

DATED: Tuesday 6th May, 2014

**TERMS AND CONDITIONS FOR
FIXED WIRELESS ACCESS INTERNET**

AIRNEXUS
Superfast Wireless Broadband

airNexus Dere Cottage Whittonstall Durham DH8 9JN
T 0845 544 2141 **E** hello@airnexus.co.uk **W** www.airnexus.co.uk

airNexus is a trading style of Data Network Consultants Limited. Registered in England and Wales. Reg. No.: 06769055

IT IS AGREED THAT

1 INTERPRETATION

1.1 The following definitions and rules of interpretation apply in this Agreement.

"Charges"	means the charges payable by the Customer for the Services being the Price Per Month as set out in the Order payable in each month of the term of this Agreement;
"Customer"	the party specified on the Order Form;
"CPE"	means customer premises equipment: antenna, radio, mounting bracket, power over ethernet (PoE) injector and cabling to be installed at the Property necessary to receive the Services and any updates and modifications thereto;
"FWA"	means fixed wireless access and describes the infrastructure technology used for connecting to the internet;
"Longstop Date"	means the date 9 months after the date of this Agreement;
"Minimum Term"	means the minimum term of this Agreement as set out in the Order Form;
"Order Form"	the order form to be completed by the Customer before the Service commences available as a separate document;
"Partner Networks"	the partner networks listed from time to time at http://airnexus.co.uk/about/partner-networks ;
"Permitted Use"	the use set out in the Order Form;
"Personal Data"	has the meaning set out in section 1(1) of the Data Protection Act 1998;
"Privacy Policy"	the airNexus' privacy policy in place from time to time;
"Property"	means the property detailed in the Order Form including any outside space upon which the CPE is located;
"Security Information"	means as described in Clause 3.3;
"Service"	access to the internet and voice over internet protocol via airNexus' communications infrastructure;

TERMS AND CONDITIONS FOR FIXED WIRELESS ACCESS INTERNET

“Start Date” means the date notified to the Customer by airNexus being the date for the commencement of the service or otherwise the actual component of the Service;

"Terms of Use" Schedule 1 to these terms and conditions governing the use of the Service;

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- 1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.9 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.11 A reference to **writing** or **written** includes fax and e-mail.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 References to a document in **agreed form** are to that document in the form agreed by the parties and initialled by or on their behalf for identification.
- 1.14 References to clauses and schedules are to the clauses and schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.15 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 COMMENCEMENT AND DURATION

- 2.1 This Agreement shall commence on the Start Date and shall continue, for the Minimum Term and thereafter until either party gives to the other party three months' written notice to terminate or in all other circumstances unless sooner terminated in accordance with clause 8.
- 2.2 In the event that airNexus fails to commence the provision of the Service prior to the Longstop Date then the Customer may terminate this Agreement without further liability to airNexus immediately upon written notice **PROVIDING ALWAYS** that such notice is given prior to the actual commencement of the Service.

3 THE PROVISION OF THE SERVICE

- 3.1 airNexus shall provide the Service to the Customer in accordance with the terms and conditions of this Agreement.
- 3.2 To enable the Customer to use the Service airNexus shall provide the Customer with CPE, a username and password which will allow the Customer to authenticate and access the Service. For the avoidance of doubt the CPE shall at all times remain owned by airNexus.
- 3.3 The Customer shall treat any username, password or any other information which forms part of airNexus' security procedures as confidential (Security Information) and that they shall not disclose it to any third party. The Customer shall be liable for any loss or damage arising out of the disclosure of any Security Information.
- 3.4 airNexus has the right to disable any access code, username, password or other information airNexus provided to the Customer at any time if, in airNexus' opinion, the Customer fails to comply with any of the provisions of these terms and conditions and/or the Terms of Use.
- 3.5 From time to time airNexus may:
- 3.5.1 (for operational reasons), change access codes, usernames, passwords or other security information necessary to access the Service or change the technical specification of the Service.
- 3.5.2 issue instructions to the Customer which airNexus believes are necessary for reasons of health, safety, security or the quality of any telecommunications service provided by airNexus to the Customer or any other customer. The Customer shall comply with any such instructions that airNexus issues to the Customer.
- 3.5.3 temporarily suspend the Service because of an emergency or for operational maintenance or improvements or for the purpose of ensuring network or information security. In such cases, airNexus shall aim to restore the Service as soon as reasonably practical and airNexus shall aim to give the Customer as much notice as possible of any emergency or scheduled suspension of the Service.
- 3.6 airNexus does not guarantee that products or services or any websites accessible via the Service are error or virus free, and dealings that the Customer may have with promotions, services or merchants via the Service are solely between the Customer and the person with whom they are dealing.

- 3.7 airNexus does not warrant or guarantee the performance of the internet or that the transmission of information over the internet will be secure or that the internet will be accessible at all times or at the speeds indicated by airNexus.

4 CONNECTION OF EQUIPMENT TO THE SERVICE

- 4.1 The Customer shall allow airNexus access to the Property at such reasonable times as are necessary to install, connect and maintain the CPE.

- 4.2 The Customer undertakes:

4.2.1 not to damage or interfere with the CPE except in emergencies when having used reasonable endeavours it has not been possible to contact airNexus before the event;

4.2.2 to take reasonable precautions necessary to prevent any visitors to the Property from damaging or interfering with the Equipment;

4.2.3 to keep the CPE insured against fire and other usual risks in accordance with the recommendations of the insurers and where required by the relevant insurance policy or upon the request of airNexus, notify the insurer of the existence of the CPE on or in the Property and airNexus' interest;

4.2.4 to keep the structure and exterior of the Property in repair to the extent necessary to provide support and shelter and safe access to the Equipment;

4.2.5 where requested by airNexus to permit the installation of additional equipment including but not limited to additional access points (repeater equipment) for the purposes of transmitting on the Services to other customers and comply with the obligations in the Clause 4.2 in respect of such equipment; and

4.2.6 to return the CPE to airNexus in good working order and condition (fair wear and tear accepted) immediately upon termination or expiry of this Agreement.

- 4.3 The Customer shall ensure, that any equipment used by the Customer to connect to or use the Service is connected and used in accordance with any instructions, safety and security procedures applicable to the use of that equipment and/or the standards that airNexus has notified to the Customer.

- 4.4 IP addresses may be assigned on a dynamic basis and airNexus does not represent, warrant or guarantee that the Customer will be assigned the same (or similar) IP address between sessions.

- 4.5 From time to time airNexus and/or relevant Partner Networks may have to interrupt the Service or alter the Service for operational or maintenance reasons. Wherever possible, notice of such interruption shall be given to the Customer prior to the event. Wherever possible airNexus shall implement all Service maintenance, specification alterations or suspensions outside the hours of 9am to 5pm. In any event the Customer shall have no claim against airNexus arising from such interruption for whatever loss or for whatever reason.

- 4.6 In the event that the Customer becomes aware of a defect, fault or impairment in the provision of the Service other than by way of service maintenance, and the Customer gives written notification to airNexus of such defect, fault or impairment, then airNexus shall use its reasonable endeavours to resolve the defect, fault or

TERMS AND CONDITIONS FOR FIXED WIRELESS ACCESS INTERNET

impairment as quickly as reasonably possible providing always that if it is determined that the defect, fault or impairment is a result of;

4.6.1 negligence, act, omission, or fault of the Customer or its agents, or

4.6.2 the Customer or its Agent's breach of this Agreement, or

4.6.3 the failure or malfunction of Customer Equipment,

then airNexus may recover from the Customer all costs incurred on an indemnity basis in remedying the defect, fault or impairment.

5 USE OF THE SERVICE

5.1 The Customer may access the Service in accordance with these terms and conditions for the Permitted Use.

5.2 The Customer warrants that any use of the Service the Customer complies with airNexus' Terms of Use, and the terms and conditions of use of the Partner Networks, and the Customer will indemnify airNexus for any breach of that warranty.

5.3 Access to the Service is provided to the Customer's use only. The Customer may not re-sell the Service to any third party for money or money's worth or otherwise provide use of the Service.

5.4 The Customer warrants that it will comply with clause 5.3 and the Customer shall indemnify airNexus for any breach of that warranty.

5.5 The Customer shall not do anything that is likely to adversely interfere with the provision of the Services or the provision of similar service by airNexus to other customers.

5.6 airNexus has the right to suspend restrict or otherwise limit the Service and terminate the agreement immediately in the event of a breach by the Customer of any of the provisions of these terms and conditions, airNexus' Terms of Use or airNexus' Partner Network's terms and conditions of use, including without limitation:

5.6.1 if the Customer uses equipment which is defective or illegal;

5.6.2 if the Customer causes any technical or other problems to airNexus or airNexus' Partner Networks;

5.6.3 if in airNexus' reasonable opinion the Customer is involved in fraudulent or unauthorised use of the Service;

5.6.4 if the Customer resells or otherwise provides access to the Service in breach of clause 5.2 above; or

5.6.5 if the Customer uses the Service in contravention of the Terms of Use.

6 CHARGES AND PAYMENT

6.1 The Customer shall pay the Charge for the Service monthly in advance by direct debit as specified in writing by airNexus. Charging shall begin on the Start Date.

TERMS AND CONDITIONS FOR FIXED WIRELESS ACCESS INTERNET

airNexus will calculate the Charges in accordance with the details recorded by, or on behalf of, airNexus.

- 6.2 If airNexus terminates the Service due to non-payment and/or breach of any of these terms and conditions or airNexus' Terms of Use, the Customer may be required to pay a reconnection fee, if the Service is reactivated.
- 6.3 airNexus may revise the Charges by giving the Customer no less than 90 days' notice in writing of any such increase. If such increase is not acceptable to the Customer, it may, within 14 days of such notice being received or deemed to have been received in accordance with clause 15, terminate the contract by giving 60 days' written notice to airNexus.
- 6.4 airNexus will invoice and the Customer shall pay all charges in pounds sterling. The Charges are exclusive of value added tax if chargeable or any other sales, usage or similar tax applicable in any country where the Service is provided.
- 6.5 airNexus may, at any time, require the Customer to pay a Deposit or provide a guarantee as security for payment of future bills. If the Customer fails to pay such a deposit or provide such a guarantee, airNexus has a right to suspend the provision of the Service.

7 INTEREST

If the Customer fails to make any payment due to airNexus under this Agreement by the due date for payment, then, without limiting airNexus' remedies under clause 8, the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

8 TERM AND TERMINATION

- 8.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
 - 8.1.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
 - 8.1.2 the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 8.1.3 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
 - 8.1.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being

TERMS AND CONDITIONS FOR FIXED WIRELESS ACCESS INTERNET

an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- 8.1.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 8.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 8.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
 - 8.1.8 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 8.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 8.1.10 the Customer (being an individual) is the subject of a bankruptcy petition or order;
 - 8.1.11 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - 8.1.12 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.1.4 to clause 8.1.11(inclusive);
 - 8.1.13 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - 8.1.14 any warranty given by the other party in this Agreement is found to be untrue or misleading.
- 8.2 For the purposes of clause 8.1.2, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:
- 8.2.1 a substantial portion of this Agreement; or
 - 8.2.2 any of the obligations set out in clauses 3.3, 4.1, 6.1, 6.3 and 7.1,

TERMS AND CONDITIONS FOR FIXED WIRELESS ACCESS INTERNET

over the term of this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

- 8.3 airNexus may terminate this Agreement immediately upon written notice to the Customer (without liability save in respect of a refund of any advanced payment made) in the event that:
- 8.3.1 any agreement between airNexus and a Partner Network is terminated or expires; or
 - 8.3.2 airNexus is required to relocate, decommission or alter its equipment used in the provision of the Service; or
 - 8.3.3 In airNexus' sole discretion it is no longer commercially or economically viable to provide the Service to the Customer.

9 CONSEQUENCES OF TERMINATION

- 9.1 On termination or expiry of this Agreement, the following clauses shall continue in force: Clause 4.2.6, Clause 7, Clause 9, Clause 11, Clause 12, Clause 13, Clause 14, Clause 24 and Clause 26.
- 9.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

10 SUSPENSION OF SERVICE

- 10.1 airNexus may terminate or temporarily suspend the Service at the Customer's expense if:
- 10.1.1 airNexus is entitled to terminate the agreement under any of the provisions of these terms and conditions;
 - 10.1.2 the Customer is in arrears with any payment due under the agreement for more than 30 days.
- 10.2 airNexus may also prevent the Customer from continuing to use the Services if the Customer has used the Service:
- 10.2.1 in a way that is likely to adversely interfere with airNexus' ability to provide the Service to the Customer or any third party;
 - 10.2.2 in violation of the airNexus' Terms of Use.
- 10.3 Where the Service is suspended under this paragraph, the Customer shall pay the charges for the Service until the agreement has been terminated by either party in accordance with clause 8.

11 INTELLECTUAL PROPERTY RIGHTS

- 11.1 Where airNexus provides to the Customer software which enables the Customer to use the Service, airNexus grants to the Customer a non-exclusive, non-transferable licence to use that software solely for that purpose. The Customer agrees that it shall not, without airNexus' prior written consent, copy, compile or modify the software, nor copy any manuals or documentation (except as permitted by law). The Customer shall sign any agreement reasonably required by airNexus or the owner of the copyright in the software (where the software is licensed by airNexus) to protect airNexus' or the owner's interest in that software.
- 11.2 The Customer shall indemnify airNexus for any breach of clause 11 by the Customer.

12 LIMITATION OF LIABILITY

- 12.1 The following provisions set out the entire financial liability of airNexus (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:
- 12.1.1 any breach of the agreement however arising;
 - 12.1.2 any use made by the Customer of the Service, or any part of it; and
 - 12.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the agreement.
- 12.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the agreement.
- 12.3 Nothing in these conditions excludes the liability of airNexus for:
- 12.3.1 death or personal injury caused by airNexus' negligence; or
 - 12.3.2 fraud or fraudulent misrepresentation; or
 - 12.3.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - 12.3.4 breach of section 2 of the Consumer Protection Act 1987; or
 - 12.3.5 the deliberate default or wilful misconduct of airNexus, its employees, agents or subcontractors.
- 12.4 Subject to condition 12.3 and condition 12.4:
- 12.4.1 airNexus shall not be liable for any errors or interruption in the installation process, whether within or outside its control including but not limited to a termination of supply by a Partner Network or a requirement to de-commission or relocate any of airNexus' equipment used in the provision of the Service;
 - 12.4.2 airNexus shall not be liable under any circumstances to the Customer whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
 - (a) loss of profits;

TERMS AND CONDITIONS FOR FIXED WIRELESS ACCESS INTERNET

- (b) loss of business
- (c) depletion of goodwill or similar losses;
- (d) loss of anticipated savings;
- (e) loss of goods;
- (f) loss of contract;
- (g) loss of use of Service;
- (h) loss or corruption of data or information; or
- (i) special, indirect, consequential or pure economic loss, costs, damages, charges or expenses,

suffered by the Customer that arises under or in connection with this Agreement, provided that this clause 12.4 shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of clause 12.3 or any other claims for direct financial loss that are not excluded by any of categories (a) to (i) inclusive of this clause 12.4.2;

12.4.3 airNexus' total liability under this sub-clause including all related costs, fees and expenses and whether arising in contract, negligence or other tort or otherwise howsoever arising will not under any circumstances cumulatively exceed 50% of the charges of the last 12 months. In the case of damage occurring within the first 12 months following the conclusion of the agreement, the charges due up to that date shall be projected for a 12-month period.

12.5 airNexus shall not be held responsible for any loss, damage or inconvenience the Customer may suffer for emergencies or scheduled maintenance.

13 CONFIDENTIAL INFORMATION

13.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 13.2.

13.2 Each party may disclose the other party's confidential information:

13.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13; and

13.2.2 as may be required by law, court order or any governmental or regulatory authority.

13.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Agreement.

14 PRIVACY AND DATA PROTECTION

- 14.1 airNexus shall process all information about the Customer (including all the personal data provided by the Customer to airNexus before or during the term of the agreement) in accordance with airNexus' Privacy Policy.
- 14.2 While airNexus agrees to take all necessary technical and organisational steps to ensure the security of the Service, it is not responsible for the accidental loss or destruction of any personal data the Customer transmits using the Service and airNexus excludes all liability of any kind in relation to the content, loss, destruction or security of personal data and all other data the Customer sends or receives through the Service. For the avoidance of doubt, this paragraph does not limit or exclude any liability of airNexus for a breach of airNexus' data protection obligations in relation to the information which airNexus obtains from the Customer before or during the term of the agreement.
- 14.3 The Customer agrees and acknowledges, that airNexus may be required by law to provide assistance to law enforcement, governmental agencies and other authorities. Accordingly, the Customer agrees:
- 14.3.1 that airNexus and/or its Partner Networks may implement and maintain an interception capability suitable to meet these requirements where airNexus and/or Partner Networks are obliged by law to ensure or procure that such a capability is implemented and maintained;
- 14.3.2 that airNexus and its Partner Networks may implement and maintain a data retention capability for the Service to meet requirements where airNexus and/or its partner networks are obliged by law to ensure or procure that data is retained; and
- 14.3.3 airNexus may at times co-operate with law enforcement authorities and rights-holders in the investigation of any suspected or alleged illegal activity by the Customer. If airNexus is required to do so by law, this may include but is not limited to, disclosure of the Customer's contact information to law enforcement authorities or rights-holders.

15 NOTICES

- 15.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:
- 15.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 15.1.2 sent by email to sales@airNexus.co.uk
- 15.2 Any notice or communication shall be deemed to have been received:
- 15.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 15.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the Business Day after posting or at the time recorded by the delivery service.

15.2.3 if sent by fax, at 9.00 am on the next Business Day after transmission.

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

16 VARIATIONS

airNexus has the right to revise and amend these terms and conditions from time to time on giving the Customer at least 30 days' notice in writing.

17 ASSIGNMENT

The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of airNexus such consent not to be unreasonably withheld or delayed.

18 FORCE MAJEURE

18.1 "**Force Majeure Event**" means any circumstance not within a party's reasonable control including, without limitation:

18.1.1 acts of God, flood, drought, earthquake or other natural disaster;

18.1.2 epidemic or pandemic;

18.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

18.1.4 nuclear, chemical or biological contamination or sonic boom;

18.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

18.1.6 collapse of buildings, fire, explosion or accident; and

18.1.7 any labour or trade dispute, strikes, industrial action or lockouts;

18.1.8 non-performance by suppliers or subcontractors; and

18.1.9 interruption or failure of utility service; and

18.1.10 damage to airNexus' communications infrastructure; and

18.1.11 loss of right by airNexus to operate its infrastructure or the termination of any agreement by a Partner Network which prevents the provisions of the Service.

18.2 Provided it has complied with clause 18.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of this

TERMS AND CONDITIONS FOR FIXED WIRELESS ACCESS INTERNET

Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

- 18.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 18.4 The Affected Party shall:
- 18.4.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 21 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- 18.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 18.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 13 weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving 2 weeks' written notice to the Affected Party.

19 WAIVER

- 19.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 19.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 19.3 A party that waives a right or remedy provided under this Agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

20 SEVERANCE

- 20.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 20.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid

and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

21 NO PARTNERSHIP OR AGENCY

- 21.1 Nothing in these terms and conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 21.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

22 ENTIRE AGREEMENT

- 22.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 22.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 22.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 22.4 Nothing in this clause shall limit or exclude any liability for fraud.

23 CONFLICT

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

24 THIRD PARTY RIGHTS

No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

25 GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

26 JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with

TERMS AND CONDITIONS FOR FIXED WIRELESS ACCESS INTERNET

this Agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1

Terms of use

This acceptable use policy sets out the terms between the Customer ("You") and airNexus under which you may access the Service. This acceptable use policy applies to all users of, and visitors of the Service.

Your use of the Service means that you accept, and agree to abide by, all the policies in this acceptable use policy.

Prohibited uses

You may use the Service only for lawful purposes. You may not use the Service:

- In any way that breaches any applicable local, national or international law or regulation.
- In any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect.
- For the purpose of harming or attempting to harm minors in any way.
- To send, knowingly receive, upload, download, use or re-use any material which does not comply with our content standards.
- To transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (SPAM).
- To knowingly transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware.

You also agree:

- Not to reproduce, duplicate, copy or re-sell any part of the Service.
- Not to access without authority, interfere with, damage or disrupt:
 - any part of the Service;
 - any equipment or network;
 - any software used in the provision of the Service; or
 - any equipment or network or software owned or used by any third party.

Your use of the Service must not:

- Contain any material which is defamatory of any person.

TERMS AND CONDITIONS FOR FIXED WIRELESS ACCESS INTERNET

- Contain any material which is obscene, offensive, hateful or inflammatory.
- Promote sexually explicit material.
- Promote violence.
- Promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age.
- Infringe any copyright, database right or trade mark of any other person.
- Be likely to deceive any person.
- Be made in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence.
- Promote any illegal activity.
- Be threatening, abuse or invade another's privacy, or cause annoyance, inconvenience or needless anxiety.
- Be likely to harass, upset, embarrass, alarm or annoy any other person.
- Be used to impersonate any person, or to misrepresent your identity or affiliation with any person.
- Give the impression that they emanate from airNexus, if this is not the case.
- Advocate, promote or assist any unlawful act such as (by way of example only) copyright infringement or computer misuse.

Suspension and termination

airNexus will determine, in its discretion, whether there has been a breach of this acceptable use policy through your use of the Service. When a breach of this policy has occurred, airNexus may take such action as we deem appropriate.

Failure to comply with this acceptable use policy constitutes a material breach of the terms of use upon which you are permitted to use the Service, and may result in our taking all or any of the following actions:

- Immediate, temporary or permanent withdrawal of your right to use the Service.
- Immediate, temporary or permanent removal of any posting or material uploaded by you to the Service.
- Issue of a warning to you.
- Legal proceedings against you for reimbursement of all costs on an indemnity basis (including, but not limited to, reasonable administrative and legal costs) resulting from the breach.

- Further legal action against you.
- Disclosure of such information to law enforcement authorities as we reasonably feel is necessary.

airNexus exclude liability for actions taken in response to breaches of this acceptable use policy. The responses described in this policy are not limited, and airNexus may take any other action it reasonably deems appropriate.

Changes to the acceptable use policy

airNexus may revise this acceptable use policy at any time by amending at <http://airnexus.co.uk/about/acceptable-use-policy>. You are expected to check this page from time to time to take notice of any changes we make, as they are legally binding on you. Some of the provisions contained in this acceptable use policy may also be superseded by provisions or notices published elsewhere on the Service.

Telephony

airNexus may provide telephony as part of the Service. This should not be relied upon for emergency calls in the unlikely event of an infrastructure failure or power cut it will not be possible to place an emergency call. The Service will not be operational during CPE, communications infrastructure or power failure and airNexus cannot accept any liability where the Service cannot be used for emergency purposes or otherwise in such circumstances.

Where airNexus has provided telephone numbers to you, these numbers will remain the property of airNexus or their suppliers. Upon termination of the Agreement these numbers must not be used by you. Unless the numbers have been ported over to a third party supplier.

airNexus may transfer or port a telephone number from your previous telephone provider. This process requires the co-operation of both providers and airNexus do not warrant or represent that acceptance of the Order shall mean this transfer will be successful.

The Customer must undertake to pay for all ancillary or incidental charges (including but not limited to cost of telephone calls incurred) whilst utilising the Service charged at the current list rates (available from airNexus from time to time).