

## **CONNECTANDSELL ONLINE AGREEMENT – CONNECTS PROFESSIONAL**

IMPORTANT – PLEASE READ CAREFULLY. BY USING CONNECTANDSELL PRODUCTS, SOFTWARE AND SERVICES (“SYSTEM”) YOU (“CUSTOMER”) AGREE TO THE FOLLOWING TERMS AND CONDITIONS, AND ANY POLICIES, GUIDELINES AND AMENDMENTS. WE MAY UPDATE THE TERMS IN FUTURE AND THE MOST CURRENT VERSION OF THIS AGREEMENT IS AT

[http://www.connectandsell.com/docs/CONNECTANDSELL\\_ONLINE\\_AGREEMENT\\_CONNECTS\\_PROFESSIONAL\\_USER.pdf](http://www.connectandsell.com/docs/CONNECTANDSELL_ONLINE_AGREEMENT_CONNECTS_PROFESSIONAL_USER.pdf)

### **1. Connects Professional License Grant**

CONNECTANDSELL hereby grants CUSTOMER a Connects Professional License ("License") allowing access to and fair use (“Fair Use”) of the CONNECTANDSELL Connects Professional Service ("Service") and during CONNECTANDSELL'S business hours for the duration from the Engagement Start Date through the Renewal Date (“Engagement Period”) specified in an associated Professional Order Form, by the number of named users (“Named Users”), with each Named User limited to using a maximum number of connects (“Connects”) per license month (“License Month”) as specified in said Professional Order Form. A Connect is defined as an instance of a completed telephone connection between a Named User and a person whose contact information was provided to CONNECTANDSELL for the purpose of using the Service. Customer agrees to pay, at the per Connect price specified in said Professional Order Form, for any excess Connects consumed in any License Month by any Named User. Each License Month is defined as a period of time completely contained within the Engagement Period, starting on the same day number as the Engagement Start Date in a given calendar month and ending on the same day number minus one (1) in the following calendar month. Each Named User must be a natural person who is a full time employee or full time contractor of CUSTOMER and has been identified as a Named User by CUSTOMER to CONNECTANDSELL in writing or by using user registration and management software that may be provided by CONNECTANDSELL. Each Named User is restricted to use the Service only by means of personally using user interface software provided by CONNECTANDSELL, and is specifically prohibited from accessing the Service by use of any other means including application program interfaces (APIs), screen scraping software, or user emulation software. Fair Use is strictly limited to connecting with and conducting legitimate and legal business conversations with CUSTOMER'S customers, prospective CUSTOMERS, employees or business associates. Fair Use specifically excludes using the Service to conduct any business on behalf of any third party, including but not limited to using the Service to set sales appointments, generate sales leads, conduct surveys, or validate contact data on behalf of any third party. License is to be used by one and only one person to conduct to use the Service. Named Users may be replaced from time to time at the request of the CUSTOMER and upon payment of a Named User Replacement Fee specified by CONNECTANDSELL at the time of the request. License may not be used by any person other than a Named User except as specifically authorized by CONNECTANDSELL for training or support purposes. CONNECTANDSELL reserves the right to analyze patterns of use of the Service, and to record, replay and analyze content generated by use of the Service, in order to insure compliance with the terms of the License.

## **2. Description of Service**

The Service connects a Named User by telephone with zero or more Contacts provided by the Named User during a calling session (“Session”). The Service also includes Software that provides various functions to manage contact lists, interact with customer relationship management systems and other systems of record, and help follow up on business conversations at the appropriate time. The Service is designed and intended for business use only, and use of the Service for the purpose of calling consumers in their homes or on their mobile phones is strictly prohibited. The Service is provided as-is. CONNECTANDSELL does not warrant or guarantee that the Service provides any specific service levels with regard to: how long it takes to make the next connection; which contact, if any, will be connected next; voice quality; or any characteristic or outcome of any given conversation or Session. CUSTOMER recognizes and agrees that the results of any given Session, including the number of connects made during that session and the outcome of any given conversation, are controlled by factors outside of the control of CONNECTANDSELL, and further agrees that CUSTOMER'S ability to schedule and use up to the specified maximum number of Connects per Named User per month within the constraints of the duration of this License and CONNECTANDSELL'S business hours constitutes a fair remedy for any real or perceived shortfall in the results of using the Service. Specifically, CUSTOMER agrees that any other guarantees that may be or have been provided by CONNECTANDSELL under other licenses or as part of any other offerings, including any guarantees previously or currently published in print or by electronic means, do not apply to this License and may not be invoked by CUSTOMER for the purpose of requesting any refund, replacement or other remedy under this License.

## **3. CUSTOMER Rights and Restrictions**

- 3.1 During the Term of this Agreement, and upon CUSTOMER payment of all applicable fees, CONNECTANDSELL will enable CUSTOMER to access and utilize the SYSTEM pursuant to and in accordance with the provisions of this Agreement.
- 3.2 CUSTOMER represents and warrants that Contacts have not been obtained in violation of any third party rights, that making telephone calls to such Contacts does not violate any national, state or local Do Not Call Registry, or similar prohibited telephone calling list, and that a telephone call to such Contact will not violate any law, rule or regulation. CUSTOMER will defend, indemnify and hold harmless CONNECTANDSELL from any violation of such third party rights, laws and regulations.
- 3.3 CUSTOMER shall be solely responsible for all content transferred by CUSTOMER or any other party in connection with CUSTOMER'S access and/or use of the SYSTEM. Although CONNECTANDSELL is not responsible for any such content or communications, CONNECTANDSELL reserves the right to take any action it deems necessary or appropriate in its sole discretion, with respect to any such content or communications of which CONNECTANDSELL may become aware, at any time and without notice to CUSTOMER.
- 3.4 CUSTOMER will have no more than one (1) Named User logged in to use the Service per Session.
- 3.5 CONNECTANDSELL reserves the right to prevent CUSTOMER from accessing SYSTEM if outstanding payments are due to CONNECTANDSELL from CUSTOMER.

- 3.6 CUSTOMER may not reverse engineer, decompile or otherwise attempt to analyze or decipher any software code in connection with the Service or any other aspect of CONNECTANDSELL technology.
- 3.7 CUSTOMER must not modify any logo, branding or other identifying information on any CONNECTANDSELL software, user interface or documentation, and must inform its Named Users, CUSTOMERS and employees that the SYSTEM subscribed to hereunder is powered by CONNECTANDSELL.
- 3.8 CUSTOMER may not resell, distribute, or otherwise use or allow use of any portion of the SYSTEM on a timeshare or service bureau basis.
- 3.9 CUSTOMER shall not access and/or use any portion of the SYSTEM in any manner that could damage, disable, overburden, impair or otherwise interfere with or disrupt the operation of the SYSTEM or any networks or security systems of CONNECTANDSELL.
- 3.10 CUSTOMER has the right to designate as problem connects (“Problem Connects”) a maximum of 10% of the licensed maximum number of Connects in a given month. Problem Connects will not be counted against the maximum number of Connects allowed per Named User in any given month. CUSTOMER must report any Problem Connect immediately upon terminating the Connect by using the Service’s problem reporting feature available as part of the Service’s user interface.
- 3.12 CUSTOMER agrees that no other rights are granted hereunder except as expressly set forth in this Agreement.

#### **4. Term and Termination**

- 4.1 Term - This Agreement shall commence on the date an order is placed by CUSTOMER (“Effective Date”) and continue until the Renewal Date set forth in the applicable Agreement or Order Form.
- 4.2 Termination for Cause - either party may terminate this Agreement immediately if the other party breaches any of its obligations under this Agreement.
- 4.3 Effect of Termination - Upon termination of this Agreement, CUSTOMER will immediately discontinue all access to and use of the SYSTEM and uninstall any SYSTEM components. CONNECTANDSELL shall not be liable for any damages resulting from a termination of this Agreement as provided for herein. The termination of this Agreement shall not affect any claim arising prior to such termination.

#### **5. Confidential Information**

Each party acknowledges that during the Term it shall have access to the confidential information and trade secrets of the other party consisting of, but not limited to, information concerning each other's methods of operations, systems, products, customer lists, agent lists, and other such proprietary

business information. Each party agrees not to use or disclose the confidential information (“Confidential Information”) of the other. Unless expressly authorized in writing by the other party, neither party shall publicly disclose any non-public information or materials provided by the other party under this Agreement and reasonably understood to be Confidential Information, or use such Confidential Information in any manner other than to perform its obligations under this Agreement. The foregoing restrictions do not apply to any information that (i) is in or becomes available in the public domain, including company names, contact names, titles, email addresses and telephone numbers used or dialed by the SYSTEM in the course of providing the Service (ii) is already lawfully in the receiving party’s possession, (iii) was known to the receiving party prior to the date of disclosure, (iv) becomes known to the receiving party from a third party having an apparent bona fide right to disclose the information, or (v) Confidential Information that the receiving party is obligated to produce pursuant to an order of a court of competent jurisdiction or a valid administrative subpoena, providing receiving party provides disclosing party timely notice of such court order or subpoena. Furthermore, CUSTOMER will keep in strict confidence all passwords and other access information to the SYSTEM. Each party retains ownership of its confidential information. CUSTOMER does not acquire any rights in the CONNECTANDSELL confidential information under this Agreement, save for CUSTOMER’S limited right of use as set forth herein.

## **6. Indemnification**

CUSTOMER hereby agrees, at its sole expense, to indemnify and hold CONNECTANDSELL harmless from and against any loss, cost, damages, liability or expense arising out of or relating to (i) a third-party claim, suit, proceeding, action of infringement based on information, data, files or other content submitted by CUSTOMER or otherwise related to CUSTOMER’S access to and/or use of the SYSTEM; or (ii) any fraud or manipulation, or other breach of this Agreement by CUSTOMER.

## **7. DISCLAIMER OF WARRANTIES**

CUSTOMER HEREBY ACKNOWLEDGES AND AGREES THAT THE SYSTEM IS PROVIDED BY CONNECTANDSELL ON AN “AS IS” BASIS, AND CUSTOMER’S ACCESS TO AND/OR USE OF THE SYSTEM IS AT ITS SOLE RISK. CONNECTANDSELL EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CONNECTANDSELL MAKES NO WARRANTY THAT THE SYSTEM WILL MEET THE REQUIREMENTS OF CUSTOMER OR THAT THE SYSTEM WILL BE UNINTERRUPTED, TIMELY OR ERRORFREE, NOR DOES CONNECTANDSELL MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SYSTEM OR THE ACCURACY OF ANY OTHER INFORMATION OBTAINED THROUGH THE SYSTEM OR THAT ANY DEFECTS IN ANY SOFTWARE PROVIDED TO CUSTOMER WILL BE CORRECTED. CUSTOMER UNDERSTANDS AND AGREES THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED (INCLUDING PLUG-INS) THROUGH THE USE OF THE SYSTEM IS DONE AT THE SOLE RISK OF CUSTOMER AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. NO INFORMATION OR ADVICE, WHETHER ORAL OR

WRITTEN, OBTAINED BY CUSTOMER FROM CONNECTANDSELL OR THROUGH THE SYSTEM SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

## **8. LIMITATIONS OF LIABILITY**

WITH THE EXCEPTION OF SECTION 5, CONFIDENTIAL INFORMATION, CONNECTANDSELL'S MAXIMUM LIABILITY FOR ANY AND ALL CLAIMS ARISING FROM OR OTHERWISE RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT OR IN TORT, SHALL BE LIMITED TO THE AMOUNT PAID TO CONNECTANDSELL (IF ANY) FOR THE SPECIFIC SERVICE WHICH DIRECTLY CAUSED SUCH DAMAGE. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL, MULTIPLE, PUNITIVE OR OTHER DAMAGES RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, LOSS OF INCOME, LOSS OF OPPORTUNITY, LOST PROFITS, COSTS OF RECOVERY OR ANY OTHER DAMAGES), HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT FOR BREACH OF CONTRACT, NEGLIGENCE, OR OTHERWISE, AND WHETHER OR NOT CONNECTANDSELL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **9. General Terms**

**Severability** - CUSTOMER agrees that if any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, including some jurisdictions where exclusion or limitation of warranties and liabilities for incidental and consequential damages are not allowed and may not apply to CUSTOMER, such provision shall be severed from this Agreement and all other provisions shall nevertheless continue in full force and effect, to the extent possible, to achieve the purposes as originally expressed in the invalid or unenforceable provision.

**Dispute Resolution** - This Agreement shall be governed by the laws of the State of California, USA. Any and all disputes or disagreements shall be resolved first by non-binding confidential mediation in San Francisco, California before a neutral mediator appointed by the American Arbitration Association. If the mediation is not successful, then the matter shall be submitted to binding, confidential arbitration before a neutral arbitrator appointed by JAMS-ENDISPUTE in San Francisco, California. The decision of the arbitrator shall be final and binding on all Parties and it may be entered as a judgment in any federal or state court of competent jurisdiction. The parties hereby agree that in the event any arbitration is initiated with reference to this Agreement by any party, the prevailing party shall be entitled to (and in addition to all remedies permissible under the express terms of this Agreement, the arbitrator shall also issue) an award of reasonable attorney's fees and disbursements incurred by such party in connection with, including but not limited to fees and disbursements in administrative, regulatory, bankruptcy and appellate proceedings.

**Modifications** - The Parties hereby agree that modification and waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement. The failure of any party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default or breaches of the same or similar nature.

Survival - Termination of this Agreement shall terminate each party's obligations under this Agreement, except that the provisions of Sections 3.2, 3.3, 4.3 and Sections 5 through 9 shall survive such termination.

Entire Agreement and Assignment - The parties hereby agree that this Agreement including any of its Appendices contains the entire understanding of the parties relating to the service described herewith only. There are no representations, covenants, warranties or undertakings other than those expressly set forth in this agreement. The terms and conditions hereof shall prevail over any conflicting purchase order or other written instrument submitted by CUSTOMER. CUSTOMER may not assign this Agreement or any other rights or obligations herein except with the prior written consent of CONNECTANDSELL and any attempt to assign (by operation of law or otherwise) without such consent shall be null and void. No person or entity not a party to this Agreement will be deemed to be a third party beneficiary of this Agreement or any provision hereof.

Authority - Each party hereby represents and warrants to the other party that it has all necessary authority to enter into and perform its obligations under this Agreement without the consent of any third party or breach of any contract or agreement with any third party.

Force Majeure - CONNECTANDSELL will not be responsible for any delay, interruption or other failure to perform under this Agreement due to acts beyond the control of CONNECTANDSELL.

Proprietary Rights - CONNECTANDSELL retains ownership of all proprietary rights in or associated with all its products and services (including the SYSTEM), and CUSTOMER may not use the CONNECTANDSELL logo, or any other name, logo, icon or mark identifying CONNECTANDSELL's products and/or services (including the SYSTEM) without prior written permission of CONNECTANDSELL.

No Waiver - The failure of either CUSTOMER or CONNECTANDSELL in any one or more instance(s) to insist upon strict performance of any of the terms of this Agreement will not be construed as a waiver or relinquishment of the right to assert or rely upon any such term(s) on any future occasion(s).

CONNECTANDSELL Beta Program – The terms of this sub-section shall only apply to CUSTOMER with respect to any Beta version of the SERVICE (the “Beta System”) made available to CUSTOMER for purposes of evaluation and feedback. CUSTOMER acknowledges that the Beta System being evaluated may contain bugs, errors and other problems and is provided to CUSTOMER “as-is.” Therefore, CONNECTANDSELL disclaims any warranty or liability obligations to CUSTOMER of any kind with respect to the Beta System. CUSTOMER also hereby acknowledges that CONNECTANDSELL has not made any representations, promises or guarantees that the Beta System will ever be announced or made available to anyone in the future and that CONNECTANDSELL has no express or implied obligation to CUSTOMER to announce or introduce the Beta System. If during the CONNECTANDSELL Beta program, CUSTOMER is asked to provide feedback regarding CUSTOMER'S use of the Beta Service(s), CUSTOMER hereby grants to CONNECTANDSELL a perpetual, royalty-free worldwide license to use and/or incorporate such feedback into any CONNECTANDSELL product or service (including the Beta System) at any time at the sole discretion

of CONNECTANDSELL. With respect to the Beta System, this subsection shall supersede any other terms and conditions contained herein, but only to the extent necessary to resolve conflict.