn to the address for notices specified in “15.11”), Customer may terminate the applicable Service. Customer will not be liable for any charges accruing in respect of the Service from the date of termination. If NetConn’s failure to perform (and no other factors) resulted in Customer not being able to use the Service, Customer will not be liable for any charges accruing in respect of the Service after the date the Service became totally unusable. Termination of the Service is Customer’s sole and exclusive remedy under the relevant Agreement for breach by NetConn. A failure by NetConn to comply with service levels under the Agreement does not constitute a material breach of the Agreement.

3. Termination Charges for Customer Breach or Early Termination for Customer Convenience. If a Service is terminated at any time after the Effective Date of the Agreement either for Customer’s breach or Customer’s convenience (including where Customer terminates a Service before the Service Commencement Date, other than in circumstances permitted under “3.2”), Customer must pay (i) all unpaid Initial Charges, Monthly Service Charges and Other Charges incurred up to and including the date of termination; (ii) all Monthly Service Charges multiplied by the number of months remaining in the Initial Term or Renewal Term; and (iii) any taxes payable by Customer (see “4.2”). For the avoidance of doubt, this clause does not apply to terminations by Customer under “9.2”, “9.4” or “15.9”.
4. Termination by either Party. Either NetConn or Customer may terminate any Agreement in accordance with the manner below:-
 - (a) Termination rights as specified in “6.1(a)”;
 - (b) If any Force Majeure Event occurs in accordance with “15.9”; or
 - (c) If either Party is subject to an application for winding up, or any proceeding in bankruptcy, reorganisation, insolvency, liquidation or receivership is commenced by or against either Party, the other Party may, upon twenty-four hours’ written notice, terminate any Agreement with immediate effect.
5. Consequences of Termination: On termination of the Agreement, NetConn will cease providing Customer with the Service under the Agreement and send Customer a final invoice for all accrued and outstanding charges and early termination charges if termination has taken place during the Initial Term. All fees and charges must be paid within seven (7) days of issuance of NetConn invoice.

10. Third Party Use

1. Customer may resell and permit third parties to use the Service, subject to the following conditions: (a) no such resale or third party use will lessen or modify Customer’s obligations under the Agreement; (b) use of the Service by third parties must comply with the Agreement and all applicable laws; (c) Customer must possess or maintain all licenses, permits and other requirements that may be applicable to such resale or third party use. Customer agrees to indemnify, defend and hold harmless NetConn and its Affiliates for and from all liabilities and costs (including reasonable legal fees) arising from any and all claims by any third party in connection with the Services (including, without limitation, any claims regarding content transmitted using the Services or violation of data protection legislation) regardless of the form of action, whether in contract, tort, or strict liability. However, Customer has no obligation to indemnify NetConn against claims for damages for bodily injury or death directly caused by NetConn’s own negligence.

11. Warranty and Limitation of Liability

1. WARRANTY AND DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, NETCONN MAKES NO OTHER WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, UNDER THE AGREEMENT OR OTHERWISE. NETCONN FURTHER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.
2. NETCONN WILL HAVE NO LIABILITY IN CONTRACT, TORT OR STATUTE OR OTHERWISE FOR ANY CLAIM OF UNAUTHORISED ACCESS OF CUSTOMER’S TRANSMISSION FACILITIES OR EQUIPMENT OR FOR UNAUTHORISED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER’S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD, EXCEPT TO THE EXTENT CAUSED BY NETCONN’S WILFUL MISCONDUCT OR GROSS NEGLIGENCE.
3. NETCONN WILL IN NO CIRCUMSTANCES BE LIABLE TO CUSTOMER OR ANY PERSON CLAIMING THROUGH CUSTOMER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES OR FOR LOST REVENUES, LOSS OF DATA, LOST SAVINGS, OR LOST PROFITS OF



ANY KIND, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, UNDER STATUTE, OR TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE.

4. NETCONN'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES AGAINST NETCONN OR ITS AFFILIATES FOR ANY DAMAGES ARISING FROM ANY ACT OR OMISSION RELATING TO THE AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, UNDER STATUTE, IN TORT OR OTHERWISE, INCLUDING NEGLIGENCE, WILL BE LIMITED, FOR EACH EVENT OR SERIES OF CONNECTED EVENTS, AS FOLLOWS:
 - i. FOR PERSONAL INJURY OR DEATH, UNLIMITED, BUT SUBJECT TO PROVEN DIRECT DAMAGES;
 - ii. FOR FAILURE TO COMPLY WITH SERVICE LEVELS, TO THE AMOUNT OF CREDITS SET OUT IN THE RELEVANT SERVICE LEVEL AGREEMENT; AND
 - iii. FOR ALL OTHER EVENTS, SUBJECT TO A MAXIMUM EQUAL TO THE AGGREGATE MONTHLY SERVICE CHARGES PAID BY THE CUSTOMER UNDER THE AGREEMENT.
5. NETCONN WILL IN NO CIRCUMSTANCES BE LIABLE FOR ANY DAMAGES (EXCEPT RESULTING IN PERSONAL INJURY OR DEATH) ATTRIBUTABLE TO ANY SERVICE, PRODUCT OR ACTIONS OF ANY PERSON OTHER THAN NETCONN, ITS EMPLOYEES AND AGENTS.

12. Dispute Resolution

1. Any disputes concerning the construction or interpretation of this Agreement or a Party's performance of its obligations hereunder, which are not resolved through good faith consultation between the Parties within sixty (60) days of initial notification to the other Party, may thereafter be submitted by either Party to the non-exclusive jurisdiction of the forum specified in the Country Annex.

13. Confidentiality

1. From the Effective Date until the expiration of three (3) years following the termination of the Agreement, a Party receiving ("**Recipient**") information in connection with the provision of the Service marked or otherwise reasonably understood to be confidential or proprietary of the disclosing Party ("**Information**") must keep confidential and not disclose without the disclosing Party's consent the Information received, and will use the same level of care with respect to the Information as the Recipient employs with respect to its own confidential or proprietary information. For purposes of maintaining the confidentiality of the Agreement, both Parties will be Recipients of the Information contained in it.
2. Notwithstanding the above, Information will not be deemed confidential and Recipient will have no obligation with respect to any Information which (a) is already known to Recipient (without breach of confidentiality), (b) is or becomes publically known through no negligent or wrongful act of Recipient, (c) is received by Recipient from another source without similar restriction and without breach of the Agreement; or (d) is furnished to a third party by the disclosing Party without similar restrictions on the third party's rights.
3. Notwithstanding anything to the contrary, NetConn shall be entitled to (and Customer authorizes NetConn to) disclose Information of the Customer that is in its or its Affiliates' possession to any governmental authority upon receipt of written requests from such authority or otherwise required by law.
4. To the extent NetConn collects any personal data in the administration and operation of the Agreement, such data will be considered Information subject to "14".
5. NetConn will be permitted to process Information received from Customer for the purposes of the administration and operation of the Agreement and the provision of the Services. Such processing may also include storage of Information in a local or foreign database.
6. To the extent NetConn comes into possession of any information in connection with providing Customer with conduit or storage services for the information (which includes without limitation, NetConn Data Centre Services and NetConn DataVault Service):
 - (a) the information will not be deemed to have been collected by NetConn and will not be subject to "14"; and
 - (b) the information will not be deemed to have been received by NetConn for the purpose of "13.1" and will not be subject to the obligations of confidentiality under "13.1".

14. Personal Data

1. NetConn may request and collect Personal Data from Customer in order to provide a Service to the Customer. Customer may decline to provide the Personal Data but NetConn reserves the right to decline the provision of the Service to Customer.
2. Customer agrees and understands that NetConn may use Personal Data for:
 - (a) the provision of the Services including the transfer of such Personal Data to other telecommunications network providers or third parties as necessary for the provision of the Service and/or transfer of such Personal Data to Affiliates and agents as necessary for the provision of any service by such Affiliates or agent;
 - (b) improving the Service or the provision of services by Affiliates and agents;
 - (c) analysing, authenticating and checking credit, payment and/or status in relation to the provision of the Service;
 - (d) processing any payment instructions, direct debit facilities and/or credit facilities in relation to the provision of a Service or requested by Customer;
 - (e) enabling the daily operation of Customer's accounts with NetConn or its Affiliates and/or the collection of amounts outstanding from Customer (which may include disclosing Customer Personal Data to debt collection agents) in relation to the Services or any products or services provided by our Affiliates; and
 - (f) disclosure as required by laws of the Applicable Jurisdiction.
3. Customer shall notify NetConn of any changes of Personal Data which may affect the provision of the Service to Customer. Upon request, Customer shall provide NetConn with information reasonably required by NetConn relating to Customer and Customer's use of the Services to:
 - (a) assist NetConn in complying with its obligations under any applicable laws;
 - (b) report to any government agency regarding compliance with those obligations;
 - (c) assess whether Customer has complied, is complying and will be able to comply with all of its obligations under the Agreement.
4. Customer may access the personal information NetConn holds about Customer at any time on reasonable notice.
5. NetConn will take reasonable steps to protect the Personal Data it holds about the Customer from misuse and loss and from unauthorised access, modification or disclosure.

15. General Terms

1. Publicity and Advertising. Neither Party may publish or use any advertising, sales promotions, press releases or other publicity which use the other Party's name, logo, trademarks or service marks without the prior written approval of the other Party, provided that NetConn may list Customer as a user of the Service in advertising and sales promotion materials.
2. Governing Law and Jurisdiction. Unless otherwise specified in the Order Form:
 - (a) the validity, interpretation and performance of this Agreement will be governed by the laws of the place of incorporation of NetConn; and
 - (b) any disputes concerning the construction or interpretation of this Agreement or a Party's performance of its obligations hereunder, which are not resolved through good faith consultation between the Parties within sixty (60) days of initial notification to the other Party, may thereafter be submitted by either Party to the exclusive jurisdiction of the courts of country of incorporation of NetConn.
3. Limitation of Action. Any legal action arising from or in connection with any Agreement or any Service provided or work performed thereunder must be brought within two (2) years after the cause of action arises.
4. Title. Nothing in these General Conditions is intended to or will create or vest in Customer any right, title or interest in any Service, its configuration or the underlying equipment and assets used to provide it.
5. Severability. If a court or administrative body holds any provision of any Agreement to be invalid or unenforceable, the relevant provision will be deemed severed



- from the Agreement, and the remaining provisions will remain in full force and effect and the Parties will promptly negotiate a replacement provision, if necessary.
6. Assignment and Subcontracting. None of the Agreements may be assigned or transferred by either Party unless the other Party gives its prior written consent. Notwithstanding the previous sentence, NetConn may: (a) freely assign or transfer any Agreement to an Affiliate; (b) freely assign NetConn's right to receive payments for the Services; and (c) subcontract a Service or a portion thereof, however NetConn will remain liable for the performance of any of NetConn's subcontractors. Any purported assignment that is inconsistent with this "15.6" will be void. The Parties agree that they will execute all documents and do all such acts reasonably necessary to give effect to this "15.6".
 7. Independent Contractors. Under the Agreement, both Parties are independent contractors, maintaining complete control over their own personnel and operations. Neither Party will become a partner, agent, fiduciary or legal representative of the other through operation of the Agreement.
 8. No Third Party Beneficiaries. None of the Agreement is intended to be for the benefit of any third party, is not enforceable by any third party, and does not confer upon any third party any remedy, claim or rights.
 9. Force Majeure. Neither Customer nor NetConn may be held responsible for any delay or failure in performance of any part of any Agreement if and to the extent that it is caused by acts of God or nature (including wild animals), war or war-like conditions, mob violence, earthquake, natural disasters, acts or failures to act of any governmental authority or any other events or circumstances beyond the reasonable control of the applicable Party ("**Force Majeure**"). However, no event of Force Majeure will excuse Customer of Customer's obligation to make any payments that are owed to NetConn for Services delivered before the event of Force Majeure or that accrue due to the Customer's ability to continue using the Services thereafter. NetConn will give Customer notice, and Customer must give NetConn reasonable notice of any events of Force Majeure and their anticipated effect upon performance under the Agreement. If any event of Force Majeure lasts for more than three (3) months, either Party may terminate the affected Service upon twenty-four (24) hours' prior written notice to the other Party. Neither Party will incur any liability nor other penalties in the event a Service is terminated under the previous sentence, except Customer will be required to pay any outstanding charges in respect of the Services.
 10. Regulatory Changes. Services may be subject to laws and regulations in one or more jurisdictions. If the provision of a Service in any applicable jurisdiction is found to violate any applicable law or regulation or would result in any additional licensing requirements becoming applicable to NetConn in any applicable jurisdiction, NetConn may cancel or suspend the applicable Service upon reasonable prior notice to Customer. Customer must pay any charges applicable to the Service prior to its cancellation or suspension, but will not be liable for any other amounts. NetConn will make commercially reasonable efforts to restore the Service, or to provide under any Agreement a functionally equivalent Service that is permitted under the applicable laws and regulations of the relevant jurisdiction. NetConn will agree with Customer separately upon pricing terms for a functionally equivalent substitute Service. NetConn will not be liable for any other damages or costs incurred due to regulatory changes affecting NetConn's Services.
 11. Notices. All notices required or permitted under any Agreement must be made in writing (excluding by email), addressed to the person specified in the Order Form (except as otherwise specified in "9.2" and in the case of notices to NetConn, such form as may be prescribed by NetConn, provided however that NetConn may send the following by email: any invoice-related notice, suspension notice or termination notice. All notices will be treated as having been received by the intended recipient when: (i) delivered in person to the recipient; (ii) forty-eight (48) hours after delivery by a reputable courier service; (iii) sent by facsimile with receipt confirmed by the sender's equipment; or (iv) sent by email without transmission error notice. Either Party may change their address for notice as shown on the Order Form with ten (10) days' prior written notice to the other Party.
 12. Customer Contact. The Customer will nominate a contact and keep NetConn informed at all times with accurate and updated contact details for the contact.
 13. Survivability. Any provision of any Agreement which by its context is intended to apply after termination of any Agreement will survive its termination.
 14. Waiver. The waiver by either Party of any breach of any Agreement by the other Party in a particular instance will not operate as a waiver of subsequent breaches of a same or different kind. The failure of either Party to exercise any rights under any Agreement in a particular instance will not operate as a waiver of the Party's



right to exercise the same or different rights in any subsequent instance.

15. English Language. All Agreements shall be entered into in the English Language, which language will be controlling in all respects. No translation of any Agreement into any other language will be of any force or effect in the interpretation of the Agreement or in the determination of the intent of the Parties.

16. Definitions

References to “you”, “your” and “Customer” refer to the Customer named on the Order Form and executing the Agreement . References to “we”, “us”, “our” and “NetConn” refer to the NetConn entity entering into an Agreement to provide the Service. As used in the Agreement, the following terms are intended to have the meanings indicated.

“Accepted” has the meaning given to it in the Order Form.

“Affiliate” means, in relation to an entity, any other entity which directly or indirectly controls, is controlled by, or is under common control with such entity, including an entity with 50% or more equity in an entity.

“Agreement” has the meaning given to it in the Order Form.

“Applicable Jurisdiction” means the jurisdiction specified in 15.2 (Governing Laws)

“Circuit Location Address” means the location specified by Customer in the Order Form for one or both ends of the Service, if the Service is to be delivered at a location outside a NetConn POP.

“City Pairs” mean, for example, Tokyo-Singapore, Hong Kong-Taipei, Sydney-Seoul, and include such City Pairs as may be available from time to time and are accepted by NetConn on the Order Form.

“Customer Interface” means either (i) the Customer connection to the provider of local access line Interface Equipment at a Circuit Location Address, or (ii) the Customer connection to a NetConn POP, in each case as specified on the Order Form.

“Effective Date” means the date on which the Order Form is Accepted by NetConn.

“NetConn POP” means a network Point of Presence maintained by NetConn or its Affiliates and partners in a city between any City Pairs.

“Party” means either NetConn or Customer and “Parties” means both of NetConn and Customer.

“Personal Data” means data, information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

“Service Commencement Date” means:

- (a) the earlier of:
 - i. the date notified by NetConn to Customer in writing as the date that the Service ordered is being provided to the Customer Interface after successful circuit testing by NetConn; and
 - ii. the date when Customer begins using the Service; or
- (b) if it is an Amendment which does not involve the delivery of a Service, the date notified by NetConn to Customer in writing in the first invoice issued in respect of the Amendment.

17. Entire Agreement

Any Agreement, including the Order Form and Specific Conditions, is the entire agreement between the Parties concerning the applicable Service and it supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the Service. No change, modification or waiver of any of the terms of any Agreement will be binding unless included in a written agreement (including an Order Form) and signed by both Parties.

All preprinted, standard, or posted terms and conditions in any media including without limitation (a) terms and conditions in any purchase order, acknowledgement or other document issued by Customer; or (b) terms and conditions where acquiescence requires only a mouse click, shall have no legal effect and shall not be incorporated into nor construed to amend the terms of this Agreement.



Hong Kong Country Annex -- General Terms and Conditions for NetConn Services --

Country Specific Terms and Conditions for Hong Kong:

1. NetConn contracting entity : NetConn Services Ltd, RM2003,20/F,Sino Favour Centre 1 On Yip Street Chaiwan,Hong Kong
2. Invoice Currency (see Clause 4.6) : US Dollars, unless otherwise specified in Order Form.
3. Forum for Dispute Resolution (see Clause 12.1) : The courts of Hong Kong, SAR China.
4. Governing Law (see Clause 15.2) : Hong Kong.
5. Other country specific terms and conditions. NetConn will at all times fully observe the Personal Data (Privacy) Ordinance (the "Ordinance") of the Hong Kong SAR in collecting, maintaining and using such personal data. In particular, NetConn will observe the following principles, save and otherwise appropriately agreed by the owner of the personal data: Collection of personal data, if any, and its use, will be for purposes solely relating to the provision of the Services; All practical steps will be taken to ensure that personal data are accurate and not kept longer than necessary (or destroyed in accordance with internal retention guidelines); Personal data will be protected against unauthorised or accidental access, processing or erasure; and the owner of personal data will have the right of access to, and correction of, personal data, and any request for access or correction will be dealt with in accordance with the Ordinance.