

# Terms and Conditions

You must agree to these terms and conditions before accessing any of Exa Networks' services. By opening an account with Exa Networks or accessing any of Exa Networks' services you indicate your acceptance of these terms and conditions of use and agree to be bound by them. If you do not agree with them you should cancel any account set up.

## Section A – General Terms and Conditions

### 1. Interpretation

- 1.1 In this Agreement:

**Agreement** means the agreement between Exa and the Customer for the supply of Services comprising the documents referred to in Clause 2.1.

**AUP** means the Company's acceptable use policy for Services in force from time to time (appended to these Conditions).

**Cancellation Fee** means the cancellation fee payable in accordance with Clauses 6.12 to 6.13. Commencement Date has the meaning set out in Clause 3.1.

**Conditions** means together these general terms and conditions which apply to all Services (Section A) and the Service Specific Conditions in Section B.

**Customer** means the person, company, firm or other entity purchasing Services from Exa and whose details are in the Order.

**Deliverables** means those deliverables made available to the Customer as part of the Services including documents, instructions, manuals and other information, in any format.

**Exa** means Exa Networks Limited, (Company No. 04922037) with registered office 100 Bolton Road, Bradford, West Yorkshire, BD1 4DE, United Kingdom.

**Exa Equipment** means any hardware together with any operating software, cabling, peripherals and other equipment as Exa provides for the Services, whether owned by Exa or a third party but specifically excluding any hardware sold to the Customer.

**Fees** mean the Fees payable by the Customer for the various Services. Fees will in most cases be detailed in the Order but in some cases may also include additional fees as may become payable in accordance with these Conditions and shall include any Additional Fees (defined in Clause 6.2), Consultancy Fees (defined in Clause 6.2), Engineer Fees (defined in Clause 6.4), Cancellation Fees (defined in Clause 6.12) and Set-Up Fees (defined in Clause 6.5), in each case as applicable and as become payable in accordance with this Agreement.

**Group** means in relation to a company, that company, any subsidiary or holding company from time to time of that company and any subsidiary from time to time of a holding company of that company and Group Company means in relation to a company, any member of its Group.

**Intellectual Property Rights** means all patents, rights to inventions, utility models, copyright and related rights, trademarks, 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 protection anywhere in the world.

**Minimum Notice** means the minimum period of notice stated in the Order, required to terminate a Service.

**Order** means the order for Services attached to (or emailed to the Customer with) these Conditions.

**Services** means the services supplied by Exa to the Customer specified in the Order, including replacement and updated services.

**Service Start Date** means the start date for each of the Services as may be specified in the Order. Different Services may have different Service Start Dates.

**Service Term** means the initial minimum term specified in the Order for which the Service is to be purchased. Renewal Term means a further period equal to the Service Term for which the Service may be renewed immediately after the Service Term or previous Renewal Term.

**Service Specific Conditions** means the conditions which pertain to a particular category of Service in Section B.

**Site** means the site owned or controlled by the Customer at which installation, set-up or on-site Services take place, as referenced in the Order.

**Target Installation Date** means the anticipated completion date for set-up and installation.

**Working Day** means 08.00 to 18.00 (GMT/BST), Monday to Friday excluding UK Public Holidays.

- 1.2 In this Agreement, a:
  - 1.2.1 person includes a natural person, corporate or unincorporated body;
  - 1.2.2 reference to a party includes its successors or permitted assigns;
  - 1.2.3 reference to a statute or statutory provision is a reference to it as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provision also as amended or re-enacted;
  - 1.2.4 phrases introduced by the terms including, include, in particular or similar is illustrative and shall not limit the sense of the words preceding the term.

## 2. Basis of Agreement

- 2.1 The Agreement between us consists of the:
  - 2.1.1 Order;
  - 2.1.2 General Terms and Conditions (Section A);
  - 2.1.3 Service Specific Terms and Conditions where applicable (Section B);
  - 2.1.4 AUP.
- 2.2 If there is any inconsistency between any provisions of the documents referred to in Clause 2.1, they shall take precedence in the order listed in Clause 2.1.
- 2.3 Any amendments to any Agreement provisions will be included by a schedule appended to this Agreement or by amendment to the Order. Amendments will only be binding once signed by both parties.

## 3. Orders and Contract Formation

- 3.1 The Customer may request Services by submitting a signed Order. An Order is an offer by the Customer to purchase Services in accordance with this Agreement and shall only be deemed accepted when Exa issues a written acceptance or signs the Order (whichever is sooner) at which point, the Agreement shall be formed (Commencement Date).
- 3.2 If for any reason an Order is not signed by the parties or an Order confirmation is not issued, use by the Customer of any or all of the Services shall constitute agreement by the Customer to the terms of the Agreement.
- 3.3 Exa may decline to accept any Order or request in which case, it shall notify the Customer as soon as it reasonably can and no longer than 14 calendar days after receiving the signed Order or the request from the Customer.

- 3.4 The Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Exa which is not set out in the Agreement.
- 3.5 Any promotional material and descriptions in catalogues or brochures are for the sole purpose of giving an approximation of the Services. They shall not form part of the Agreement or have contractual force.
- 3.6 These Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or which are implied by trade, custom, practice or course of dealing.
- 3.7 Unless otherwise agreed in the Order, any quotation given by Exa shall not constitute an offer and is only valid for 14 calendar days from date of issue.
- 3.8 The Customer must ensure that the individual signing on its behalf has appropriate authority. Exa shall not investigate whether such person has authority. Further, the person signing the Agreement warrants that he/she has due authority to sign on behalf of the Customer.

## 4. Supply of Services - General

- 4.1 Exa shall supply the Services to the Customer in accordance with the Order in all material respects.
- 4.2 Exa shall use reasonable endeavours to meet any performance timescales, dates or Target Installation Dates in the Agreement but such timescales and dates are estimates only and time for performance shall not be of the essence.
- 4.3 Exa may make changes to Services as necessary to comply with any legal or safety requirement or which do not materially affect the Service nature or quality and Exa shall notify the Customer in any such case.
- 4.4 Exa warrants that the Services will be provided using reasonable care and skill.
- 4.5 Exa warrants that the Services shall be provided in compliance with applicable English law and regulation.
- 4.6 Exa shall use reasonable efforts to procure that its representatives have due regard to health and safety guidelines when attending a Site.
- 4.7 The Customer will not be entitled to alter or change the Services during a Service Term or Renewal Term without Exa's prior written agreement.
- 4.8 Exa will use reasonable endeavours to comply with the Customer's reasonable requests in relation to installation of Services but Exa's decision relating to the same will be final and binding.
- 4.9 Exa may give directions about the use of the Services to the Customer which Exa thinks is reasonably necessary in the interests of safety or the quality of Service or service to other customers. The Customer shall comply with all such directions.

- 4.10 Exa may upgrade Customers to a different level of service if, in Exa's opinion, existing Services become inappropriate or insufficient to meet the Customer's requirements, usage pattern or needs or if existing Services become obsolete. Exa will consult the Customer and if the Customer agrees to change the Services in accordance with Exa's recommendation, the Customer may be liable for higher Fees and costs associated with the upgrade and any cancellation fees associated with the terminated Services (which may include third party cancellation fees for which the Customer shall also be liable). If the Customer does not agree to the upgraded Services, Exa may terminate the existing Services on providing 30 days' written notice. If the Customer chooses not to upgrade and Exa allows the Customer to continue using the existing Services, any applicable service levels shall cease to apply. Exa reserves the right to pass on any third party costs associated with change to the Services.
- 4.11 Exa may temporarily suspend a Service because of an emergency or for operational maintenance or improvements or for the purpose of ensuring network or information security.
- 4.12 If the Customer agrees to a Beta Trial of a Service (meaning a Service trial before its official release), the Customer agrees that Exa will not be held liable in any way for the quality of the Service during the period of the Beta Trial. Exa reserves the right to cancel all Beta Trials on immediate notice, without penalty. On termination of the Beta Trial, all Exa's obligations and liabilities in relation to the Beta Trial will cease.

## 5. Customer's Obligations

- 5.1 The Customer shall:
  - 5.1.1 ensure that the Order is complete and accurate and shall notify Exa if it is incorrect in any way, as soon as possible;
  - 5.1.2 co-operate with Exa in all matters relating to the Services;
  - 5.1.3 provide Exa, its employees, agents, consultants and subcontractors, with access to the Site, offices and other facilities as reasonably required by Exa, including any access to server rooms;
  - 5.1.4 provide Exa with such information and data as Exa may reasonably require to provide the Services (including network information), and ensure that such information is accurate in all material respects;
  - 5.1.5 obtain and maintain all necessary licences (including software licences), permissions and consents which may be required before the relevant Service Start Date;
  - 5.1.6 on not less than 24 hours prior notice, itself provide or in the case of third party sites, procure access to the Site. If the Customer fails to provide or procure such access and Exa incurs any third party costs as a result, Exa reserves the right to pass such costs on to the Customer.

- 5.2 Without affecting its other rights and remedies in this Agreement, if Exa's performance of any obligation is prevented or delayed by any act or failure by the Customer to perform any relevant obligation (**Customer Default**):
  - 5.2.1 suspend the Services until the Customer remedies the Customer Default and may rely on it to relieve it from performance of any of its obligations to the extent the Customer Default prevents or delays performance;
  - 5.2.2 Exa shall not be liable for any costs or losses incurred by the Customer arising directly or indirectly from Exa's failure or delay to perform any of its obligations;
  - 5.2.3 the Customer shall still pay all Fees due while performance of Exa's obligations is prevented, delayed or suspended; and
  - 5.2.4 the Customer shall reimburse Exa on demand for any costs and expenses sustained or incurred by Exa arising directly or indirectly from the Customer Default.
- 5.3 The Customer shall also provide access to all facilities, equipment, personnel and information as needed for Exa to undertake installation and set-up. The Customer shall also undertake any work for preparation of the Site, on Exa's reasonable instruction in good time ahead of installation and set-up.
- 5.4 Subject to any other timescales as may be specified by Exa in writing, the Customer will have 7 Working Days from the Service Start Date to notify Exa of any Service defect. Unless the Customer so notifies, Services will be deemed set up correctly and to be accepted by the Customer and Exa may invoice Fees accordingly.
- 5.5 If the Customer notifies Exa of any such defect in accordance with Clause 5.4 Exa will use its reasonable endeavours to fix such defect as soon as is reasonably practicable, taking account of the nature of the Service and the nature of the defect.
- 5.6 The Customer shall provide Exa with reasonable assistance and Site access to allow Exa to remedy a defect. Wilful or repeated failure to provide Exa with the same will be deemed acceptance by the Customer of the Services and shall entitle Exa to invoice for all applicable Fees irrespective of whether the defect is rectified.
- 5.7 Services shall be used solely for the Customer's internal business operations and shall not under any circumstances be used to provide services to third parties by way of resale, sub-licence or similar. Further, the Customer shall use all reasonable endeavours to prevent unauthorised access or use of the Services and promptly notify Exa of the same.
- 5.8 The provisions of this Clause 5 apply equally to any replacement Services and references to Service Start Date in this Clause 5 shall in such cases, mean the date on which replacement Services are available.

## 6. Fees

- 6.1 The Fees for Services shall be in accordance with Exa's standard rates and pricing applicable to each Service unless otherwise specified in the Order. A copy of Exa's

standard rates and pricing in force from time to time is on its website.

- 6.2 Some Services may require installation surveys. Additional fees may arise as a result of such surveys (Additional Fees) if it transpires that additional work is needed. They will be notified to the Customer as soon as possible. If the site survey does give rise to Additional Fees, the Customer may cancel the Services to which Additional Fees relate, in writing within 5 days of the date of notification of the Additional Fees. If Exa does not receive a cancellation notice within that time, the Additional Fees will be added to the other Fees and the right to cancel will no longer apply.
- 6.3 Where Exa is requested to provide additional services, including advanced support, custom programming, configuration or software set up which are not referenced in the Order, Exa may charge the Customer on a time and materials basis at Exa standard rates from time to time and reserves the right to raise such charges in advance (Consultancy Fees). No such additional Services will be undertaken without Customer prior written consent.
- 6.4 If an Exa engineer attends the Site due to the Customer not following Exa's procedure for trouble-shooting or other reasonable instructions of Exa and it is determined that the issue is due to Customer error or, if Exa otherwise requires such site attendance by an engineer, Exa may charge the Customer for the engineer's time (Engineer Fees). Engineer Fees will be charged at rates as set out at the time of, and on a per visit basis.
- 6.5 If installation or set-up is required at the Site or otherwise, set-up fees will apply as detailed in the Order (Set Up Fees).
- 6.6 Fees do not include charges for any third party communications services used by the Customer to connect to the Services unless otherwise stated.
- 6.7 Exa may charge the Customer for any expenses reasonably incurred by the individuals who Exa engages in connection with the Services including travel, hotel, subsistence and any associated expenses.
- 6.8 Exa may alter the amount of, or payment terms relating to, any or all Fees at any time during the Agreement to take account of any increase in:
  - 6.8.1 costs incurred by Exa in Service set-up (including increases in third party licensor or supplier fees or costs);
  - 6.8.2 data centre or power charges imposed by any third party on Exa;
  - 6.8.3 charges imposed by any telecommunications supplier; or
  - 6.8.4 any other third party costs on which the performance of the Services depends;and Exa shall notify the Customer in writing of any such alteration and shall if reasonably able to, give the Customer 30 days' prior notice of the same. The Customer acknowledges that such costs are beyond Exa's control.
- 6.9 Exa may increase the Fees once annually in line with the percentage change recorded in the RPI or otherwise in accordance with any price increase mechanism referred to in the Order.

- 6.10 If Exa receives any third party costs in a currency other than sterling which are to be charged to the Customer, Exa shall charge the relevant sums in sterling. The sterling amount shall be calculated by converting the relevant currency amount by applying the exchange rate prevailing as at the date of the Customer invoice, according to HSBC Bank PLC for that date.
- 6.11 Except as otherwise expressly stated in this Agreement, Fees are payable in advance and are non-refundable. If the Customer or Exa terminates any or all Services or this Agreement, Exa will not refund Fees paid in advance and all other Fees for the remainder of the current Service Term or Renewal Term as the case may be shall become payable immediately, except where the Agreement is terminated by the Customer pursuant to Clause 12.5 or Sub-Clauses 12.4.5 or 12.4.6. Exa operates on the basis that the level of Fees it offers reflect the fact that Customers are to sign up for a minimum period and on each renewal, and the Customer acknowledges this.
- 6.12 The Customer may however cancel Services in full before any Target Installation Date by providing prior written notice to Exa and payment of the Cancellation Fee set out in this Clause 6.12. If the Customer terminates the Services in accordance with this Clause 6.12, the Customer must pay the Cancellation Fee calculated as follows. Where notice is given:
  - 6.12.1 30 Working Days' or more prior to the Target Installation Date: 25% of that Service's total Fees;
  - 6.12.2 between 10 and 30 Working Days prior to the Target Installation Date: 80% of that Service's total Fees;
  - 6.12.3 10 Working Days or less prior to the Target Installation Date: 100% of that Service's total Fees;but Exa may still raise an invoice for work undertaken before such cancellation takes effect (including any Engineer Fees and Consultancy Fees).
- 6.13 If a Customer requires any bespoke managed services from Exa (being those which Exa does not routinely offer) then the Fees shall to the extent known prior to the commencement of the same, be included on the Order but further Fees may also apply. Any Fees for such bespoke managed services (and any linked Services) shall be invoiced by Exa notwithstanding that a delay in any "go live" date is caused by the Customer or a third party to either the bespoke elements or any linked or dependant Services.

## 7. Invoicing and Payment

- 7.1 Unless otherwise specified in the Order, Exa shall issue a valid VAT invoice to the Customer for the Fees annually in advance and may do so any time on or after the Commencement Date and each anniversary thereafter. If a Customer is not ready to accept or go live with the Services until a later time, Exa may still raise an invoice in advance. Where more than one Service is included on the Order, Exa may invoice each Service separately. Exa may also issue separate invoices at any time for any other Fees



incurred by the Customer in accordance with this Agreement.

- 7.2 If a Service is replaced, upgraded, reconnected or amended, Exa may issue additional invoices to cover any such Services in addition to invoices for the original Services and may do so at any time, such that for a period, there may be parallel bills to facilitate the transition between Services.
- 7.3 Exa may raise invoices with individual credit terms without prejudice to any of the terms and conditions stated herein in situations where Exa acting reasonably, has grounds to doubt the creditworthiness or ability to pay of the Customer.
- 7.4 All invoices shall be paid by the Customer in full and cleared funds within 7 (seven) calendar days of the invoice date. Time for payment shall be of the essence.
- 7.5 Invoices shall be paid by BACS, standing order, telegraphic transfer or cheque. Exa reserves the right to pass on to the customer any payment processing fees as may be charged to it by any bank.
- 7.6 All Fees and other amounts payable by the Customer exclude Value Added Tax (VAT). Where any taxable supply for VAT purposes is made by Exa to the Customer, the Customer shall, on receipt of a valid VAT invoice pay to Exa such additional amounts in respect of VAT chargeable on the supply, at the same time as payment is due for the supply.
- 7.7 Without limiting any other right or remedy of Exa, if the Customer fails to make any payment by the due date, Exa may at its discretion charge interest on any overdue amounts at the rate of 5% per annum above HSBC Bank plc base rate for the time being, calculated from the date of the invoice to the date actual payment is received, whether before or after judgment.
- 7.8 Exa may also charge administration fees in respect of any cheques and direct debits returned unpaid by the Customer's bank and any card payments returned unpaid.
- 7.9 Exa may at any time acting reasonably, require the Customer to issue a deposit or other security if the Customer's financial circumstance or payment history is or becomes unacceptable to Exa or there is a material change in the Customer's actual or anticipated usage of the Services which results or in Exa's reasonable opinion may result, in increased risk to Exa of Fees not being paid.
- 7.10 On written request for security, the Customer shall have 5 Working Days to provide the same and, if the Customer fails to do so, Exa may immediately refuse to accept any further Orders, suspend any or all Services, terminate the Agreement (or any or all of the same), without notice and without any refund to the Customer.

## 8. Intellectual Property Rights

- 8.1 All Intellectual Property Rights in or arising in connection with the Services are and shall remain owned by Exa (or its third party licensors) and no such Intellectual Property Rights whatsoever shall be transferred to the Customer. Without prejudice to the

generality of the foregoing, the Intellectual Property Rights arising shall include without limitation those arising in any and all software, documents, methods, processes, know how, reports, records and data generated by Exa or arising in the course of performing the Services. Nothing in this Clause 8.1 shall affect the pre-existing Intellectual Property Rights belonging to either party.

- 8.2 The Customer acknowledges that its use of any third party Intellectual Property Rights which Exa may sub-licence as part of the Services, is conditional on Exa obtaining a written licence from the relevant licensor on such terms as will entitle Exa to sub-licence such rights to the Customer. Where in the course of providing the Services or any Deliverables, Exa sub-contracts or procures the use of any such third party Intellectual Property Rights (including of any Exa Group Company) the Customer shall comply in full at all times with all licence and other agreements applicable to use of the same.
- 8.3 The Customer shall not do, or omit to do anything which may jeopardise, limit or interfere with Exa's rights (or those of its third party licensors) in the Services or Deliverables.
- 8.4 If any Exa proprietary software is provided to the Customer as part of the Services, Exa hereby grants a personal, non-transferable, non-exclusive licence for the duration of this Agreement to the Customer to use such software solely for the purposes of the Services. The Customer agrees to comply with any terms and conditions governing the use of such software provided to it by Exa from time to time.
- 8.5 The Customer shall not or allow any other person (except as may be allowed by law) to copy or attempt to copy, modify, adapt or duplicate the Services or Deliverables nor create any derivative works, publish, distribute or transmit the same in any form or by any means. The Customer shall not attempt to decompile, disassemble, reverse engineer or otherwise reduce to human readable form any software comprised in the Services nor access or any part of the Services so as to build a competitive product.

## 9. Confidentiality and Publicity

- 9.1 Each party (**Receiving Party**) shall keep in strict confidence all technical and commercial know-how, specifications, processes and initiatives and any other confidential information concerning the other's business, products and services and where relevant, the terms of any service level agreement disclosed to it by that other party (**Disclosing Party**), its employees, agents or subcontractors or which the Receiving Party may otherwise obtain in connection with this Agreement (**Confidential Information**).
- 9.2 Nothing in this Clause 9 shall prevent the Receiving Party from disclosing any Confidential Information:-
  - 9.2.1 to any Group Company, consultant, subcontractor or other person provided that the disclosure is reasonably necessary for the purposes of this Agreement and that

the Receiving Party has ensured that the same standards are applied to the same as applied to its own confidential information;

- 9.2.2 which is or becomes public knowledge other than by breach of this Clause 9;
- 9.2.3 which the Receiving Party has otherwise received from an independent source;
- 9.2.4 which must be disclosed to any governmental or regulatory body or for any legal proceedings including where Exa is the Receiving Party, any disclosures to a third party in accordance with the AUP.
- 9.3 The Customer acknowledges that any Confidential Information obtained from or relating to Exa or any Exa Group Company by the Customer in connection with this Agreement is and shall remain the property of Exa or the relevant Group Company.
- 9.4 Exa may refer to the Customer by company or trading name and to the existence of this Agreement in any marketing or promotional materials (including on its website) or in any other publicity.

## 10. Limitation of Liability: the customer's attention is drawn particularly to this cause

- 10.1 Nothing in this Agreement shall limit or exclude Exa's liability for:
  - 10.1.1 death or personal injury caused by its negligence (or that of its employees, agents or subcontractors);
  - 10.1.2 fraud or fraudulent misrepresentation; or
  - 10.1.3 any other liability which cannot be excluded by law.
- 10.2 Subject to Clause 10.1, in no event shall Exa be liable in contract, tort, statute or otherwise however arising for any costs, claims, damages, liabilities or expenses in respect of:
  - 10.2.1 any direct loss of profit; or
  - 10.2.2 any direct loss of anticipated savings; or
  - 10.2.3 any indirect loss or damage however caused including:
    - 10.2.3.1 any indirect loss of profit, loss of anticipated profit including lost profit on contracts; or
    - 10.2.3.2 any indirect loss of anticipated savings; or
    - 10.2.3.3 loss of use of money; or
    - 10.2.3.4 loss of opportunity; or
    - 10.2.3.5 loss of business; or
    - 10.2.3.6 loss of revenue; or
    - 10.2.3.7 loss of contracts; or



- 10.2.3.8 loss of goodwill or damage to reputation; or
  - 10.2.3.9 loss of or damage to information, data or content; or
  - 10.2.3.10 any other special, indirect or consequential loss;
- whether occasioned by the negligence, breach of contract or out of or in connection with the Services, this Agreement or otherwise however arising.

The parties agree that the categories of loss referred to at this Clause 10 shall be distinct and severable.

- 10.3 The Customer acknowledges that many of the Services to be performed by Exa are dependent on the UK telecoms network infrastructure made available by BT, which only BT controls. Accordingly, the exclusions of and limitations on liability as set out in this Clause 10, reflect this situation with BT and the fact that accordingly, many issues are outside the control of Exa.
- 10.4 Without prejudice to Clauses 10.1 and 10.2, Exa's maximum aggregate liability in respect of any incident or any series of connected incidents shall not exceed the total Fees payable by the Customer under this Agreement in the Service Term or Renewal Term (as the case may be) in which the incident (or series of connected incidents) giving rise to the liability occurs, in each case, however the claim arises including negligence, tort, breach of contract or breach of statutory duty.
- 10.5 The Customer acknowledges that Fees are based on the assumption of liabilities as set out in the Agreement and the Customer is advised to insure against any risks which are not accepted by Exa.
- 10.6 Except as expressly set out in this Agreement, all conditions, warranties and representations, express or implied, statutory or otherwise (including the fitness of the Services for a particular purpose) are hereby excluded to the fullest extent permitted by law.
- 10.7 The Customer shall indemnify and keep Exa indemnified against any and all costs, claims, damages, losses, liabilities and expenses (including legal fees) which are brought or threatened against Exa or a Group Company by any person;
  - 10.7.1 arising out of or in connection with a breach by the Customer of any of the provisions of the AUP;
  - 10.7.2 any claim or allegation of a claim or breach by the Customer of any Intellectual Property Rights of a third party.
- 10.8 The Customer accepts that Exa has no control over the information, content, materials and data transmitted to, from or via the Services and that Exa does not ordinarily examine the use to which Customers put the Services or the nature of the information, content, materials and data they are sending or receiving. The Customer acknowledges that in most cases, Exa is a mere conduit for the purposes of the Electronic Commerce Regulations 2002. Exa accordingly excludes all liability of any kind arising in connection with the information, content, materials and data of whatever nature used in connection with the Services. Notwithstanding the foregoing, Exa

reserves the right to take such measures as it may deem appropriate (including a right to take down content and use traffic data) in order to remove or minimise the risk of any liability arising to it.

- 10.9 If any limitation or provision in this Clause 10 is held invalid under any applicable law, it shall, to that extent, be deemed omitted. If a party becomes liable for loss or damage which would otherwise have been excluded, that liability shall be subject to the other limitations and provisions in this Clause 10.

## 11. Exa Equipment and Sale of Hardware

- 11.1 Except where it is expressly agreed in the Order that there will be a sale of equipment, ownership of any Exa Equipment shall at all times remain with Exa and the Customer shall have no right, title or interest in the same other than to use it in connection with the Services. Risk of loss, theft, damage or destruction of the Exa Equipment shall pass to the Customer on delivery and the Customer shall insure the Exa Equipment for full replacement value whilst on its Site.
- 11.2 The Customer shall keep the Exa Equipment in a suitable, secure operating environment and shall not use the same except for proper use of the Services. The Customer shall be responsible for testing all Equipment on receipt and if it fails to do so, the same shall be deemed to have been tested.
- 11.3 If during the Service Term or any Renewal Term and subject always to the Customer completing the diagnostic procedures advised by Exa, any Exa Equipment supplied by Exa is identified as faulty by the Customer, Exa shall replace the same. The Customer must return the faulty Exa Equipment to Exa within 5 Working Days of confirmation (verbal or written) by Exa that the Exa Equipment is faulty. If such Exa Equipment is not returned within 5 Working Days, Exa may invoice the Customer for the Exa Equipment whether faulty or not.
- 11.4 Exa may enter the Site to inspect Exa Equipment on reasonable notice. This right shall continue following termination or expiry until Exa has removed all Exa Equipment from the Site.
- 11.5 Exa may have to move the location of certain Exa Equipment and/or Customer equipment. The Customer agrees that on receipt of prior notice, Exa may move any such equipment as it sees fit. Where possible, Exa will aim to minimise any adverse impact on the Services or incremental costs to the Customer associated with relocation.
- 11.6 If any hardware is to be sold by Exa to the Customer (such that ownership transfers) then the same shall be delivered by Exa to the Customer's premises. Risk in the hardware shall pass on delivery. Title to the hardware shall not pass to the Customer until Exa has received payment in full (in cash or cleared funds) for the hardware. Until title has passed to the Customer, the Customer shall:
  - 11.6.1 hold the hardware on a fiduciary basis as Exa's bailee;
  - 11.6.2 store the hardware separately from all other hardware so that it remains

identifiable as Exa's property and not remove or obscure any identifying mark or packaging;

- 11.6.3 maintain the hardware in good condition and keep it insured against all risks for its full price from delivery;
- 11.6.4 notify Exa immediately if it becomes subject to any of the events listed in Clause 12.6; and
- 11.6.5 give Exa such information relating to the Hardware as it may require, but the Customer may use the hardware in the ordinary course of its operations.
- 11.7 If before title to the hardware passes to the Customer, the Customer becomes subject to any of the events in Clause 12.6 or Exa reasonably believes that any such event is about to happen and notifies the Customer, Exa may at any time require the Customer to deliver up the hardware and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the hardware is stored in order to recover it.
- 11.8 Exa will assign to the Customer, any warranty (or remainder thereof) which the manufacturer of the hardware provides with the hardware sold to the Customer, where it is able to so and subject to any limitations imposed by the manufacturer.

## 12. Term and Termination

- 12.1 This Agreement shall come into force on the Commencement Date and shall continue in full force and effect unless and until terminated in accordance with its terms. For clarity, the Agreement shall remain in full force and effect for as long as any one Service specified in the Order continues and the termination or expiry of any one of the Services shall not preclude the continued obligations and application of the Agreement in respect of the other Services.
- 12.2 Each of the Services will commence on its Service Start Date and shall continue for the relevant Service Term and any Renewal Terms. If the Services are replacement Services, a new Service Term shall apply for those replacement Services. At the end of the Service Term, each Service will be automatically renewed for the Renewal Term and thereafter for consecutive Renewal Terms unless notice is given in accordance with Clause 12.3. The system of automatic renewal is implemented in order to ensure continuity of Service for the Customer.
- 12.3 Either party may terminate the Service at the end of the Service Term or any Renewal Term for such Service by providing not less than the Minimum Notice (or if no Minimum Notice is stated, not less than 30 days' notice) to the other party in writing, prior to the expiry of the current Service Term or Renewal Term.
- 12.4 Exa may at its option terminate this Agreement or suspend or terminate any or all Services under this Agreement (or both) at any time immediately upon written notice to the Customer if:
  - 12.4.1 the Customer is in material breach which is capable of remedy and has failed

to remedy within 15 days of a written request from Exa to do so. Any failure by the Customer to pay any sum due under this Agreement by the due date for payment shall be a material breach, capable of remedy for the purposes of this Clause 12.4.1 but without affecting Exa's rights at Clause 12.7;

- 12.4.2 the Customer is in material breach which is incapable of remedy. A breach of any of the provisions of Clauses 8 or 9 or a breach of any of the provisions of the AUP by the Customer shall, without limitation, be a material breach of this Agreement incapable of remedy for the purposes of this Clause 12.4.2;
- 12.4.3 the Customer is in repeated breach of this Agreement;
- 12.4.4 the Customer acts to preclude or materially affect Exa's ability to provide services to other customers;
- 12.4.5 it becomes unlawful for Exa to continue to provide the Services or Exa is required to cease the Services by a competent regulatory authority; or
- 12.4.6 any other third party supporting the Services ceases to provide services to Exa or otherwise materially changes the terms on which it provides services to Exa beyond Exa's reasonable control or withdraws any permissions or consents which Exa requires to provide the Services.
- 12.5 The Customer may terminate the Agreement at any time:
  - 12.5.1 immediately on written notice to Exa if Exa is in material breach of this Agreement which is incapable of remedy except that the Customer may not terminate the agreement to the extent that the breach arises as a result of any action or inaction of a third party;
  - 12.5.2 in the case of a material breach by Exa which is capable of remedy but subject always to affording Exa a reasonable period of time to remedy the breach taking account of its nature and the nature of the Service;
  - 12.5.3 if Exa is in repeated breach of the Agreement.
- 12.6 Without limiting other rights or remedies, either party may terminate the Agreement with immediate effect on written notice to the other if the other suspends or threatens to suspend payment of its debts, is or is deemed unable to pay its debts as they fall due or the other party commences negotiations with all or any creditors with a view to rescheduling its debts or makes a proposal for or enters into any compromise or arrangement with its creditors (except for solvent amalgamation or reconstruction), a petition is filed, a notice given, a resolution passed or an order made for the winding up of the other party (except for solvent amalgamation or reconstruction) or a creditor or encumbrancer of the other party attaches or takes possession of, or distress or execution is levied or enforced on or sued against, the whole or any part of its assets or an application is made to court or an order 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 or a floating charge holder over the assets of that other party has become entitled to appoint or has appointed, an administrative receiver or a

person becomes entitled to appoint or there is appointed, a receiver over the assets of the other party or any event occurs with respect to the other party in any jurisdiction to which it is subject with effect equivalent or similar to the events mentioned above or the other party suspends, ceases or threatens to suspend or cease to carry on all or a substantial part of its business.

- 12.7 Without limiting its other rights or remedies Exa may suspend any or all of the Services with immediate effect on written notice to the Customer if the Customer:
  - 12.7.1 fails to pay any amount due under this Agreement on the due date;
  - 12.7.2 becomes subject to any of the events listed in Clause 12.6 or Exa reasonably believes that the Customer is about to become subject to any of them.

## 13. Consequences of Termination

- 13.1 On termination or expiry of the Agreement for any reason or on termination of any of the Services:
  - 13.1.1 the Customer shall immediately pay to Exa all unpaid invoices and interest for Services supplied and where no invoice has been submitted, Exa shall submit an invoice for all Fees incurred or due which shall be payable by the Customer immediately on receipt;
  - 13.1.2 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach which existed at or before the date of termination or expiry;
  - 13.1.3 the Customer shall immediately stop using the Services and the Customer's right to use the Services shall immediately cease;
  - 13.1.4 any licences granted by Exa under this Agreement shall terminate;
  - 13.1.5 all Exa Equipment and Deliverables shall be returned to Exa by the Customer at the Customer's expense. If the same are not returned within 5 Working Days after termination or expiry, Exa may invoice the Customer for their replacement value;
  - 13.1.6 clauses which expressly or by implication have effect after termination shall continue in full force and effect including Clauses 6, 7, 8, 9, 10, 11.7, 13 and 16.

## 14. Data Protection

- 14.1 Personal Data, Data Controller and Data Processor have the meanings given in the Data Protection Act 1998 (DPA).
- 14.2 Exa shall at all times remain a Data Processor only in connection with any Personal Data of the Customer which is made available to Exa or which EXA otherwise has access to in connection with the Services and this Agreement. Accordingly, the Customer shall at all times remain Data Controller of such Personal Data and shall at all times comply



with its obligations under the DPA.

- 14.3 Exa shall use Customer Personal Data in accordance with the Customer's instructions and put in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of or damage to Customer Personal Data.

## 15. Security Codes

- 15.1 Security codes issued in connection with the Services shall remain the responsibility of the Customer who shall keep the same secure and confidential including disclosing them to only those of its employees who need them.
- 15.2 If the Customer becomes aware of any loss or inappropriate use of security codes, the Customer shall immediately inform Exa and shall take such action as Exa may require to restrict the damage that may be caused by such breach.
- 15.3 The Customer shall indemnify Exa against any and all costs, claims, damages, liabilities and expenses incurred by Exa as a result of damage to, loss of, theft of or inappropriate use of security codes.
- 15.4 Exa shall not under any circumstances be liable to the Customer as a result of any failure by the Customer to maintain security codes as appropriate.
- 15.5 Exa may disable any security codes or other information if the Customer is in breach of this Agreement and may for operational reasons, change security codes or other security information at any time.

## 16. General

- 16.1 Neither party shall be liable to the other for any delay or non-performance of its obligations if the same is due to a Force Majeure Event. The Customer may not rely on a Force Majeure Event for any delay or non-performance of any obligation to pay. Either party may terminate this Agreement by written notice to the other party if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 60 Working Days. Force Majeure Event means an event beyond the reasonable control of either party including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 16.2 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 English law and the parties submit to the exclusive jurisdiction of the English courts.

- 16.3 If a court or any other competent authority finds any provision invalid, illegal or unenforceable, that provision shall, to the extent required, be deemed deleted and the validity and enforceability of the other provisions shall not be affected. If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part were deleted, the provision shall apply with the minimum modification necessary.
- 16.4 Failure by either party to exercise or enforce any right shall not be a waiver of that right nor prevent the exercise or enforcement of that or any other right at any time.
- 16.5 The Customer may not assign or transfer the benefit of the Agreement without Exa's prior written consent. Exa may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement and may subcontract any or all of its obligations to any third party.
- 16.6 Nothing in this Agreement shall create or be deemed to create a partnership or relationship of principal/agent or employer/employee between the parties.
- 16.7 Except as set out in the Agreement, any variation, including the introduction of any additional terms and conditions to the Agreement shall only be binding when agreed in writing and signed by Exa.
- 16.8 Each party warrants that it has full capacity and authority and all necessary licences, permits and consents to enter into and perform this Agreement.
- 16.9 Except as expressly stated, a person who is not a party to the Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce it. Any remedy which exists or is available apart from the Act is not affected.
- 16.10 The Customer shall (and use reasonable efforts to ensure that any necessary third party shall) at its own expense, do all further things, perform such acts and execute and deliver such documents as may be required by law or which Exa may request in order to give effect to the provisions of the Agreement.
- 16.11 A notice to be given by one party to the other under or in connection with the Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first class post in each case to its registered office or sent by fax to the other party's main fax number. Any such notice is deemed received if delivered by hand, on signature of a delivery receipt, or if faxed on receipt of a confirmation of successful transmission or if posted on the second Working Day after posting. Notice shall not be served by email.
- 16.12 This Agreement is the entire agreement between the parties and supersedes any previous agreement between the parties in relation to its subject matter.
- 16.13 Exa may also amend these Conditions and its AUP from time to time. Further, Exa may make any changes to this Agreement or the Services as it deems necessary from time to time to take into account operational and technical matters (including the terms on which its third party providers provide Exa with services) and changes to any applicable laws and regulations. Such changes shall be notified to the Customer in writing.
- 16.14 Each party agrees during the term of this Agreement and for a period of six

months following its termination, not to solicit or induce any officer, employee, agent or contractor of the other party involved with the provision of the Services or the management of this Agreement or any significant part thereof, to terminate their employment or engagement with the other. If a party is found to be in breach of the above mentioned non-solicitation clause, then that party agrees to compensate the other with a one-off payment of whichever is the lesser of (a) £100,000 or (b) the gross annual salary of the officer, employee, agent or contractor of the other so solicited or induced.

## Section B – Service Specific Terms and Conditions

### Section B1

Provisions in this Section B1 also apply to hosted and hosting Services provided to the Customer as the case may be including email, web hosting, domain registration, domain hosting, VOIP, content filtering and other security related services, data centre services, hardware hosting, software as a service (SaaS) and instant messaging (in each case as specified in the Order). For clarity, the terms in this Section B1 apply IN ADDITION TO the General Terms and Condition in Section A above.

- B1.1 The Customer acknowledges that it is technically impractical to provide the Services free of fault or error or uninterrupted and Exa does not undertake to do so. Accordingly, Exa does not give any warranty or undertaking that these Services will be uninterrupted or error or virus free. It does not give any guarantee or warranty that the Services or connection will be available for 100% of the time nor does it guarantee the performance of the internet, nor give any guarantee or warranty that the transmission of information over the internet will be secure nor that the internet will be accessible at all times.
- B1.2 The Customer acknowledges that not all information made available by way of these Services (whether on a website or otherwise) will be 100% accurate and no warranty is given by Exa in this regard.
- B1.3 Exa reserves the right to vary the technical specification of the Service when necessary for operational reasons or as it may in its reasonable discretion determine. Such variation may affect connection speeds in which case, Exa shall not have any liability as a result of any reduced connection speeds arising from variations made in accordance with this Clause.
- B1.4 The Customer acknowledges that connection speeds will depend on its own equipment and connection. Accordingly, Exa will not be liable for any delays in connection speeds if they arise as a result of matters beyond its own reasonable control including those which are the responsibility of the Customer.
- B1.5 A limited level of data transfer may be stipulated by Exa in connection with these

Services and any restrictions on data transfer shall be specified in the Order. Data transfer in excess of restricted limits will be charged in accordance with Exa's standard price list in force from time to time. Further, responsibility for compliance with any bandwidth and speed restrictions shall at all times be those of the Customer and such responsibility shall include where any excess arises as a result of any third party actions whether authorised by the Customer or not and shall include hacking or other malicious use.

- B1.6 Exa reserves the right to undertake maintenance works during planned maintenance downtime. None of the Services is accompanied by service levels but should that be varied at any time by Exa in writing, any planned maintenance downtime shall be excluded from any downtime referred to in any such service levels.
- B1.7 Any IP address assigned by Exa to the Customer for use in connection with these Service shall at all times remain Exa's sole property and the Customer shall have a non-transferable licence to use such address only for the duration of the particular Service as relevant. If the Service is terminated for any reason, the Customer's licence to use the IP address shall automatically terminate.
- B1.8 Any email accounts made available as part of these Services must be used for proper and lawful business purposes in accordance with the AUP. Exa reserves the right to remove emails stored on the server at such reasonable frequency as it may determine, including in order to free up server space which the Customer recognises is necessary for Exa to maintain the quality of its services but does not do so as part of these Services and accordingly does not undertake to do so at any time. Exa reserves the right to disable email accounts which are not used.
- B1.9 The Customer shall be responsible for all content used in connection with the Services and for loading and making any necessary changes to such content as applicable. In particular, all content provided must strictly comply with the AUP.
- B1.10 Exa does not and shall not, except where expressly specified in the Order, provide any editorial or monitoring function in connection with Customer or other content used in connection with the Services.
- B1.11 Exa shall use reasonable efforts to update any hosted content as soon as reasonably practicable but shall not be liable for any delay in doing so. The Customer acknowledges that not all content will always be up to date.
- B1.12 The Customer shall be strictly responsible for all website, system and content back up and Exa shall not under any circumstances be liable as a result of any damages, losses, costs or expenses arising as a result of a Customer failure to back up the same.
- B1.13 Exa reserves the right in its absolute discretion to remove or disable any content used in connection with the Service at any time and without notice including if it has reason to believe or does believe that any such content breaches the AUP or if it receives a notice of complaint about any such content.
- B1.14 Where relevant to the Services, Exa will notify the Customer on the release of any operating system critical patches or other software patches or fixes which it may

require the Customer to install. It will be the responsibility of the Customer to request installation of the same by Exa and patches or other fixes will not be deployed without the explicit permission of the Customer. If the Customer fails to request the same, any losses, costs, claims, damages or expenses arising as a result shall be entirely the Customer's responsibility.

- B1.15 Where domain name registration is provided, Exa will register the same with the relevant naming authority requested by the Customer but the Customer acknowledges that such matters are beyond Exa's reasonable control and that Exa cannot guarantee that a domain name as the Customer may request will be available or approved for use and the Customer waives any claims it may have against Exa in respect of any decision of a naming authority to refuse to register a domain name.
- B1.16 The Customer warrants that it is the owner of or has the right to use any trademark or name requested or allocated or used in connection with the Customer's domain name or otherwise used by the Customer in connection with the Services.
- B1.17 Exa does not represent, warrant or guarantee that any domain name applied for by the Customer or on the Customer's behalf will be registered in the Customer's name or is capable of being registered by the Customer or that the use of such name will not infringe any third party Intellectual Property Rights. Accordingly, the Customer shall be solely responsible for any action it takes in respect of its requested domain name.
- B1.18 Registration of any domain name and on-going use by the Customer shall at all times be subject to the relevant naming authority's terms and conditions of use and the Customer shall comply with the same. Exa accepts no responsibility in respect of the use of any domain name by the Customer and any dispute between the Customer and any other individual organisation regarding a domain name must be resolved between the parties concerned.
- B1.19 Where any of the Services is licensed or made available on the basis of a restricted number of users, the Customer shall ensure that the number of authorised users is not exceeded. If that number is exceeded, additional Fees shall be payable and Exa may also disable access to the relevant Services by disabling passwords.
- B1.20 The Customer shall maintain a list of authorised users/details of the number of users who can access the Services which it shall provide to Exa on request. Exa may at any time audit the use of Services to verify that the scope of Services and other rights grants under this Agreement is not exceeded.
- B1.21 If the Customer needs to increase the number of authorised users for the Services it will inform Exa as soon as it becomes aware of the need to increase and Exa will inform the Customer of the increased Fees payable. The increased Fees will apply from the date of increased use.

## Section B2

Provisions in this Section B2 also apply to connection and telephony Services provided to

the Customer as the case may be including connectivity services, line rental, leased lines irrespective of the line type and mobile (in each case as specified in the Order). For clarity, the terms in this Section B2 apply IN ADDITION TO the General Terms and Condition in Section A above.

- B2.1 Line type and voice or data connection type shall also be specified in the Order.
- B2.2 Exa may advise the Customer on the most suitable line or voice or data connection type but the choice of the particular Service shall ultimately be the Customer's responsibility depending on its own requirements.
- B2.3 The Customer shall be responsible for terminating all prior line rental and voice and data connection agreements with any other network provider immediately prior to the commencement of the Connection Service. Exa shall not be liable for any costs, expenses, fees or liabilities incurred by the Customer as a failure to do so.
- B2.4 All data transmitted using these Services shall be at the Customer's risk and Exa shall not have any liability to the Customer for any loss of or damage to data.
- B2.5 The Customer acknowledges that connection speeds and Service speed will depend in part on its own equipment and connection. Accordingly, Exa will not be liable for any delays in connection speeds if they arise as a result of matters beyond its own reasonable control including those which are the responsibility of the Customer.
- B2.6 These Services will be subject to any capacity and speed restrictions as may be set out in the Order. Additional Fees will apply if the Customer needs to increase capacity or Service speed.
- B2.7 Some of these Services shall be invoiced in arrears which may include those Services which are dependant on usage levels but where this is the case, specific payment arrangements shall be included in the Order, otherwise all invoices shall be raised in advance in accordance with Clause 7 of the General Terms and Conditions.
- B2.8 Unless otherwise agreed by Exa in writing, quotations given to the Customer for leased lines shall be valid for a period of 30 days from the date of quotation.

## Section C – Amendment to Services Specific to Canonbury Management

- C1.1 Exa Networks will not invoice any data usage above the selected tariff for Canonbury Management. At initial deployment a 2GB usage tariff will be applied to each sim, and no data used above this level will be invoiced to Canonbury Management.
- C1.2 Exa Networks will 'hard cap' deployed connectivity and will terminate connections at a chosen point beyond 2GB of data usage. Exa Networks will alter this usage only at the request of Canonbury Management.