Focus Networks UK Limited

Terms and Conditions

1: Interpretation

In this agreement:

Definitions:

Agreement: the agreement between Focus Networks UK Limited for the supply of services.

Authorised user: any individual authorised by the customer to access or use the services on the customer's behalf, including its employees, contractors, consultants and agents.

Artificial intelligence services: any functionality provided by the supplier that uses artificial intelligence or similar automated technologies to generate, analyse, classify, summarise or otherwise process content or data.

Charges: the charges payable by the customer for the supply of the services.

Conditions: these terms and conditions as amended from time to time in accordance with clause …

Covered equipment: the equipment, hardware and associated infrastructure specified as being covered by the maintenance services.

Customer: the person or firm who purchases services from the supplier.

Customer content: any data, information, documents, recordings, files, prompts, communications, images, texts, audio, video, metadata, software or other content submitted, uploaded, transmitted, stored, generated, or otherwise made available by or on behalf of the customer, its authorised users or end users in connection with the services.

Deliverables: the deliverables made available to the customer as part of the services, including any software.

Intellectual Property rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, trade, business and domain names, rights in trade 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 rirights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including applications for and renewals or extensions of such rights and all similar or equivalent rights or protection anywhere in the world.

Maintenance services: the preventative maintenance, remedial maintenance, technical support and associated services supplied by the supplier in respect of the covered equipment, as more particularly described in the order.

Minimum notice: the minimum notice period stated in the order, required to terminate a service

Order: the customer's order for services attached to, or emailed, to the customer, with these conditions

Renewal order: an order entered into after the commencement date for the for the provision of additional services which includes the text "including renewal of existing services" or similar wording to the same effect.

Services: the services supplied by Focus Networks to the customer, including replacement parts and updated services.

Service hours: the hours during which the maintenance services are ordinarily provided, as specified in the order or, where no hours are specified, between 8.30am and 5.30pm on a business day.

Software: means software that the supplier provides for the customer under licence which enables the customer to use the services.

Supplier: Focus Networks UK Limited registered in England and Wales with company number ……. and any permitted successor, assignee or transferee of its rights and obligations under the contract.

Supplier materials: all materials and equipment used in the provision of the services, save for any equipment explicitly detailed in the order as being equipment belonging to the customer.

Unacceptable use: any activity which includes, but is not necessarily limited to terrorist, criminal, illegal, malicious, fraudulent, threatening, harassing, or defamatory behaviour or attempting to violate or compromise security, permitting unauthorised access relating to any service that the supplier may provide utilising the internet, landline or airtime networks.

2: Basis of Contract

2.1 The order constitutes an offer by the customer to purchase services in accordance with these conditions and shall only be deemed accepted when the supplier issues a written acceptance or signs the order (whichever is sooner) at which point, the agreement shall be formed (commencement date).

2.2 The contract shall run from the commencement date for a minimum period as defined in the order (commitment period).

2.3 The contract shall be renewed automatically at the end of the commitment period, unless the customer gives the supplier the required notice in writing of the customer's intention to terminate the contract. Where relevant, the required notice period will be specified in the sales contract.

2.4 If the contract renews under clause 2.3, the contract shall continue to run for a further minimum period of 12 months, beginning on the first day after the commitment period **(renewal period).**

3: Supply of Services

3.1 The supplier shall supply the services to the customer in accordance with the order in all material aspects.

3.2 The supplier reserves the right to amend the order if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the services and the supplier shall notify the customer in any such event.

3.3 Any start dates specified within the order (excluding maintenance services) are estimated start dates only. The supplier cannot guarantee the date on which the services will start and cannot be held liable for any loss or damage arising from any change to the estimated start date.

3.4 The supplier may, from time to time, replace any third party provider or supporting infrastructure used in providing the services, provided that such changes do not materially reduce the overall functionality of the services.

4. Service Level and Faults

4.1 The supplier does not guarantee that the services will be continuously available to the customer or free from interruption faults.

4.2 The customer should report any interruptions or faults to the supplier's team on 0333 344 2239 or email: info@focusnetworks.co.uk during normal business hours.

4.3 Where applicable, the customer shall provide the supplier with:

(a) prompt notice of any faults it becomes aware of

(b) remote access to the customer systems as necessary to assist the resolve the issue

4.4 The supplier will log the time of the customer's report and shall endeavour to investigate and respond to the customer's report within the response time detailed below:

Priority level	Description	Target resolution time for other services	Target resolution time for IT maintenance services	Target response time
High	Total loss of service	4 working hours	8 working hours	30 minutes
Medium	Intermittent fault or partial loss of service	8 working hours	12 working hours	1 hour
Low	Service enhancement or services changes	12 working hours	16 working hours	4 hours

4.5 The response times given in the table 4.4 are estimated response times only. The supplier cannot guarantee the estimated response times and cannot be held liable for any loss or damage arising from any change to the estimated response times.

4.6 Where, having investigated the interruption or fault, the supplier finds that the interruption or fault was caused by any act or omission of the customer or failure by the customer to perform any relevant obligation or any act or omission of any third-party, the supplier reserves the right to charge the customer for all reasonable costs incurred in investigating the report and the customer agrees to pay such costs in full.

4.7 The duration of any interruption or fault will be measured from the time that the supplier receives a report from the customer, or becomes aware of the issue, until the supplier can demonstrate that the services have been restored.

5. Maintenance Services

Where the order includes maintenance services, the following applies:

5.1 The supplier agrees to provide the maintenance services to the customer in respect of the equipment on the terms and conditions set out in this agreement.

5.2 The supplier shall provide maintenance services during the service hours, for which the customer shall pay the annual charge specified. Services may be preventative to keep equipment in good working order, or remedial when notified of any faults.

5.3 Services requested outside the service hours may be provided at the supplier's discretion and may be subject to additional charges at the supplier's then-current rates.

5.4 The supplier's obligation to provide maintenance services is contingent upon the proper use of all equipment. The provider shall not be obliged to provide maintenance services if:

(a) any equipment has been subjected to unusual physical or electrical stress.
(b) adjustment, repair or parts replacement is required because of accident, neglect, misuse, improper programming, failure of electrical power, air conditioning, humidity control, transportation, internet connectivity or causes other than normal use.
(c) the equipment is maintained or repaired, or if attempts to repair or service the equipment are made by anyone other than the provider's personnel without the prior approval of the provider (such approval not to be unreasonably withheld);
(d) the equipment is either removed from its initial installation location or is reinstalled without the approval of the provider
(e) the equipment is more than 5 years old unless the provider has agreed in writing to the customer that it will not be excluded; or
(f) any equipment, in the supplier's reasonable opinion, has reached the end of its useful life.

If maintenance services are required as a result of the causes stated above, such repairs will be made at the provider's then prevailing non-contract service rates.

5.5 Unless expressly stated otherwise in the order, replacement hardware, replacement parts, consumables, equipment modifications and upgrades are not included within the charges for maintenance services and shall be chargeable to the customer.

5.7 The customer shall provide the supplier with full and reasonable access to the covered equipment, systems, premises, personnel, information and facilities reasonably required to provide the maintenance services.

5.8 The supplier may provide maintenance services remotely wherever reasonably possible and will only be required to attend the customer's premises where the supplier determines that an on-site attendance is necessary.

5.9 Where the supplier provides or maintains a backup service, the supplier will advise on the best backup solution that is needed to secure data and prevent a data crisis. If a customer makes the decision not to follow this advice, the provider will not accept responsibility for any situation that requires the recovery of data.

Where the supplier has installed backup solutions, the supplier will maintain the highest level of data protection. However, the supplier cannot guarantee data recovery in all circumstances due to factors beyond control, such as hardware failure, malicious activity, user error, neglect, misuse etc. Additional labour incurred in attempting to recover files if the customer has damaged on-site equipment will be charged at the suppliers then current rates (abnormal hours).

6. Customer Obligations

6.1 The customer shall:

(a) ensure that the terms of the order are complete and accurate
(b) co-operate with the supplier in all matters relating to the services
(c) provide full and free access to the equipment as reasonably required by the supplier
(d) provide the supplier with such information and materials as the supplier may reasonably require in order to supply the services and ensure that such information is complete and accurate in all material respects.
(e) Liaise with the supplier to disable or remove access for any user who: leaves employment, changes role such that access is no longer required; or is no longer authorised to use the services.
(f) Immediately notify the supplier if it becomes aware of or reasonably suspects: compromised credentials, unauthorised access, credential sharing, malicious use of an account, loss or theft of authentication information.
(g) Inform the supplier immediately if it becomes aware of any matters that it believes may threaten the security of the services.

7. Fees, Price Variation and Payment

7.1 The chargers for services shall be in accordance with supplier's standard rates and pricing applicable to each service unless otherwise stated in the order.

7.2 Maintenance charges are payable yearly, in advance and are non-refundable.

7.3 All other invoices submitted by the supplier must be paid within 30 days of receipt of the invoice

7.4 All charges are payable without deductions or withholding of any kind, but with the addition of VAT.

7.5 If the customer fails to make a payment due to the supplier under the contract by the due date, then, the supplier reserves the right to charge interest on the overdue sum from the due date, until payment of the overdue sum. Interest will accrue each day at 4% a year above HSBC's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

7.6 If the supplier identifies that any charges have been underbilled or not billed as a result of an administrative or billing error (including where services were incorrectly billed on a one off basis instead of a recurring basis), the supplier shall be entitled to invoice the customer for the relevant under billed charges. Such charges may be invoiced retrospectively and shall be payable in accordance with clause 7.3, provided that the supplier notifies the customer promptly on becoming aware of the error and supplies reasonable details of the basis of the correction. The supplier shall not invoice for under billed charges relating to a period more than 24 months prior to the date on which the error was identified.

7.7 The supplier shall be entitled to adjust fees annually, in line with indicators such as the CPI and RPI. The supplier shall give at least 30 days' prior written notice to the customer of any increase that will take effect from the next due invoice.

8. Contract Variation

8.1 The supplier may vary the terms of the contract for all or any services from time to time by giving the customer not less than 30 days' prior written notice which shall set out the customer's right to terminate this agreement in accordance with clause 8.2.

8.2 Where an amendment to the terms of the contract will have an adverse effect on the customer's business, the customer may terminate the agreement by providing the supplier with a prior written notice within 30 days of the date of receiving a notice from the supplier under clause 8.1.

9. Intellectual Property Rights

9.1 All Intellectual Property Rights in or arising in connection with the Services are and shall remain owned by the supplier (or its third party licensors) and no such Intellectual Property Rights whatsoever shall be transferred to the Customer.

9.2 The Customer shall not do, or omit to do anything which may jeopardise, limit or interfere with the Supplier's rights (or those of its third party licensors) in the services or deliverables.

9.3 If any supplier proprietary software is provided to the Customer as part of the Services, Focus Networks 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 Focus Networks from time to time.

10. Data Protection and Data Processing

10.1 The customer and the supplier acknowledge that, for the purposes of data protection regulations, including the UK GDPR, the customer is the data controller and the supplier is the data processor with respect to any personal data.

10.2 The supplier shall process the personal data only in accordance with the customer's instructions from time to time and shall not process the personal data for any other purposes other than those expressly authorised by the customer.

10.3 The supplier shall take reasonable steps to ensure the reliability of all its employees who have access to the personal data.

10.4 It is the responsibility of the customer to export any personal data they wish to retain prior to the termination of the agreement. If no request is made by the customer, the supplier will proceed to securely delete all personal data in accordance with applicable data protection regulations.

10.5 The supplier shall use its best endeavours to assist the customer in responding to requests from individuals exercising their data protection rights, provided that such assistance is within the suppliers reasonable capacity and does not violate any legal or contractual obligations.

10.6 The supplier agrees to collaborate with the customer to ensure compliance with their mutual obligations under Article 28. This includes accommodating reasonable requests for audits and inspections as well as providing necessary information to demonstrate adherence to data protection standards.

10.7 Each party warrants to the other that it will process the personal data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

10.8 Where either party becomes aware of any actual or suspected cyber security incident, unauthorised access, compromise of authentication credentials or other event which may materially affect the security or integrity of the services, that party shall notify the other without undue delay and shall provide all reasonable assistance necessary to investigate, mitigate, contain and remediate the incident.

10.9 Each party shall preserve all relevant evidence relating to such incident and shall reasonably cooperate with the other party in complying with any applicable legal, regulatory or contractual obligations arising from the incident.

10.10 The customer acknowledges that the supplier is reliant on the customer for direction as to the extent to which the supplier is entitled to use and process the personal data. Consequently, the supplier will not be liable for any claim brought by a data subject arising from any action or omission by the supplier, to the extent that such action or omission resulted directly from the customer's instructions.

11. Limitation of Liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

11.1 Nothing in the contract shall limit or exclude the supplier's liability for:

- death or personal injury caused by its negligence (or that of its employees, agents or subcontractors)
- fraud or fraudulent misrepresentation
- any other liability which cannot be excluded by law

11.2 subject to clause 11.1, the supplier shall not be liable to the customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the contract for:

- loss of profits
- loss of sales or business
- loss of agreements or contracts
- loss of anticipated savings
- loss of use or corruption of software, data or information
- loss of or damage to goodwill; of
- any indirect or consequential loss

11.3 Subject to clause 11.1, the supplier's total liability to the customer whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the contract shall be limited to the lower of £1,000.00 or 15% of the annual aggregate charges arising under the contract.

11.4 unless the customer notifies the supplier that it intends to make a claim in respect of any event within the notice period, the supplier shall have no liability for that event. The notice period for an event shall start on the day on which the customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

11.5 This clause 11 shall survive termination of the contract.

11.6 If any limitation or provision in this clause 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.

12. Termination

12.1 Neither party may terminate the contract at any time, save for in accordance with one of the following clauses:

Clause 2.3
Clause 8.2
Clause 12.2
Clause 12.3

12.2 Either party may terminate the contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of the agreement and (if such a break is remediable) fails to remedy the breach within 30 days of that party being notified in writing to do so:

(b) the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to so; or

(c) the other party ceases to carry on its business or substantially the whole of its business; or

(d) the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

(e) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the contract has been placed in jeopardy.

12.3 Without affecting any other rights, the supplier may terminate the contract with immediate effect by giving written notice to the other customer if:

(a) the customer fails to pay any amount due under the contract on the due date for payment.

(b) if any alteration is made to the contract, the order or this agreement otherwise than in accordance with clause 15.4.

12.4 Without affecting any other rights, the supplier may suspend the supply of services under the contract or any other contract between the customer and the supplier if:

(a) the customer fails to pay any amount due under the contract on the due date for payment:

(b) the customer becomes subject to any of the events listed in clause 12.2 (b), (c), (d) (e) or the supplier reasonably believes that the customer is about to become subject to any of them:

(c) the supplier has reasonable grounds to believe that the customer has been using or is intending to use the services in a manner which would constitute unacceptable use;

(d) technical limitations arise which materially affect the functionality or performance of the services;

(e) any upgrades, servicing or emergency maintenance are required or any other operational reasons arise which, in the reasonable opinion of the supplier, require the suspension of the services;

(f) any third party carrier involved in the provision of the services suspends or causes the suspension of the services or any part thereof, for any reason whatsoever.

13. Consequences of Termination

13.1 On termination of the contract:

(a) the customer shall immediately pay to the supplier all of the supplier's outstanding unpaid invoices in respect of services supplied but for which no invoice has been submitted, the supplier shall submit an invoice, which shall be payable by the customer immediately on receipt; and

(b) the customer shall return all of the supplier materials which have not been fully paid for.

13.2 Termination or expiry of the contract 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 contract which existed at or before the date of termination or expiry.

13.3 Any provision of the contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the contract shall remain in full force and effect.

14. Electronic Signature

14.1 A contract will be sent for electronic signature to the relevant email address. By electronically signing, the customer confirms agreement to the Focus Networks' Terms and Conditions and consents to be legally bound by them.

15. General

15.1 Force majeure

Neither party shall be liable to the other party for any delay or failure to perform any of its obligations under this agreement if the delay or failure results from events or circumstances outside its reasonable control.

15.2 Confidentiality

(a) Each party undertakes that it shall not at any time during the contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by 15.2 (b)

(b) Each party may disclose the other party's confidential information:

- to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying our the party's obligations under the contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 15.3; and

- as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the contract.

15.3 Entire Agreement

(a) The contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, written or oral, relating to its subject matter.

(b) each party acknowledges that in entering into the contract 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 the contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the contract.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

15.4 Variation – except as set out in these conditions, no variation of the contract shall be effective unless it is in writing and agreed by both parties.

15.5 Notices – any notice to be given by either party to the other may be sent by email or recorded delivery to the most recent email address or address notified to the other party. If sent by email this shall be deemed to be received on the day it was sent or, if sent by recorded delivery, 2 days following the date of posting.

16. Third Party Rights

No person other than the provider and the customer shall acquire any enforceable rights under or in connection with this agreement.

17. Governing Law and Jurisdiction

This agreement shall be governed by and construed in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.