

# Konect Global Data Service Subscription Agreement

This Konect Global Data Service Subscription Agreement is between the entity that accepts this agreement ("you") and Campbell Scientific Limited ("us", "we"). This agreement consists of: (1) the below terms and conditions; (2) the Online Services Use Rights; (3) the Service Level Agreement(s); and (4) the pricing and payment terms available via the Portal or through Normal Sales Channels. This agreement is effective from the moment you accept our terms and conditions. Your use of the Service shall be deemed as acceptance of our terms and conditions.

## ***Terms and Conditions***

### **1. Definitions.**

"Affiliate" means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. "Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity. If you are an agency of a state, provincial, or local government, "Affiliate" means (1) any government agency, department, office, instrumentality, division, unit or other entity, of your state, provincial or local government that you supervise or is part of you, or which supervises you or you are part of, or which is under common supervision with you; (2) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of your state or province and located within your state's or province's jurisdiction and geographic boundaries; and (3) any other entity in your state or province expressly authorized by the laws of your state or province to purchase under state or provincial contracts; provided that a state or province and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government or its Affiliates. Notwithstanding the foregoing, provincial Crown corporations are not Affiliates for the purposes of this definition. If you are an agency of the U.S. government, "Affiliate" means any other agency of the U.S. government. If you are an agency of the Canadian government, "Affiliate" means any other agency of the Canadian government, except for a federal Crown corporation.

"Committed Offering" means the Subscription option for a Product as described below in Section 4a.

"Communities" means one or more forums that we or an Affiliate of ours may establish for customers or the general public to obtain information or collaborate regarding the use of the Product(s), as may be accessible via the Portal or at an alternate website we identify.

"Consumption Offering" means the Subscription option for a Product as described below in Section 4a.

"Customer Data" means all data, including all text, sound, or image files that you provided, or are provided on your behalf, to us through your use of the Online Services.

"License" means the right to copy, install, use, access, display, run and/or otherwise interact with a Product, as applicable, and as may be further described in the Online Services Use Rights.

"Licensed Software" means any software product as available on the Portal. Licensed Software is offered on a standalone basis or as a component of an Online Service.

"Online Service" means any online service as available on or via the Portal. An Online Service may include Supplemental Software and/or Licensed Software.

"Online Services Use Rights" means the use rights for each Product available at <http://www.konectgds.com> or at an alternate site that we identify.

"Order" means an order for a Product on the Portal or direct with us. An Order may include multiple Subscriptions to a Product.

"Portal" means the Konect Global Data Service Portal at <http://www.konectgds.com> or at an alternate website we identify.

"Product" means any Online Service and any Licensed Software as described on the Portal.

"Service Level Agreement" means an agreement representing commitments we make regarding delivery and/or performance of an Online Service.

"Subscription" means the part of the Order identifying the specific Product being ordered and may include the quantity, ship-to address, or other information.

"Trial Subscription" means a Subscription offered to you on a temporary basis often at a reduced rate. A Trial Subscription will be offered for a limited period of time as defined when the trial is offered. Trial Subscriptions are offered at our discretion and maybe withdrawn at anytime.

"Supplemental Software" means software provided to you as part of an Online Service and which is used with the Online Service to enable certain functions of the Online Service.

"Term" means the duration of a Subscription.

"Normal Sales Channels" means contacting any Campbell Scientific Limited office or an Affiliate of ours via either telephone or email. Regional sales contacts can be found by visiting <http://www.konectgds.com> and viewing the Contact Us page.

"Live Data Retention Period" means the period of time we will historically retain your data for whilst you have a valid subscription in place.

"Station" means a single datalogger or compatible device connected to the Online Service via an approved communications mechanism and accessible by the Online Service.

"Over Usage" means any usage of a service or feature that exceeds the defined period limits of your subscription agreement. For example if you have an SMS text message allowance of 10 messages in the period, once you exceed this limit you will be charged at over usage rates as defined in your subscription agreement.

## 2. Your use of our Products.

**a. General.** This agreement governs your use of the Products. You may need to activate an Online Service prior to use. We grant you a License to Products you ordered provided you pay for them and comply with this agreement. Your License is non-exclusive, non-perpetual, and, unless specifically allowed, non-transferable. Minimum system requirements or other factors may affect your ability to use Products. We reserve all rights not expressly granted in this agreement.

**b. Service Level Agreement.** We will provide Online Services according to the Service Level Agreement(s) located at <http://www.konectgds.com> or at an alternate site that we identify.

**c. Privacy, Use and Security of Customer Data.** We will handle your Customer Data according to the privacy, use and security terms set forth in the Online Services Use Rights.

**d. Supplemental Software.** To enable optimal access and use of certain Online Services, you may need to install Supplemental Software, including upgrades and/or updates. This agreement governs your use of Supplemental Software, and any upgrades/updates, unless we present separate license terms to you upon installation. Any separate license terms are between us and you, not your users. You may use Supplemental Software only to support the applicable Online Service. Copies you make must be complete copies (including copyright and trademark notices) and made from Campbell Scientific-approved media or a network source. You may use a third party to make and install these copies, but you agree to be responsible for that third party's actions. You agree to use reasonable efforts to inform anyone you allow to use the Supplemental Software that it is licensed from us and subject to the terms of this agreement.

We may check the version of the Supplemental Software you are using and recommend or download updates, with or without notice, to your devices. Your right to use the Supplemental Software ends when your right to use the Online Service ends or when we update the Online Service and it no longer supports the Supplemental Software, whichever comes first. You must uninstall the Supplemental Software when your right to use it ends. We may also disable it at that time.

**e. Licensed Software.** We grant you Licenses for the number of copies of Licensed Software you ordered. We also grant you the right to use a prior (older) version in place of a Licensed Software version you license if we specify such use in the Online Services Use Rights.

**(i) When Licenses become perpetual.** Unless you obtain perpetual Licenses under a buy-out option indicated on the Portal, a License to Licensed Software you obtained under this agreement lasts only for the Subscription Term. Any references in the Online Services Use Rights to running Licensed Software on a perpetual basis apply only if you obtained perpetual Licenses.

**(ii) License confirmation.** Proof of your Licenses consists of: (1) this agreement, (2) any Order confirmation, (3) documentation evidencing License transfers (for any permitted transfers), and, if applicable, (4) proof of payment.

**(iii) Copies.** You may make as many copies of the Licensed Software as you need to distribute them throughout your organization provided you have a valid License for each such copy. Copies you make must be complete copies (including copyright and trademark notices). You must make copies from Campbell Scientific-approved media or a network source acquired from or made available by a Campbell Scientific-approved fulfillment source. You may use a third party to make and install these copies, but you agree to be responsible for that third party's actions. You must use reasonable efforts to inform anyone you allow to use the Licensed Software that it is licensed from us and subject to the terms of this agreement.

**(iv) Right to re-image.** In certain cases, you may re-image a software product on a device by using the Licensed Software media. If you acquired the software product (1) from an original equipment manufacturer (OEM), (2) as a full packaged software product through a retail source, or (3) under another Campbell Scientific program, you may use the media provided to you under this agreement to create images for use in place of copies provided through that separate source. You have this right provided that:

- 1) You have a valid license from the separate source for each copy of the software product that is re-imaged;
- 2) The Licensed Software, language, version, and components of the copies are identical to the software product, language, version, and all components of the copies they replace and the number of copies or instances of the re-imaged software product permitted remains the same;
- 3) Except for copies of software product licensed under another Campbell Scientific program, the Licensed Software type (e.g., upgrade or full License) is identical to the software product type from the separate source;
- 4) You comply with any specific requirements for re-imaging identified in the Online Services Use Rights; and
- 5) You agree that re-images made under this subsection remain subject to the terms and use rights provided with the software product from the separate source.

This subsection does not create or extend any warranty or support obligation.

**(v) Transferring and assigning Licenses.**

- 1) **License Transfers.** License transfers are not permitted, except as explicitly granted by us in writing. The resale of Licenses is prohibited, including any transfer by you or your Affiliate(s) for the purpose of transferring those Licenses to an unaffiliated third party.
- 2) **Internal Assignment of Licenses.** Licenses must be assigned to a single user or device. Licenses may be reassigned as described in the Online Services Use Rights.

**f. Limitations on use.** The Online Services Use Rights identify limitations on your use of Products in addition to those specified in this agreement. You may not reverse engineer, decompile or disassemble any Product, except where applicable law permits it despite this limitation. You may not rent, lease, lend, resell, or host to or for third parties any Product, except as expressly permitted for a given Product in the Online Services Use Rights. You may not separate and use the components of a Product on two or more computers, upgrade or downgrade components at different times, or transfer components separately, except as provided in the Online Services Use Rights.

**g. Responsibility for your IDs and accounts.** You are responsible for protecting the confidentiality of any Konect Passport IDs and Campbell Scientific Online Services IDs associated with this agreement. In addition, you are responsible for your passwords, and for any and all activity associated with your Online Service accounts including that of users you provision and dealings with third parties that take place through your account or associated accounts. You must keep your accounts and passwords confidential. You must tell us right away about any possible misuse of your accounts or any security incident related to the Online Service.

**h. Acceptable use of your IDs and Accounts.** Each Konect Passport ID or Campbell Scientific Online Services ID (the "Account ID") is assigned for the use of a single individual (the "Account Holder"). Only the Account Holder may use the Account ID to access the Online Service. An Account ID can be used on a single device at any one time and must only be used to maintain a single connection to the Online Service. Multiple connections to the Online Service using a single Account ID are strictly prohibited. You will be liable to reimburse us for any costs incurred as a result of failing to comply with the Acceptable use of your IDs and Accounts.

**i. Dormant IDs and Accounts.** A Konect Passport ID or Campbell Scientific Online Services ID (the "Account ID") is deemed to be "Dormant" if you do not use it to access the Online Service for a period of 90 consecutive days or more. We reserve the right to delete Dormant Account IDs at our discretion. Deleting an Account ID has no effect on the data stored as part of your subscription, only the data specific to the Account ID.

**j. Your responsibility for use of Communities.** You are responsible for your users' use of any Community, including ensuring compliance with the terms governing the Community located at the Community's website. We specifically disclaim any liability arising from or related to you or your users' use of or inability to use a Community's website.

### 3. Your obligations.

- a. Communications Mechanism.** You agree to only connect stations using a communication method as outlined at <http://www.konectgds.com> or at an alternate site that we identify.
- b. SIM Cards Supplied by Us.** We may provide SIM Cards to you as part of a subscription package, where a SIM card is supplied by us it remains our property and must be returned to us on request or surrendered to us upon the termination of any related subscription. If a SIM card is supplied by us with a subscription then ONLY that SIM card must be used with the associated Station in conjunction with our service, failure to do this will invalidate any Service Level Agreement associated with the subscription. It is your responsibility to ensure any SIM card provided by us remains secure at all times. In the event that a SIM Card is lost or stolen you must notify us immediately so that we can invalidate it. Should a SIM card be lost or stolen you will remain liable for all charges accrued through the SIM until it has been invalidated.
- c. Third (3rd) Party GPRS SIM Cards.** If a GPRS SIM card is supplied by you then it must have a fixed public IPv4 address which has NO requirement for the use of a VPN in order to communicate with it.
- d. Your Equipment.** It is your responsibility to ensure that any equipment owned and maintained by you including all elements of a Station and associated devices are in working order and that any communication mechanism or device is in full working order and contactable by our Online Services. .
- e. Station Programs.** It is your responsibility to ensure that any program running on a Station is free from errors and running. Any program or subsequent program change which results in the Station failing to record data and make it available for collection as intended is beyond the scope of the Online Service. Any assistance which may be provided by us; at our discretion, will remain chargeable in addition to any subscription charges, any charge will be agreed in advance.
- f. Failure to Meet Your Obligations.** Failure to meet your obligations will render your Service Level Agreement invalid, however you will remain liable for all charges under the terms of your subscription.

### 4. Ordering, pricing, payments, renewals, and taxes.

- a.** The Portal provides the available Subscription options for each Product and they can generally be categorized as follows:
  - (i) Committed Offerings:** You commit in advance to purchase a specific quantity of Products for use during a Term. You pay on a periodic basis during the Term in advance.
  - (ii) Consumption Offerings:** You pay in advance for the basic subscription and for over usage based on actual usage in the preceding period. Payment is on a periodic basis.
  - (iii) Combination Offerings:** You may have a Subscription that is a combination of a Committed Offering and a Consumption Offering.
- b. Ordering.** You can place an Order on the Portal or directly with us through one of our Normal Sales Channels.
- c. Prices and Payment.** Pricing and payment terms for Products are available on or through the Portal or through Normal Sales Channels. Payments are due and must be made according to the payment option you selected for each Product on the Portal.
  - (i)** For Committed Offerings and Consumption Offerings, unless otherwise expressed in writing by us the following payment mechanisms and terms will apply:
    1. For customers in the United Kingdom, France and Germany payment will be required by Direct Debit, details of which will be provided at the outset of your subscription. The billing period for all subscriptions is from the first (1<sup>st</sup>) day of each calendar month. Subscription costs will be charged monthly in advance on the first (1<sup>st</sup>) day of each calendar month, any subscription which begins after the first (1<sup>st</sup>) day of the calendar month will be charged for pro-rata on your first (1<sup>st</sup>) invoice. Any over usage during the previous period will be calculated and charged based on the thresholds and charges outlined in your subscription agreement and applied to your invoice.
    2. For customers outside the United Kingdom, France and Germany payment will be required as a pre-payment. The billing period for all subscriptions is from the first (1<sup>st</sup>) day of each calendar month. Subscription costs will be charged monthly in advance on the first (1<sup>st</sup>) day of each calendar month, any subscription which begins after the first (1<sup>st</sup>) day of the calendar month will be charged for pro-rata on your first (1<sup>st</sup>) invoice. Any over usage during the previous period will be calculated and charged based on the thresholds and charges outlined in your subscription agreement and applied to your invoice.

3. For all customers payment is required by the fifteenth (15<sup>th</sup>) day of each calendar month. Failure to provide payment within this time frame or if a Direct Debit payment is refused will cause us to invoke the terms of suspension outlined in section 5.

(ii) For Committed Offerings and Consumption Offerings, the pricing and rate schedules are either based on; or will contain actual usage and are subject to change at any time upon notice.

(iii) For Committed Offerings and Consumption Offerings, we reserve the right to modify the price of any subscription once the minimum subscription period associated with it has elapsed. You will be notified by us of any planned change in price no less than 30 days in advance of the price change taking effect.

**d. Subscription modification.**

(i) For Committed Offerings and Consumption Offerings, your Subscription can be upgraded to one of a higher value at anytime, but not more than once in a single billing period. Upgraded subscriptions take immediate effect and any increase in price will be applied pro-rata to your next invoice.

(ii) For Committed Offerings and Consumption Offerings, your Subscription can be downgraded to one of a lower value at any time after the expiration of any minimum subscription term. Any downgraded subscription will take effect from the first (1<sup>st</sup>) day of the next calendar month. You can only downgrade once in a single billing period.

**e. Subscription renewal.**

(i) For Committed Offerings and Consumption Offerings, your Subscription will continue indefinitely until we are notified of termination as outlined in section 5.

(ii) Trial Subscriptions cannot be renewed.

**f. New agreement.** Before you place new Orders or renew any Subscriptions, we may require you to enter into an updated agreement that will govern your new Orders and renewal Subscriptions from that date forward.

**g. Taxes.** Any amounts owed to us are exclusive of any taxes including withholding taxes. You shall pay any applicable value added, goods and services, sales, or like taxes that are owed with respect to any Order placed under the agreement and which we are permitted to collect from you under applicable law. You shall be responsible for any applicable stamp taxes and for all other taxes that you are legally obligated to pay including any taxes that arise on the distribution or provision of Products to your Affiliates. If any taxes are required to be withheld on payments you make to us, you may deduct such taxes from the amount owed to us and pay them to the appropriate taxing authority, provided however that you promptly secure and deliver an official receipt for those withholdings and other documents we reasonably request to claim a foreign tax credit or refund. You will make certain that any taxes withheld are minimized to the extent possible under applicable law. Any taxes imposed on us or which we have a duty to collect in connection with providing Online Services or Products will appear as separate items on any invoice provided to you. If you are exempt from any such charges, it is your responsibility to supply us with evidence of such exemption.

**h. Chargebacks.** In certain circumstances, Card Issuers, Card Schemes and/or Other Financial Institutions refuse to Settle a Transaction or require repayment from us in respect of a Transaction previously settled and/or Remitted, notwithstanding that Authorisation may have been obtained from the Card Issuer and/or Other Financial Institution (such circumstances being a "Chargeback").

(i) You acknowledge and agree that under the Rules, you may be required to reimburse us for Chargebacks in circumstances where you have accepted payment in respect of the relevant Transaction and even if you are under no legal liability for the supply or performance of the goods or services concerned.

(ii) All Chargebacks shall correspond to the whole or part of the Settlement value of the original Transaction or, at our option, to an amount converted to the Settlement currency from the currency of Chargeback by the Card Scheme to Us at the rate of exchange quoted by us for Settlement purposes on the day the Chargeback is processed.

(iii) Where a Chargeback occurs, we shall immediately be entitled to debit Your Merchant Bank Account and/or make a deduction from any Remittance and/or invoice you to recover:

1. the full amount of the relevant Chargeback; and
2. any other costs, expenses, liabilities or Fines which we may incur as a result of or in connection with such Chargeback ("Chargeback Costs").

- (iv) A Chargeback represents an immediate liability from You to Us and where the full amount of any Chargeback and/or any Chargeback Costs is not debited by Us from Your Merchant Bank Account or deducted from any Remittance or invoiced, then We shall be entitled to otherwise recover from You by any means the full amount of such Chargeback and Chargeback Costs (or the balance thereof, as the case may be).
- (v) We shall not be obliged to investigate the validity of any Chargeback by any Card Issuer, Card Scheme or Other Financial Institution, whose decision shall be final and binding in respect of any Chargeback.
- (vi) As Chargebacks may arise a considerable period after the date of the relevant Transaction, You acknowledge and agree that, notwithstanding any termination of the Subscription for any reason, We shall remain entitled to recover Chargebacks and Chargeback Costs from You (and, where relevant, from any Person who has provided Us with a guarantee or security relating to Your obligations under the Subscription) in respect of all Chargebacks that occur in relation to Transactions effected during the term of the Subscription.
- (vii) We reserve the right to immediately pass on to you and recover from you any Fines incurred and/or impose further charges on you and/or terminate the Subscription forthwith if we consider that the total value of Refunds and/or Chargebacks is unreasonable. We can recover Fines from you in the same way as Chargebacks and in any event they represent an immediate liability from you to us.
- (viii) If we consider in good faith that there is a high risk of Chargeback, You shall on demand by us put such funds into Your Merchant Bank Account as we shall require covering such risk.

## 5. Term, suspension, and termination.

- a. Agreement term and termination.** This agreement will remain in effect unless you terminate it subject to the terms of this Section. For Committed Offerings, termination will only terminate your right to renew Subscriptions under an existing Order or place new Orders for additional Products under this agreement. Termination will not affect any Subscription not otherwise terminated and this agreement shall remain in effect for such Subscription for the remainder of the Term. For Consumption Offerings, termination will end Customer's right to use the Product.
- b. Termination of a Subscription.** You may terminate a Subscription once the Minimum Subscription Period has expired; You must give us minimum advance notice of your intention to Terminate a Subscription in accordance with the number of days defined in the Cancellation Period of your Subscription; or a minimum of 30 days where no Cancellation Period is explicitly defined. The Termination of a Subscription will be effective at the end of the calendar month during which the Subscription termination takes effect. You must pay for any as yet un-billed usage and for any over usage in the period prior to the termination effective date. We may at our discretion allow you to terminate your Subscription early subject to your agreeing to pay the subscription costs that would have been incurred during the minimum subscription period defined for your Subscription.
- c. How to terminate the agreement or a Subscription.** You must follow the process, if available, on the Portal or otherwise contact Campbell Scientific customer service (see contact information on the Portal) to terminate the agreement or a Subscription.
- d. Effect of termination or expiration on Licensed Software.** If the agreement or a Subscription is terminated or expires, and you do not exercise an available buy-out option, then you must delete all copies of Supplemental Software and Licensed Software licensed under this agreement and destroy any associated media. We may ask you to provide written certification of the deletion and destruction.
- e. Expiration or termination: Customer Data.** During the provision of your subscription data will be retained in accordance with the data retention period currently in force as part of your current subscription ("live data retention period"). Upon expiration or termination of each Subscription, you must tell us whether to:
  - (i) retain Customer Data in your paid account upon conversion from a trial account; or
  - (ii) disable your account and then delete your Customer Data; or
  - (iii) retain your Customer Data in a limited function account for at least 90 days after expiration or termination of your Subscription (the "retention period") so that you may extract your Customer Data.
  - 1) If you indicate (ii), you will not be able to extract your Customer Data from your account. If you indicate (iii), you will be able to extract your Customer Data via our standard processes and tools, and you will reimburse us if there are any applicable costs. If you do not indicate (ii) or (iii), we will retain your Customer Data in accordance with (iii).
  - 2) Following the expiration of the retention period, we will disable your account and then delete your Customer Data.

You agree that, other than as described above, we have no obligation to continue to hold, export or return your Customer Data. You agree that we have no liability whatsoever for deletion of your Customer Data pursuant to these terms.

**f. Subscription suspension.** We may suspend any Online Service provided to you if you fail to meet your payment obligations as outlined in section 4. If we suspend a subscription you will lose access to that subscription and at our discretion we may suspend data collection from your Station(s). Any data already held will be retained in accordance with the provisions outlined in section 4. Your subscription will be reactivated and data collection will resume upon you successfully clearing any outstanding amounts owed to us. Failure to clear/settle any outstanding charges could result in us invoking termination of your subscriptions whereupon your data will be subject to the provisions outlined relating to termination in section 5.

**g. Regulatory environment: modification or termination.** We may modify or terminate an Online Service in any country where there is any current or future government requirement or obligation that subjects us to any regulation or requirement not generally applicable to businesses operating there, presents a hardship for us to continue operating the Online Service without modification, and/or causes us to believe these terms or the Online Service may be in conflict with any such requirement or obligation. For example, we may modify or terminate the Online Service in connection with a government requirement that would cause us to be regulated as a telecommunications provider.

## 6. Confidentiality.

You agree that you shall treat the design and performance of the Online Services that are accessible to you only via password protected access and any documentation or materials we make available to you under this agreement as confidential and shall not disclose them to any third party except with the prior written permission of Campbell Scientific Ltd. If you are a government customer, this Section is subject to the requirements of applicable trade secret, public records, and similar laws. Neither party shall make any public statement concerning the terms or our business relationship as provided in this agreement without the other party's prior written consent. We recognise that during the provision of Online Services or through the provision of Products we, our affiliates or our employees may be exposed to information of a confidential nature relating to the business or developments carried out by you. We agree to hold such information in confidence for you to the same extent we provide for our own information and not to disclose such information to any other person or organisation without the prior written consent of you.

## 7. Warranties.

**a. Limited warranty.** We warrant that:

- (i) Online Services will perform in accordance with the Service Level Agreement; and
- (ii) Licensed Software will perform substantially as described in the applicable Campbell Scientific user documentation or end-user license agreement.

**b. Limited warranty term.** The limited warranty for:

- (i) Online Services is for the duration of your use of the Online Service; and
- (ii) Licensed Software is 90 days from the date of provision.

**c. Limited warranty exclusions.** This limited warranty is subject to the following limitations:

- (i) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last one year from the start of the limited warranty;
- (ii) this limited warranty does not cover problems caused by accident, abuse or use of the Products in a manner inconsistent with this agreement or the Online Services Use Rights, or resulting from events beyond our reasonable control;
- (iii) this limited warranty does not apply to problems caused by the failure to meet minimum system requirements; and
- (iv) this limited warranty does not apply to free, trial, pre-release or beta Products.

**d. Remedies for breach of limited warranty.** If we fail to meet any of the above limited warranties and you notify us within the warranty period that a Product does not meet the limited warranty, then we will:

- (i) for Online Services, provide the remedies identified in the Service Level Agreement for the affected Online Service; and
- (ii) for Licensed Software, at our option either (1) return the price paid or (2) repair or replace the Licensed Software.

These are your only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.

- e. DISCLAIMER OF OTHER WARRANTIES. OTHER THAN THIS LIMITED WARRANTY, WE PROVIDE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. WE DISCLAIM ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.**

## 8. Defense of infringement, misappropriation, and third party claims.

**a. Limitations on defense obligation.** Our obligations will not apply to the extent that the claim or award is based on:

- (i) Customer Data, code, or materials you provided as part of the use of an Online Service;
- (ii) your use of the Product after we notify you to discontinue that use due to a third party claim;
- (iii) your combination of the Product with a non-Campbell Scientific product, data or business process;
- (iv) damages attributable to the value of the use of a non-Campbell Scientific product, data or business process;
- (v) modifications you make to the Product;
- (vi) your redistribution of the Product to, or use for the benefit of, any unaffiliated third party;
- (vii) your use of Campbell Scientific's trademark(s) without express written consent to do so; or
- (viii) any trade secret claim, where you acquire the trade secret or undisclosed information (1) through improper means; (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (3) from a person (other than us or one of our Affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret.

You will reimburse us for any costs or damages that result from any of the above actions.

**b. Specific rights and remedies in case of infringement.**

- (i) **Our rights in addressing possible infringement.** If we receive information concerning an infringement claim related to a Product, we may, at our expense and without obligation to do so: (1) procure for you the right to continue to use the allegedly infringing Product; (2) modify the Product; (3) replace the Product with a functional equivalent, to make it non-infringing, in which case you will immediately stop using the allegedly infringing Product after receiving notice from us; or (4) terminate any applicable Subscriptions if the Product was provided free of charge.
- (ii) **Your specific remedy in case of injunction.** If, as a result of an infringement claim, your use of a Product is enjoined by a court of competent jurisdiction, we will, at our option, either: (1) procure the right to continue its use; (2) replace it with a functional equivalent; (3) modify it to make it non-infringing; (4) terminate the License for the infringing Product and refund any amounts you paid in advance for unused Product; or (5) terminate any applicable Subscriptions if the Product was provided free of charge.

**c. Your agreement to protect.** You will defend us and our Affiliates against any claims made by an unaffiliated third party (1) that any Customer Data or non-Campbell Scientific software we host on your behalf infringes the third party's patent, copyright, or trademark or makes intentional unlawful use of its Trade Secret, or (2) related to your use of the Product in violation of this agreement. You must pay the amount of any resulting adverse final judgment (or settlement to which you consent). This section provides our exclusive remedy for these claims.

**d. Obligations of protected party.** We must notify you promptly in writing of a claim subject to the subsection titled "Your agreement to protect." The party invoking its right to protection must (1) give the other party sole control over the defense or settlement; and (2) provide reasonable assistance in defending the claim. The party providing the protection will reimburse the other party for reasonable out of pocket expenses that it incurs in providing assistance.

## 9. Limitation of liability.

**a. Limitation on liability.** Except as otherwise provided in this Section, to the extent permitted by applicable law, our and our Affiliates' and contractors' liability to you arising under this agreement is limited to direct damages up to the amount you paid us for the Product giving rise to that liability during the (1) Term or (2) twelve months prior to the filing of the claim, whichever is less. In the

case of Products provided free of charge or any code that you are authorized to redistribute to third parties without separate payment to Campbell Scientific, our and our Affiliates' and contractors' liability to you arising under this agreement is limited to one United Kingdom Pound Sterling (£1.00 GBP). These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:

- (i) Our obligations under the Section titled "Defense of infringement, misappropriation, and third party claims";
- (ii) liability for damages awarded by a court of final adjudication for our or our employees' or agents' gross negligence or willful misconduct;
- (iii) liabilities arising out of any breach of our obligations under the Section entitled "Confidentiality", except that our and our Affiliates' and contractors' liability arising out of or in relation to Customer Data shall in all cases be limited to the amount you paid for the Online Service giving rise to that liability during the (1) Term or (2) twelve months prior to the filing of the claim, whichever is less; and
- (iv) liability for personal injury or death caused by our negligence or that of our employees or agents or for fraudulent misrepresentation.

**b. EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES OR SUPPLIERS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS (EXCEPT TO THE EXTENT THAT SUCH VIOLATION RELATES TO CUSTOMER DATA), THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR THE PARTIES' RESPECTIVE OBLIGATIONS IN THE SECTION TITLED "DEFENSE OF INFRINGEMENT, MISAPPROPRIATION, AND THIRD PARTY CLAIMS."**

## 10. Verifying compliance.

During the Term of any Subscription and for three years thereafter, you must keep all usual and proper records relating to the Subscription(s) and your use of Products under this agreement. We may request that you conduct an internal audit of all Products in use throughout your organization, comparing the number of Licenses in use to the number of Licenses issued to and/or paid for by you. By requesting an audit, we do not waive our rights to enforce this agreement or to protect Campbell Scientific intellectual property by any other means permitted by law.

If verification or self-audit reveals any unlicensed use, you must promptly order sufficient Licenses to cover your past and present use. If material unlicensed use is found, you must reimburse us for the costs we incurred in verification and acquire the necessary additional Licenses at retail license cost within 30 days.

## 11. Miscellaneous.

**a. Notices to us.** You must send notices, authorizations, and requests in connection with this agreement by regular or overnight mail, express courier, or fax to the address listed below. We will treat notices as delivered on the date shown on the return receipt or on the courier or fax confirmation of delivery.

<p style="text-align: center;"><b>Notices should be sent to:</b></p> <p style="text-align: center;">Campbell Scientific Limited Konect Global Data Service Campbell Park 80 Hathern Road Shepshed Leicestershire LE12 9GX United Kingdom</p> <p style="text-align: center;">Via Facsimile: +44 (0)1509 601091</p>
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**b. Electronic notices to you.** We may provide you with information about the Online Service in electronic form. It may be via email to the address you provide when you sign up for the Online Service (as you may update via the Portal), through your Konect Global Data Service inbox or through a web site that we identify. Notice via email is given as of the transmission date. As long as you use the Online Service, you have the software and hardware needed to receive these notices. You may not use the Online Service if you do not agree to receive these electronic notices. In addition, various service communications may be sent via email to account administrators you identify and may update via the Portal.

- c. Assignment.** You may not assign this agreement. We may assign this agreement to our Affiliates.
- d. Severability.** If a court holds any provision(s) of this agreement to be illegal, invalid or unenforceable, the rest of the document will remain in effect and this agreement will be amended to give effect to the eliminated provision to the maximum extent possible.
- e. Waiver.** A waiver of any breach of this agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.
- f. Applicable law.** This agreement is governed by the laws of England and Wales without regard to its conflict of laws principles. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this agreement. The Products are protected by copyright and other intellectual property rights laws and international treaties.
- g. Dispute resolution.** Any action to enforce this agreement must be brought in England and Wales. This choice of jurisdiction does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction. If you are a U.S. Government or state or local government entity, this Section does not apply and jurisdiction and venue will be determined by applicable law.
- h. This agreement is not exclusive.** You are free to enter into agreements to license, use or promote non-Campbell Scientific software or services.
- i. Entire agreement.** This agreement constitutes the entire agreement concerning the subject matter and supersedes any prior or contemporaneous communications.
- j. Survival.** Provisions regarding fees, Online Services Use Rights, restrictions on use, transfer of Licenses, export restrictions, defense of infringement, misappropriation, and third party claims, limitations of liability, confidentiality, compliance verification, obligations on termination and the provisions in this Section entitled "Miscellaneous" will survive termination or expiration of this agreement.
- k. No transfer of ownership.** We do not transfer any ownership rights in any Products. We reserve all rights not specifically granted in this agreement. Products are protected by copyright and other intellectual property rights, laws and international treaties.
- l. Force majeure.** Neither party will be liable for any failure in performance due to causes beyond either party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labour disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Online Services)). This Section will not, however, apply to your payment obligations under this agreement.
- m. Natural disaster.** In the event of a natural disaster, we may post information or provide additional assistance or rights on <http://www.konectgds.com>
- n. Protocol Overheads.** Any data thresholds specified as part of a subscription include overheads imposed by any protocol such as PakBus.