Optimity

Terms & Conditions

Contents

General Terms

1	AGREEMENT FORMATION	3
2	TERM	5
3	CUSTOMER'S OBLIGATIONS	5
4	FRAUD/SECURITY	6
5	CHARGES	6
6	INVOICING/PAYMENT	7
7	LIMITATION OF LIABILITY	7
8	CUSTOMER'S INDEMNITY	7
9	TERMINATION	7
10	CONFIDENTIALITY	7
11	DATA PROTECTION	7
12	INTELLECTUAL PROPERTY RIGHTS	7
13	GENERAL	8
14	CHANGES TO THE AGREEMENT	8
	DEFINITIONS	9
	APPENDIX A - SUPPLY OF EQUIPMENT AND INSTALLATION SERVICES	11
	APPENDIX B - NETWORK SERVICES	12
	APPENDIX C - SUPPORT SERVICES	14
	APPENDIX D - CONSULTANCY SERVICES	16
	APPENDIX E - HOSTING SERVICES	17

1. AGREEMENT FORMATION

1.1 The purpose of these Optimity Terms and Conditions is to provide general terms and conditions ("General Terms and Conditions") and a framework within which Customer may from time to time purchase for its use certain telecommunications and related services from Optimity. Additional terms and conditions that apply to each particular type of Service purchased by Customer are set forth in the Appendices hereto as Service Schedules. Customer may request Services from Optimity by submitting Optimity's form of Statement of Work in accordance with these Optimity Terms and Conditions. All Statements of Work are subject to availability and acceptance by Optimity.

1.2 These Optimity Terms and Conditions supersede all other terms, conditions and warranties which are implied by law or which the Customer may purport to apply under any purchase order, acknowledgement of delivery or similar document or otherwise; and/or which have been established between Optimity and the Customer by course of dealing, unless Optimity and Customer have mutually negotiated, executed and delivered a separate master services agreement for provision of Service(s) to Customer, in which case the terms and conditions of such master services agreement shall replace these Optimity Terms and Conditions.

1.3 The entire Agreement is formed of these Optimity Terms and Conditions (including both the General Terms and Conditions and Service Schedules relevant to the Equipment/Services being provided) and the Statement of Work.

1.4 If there is any express conflict between the General Terms and Conditions, the Service Schedule and the Statement of Work, the order of priority (highest first) shall be the Statement of Work, then the Service Schedule, and finally the General Terms and Conditions.

2. TERM

2.1 The Agreement (and the Customer's liability) commences upon the date that Optimity receives an order in respect of a signed Statement of Work from Customer, and shall continue thereafter until such time as Optimity is no longer providing Customer with Service(s) and there are no outstanding Statements of Work, unless earlier terminated in accordance with this Agreement.

2.2 The Term of each Statement of Work shall commence on the date of installation of the service and, continue for the Minimum Term specified therein, and thereafter shall automatically renew for successive periods of 12 months each unless and until terminated in accordance with this Agreement except in the case of wireless fibre network (Wibre) services. Any Wibre Service coming to the end of its Minimum Term or anniversary of commencement on or after 1st January 2021, shall instead be capable of termination by either party on a minimum 3 month's notice to be given in writing. Statements of Work may not be cancelled or terminated prior to their scheduled expiry date except in accordance with the express provisions of this Agreement

2.3 The Customer may terminate a Statement of Work by giving ninety days' Notice in writing to Optimity, such notice to become effective no earlier than the scheduled expiry of the Minimum Term of such Statement of Work or upon each such scheduled expiry date thereafter (as applicable). If the Customer does not elect to deliver such Notice, the term of the relevant Statement of Work will continue to automatically renew as above.

3. CUSTOMER OBLIGATIONS

3.1 The Customer shall be responsible for providing Optimity with all information relevant to the supply of the Equipment and the provision of Services within sufficient time to enable Optimity to duly perform the Agreement.

3.2 The Customer shall ensure that the details set out on the Statement of Work are accurate and fully describe the Customer's requirements.

3.3 the Customer shall permit or procure permission for Optimity, its agents, employees, representatives, sub-contractors and any other person(s) authorised by Optimity to have reasonable access to the Site, Equipment, Supported Equipment and any other relevant telephone system and other equipment and shall provide such reasonable assistance as Optimity requests.

3.4 Optimity will normally carry out work by appointment and during Normal Working Hours but may request the Customer to (and the Customer shall) provide access at other times.

3.5 The Customer warrants, represents and undertakes that there are adequate health and safety provisions in place at the Site, there is a suitable and safe working environment, and that the Customer holds third party public liability insurance with a level of cover of at least the minimum required by Relevant Law.

3.6 The Customer shall procure all consents, licences, wayleaves and permissions necessary from landlords or other third parties for the carrying out of preparation work, installation of Equipment and for the provision, use and operation of the Equipment, the Supported Equipment and/or Services at the Sites (save to the extent Optimity has agreed in writing to do it) and keep them in effect for the duration of the term of the relevant Statement of Work. The Customer shall provide copies of such consents, licences and permissions to Optimity upon request.

3.7 Where relevant, the Customer shall provide Optimity with the site and building plans (to include full details of all internal cabling runs) of the Sites and provide Optimity with full details of all other services in the vicinity of the proposed works.

3.8 If the new installation or moving Site involves the visit of an engineer to facilitate the new installation, the Customer may be required to pay for the costs incurred by Optimity for the appointment of the engineer together with an administration fee at Optimity's standard rate in respect of any additional works required to be undertaken by Optimity to complete the transfer of the Services and Equipment.

3.9 The Customer shall comply with Relevant Laws, and ensure that Customer's End Users so comply, in relation to the use of the Services.

3.10 The Customer shall not, and shall ensure that its End Users shall not, (a) use the Services in any manner that in our reasonable opinion brings Optimity's name or business into disrepute or which in any way causes damage or disruption to Optimity's network, the Services, or any other services or systems operated by Optimity or supplied to us by a third party; and (b) use the Services for any purpose other than that for which it was designed or intended or specified in any materials or documentation Optimity provides to Customer.

3.11 The Customer shall not offer (by resale or otherwise) services which are similar to or competitive with those provided by Optimity to any other customer of Optimity (including internet access or other connectivity services)) except as may be expressly approved by Optimity and set forth in the relevant Statement of Work.

3.12 The Customer shall provide a suitable environment for the equipment such that the equipment remains in good order. The Customer shall be liable

if the environment is such that it impacts the condition of any Optimity equipment.

4. FRAUD/SECURITY

4.1 The Customer shall ensure that user names and passwords used by it and/or its personnel and/or users in connection with the Services are kept secure and confidential always and are only used by authorised users. The Customer shall inform Optimity immediately if the Customer knows or suspects that a user name or password has been disclosed to an unauthorised user, or is being used in an unauthorised way, or if there is any illegal, fraudulent or unauthorised use of the Services or Equipment. The Customer will not change or attempt to change a user name without Optimity's written consent.

4.2 Optimity reserves the right (at Optimity's sole discretion):

4.2.1 to suspend access to the Services by one or more user names if at any time Optimity believes that there has been or is likely to be a breach of security (including a breach of the Customer's obligations under this condition; and

4.2.2 to ask the Customer to (in which case, the Customer shall) change any or all the passwords the Customer's uses in connection with the Services.

4.3 The Customer will inform Optimity immediately of any subsequent changes to the information the Customer supplies to Optimity in connection with the Agreement.

4.4 The Customer accepts and acknowledges that the Services are not guaranteed to be secure and Optimity does not guarantee the prevention or detection of any unauthorised attempts to access the Services.

4.5 The Customer acknowledges that Optimity has no control of a Customer's PABX/switch configuration, voice mail security or other feature services enabled by Customer, and Optimity shall not be responsible for any such matters within Customer's control.

4.6 Optimity shall not be responsible for call charges or other charges resulting from fraudulent and/or unauthorised use of the Equipment and/or Services or any use of the Equipment and/or Services by any unauthorised third parties (who are not employees of Optimity). The Customer shall be responsible for all use of the Services in association with the Customer's accounts whether or not authorised by the Customer. The Customer agrees to immediately notify Optimity of any unauthorised use of the Customer's account of which the Customer becomes aware and the Customer agrees to pay all additional charges related to fraudulent and/or unauthorised usage. The Customer is therefore urged to verify with their equipment provider that all necessary steps to combat fraudulent and/or unauthorised use have been taken.

4.7 Any assistance given by Optimity in relation to fraudulent and/or unauthorised use by the Customer or third parties (or the prevention of such use) will be on a reasonable endeavours basis only and no liability can be accepted by Optimity for any loss sustained by the Customer via fraudulent and/or unauthorised means that are beyond Optimity's reasonable control (save for any fraud and/or authorised use by an employee of Optimity acting in that capacity).

4.8 The Customer shall, at all times, be responsible for preventing unauthorised use of the Equipment and/or Services; (a) maintaining the security of all systems, Services, network elements and Equipment within its (or its employees', agents' or contractors') control; and (b) maintaining (and ensuring that each of its authorised users maintains) at all times, the integrity and secrecy of all passwords, log-in details and access codes used for the purposes of accessing or using the Services or any systems, network elements or Equipment. Optimity shall have no liability for any such matters.

5. CHARGES

5.1 Any invoices issued by Optimity in respect of the Charges shall, save in the case of manifest error, be final, conclusive and binding on the Customer.

5.2 The Charges will be as detailed on the Statement of Work. The Charges may include One Time Charges, Monthy Recurring Charges and/or Usage Based Charges.

5.3. Unless otherwise specified in the relevant Statement of Work, the One Time Charges assume that the Delivery of the Equipment and (where applicable) Installation Services will be completed in one visit to the Site and accordingly Optimity may at its discretion at any time increase the One Time Charges to take account of any additional costs to Optimity (including but not limited to storage and delivery costs) reasonably incurred in the event that Delivery and/or the Installation Services require more than one visit.

5.4 Usage Based Charges payable shall be calculated by reference to data recorded or logged by Optimity and not by reference to any data recorded or logged by the Customer.

5.5 Optimity shall be entitled to increase the Charges for Services upon the automatic renewal of the term of the relevant Statement of Work, and every subsequent anniversary thereof, by the increase (if any) in the rate of RPI since the commencement of the Service or applicable renewal.

5.6 The Charges will be as stated on the Statement of Work and are exclusive of VAT or any other tax or duty payable which will be added at the prevailing rate at the date of the invoice.

5.7 On transfer of Services to a new supplier, Optimity shall be entitled to charge Customer and third-party migration costs incurred plus a £100 administration fee

6. INVOICING AND PAYMENT

6.1 Unless otherwise stated on the Statement of Work, a deposit equal to at least one half of the One Time Charges is payable by the Customer at the time of the placing of the relevant order, and the balance of such One Time Charges shall be invoiced to Customer upon the Commencement Date of the relevant Service(s).

6.2 Unless otherwise stated on the Statement of Work, the Customer shall be invoiced either monthly in arrears for Usage Based Charges or, in the case of Network or Support Services, quarterly in advance for Monthly Recurring Charges by Optimity, and shall pay any Charges within thirty (30) days of the date of the invoice (unless otherwise expressly agreed with Optimity and set out on the Statement of Work).

6.3 Unless otherwise stated on the Statement of Work, the Customer will pay the Charges to Optimity by direct debit (to such account as Optimity may designate from time to time for that purpose) in advance of the relevant period as set out on the Statement of Work.

6.4 If payment of any sum payable to Optimity is not made on or before the due date, Optimity shall be entitled to charge interest thereafter on such sum at either the rate of four per cent per annum above the current base rate of The Royal Bank of Scotland plc from time to time or, if higher, such rate as Optimity would be entitled to claim under the Late Payment of Commercial Debts (Interest) Act 1998 (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) from the due date until the date of payment whether before or after judgment.

6.5 If Optimity is unable, for whatever reason, to recover any sum due under the Customer's account within thirty (30) days following the due date for payment, Optimity reserves the right to forthwith suspend all or any of the Services.

6.7 Without prejudice to Optimity's other remedies, if the Customer's account remains outstanding for any reason after the original due date for payment, then the Customer will be charged an administration fee at Optimity's standard rate for correspondence in connection with the recovery of the overdue amount. Optimity may also charge the Customer an administrative fee where it suspends a Network Service for non- payment; and Optimity reserves the right to refer the outstanding account to a debt collection agency. If Optimity instructs a debt collection agency to collect payment (including interest and late payment charges) on its behalf the Customer must pay Optimity's costs payable to the agency, who will add the sum to the Customer's outstanding debt.

6.8 If the Customer cancels an active direct debit instruction following the Effective Date, an additional administration fee may be notified to the Customer by Optimity and will be added to the monthly invoice until the direct debit instruction is reinstated. Optimity also reserves the right to charge the Customer a direct debit cancellation fee at Optimity's then applicable rate.

6.9 If any sum owed by the Customer to Optimity under the Agreement or any other contract with Optimity is not paid by the due date, Optimity may deduct this sum from any payment or credit due to the Customer under the Agreement or any other contract with Optimity.

6.19 Payment of all sums due to Optimity shall be made without any set-off whatsoever.

6.11 If the Customer intends to dispute any charge on an invoice, the Customer must do so in writing to Optimity within thirty (30) days of the date of the invoice and provide Optimity with all relevant information in support of the dispute. Where the disputed charge(s) amount to:

6.11.1 less than five per cent of the total charges listed on the invoice, the Customer will pay the full amount of the invoice; or

6.11.2 more than five per cent of the total charges listed on the invoice, the Customer must pay the remaining amount of the invoice that is not in dispute.

7. LIMITATION OF LIABILITY

7.1 Unless otherwise expressly stated in this Agreement, Optimity makes no warranty in respect of the supply of Equipment and/or Services and all other terms, conditions and warranties which may otherwise be implied into this Agreement by law or course of dealings between the parties are hereby excluded to the fullest extent legally possible.

7.2 In no circumstances shall Optimity's liability to the Customer arising under or in connection with this Agreement (whether in contract, tort (including without limitation negligence) misrepresentation, breach of statutory duty or otherwise) in any Agreement Year exceed 110% of the Charges paid in the twelve months prior to the date on which a claim arose.

7.3 Under no circumstances shall Optimity be liable in any event under or in connection with the Agreement and whether in contract, tort (including negligence) misrepresentation, breach of statutory duty or otherwise for any (a) loss of revenue; (b) loss of business; (c) loss of contracts; (d) loss of, damage to, or corruption of data; (e) loss of anticipated savings; (f) loss of profits; or (g) indirect, consequential or special losses; whether or not Optimity knew or ought to have known that such losses or damages might be incurred.

7.4 Except for payment of amounts due under the Agreement, neither party shall be liable to the other party for any breach of contract, tort (including but not limited to negligence) misrepresentation, breach of statutory duty or otherwise caused by any reason outside the reasonable control or responsibility of that party including, in respect of Fixed Network Services supplied by Optimity, the failure of any Carrier to provide network capacity and/or connectivity (or any element thereof) to Optimity on which it was reliant for the purposes of the Agreement, any act of God, terrorist attacks, inclement weather, accidental damage, vandalism, failure or shortage or power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, any act or omission of Government, highways authorities, or other competent authorities, or other event beyond the control of the parties.

7.5 Nothing in this Agreement excludes or restricts either party's liability for: (a) death or personal injury resulting from that party's negligence or its employees' negligence (while acting in the course of their employment); (b) any fraud, fraudulent misrepresentation or fraudulent misstatement; and/or (c) anything for which the parties cannot at law limit or exclude their liability.

7.6 The Customer agrees that any cause of action that it may have against Optimity (including, its (or their) affiliates, directors, officers, agents, consultants and employees) must commence within two (2) years after the cause of action arose, otherwise, the Customer's cause of action is permanently barred.

8. INDEMNITY

8.1 Without prejudice to any other rights of Optimity, the Customer shall indemnify, keep indemnified and hold harmless Optimity against all costs (including without limitation legal costs and the cost of enforcement (on a full indemnity basis)) liabilities, claims, damages, direct, indirect or consequential losses (including without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss whether such losses are direct, indirect or consequential losses), expenses and/or judgments whatsoever, which it may suffer or incur, and arising from any: a) breach by the Customer of any warranties, covenants, undertakings and/or representations given under the Agreement; and/or b) injury and/or damage suffered or incurred by or to any of Optimity's (or any of Optimity's contractor's) employees and/or equipment whilst on the Site (except to the extent of the indemnified party's negligence or wilful misconduct); and/or c) infringement by the Customer (including, its affiliates, directors, officers, agents, consultants and employees) of any third party's Intellectual Property Rights.

8.2 In the event that Customer's use of the Service(s) infringes, or is alleged to infringe, upon a third party's Intellectual Property Rights, Optimity will indemnify and defend Customer against all costs, liabilities, claims, or damages, on the condition that Customer: (a) notify Optimity immediately of the claim; (b) allow Optimity exclusive control of the defense of the claim; (c) make no admissions of liability or offer or accept any settlement of the claim without Optimity's prior written consent; and (d) provide Optimity with reasonable cooperation and assistance in the defence of the claim as requested by Optimity. Optimity shall have no obligation to indemnify Customer in the event that the claimed infringement arose or resulted from: (1) Customer's use of the Service in combination with equipment, software or equipment which was not supplied by Optimity; (2) any modification of the Service(s) or Equipment without Optimity's written authorisation; (3) use of the Service(s) in a way not permitted by this Agreement. If Customer's use of the Service(s) leads to a claim of such infringement, or if Optimity reasonably believes that it may lead to one, Optimity shall have the right, at Optimity's option, to (x) obtain the right to permit Customer to continue to use the Service(s) without infringement; or (y) modify or replace the infringing elements of the Service(s) to eliminate the infringement, so long as the Service(s) are not materially adversely affected thereby.

8.3 The foregoing sub-clause 8.2 sets forth Customer's exclusive remedies for claims that Customer's use of the Service(s) infringe a third party's Intellectual Property Rights.

9. TERMINATION

9.1 Without prejudice to any other right of Optimity to suspend or terminate any or all the Services under these Conditions, Optimity reserves the right to suspend provision of any Services until further notice without liability to the Customer having given the Customer reasonable notice either orally (confirming such notification in writing) or in writing if: (a) the Customer is in breach of a material term of these Optimity Terms and Conditions and/or the Agreement and/or any other contract between the parties from time to time including but not limited to the Customer's failure to pay the Charges (or any of them) to Optimity by the due date or to comply with the Broadband Acceptable Use Policy; (b) an Emergency occurs and/or Optimity is obliged to comply with an order, instruction or request of the Government, an emergency services organisation or other competent administrative or regulatory authority (including OFCOM); (c) Optimity has reasonable grounds to believe that any of the Services are being used fraudulently, unlawfully or by an unauthorised third party; (d) any licence under which the Customer has the right to run its telecommunications system and/or connect to the Services or use any of the Services is revoked, amended or otherwise ceases to be valid; (e) Optimity or any member of its Group is entitled to suspend and/or terminate provision of any other telecommunications service under the terms of any other agreement with the Customer; or (f) any maintenance or repair is necessary (for the purposes of new provision, updating facilities, general maintenance support or otherwise) or required to the relevant network or related systems or equipment (for the avoidance of doubt, in the event of emergency maintenance or repair, Optimity shall not be required to give any notice).

9.2 The Customer shall not have access to any data stored through the Hosting Services during a suspension. The Customer shall have the opportunity to create a snapshot backup of the data stored through the Hosting Services, and the Customer shall pay Optimity the applicable charges for undertaking such a backup, in accordance with Optimity's then current charges. Upon the cessation of Hosting Services, Optimity will not retain any of Customer's data for more than thirty (30) days unless a Statement of Work to provide for such extended retention and costs thereof is agreed.

9.3 Optimity may terminate (in whole or in part) the Agreement forthwith if its right, or the right of the relevant Carrier, to provide any of the Services is withdrawn by any supplier to it or OFCOM pursuant to the General Conditions or otherwise.

9.4 The Agreement may be terminated forthwith by either party by Notice in writing if the other party materially breaches its obligations under this Agreement (including without limitation non-payment of charges due) and in the case of breaches which are capable of remedy such party fails to remedy such breach within fourteen days of written notice by the other party, such notice shall contain details of what the breach is and requesting that the breach is remedied. Optimity shall also be permitted to terminate this Agreement forthwith on notice to the Customer in the event that the Customer is in material breach of any other contract to which these Optimity Terms and Conditions apply (as in force from time to time) and which breach, if capable of remedy, has not been remedied within fourteen days of written notice by Optimity, such notice shall contain details of what the breach is and requesting that the breach is remedied.

9.5 Notwithstanding anything to the contrary expressed or implied in these Optimity Terms and Conditions, either party (without prejudice to its own rights) may terminate the Agreement forthwith in the event that a liquidator (other than for the purpose of solvent amalgamation or reconstruction) trustee in bankruptcy, administrator or receiver is appointed in respect of the whole or part of the assets and/or undertaking of the other party or the other party enters into an arrangement or composition with its creditors, or other circumstances arise which entitle a court or creditor to appoint a receiver or administrator or to make a winding up order (save as in respect of a solvent reconstruction of such relevant party's group of companies).

9.6 Optimity shall be entitled to terminate the Agreement forthwith in circumstances where it also has a right to suspend the provision of the Services.

9.7 The termination or expiry of the Agreement shall be without prejudice to any rights or liabilities which have accrued prior to such expiry or termination. Any provision of this Agreement which expressly or by implication is intended to survive, shall survive the termination or expiry of the Agreement.

9.8 Any implied right to terminate for convenience that the Customer may have under applicable law is hereby expressly excluded.

9.9 For the avoidance of doubt, in the event of termination of the Agreement for any reason other than repudiatory breach by Optimity, the Customer shall not be entitled to a refund of any pre-paid sums (including, without limit, subscription, rental and/or support charges) whether such sums are attributable to the period before, including or after the date the Agreement terminates.

10. CONFIDENTIALITY/RIPA

10.1 Optimity and the Customer will keep in confidence any information of the other; whether written or oral, of a confidential nature obtained under or in connection with the Agreement except to the extent any disclosure is required by law, regulation, order of a court or other governmental body having jurisdiction. Subject to the foregoing exception, the Customer and Optimity will not, without the consent of the other, disclose such information to any person other than to its personnel and representatives who require such information in order to provide the Service to Customer, provided that it advise such personnel and representatives of the confidential nature of such information and at all times is responsible for such personnel and representatives' compliance with the confidentiality obligations set forth herein.

10.2 The restrictions set forth in the foregoing sub-clause 10.1 do not apply to information which: (a) is independently developed by the receiving party; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public (other than as a result of disclosure by the receiving party or its personnel or representatives in breach of this clause 10.

10.3 Optimity and the Customer shall not use the other's confidential information for any purpose other than exercising or performing its rights and obligations under this Agreement.

10.3 If the Customer receives a request under the Freedom of Information Act 2000 which encompasses any information provided to the Customer by Optimity in connection with the Agreement the Customer will notify Optimity immediately of the request and give Optimity at least ten Business Days to make representations before releasing the requested information (save to extent otherwise required by law).

11. DATA PROTECTION

11.1 Optimity and Customer each shall comply with their respective obligations under applicable Data Protection Laws in relation to the Agreement.

11.2 Optimity may collect, use and Process Personal Data in connection with: (a) its management and fulfilment of orders for Service(s); (b) delivery and activation of the Service(s); (c) management and resolution of faults with the Service(s); (d) the credit approval of Customer, and the preparation and management of invoicing for the Service(s); administration of the Agreement and resolution of disputes relating to the Agreement; (e) responding to questions relating to the Service(s); and (f) complying with Optimity's legal obligations under Relevant Laws.

11.3 Optimity may be required to share this Personal Data with Optimity's Affiliates and other third parties in order to carry out its obligations under the Agreement, and Customer authorises such transfer to Sub-processors in other countries outside the UK and/or the European Economic Area. Optimity shall comply with applicable Data Protection Laws in its sharing, transfer and use of such Personal Data.

11.4 Optimity may communicate with Customer and its personnel in providing information about the Service which may include marketing materials. Optimity will provide Customer with a means to opt out of receiving such marketing communications.

11.5 Customer shall obtain and maintain all required notifications, consents and permissions to enable the lawful transfer of Personal Data to Optimity for the term and purposes of the Agreement.

11.6 Customer shall disclose to Optimity only such Personal Data as Optimity needs in order to perform the Service(s).

11.7 Where Optimity Processes Personal Data for which Customer is the sole Data Controller, Optimity shall: (a) Process such Personal Data in accordance with Customer's instructions and as necessary to perform Optimity's obligations under the Agreement; (b) maintain appropriate organisational and technical measures to protect such Personal Data from accidental loss, destruction, disclosure or access; and (c) not disclose such Personal Data to third parties unless permitted by the Agreement, required in order to install, deliver and/or perform the Service, or required by Relevant Laws.

11.8 At Customer's election, Optimity shall delete or return all Customer Personal Data and any copies of that data to Customer at the end of the provision of the Services (unless required or permitted by applicable Data Protection Laws to store the Personal Data).

11.9 The Parties shall provide each other with notice of any security breach affecting either Party's Personal Data under this Agreement as soon as possible upon becoming aware of the same. The Parties shall provide each other with reasonable assistance and Information in relation to any such security breach.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 Any Intellectual Property Rights supplied by Optimity to the Customer, or specifically produced by Optimity for the Customer, in connection with this Agreement, shall be the exclusive property of Optimity and to the extent that any such rights vest in the Customer shall be deemed to be and shall be assigned to Optimity by the Customer. Any Intellectual Property Rights belonging to, licensed to or supplied by Optimity to the Customer shall be used by the Customer as expressly permitted under the terms of this Agreement and in accordance with the instructions of Optimity.

12.2 Any licence provided by Optimity to the Customer in relation to the Intellectual Property Rights shall be personal to the Customer, non-exclusive, revocable and limited to the United Kingdom and in the absence of earlier revocation shall terminate upon termination of this Agreement.

12.3 By using the Services (in particular, but without limitation, the Hosting Services) the Customer shall provide Optimity with information and data, title to which shall remain vested in the Customer (or its licensors). The Customer warrants, represents and undertakes that it has all necessary rights and licences to use and transmit over the internet to the Customer all information and data which will be subject to the Hosting Services and hereby grants Optimity a non-exclusive licence to use such information and data for the purposes of performing the Services.

13. GENERAL

13.1 No forbearance or indulgence shown or granted by Optimity to the Customer whether in respect of these General Terms and Conditions and/or any Service Schedule or otherwise shall in any way affect or prejudice the rights of Optimity against the Customer or be regarded as a waiver of any of these General Terms and Conditions and/or any Service Schedule.

13.2 The Agreement (and any non-contractual matters arising out of or in connection with it) shall be governed by and construed in all respects in accordance with English law and the Customer hereby submits for all purposes of and in connection with the Agreement to the exclusive jurisdiction of the English Courts (including in relation to non-contractual disputes).

13.3 The Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else and no third party shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

13.4 Any notice, invoice or other document which may be given by either party under the Agreement shall be in writing (except as provided otherwise) sent for the attention of the relevant person, and to the address given on the Statement of Work (or such other address or person as the relevant party may notify to the other party) and shall be delivered personally, or sent by pre-paid, first-class post or recorded delivery. E-mail shall not be a valid method of serving notices under this Agreement.

13.5 The words “include” or “including” shall be read as including the words “without limitation” following them in each instance in the Agreement.

13.6 The Customer shall not, without the prior written consent of Optimity, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

13.7 Optimity may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement without the consent of the Customer. However, the Customer shall, if Optimity requires, execute such deeds and/or documents as may be necessary or required by Optimity to give effect to any such dealing in such rights and/or obligations.

13.8 Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

13.9 The Customer shall not, without the prior written consent of Optimity, at any time from the date of the Agreement to the expiry of six months after the termination or expiry of the Agreement, actively solicit or entice away from Optimity, or actively employ or attempt to employ (save where the relevant person has responded to a general advertisement by the Customer for the relevant job vacancy), any person who is, or has been, engaged as an employee or sub-contractor of Optimity in the provision of the Services to the Customer. Any consent given by Optimity shall be subject to the Customer paying to Optimity a sum equivalent to twenty per cent of the then current annual remuneration of Optimity’s employee or sub-contractor or, if higher, twenty per cent of the annual remuneration to be paid by the Customer to that employee or sub-contractor.

13.10 If any provision (or part of a provision) of the Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

13.11 Save where the context otherwise requires, in the Agreement a reference to a "person" shall include a company, body corporate, unincorporated association, state, governmental or statutory body or authority, and/or a partnership, as well as a natural person (as appropriate).

13.12 Nothing in the Agreement is to be construed as establishing or implying any partnership or joint venture between the parties, or as appointing any party as the agent or employee of any other party.

13.13 The Agreement constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter. Neither party has entered into the Agreement in reliance upon and nor shall they have any remedy in respect of, any representation or statement (whether made by the other party or any other person) which is not expressly set out in the Agreement.

14. CHANGES TO THE AGREEMENT

14.1 Optimity may change the Optimity Terms and Conditions at any time and will publish on Optimity’s website any change at least thirty (30) days before the change is to take effect for changes that may be of material detriment to the Customer;

14.2 If the Customer wishes to object to any proposed change which is of material detriment to the Customer, the Customer must notify Optimity in writing within thirty (30) days of publication of the proposed change, otherwise the Customer will be deemed to have accepted the proposed change. For the avoidance of doubt, the service by Optimity of any notice shall not constitute either acceptance of or an admission by Optimity that any proposed change is of material detriment to the Customer, nor shall the service of notice by the Customer under this condition constitute or be deemed to constitute evidence that the relevant change is of material detriment to the Customer.

14.3 Optimity may, if requested by the Customer, provide additional services to be included within the Services under such additional terms and conditions as may be notified by Optimity from time to time.

14.4 No variation of the terms of the Agreement however notified (save with regard to the manuscript details on the Statement of Work including, where initialled by both parties, manuscript amendments to the type face, as such details may be inputted by authorised staff of Optimity) will be accepted by Optimity unless authorised by notice in writing by a Director of Optimity.

DEFINITIONS

Additional Charges means Charges which may be made for additional services supplied;

Agreement means the contract between the Customer and Optimity for the provision of the Equipment and/or Services (or any of them) incorporating these Optimity Terms and Conditions, the Statement of Work and any other terms or conditions incorporated into the Agreement;

Annual Support Charge means the support charge for the Support Services as set out on the Statement of Work;

Anti-Bribery Laws means all statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws which relate to anti-bribery and/or anti-corruption, including the Bribery Act;

Appendices means the attachments to the Optimity Terms and Conditions which contain Service Schedules setting forth service-specific additional terms and conditions for the Services.

Applicable data protection law means the legislation protecting the fundamental rights and freedoms of individuals in respect of their personal data and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

Bribery Act means the Bribery Act 2010;

Business Day means Monday to Friday (inclusive) in any week but excluding English bank holidays or public holidays;

Carrier means a communications provider from whom Optimity may obtain various services which may be included in the Service(s) Optimity provides to Customer.

Charges means amounts payable by Customer to Optimity pursuant to the terms and condition of the Agreement and may include One Time Charges, Monthly Recurring Charges, Usage Based Charges, Annual Support Charges and/or Additional Charges.

Connection Date means the date when the Carrier, having received the relevant information from Optimity, is able to, and has agreed to, commence provision of the Network Services to the Customer;

Consultancy Services means the consultancy services more particularly detailed on the Statement of Work to be provided hereunder by Optimity to the Customer;

Contractor means any person who, on or prior to the Effective Date of the Agreement (and/or prior to the date of the transfer of such services to Optimity), supplied services to the Customer which were the same as or similar to those provided or to be provided by Optimity to the Customer under the Agreement;

Customer means the person, firm or company specified on the Statement of Work and any other person appearing to act within that person's, firm's, or company's authority and includes where relevant the Customer's permitted assigns;

Data exporter means the controller who transfers the personal data;

Data importer means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Agreement and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC; [*If these Agreement are not governed by the law of a Member State, the words "and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC" are deleted.*

Data Protection Legislation means the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner. From and after 25 May 2018, Data Protection Legislation shall also include the EU General Data Protection Regulation (GDPR) until further notice;

Delivery means the point at which the Equipment arrives at the Customer's Site immediately prior to the unloading of such Equipment from the delivery vehicle and '**Delivered**' shall be construed accordingly;

Effective Date shall mean the earlier of the date on which Optimity signs the relevant Statement of Work or commences performance of the Agreement;

Employee means any employee, former employee, consultant, former consultant, contractor, former contractor, agent or former agent of the Customer or any Contractor or Subcontractor;

Employment Regulations means any laws in any country in the world implementing the provisions of EC Directives No. 77/187 dated 14 February 1977, 2001/23 dated 12 March 2001 or equivalent or similar regulations that protect the rights of employees on a transfer of a business or undertaking or any laws providing for the automatic transfer of employees on transfer of the whole or part of an undertaking, business or service provision change, including in the United Kingdom the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time;

End User means any end user of the Services;

Equipment means the equipment and/or software related products to be supplied under the Agreement as set out on the Statement of Work;

Fixed Network Services means Network Services that are provided by Optimity to Customer and are associated with a fixed Customer location, as detailed in a Statement of Work.

Hosted Data means the data which is hosted pursuant to the Hosting Services;

Hosting Services means the hosting services more particularly detailed on the Statement of Work to be provided hereunder by Optimity to the Customer;

IP means Internet Protocol;

Installation means the physical installation of Equipment at the Site;

Installation Services means services for the Installation of Equipment as more particularly described in the Statement of Work;

Intellectual Property Rights means all intellectual and industrial property rights including patents, know-how, registered trade-marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade-marks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

Minimum Term means the minimum contract period for the applicable Services which shall commence on the Service Commencement Date for each Service (except Fixed Network Services which shall commence on the Connection Date) and expire at the end of the minimum contract period set out on the Statement of Work unless renewed in accordance with the terms of this Agreement;

Network Services means the connectivity and bandwidth access services provided by Optimity to Customer as detailed in a Statement of Work.

Normal Working Hours means 9.00am to 5.30pm on any UK Business Day;

OFCOM means the Office of Communications and/or any successor body;

Personal data, special categories of data process/processing, Controller, Processor, Data subject and Supervisory authority Have the same meanings as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; [*If these Agreement are governed by a law which extends the protection of data protection laws to corporate persons, the words "except that, if these Agreement govern a transfer of data relating to identified or identifiable corporate (as well as natural) persons, the definition of "personal data" is expanded to include those data" are added.*]

Relevant Laws means any statute, regulation, bylaw, ordinance or subordinate legislation which is in force for the time being to which a party is subject; the common law as applicable to the parties (or any one of them); any binding court order, judgment or decree applicable to the parties (or any one of them); and any applicable industry code, policy, guidance, standard or accreditation terms (i) enforceable by law which is in force for the time being, and/or (ii) stipulated by any regulatory authority to which a party is subject, in each case, for the time being;

RPI means the Retail Price Index which is a measure of inflation published monthly by the Office for National Statistics reflecting the change in the cost of a representative sample of retail goods and services In the United Kingdom, or in the event that the RPI index is discontinued, a replacement index selected by Optimity which reasonably reflects comparable measurements

Service(s) means any of the services supplied by Optimity and as set out on the Statement of Work and listed in the Appendices; it shall include but is not limited to Network Services, Hosting Services, Support Services and Consultancy Services

Service Commencement Date means the commencement date of the applicable Services (excluding Fixed Network Services) as specified on the Statement of Work; provided that in the event that Customer is not ready for Optimity to deliver Service and/or complete installation to the Optimity demarcation point on the projected installation date, Optimity may notify Customer that Optimity will complete the installation to the nearest demarcation point outside of the Site, and the Minimum Term shall commence upon completion of such installation

Service Schedule means each of the individual Appendices containing additional terms and conditions which are to apply to the individual Services referenced in the relevant Statement of Work;

Site(s) means the location owned or occupied by Customer where the Service is to be delivered pursuant to the relevant Statement of Work.

Statement of Work means the Statement of Work to which either these Conditions are attached or which is expressed to be subject to these Conditions which sets out the details of the order, including (without limitation) the Customer's details and the Equipment and/or Services to be supplied under the Agreement;

Sub-contractor means any subcontractor of a Contractor;

Sub-processor means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Agreement and the terms of the written subcontract;

Support Services means the maintenance/support services in respect of the Supported Equipment more particularly described in Appendix C hereunder and the Statement of Work to be provided by Optimity to the Customer;

Supported Equipment means the items of equipment (which may include the Equipment) to be subject to the Support Services as set out on the Statement of Work;

Tariff means Optimity's tariff for calculating Charges for each of the Services

Technical and organisational security measures means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Term means the length of the Customer's obligation to pay for the Services specified in the Statement of Work

VOIP means voice over internet protocol.

APPENDIX A - SUPPLY OF EQUIPMENT AND INSTALLATION SERVICE SCHEDULE

A.1 Optimity's acceptance of each Statement of Work under this Agreement is subject to confirmation that the Services can be delivered by carrying out a site survey, if appropriate. Should it be found that, for any reason, that the service cannot be provided for technical reasons or on a commercially reasonable basis, an individual order or Statement of Work may be rescinded by Optimity without liability.

A.2 Unless otherwise agreed in the Statement of Work, the Customer will confirm and be responsible for procuring any planning consents, wayleaves or permissions necessary to provide the Services (including but not limited to consent for any necessary alterations to buildings or premises or rights of access). Both parties will also use all reasonable endeavours to facilitate this process.

A.3 In consideration of the Customer's payment of the Price Optimity will take reasonable steps to deliver the Equipment and, where expressly stated by Optimity, supply the Installation Services, using reasonable skill and care, within an estimated period of time. Such period shall commence from the date of receipt by Optimity of all instructions and information required for the performance of the Statement of Work. Optimity does not guarantee that Delivery or Installation will take place within such period, and such time is not (and may not be made) of the essence of the Agreement.

A.4 The Customer shall be responsible for providing Optimity with any necessary instructions for delivery of the Equipment within a reasonable period prior to the estimated delivery date advised by Optimity to the Customer.

A.5 If the Statement of Work provides for Delivery by instalments, any delay in the Delivery of any instalment shall not entitle the Customer to treat the Statement of Work as at an end or to reject any other instalment.

A.6 If by reason of refusal or delay of delivery or installation attributable to Customer, the Equipment shall be deemed to have been Delivered and payment shall be made by the Customer to Optimity of the balance of the Price within seven days of such deemed delivery date.

A.7 The Customer shall prepare the Site(s) (at its own cost) in accordance with Optimity's instructions so that any necessary Equipment can be installed.

A.8 The Customer shall be responsible for the cost to supply, install, maintain and operate all infrastructure required to accommodate the power and environmental specifications as specified by the Equipment manufacturer (as published and as amended from time to time) to comply with all local electrical code requirements including the Institution of Engineering and Technology's IEE Wiring Regulations in force at the date of Delivery.

A.9 The Customer shall only connect and use equipment (whether supplied by Optimity pursuant to the terms of this Agreement or not) connected in accordance with any published instructions, safety and security procedures applicable to the use of that equipment.

A.10 The Customer shall ensure that steps have been taken to configure any equipment (whether supplied by Optimity pursuant to the terms of this Agreement or not) so as to prevent such equipment being used in the commission of criminal offences including the making of fraudulent, unauthorised or bad faith calls.

A.11 The Statement of Work shall identify whether title to the Equipment will remain with Optimity or pass to Customer. Should the Statement of Work not clearly identify such matters, then title to the Equipment shall be deemed to remain with Optimity upon the terms set forth in this Appendix A. The risk of loss or damage to the Equipment shall vest with the Customer from the moment of Delivery or deemed Delivery irrespective of whether title to the Equipment has passed or payment or part payment made. From the moment of Delivery or deemed Delivery, the Customer shall be responsible for insuring the Equipment.

A.12 Notwithstanding Delivery and the passing of risk, the legal (where applicable) and beneficial interest in the Equipment supplied under the Agreement shall not pass to the Customer until Optimity has received in cleared funds payment in full of all sums due for the Equipment and Installation Services (where applicable) and to the extent the Equipment constitutes software in whole or in part, this condition shall not prejudice any proprietary rights of Optimity or any of its licensors or any other entity with any rights in respect of such software.

A.13 Until such time as the legal (where applicable) and beneficial interest in the Equipment has passed to the Customer, the Customer shall hold such Equipment as Optimity's fiduciary agent and bailee, and keep such Equipment properly stored, protected and kept free from any loss, damage, and/or deterioration and insured against all risks for its full reinstatement value and identified as being Optimity's property until title passes.

A.14 Until such time as the legal and beneficial interest in the Equipment passes to the Customer, Optimity shall be entitled at any time to require the Customer (at the Customer's cost) to deliver up the Equipment to Optimity at its nominated location and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Equipment is stored and remove and repossess such Equipment.

A.15 If the Customer enters into an agreement for maintenance of the Equipment with a third party, Optimity's liability for defects in the Equipment shall cease, save for Optimity's liability for defects arising on or before Delivery of the Equipment.

A.16 Where Optimity is to supply Support Services in respect of the relevant Equipment under the Agreement, the conditions of Support Services shall apply and in the event of any conflict between this condition and those of Support Services, the latter shall prevail.

A.17 The liability of Optimity shall apply only to defects that appear under proper use and under conditions of operation not more onerous than those declared to Optimity by the Customer prior to entering into the relevant Statement of Work, and in particular shall not apply to defects which arise from neglect, misuse, or faulty maintenance of the Equipment by the Customer or any of its other contractors, or from alterations carried out without the prior written consent of Optimity or from repairs carried out improperly by the Customer or its servants or agents or arising from normal wear and tear.

A.18 Any repaired or new parts provided by Optimity under this condition will be delivered by Optimity to the Customer free of charge. Any Equipment (or part) which has been returned to Optimity and replaced by Optimity shall become the property of Optimity upon collection by or delivery to Optimity.

A.19 Optimity reserves the right to charge on a quantum meruit basis for the costs of repairs and/or call-outs if Optimity considers that the damage has resulted from misuse or unauthorised repair or alteration of the Equipment by the Customer or any third party, or from normal wear and tear.

A.20 Neither acknowledgement of receipt, nor investigation, by Optimity of any claim or consent given hereunder shall constitute or imply admission by Optimity of any liability in respect of such claim.

A.21 Optimity shall be entitled to fix legends bearing the Optimity's and/or its third-party supplier's name and/or trademarks or other marks to any Equipment. The Customer shall ensure that no such marks are removed or defaced at any time.

APPENDIX B - NETWORK SERVICES – SERVICE SCHEDULE

B.1 The Customer is responsible for ensuring that that the terms stated on the Statement of Work for Network Services does not contain any errors or omissions.

B.2 Optimity will use reasonable endeavours to provide the Network Services from the Connection Date subject to these Optimity Terms and Conditions. Any Network Services so provided shall be provided with reasonable skill and care. The Network Services may not be fault free and use of the Network Services may not be uninterrupted.

B.3 Acceptance of the Statement of Work by Optimity is dependent upon Optimity carrying out a survey and/or testing which reveals to Optimity's satisfaction that it is possible for Optimity to supply the Network Services. Optimity will also determine whether any details or information used by Optimity to determine the Charges applicable or any other terms of the Agreement, whether supplied by the Customer or otherwise, are accurate and not misleading. The Charges may change depending on the results of such survey (including, without limit, where there are excess construction charges associated with a Site); and

B.4 Subject to the continuing supply of the service by the relevant Carrier, in the event of a fault occurring in the Network Services Optimity will use reasonable endeavours to rectify the fault as soon as practicable however Optimity shall have no liability to the Customer for any fault occurring, or any interruption to the Network Services whether in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise, howsoever caused (including but not limited to atmospheric conditions; any congestion, fault, interruption or interference with the network; any fault, interruption or interference with the power supply to the network; any act or omission by the relevant carrier, or any known or unknown viruses which cause interruption or interference with the network).

B.5 Optimity may for operational reasons; introduce Service Features, introduce process changes to improve the quality of the Network Services or upgrade the Network Services, provided always that such changes do not have a material adverse effect on the performance or provision of the Network Services.

B.6 The Customer acknowledges that the speed of the Network Services depends on a number of factors including, but not limited to, distance from the exchange, local availability and line capability. Optimity shall have no liability to the Customer whether in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise if the Customer's line(s) does/do not produce a top speed of the maximum speed advertised.

B.7 The Customer shall be responsible for the safe custody and safe use by it of the Network Services and without prejudice to the generality of the foregoing the Customer agrees and undertakes that it will not use the equipment for criminal, illegal, offensive or nuisance purposes and will comply with all relevant laws.

B.8 Any equipment installed or provided by or on behalf of Optimity for the purposes of providing the Network Services shall at all times remain the property of Optimity and shall be returned to Optimity forthwith upon request. The Customer shall be liable to Optimity for all losses, costs and expenses incurred by Optimity for the recovery, replacement or repair of such equipment (save to the extent that the same is caused by the negligence of Optimity).

B.9 Unless stated otherwise on the Statement of Work, if the Customer takes a line rental from Optimity, the Customer is also committed to using Optimity for calls over that line. Should the Customer (during the Minimum Term) use an alternative carrier for calls once the Agreement for the provision of the telephone line has commenced, or prevent Optimity from carrying calls in any monthly period so that Optimity considers that the call charges are significantly reduced in comparison to the Customer's previous average invoicing profile, the Customer agrees that Optimity may charge the Customer the difference between the average monthly spend on calls prior to such commencement or prevention and the subsequent monthly spend on calls (if any)**.**

B.10 The Network Services are provided solely for the Customer's use and the Customer may not resell or attempt to resell the Network Services (or any part of them) to any third party, save as may be expressly permitted by Optimity in the relevant Statement of Work.

B.11 Whilst Optimity will use its reasonable endeavours to provide any VOIP Fixed Network Services set out on an Statement of Work signed by Optimity, Optimity shall have no liability for the standard of quality or performance of the VOIP Fixed Network Services and Optimity draws the following features of the VOIP Fixed Network Services to the Customer's attention: (a) the VOIP service may not offer all the features, quality or resilience the Customer may expect from a conventional phone line; (b) the VOIP service may sometimes be limited, unavailable or disrupted due to events beyond Optimity's control e.g. power disruptions, failures or the quality of any connection; (c) wherever possible, alternative arrangements should be made by the Customer and a traditional PSTN telephone line maintained at each Site; (d) the quality of a call made via VOIP is more akin to that experienced when making a call from a mobile network service to another mobile network service and this means that it is typically less than the quality experienced on a traditional land line; (e) if the Customer uses the VOIP service to make Emergency Calls, the location information received by the emergency services will be limited to the installation address of the Site, which may not be the location from which the call originated, and as such the Customer may be required to provide information about the Customer's location to the emergency services to allow them to respond; (f) Emergency Calls made using the VOIP service may fail if there is a power failure or connection failure; (g) the ability for the Customer to make Emergency Calls cannot be guaranteed; (h) a VOIP originated Emergency Call will not receive the same network priority at all points on the network as that which an Emergency Call made on a mobile network or on a circuit- switched fixed line will receive; and (i) the Customer's equipment used to access the VOIP Fixed Network Services requires mains power to make Emergency Calls.

B.12 The Customer shall not use the bandwidth allocated to the VOIP service for any other purpose other than making and receiving VOIP calls. Should this prohibition not be complied with it is likely that the quality and availability of the VOIP services shall be materially reduced.

B.13 The Customer acknowledges and agrees that the following items may be required at the Customer's Site before the VOIP Fixed Network Services can be commissioned; (a) IP phones or soft phones; and/or (b) IP Access Circuit and any corresponding data hardware including but not limited to routers and port switches.

B.14 The Customer shall provide to Optimity (and update Optimity in the event of any change in such details), the following records: - a) telephone number that may be used to call the Customer; (b) the Customer's Site address including post code; and (c) where the Customer has nomadic applications that use more than one network termination point or equivalent, the address where the number is normally used.

B.15 Service Level Agreement for Network Services.

Network Services are monitored and supported 24 x 365 and subject to the following service credits:

Service Element	Description	Measurement Timeframe	Service Outage Credit per Affected Service
Uptime Availability	Time that the Network Service is available (i.e., not experiencing a complete loss of Service)	One (1) calendar month	On Optimity's Network: >3.6 hours to 4 hours = 10% of Monthly Recurring Charges for Affected Service Plus 10% of Monthly Recurring Charges for each additional full hour Service is unavailable
Service Element	**Measurement**	**Measurement Timeframe**	**Service Outage Credit per Affected Service**
Packet Loss	For dedicated internet access Service only, the Optimity Network will average monthly packet loss of not more than 0.1% (meaning successful delivery of 99.9% of packets). Packet loss not to exceed 0.50% for a sustained period of two (2) or more hours	Per incident	See Packet Loss / Latency Service Credit chart below
Latency	Latency not to exceed the agreed value for a sustained period of two (2) or more hours	Per Incident	See Packet Loss / Latency Service Credit chart below

B.16 **Packet Loss / Latency Service Credits**

Cumulative Duration of Service Level Failure(s)	Service Credit -- % of Monthly Recurring Charges for affected Customer Site(s)
>2 hrs to 4 hrs	5%
>4 hrs to 8 hrs	10%
>8 hrs to 12 hrs	15%
>12 hrs to 16 hrs	20%
>16 hrs to 20 hrs	25%
>20 hrs to 24 hrs	30%
>24 hrs	50%

B.17 **Service Level Credit Provisions. Notwithstanding anything to the contrary in this Statement of Work or the Agreement, the following provisions apply to all Services:**

The Service credits set forth above are Customer's sole and exclusive remedy if Optimity fails to meet the Service level thresholds in the Agreement, and in any calendar month, the maximum Service credit to which Customer may be entitled shall not exceed 50% of the Monthly Recurring Charge for such Service. All periods of unavailability, packet loss and/or latency must be verified by Optimity and approved credits will be applied by Optimity to the invoice for the month following the month in which the credit was approved. The measuring period for each incident shall commence upon Customer's notification to Optimity of the incident and end upon the remediation of the incident as confirmed by Optimity. No Service level credits shall be due to Customer in the event that the unavailability, packet loss, or latency results from: (a) any act or omission of the Customer or its End Users, or any of their representatives, contractors, agents, invitees or assigns; (b) the configuration, malfunction or failure of non-Optimity equipment or systems; (c) Optimity not being provided reasonable access to the Site(s); scheduled maintenance or planned upgrades or enhancements to the Optimity network; or an event of force majeure as described in clause 7.4 of the General Terms and Conditions. In the event that Optimity has procured part of the Service from a third party on behalf of Customer, Optimity will use reasonable efforts to pursue any outage credits or service level credits that may be available from such third party, and will pass through to Customer the benefit of any such credits it may receive from such third party.

APPENDIX C - SUPPORT SERVICES – SERVICE SCHEDULE

C.1 Customer provides confirmation by email to Optimity that the terms stated on the Statement of Work of the applicable Agreement for Support Services do not contain any errors or omissions.

C.2 In consideration of the payment of the Annual Support Charge each year by the Customer, Optimity will supply to the Customer the Support Services in accordance with the Agreement.

C.3 The Support Services shall apply only in respect of the Supported Equipment expressly stated on the Statement of Work to be subject to the Support Services.

C.4 Unless it is otherwise stated on the Statement of Work that a different level of Service (in terms of response times and hours of attendance) will apply, Optimity will use its reasonable endeavours to, within 2 Business Days of notification from the Customer of a request for the provision of Support Services and the Supported Equipment being made available, commence during Normal Working Hours the Support Services. Any time period stated in respect of Optimity's obligations under a Statement of Work is not guaranteed nor deemed to be of the essence of the Agreement.

C.5 Where Optimity replaces defective Supported Equipment or part thereof, it shall be entitled to supply serviceable reconditioned items in substitution thereof. These Conditions shall continue to apply to the Supported Equipment embodying such substituted items.

C.6 Subject to spare part availability, Optimity shall provide all necessary spare parts (in the reasonable opinion of Optimity) required to keep the Supported Equipment in satisfactory operation. All replaced parts shall become the property of the Customer.

C.7 The Customer shall take adequate copies of data, operating and application software such that the system and files may be restored in the event of corruption or other similar loss howsoever occasioned.

C.8 The Customer agrees that it is the responsibility of the Customer to restore data, operating and application software in the event of loss due to system failure or disk exchange. Restoration of system and data from the Customer's last good backup copies may be undertaken by Optimity at the request of the Customer and will be chargeable.

C.9 Support Services shall not include the following (the "**Excepted Services**"): (a) the repair of damage to the Supported Equipment resulting from accident, neglect or causes other than ordinary use (including, but not limited to, failure to observe any instructions supplied by Optimity or the original Supported Equipment manufacturer or supplier) regarding the operation of the Supported Equipment; (b) labour or materials required to repair Supported Equipment as a result of theft, vandalism, fire, lightning, water damage, fluctuations in electrical power supply, unsatisfactory environmental conditions, telephone line conditions, the connection or installation of unapproved accessories, attachments, software or other devices or as a result of a breach by the Customer; (c) the alteration, modification or maintenance of the Supported Equipment by any person other than Optimity without Optimity's prior written consent; (d) the transportation or relocation of the Supported Equipment save where the same has been performed by Optimity at the request of the Customer; (e) the maintenance or repair of any extension wiring (after the initial third-party warranty period, if any, has passed), any Supported Equipment not at the Site, or of anything other than the Supported Equipment; (f) any defect or error in any software (including as a consequence of modifications and customisation) used upon or in association with the Supported Equipment; (g) the supply of replacement aerials, aerial systems; (h) the reprogramming of the Supported Equipment to provide improved or modified service or facilities; (i) Supported Equipment faults caused by telephone area code changes or changes in Carriers; (j) maintenance or replacement of ancillary items including but not limited to answer phones, analogue or digital phones or devices, call loggers, payphones, computers, servers, uninterruptible power supplies, batteries, fax machines, public address systems, printers, cabinets, external music on hold sources, and any cables or consumables unless otherwise agreed in writing; (k) maintenance arising from loss of equipment as the Support Services are limited to repair or replacement of faulty equipment on a like-for-like exchange basis; (l) a dedicated helpdesk. (m) any defect in design, manufacture, installation or performance of the Supported Equipment (unless otherwise stated in this Agreement); (n) the restoration, uploading or reconstitution of any data relating to the Supported Equipment; (o) the provision of any Support Services for any items that either does not appear on the Statement of Work or which appears on the Statement of Work with an inaccurate or misleading description; (p) where the Supported Equipment includes software, the Customer's failure to install any enhancements which have been made available to the Customer or any fault in the Supported Equipment for which a patch, fix or update has not been made available by the applicable Supported Equipment supplier; and/or (q) moves and changes.

C.10 Optimity may, in its sole and absolute discretion, upon request by the Customer use its reasonable endeavours to provide all or any of the Excepted Services but shall be entitled to charge for the same by levying Additional Charges.

C.11 Optimity shall be entitled to levy (and receive from the Customer) Additional Charges if: (a) Support Services are provided in circumstances where any person who is reasonably skilled and competent in the field of maintaining telecommunications equipment would have judged the Customer's request to have been unnecessary; and/or (b) the Customer reports an apparent fault of the Supported Equipment to Optimity and upon investigation by Optimity the Supported Equipment and/or its Installation is found not to be defective. Such Additional Charges may include a charge for the investigation and/or for any call-out and for any Supported Equipment changed in a postal exchange (in respect of which Optimity reserves the right to make a charge up to the replacement value of the Supported Equipment in question); (c) where Optimity determines that a fault that has been reported to Optimity is a fault of the Carrier. Such Additional Charges may include a charge for the call-out in accordance with Optimity's then current Tariff); and/or (d) the Customer requests the restoration of data.

C.12 Additional Charges shall be levied by Optimity in accordance with Optimity's then current Tariff as follows: (a) following completion of the additional services supplied; or (b) following completion of the investigation and/or call out.

C.13 Optimity shall have the right to discontinue the Support Services in respect of any Supported Equipment (without liability to the Customer) in the event that Optimity's supplier and/or the manufacturer of the Supported Equipment has ceased to supply or manufacture such Supported

APPENDIX C - SUPPORT SERVICES – SERVICE SCHEDULE (continued)

Equipment provided that Optimity will notify the Customer as soon as reasonably practical after it is aware of any cessation in supply or manufacture of the Supported Equipment and shall either (upon consultation with the Customer) (i) terminate the Agreement or (ii) replace or upgrade the affected Supported Equipment at the Customer's expense.

C.14 Optimity shall have the right to terminate forthwith the supply of the Support Services (without liability to the Customer) if any necessary approvals required by Optimity to maintain any of the Supported Equipment are not granted or revoked by any government or regulatory agencies or any third party.

C.15 The Customer shall ensure that the Supported Equipment is used in a normal and proper manner and take all steps, measures and meet all requirements (including the environmental conditions) contained in the customer operating instructions and manufacturer's written recommendations supplied with the Supported Equipment ("**User Instructions**");

C.16 Not employ or permit a third party to make any alterations to the programming or physical structure of the Supported Equipment;

C.17 If the Supported Equipment is not (immediately prior to the Commencement Date) either already maintained by Optimity or within the scope of an express warranty given by the supplier thereof, then Optimity may at its discretion inspect the Supported Equipment and undertake such repair work as may be necessary to put the Supported Equipment in good working order. The Customer shall pay for such inspection and repair at Optimity's then current rates applying at that time, and such payment shall be in addition to the Annual Support Charge.

C.18 The Customer will not move any of the Supported Equipment, nor remove the Supported Equipment from its location as at the Commencement Date without the prior written consent of Optimity, such consent not to be unreasonably withheld. Where Optimity consents to such relocation, Optimity will provide a relocation and installation service, the cost of which shall be paid by the Customer in accordance with Optimity's then current Tariff, and such payment shall be in addition to the Annual Support Charge.

C.19 Support Service Availability

A. Hours of Support. Except as may be otherwise expressly set forth in the relevant Service Schedule or Statement of Work, the coverage parameters applicable to the Service(s) covered in the Agreement are as follows:

- Telephone support: 9:00 A.M. to 5:30 P.M. Monday – Friday on Business Days

- Email support: Monitored 9:00 A.M. to 5:30 P.M. Monday – Friday on Business Days

  Emails received outside of office hours will be collected, however no action can be guaranteed until the next Business Day

- Work onsite to be agreed and planned with at least two (2) Business Days advance notice

B. Service Requests. In support of Services as outlined in this Agreement, Optimity will endeavor to respond to Service related incidents and/or requests submitted by the Customer within the following time frames:

(1) All enquiries to receive acknowledgement within one (1) Business Day Monday – Friday when sent to support @optimity.co.uk
(2) Emergency support enquiries concerning the unavailability of Service will be responded to within 1 hour on Business Days (Customer to telephone main office in emergency) and investigated as soon as possible
(3) Issues arising outside of Normal Working Hours will be addressed within two (2) hours on the following Business Day
(4) Updates will be provided within every 4 hours period until resolved

APPENDIX D - CONSULTANCY SERVICES – SERVICE SCHEDULE

D.1 Any Agreement including the provision of Consultancy Services based on an order which is accepted by Optimity is, until the Service Commencement Date, conditional on Optimity providing confirmation by email to the Customer that the terms stated on the Statement of Work of the applicable Statement of Work for Consultancy Services do not contain any errors or omissions. Subject to this condition and in consideration of (and subject to) the payment of the Consultancy Charges by the Customer, Optimity shall supply to the Customer the Consultancy Services in accordance with the Agreement.

D.2 Optimity undertakes to use reasonable endeavours to provide the Consultancy Services to the Customer subject to these Conditions.

D.3 The Customer undertakes to co-operate with Optimity in all matters relating to the Consultancy Services and undertakes to comply with the reasonable requirements or instructions of Optimity and promptly give Optimity all such information as it may reasonably require in connection with the provision of Consultancy Services to the Customer.

APPENDIX E - HOSTING SERVICES – SERVICE SCHEDULE

E.1 Customer must provide confirmation by email to Optimity that the terms stated on the Statement of Work of the applicable Agreement for Hosting Services do not contain any errors or omissions.

E.2 In consideration of (and subject to) the payment of the Annual Hosting Charge by the Customer, Optimity shall use reasonable endeavours to provide the Hosting Services from the Commencement Date subject to these Conditions. The Hosting Services may not be fault free and may not be uninterrupted.

E.3 Optimity will use reasonable endeavours to rectify any fault in the Hosting Services as soon as practicable however Optimity shall have no liability to the Customer for any fault occurring, or any interruption to the Hosting Services whether in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise, howsoever caused including but not limited to atmospheric conditions; any congestion, fault, interruption or interference with the network; any fault, interruption or interference with the power supply to the network, any act or omission by a Carrier or other service provider, or any known or unknown viruses which cause interruption or interference.

E.4 The Customer shall:

E.4.1 not use the Hosting Services to make, provide, communicate, deliver, knowingly receive, upload, download, publish, use or re-use any material or information which is intended to be a hoax or is of a defamatory, offensive, abusive, indecent, obscene or menacing character, or which does or is intended to cause annoyance, nuisance, inconvenience or worry to any person or which in Optimity's opinion brings Optimity's name into disrepute or which in any way causes damage to or disruption to the Hosting Services;

E.4.3 implement adequate control and security over the use of the Hosting Services provided to the Customer including but not limited to the prevention of viruses, worms, Trojan horses and/ or any access to the Hosting Services by hackers;

E.4.4 not use the Hosting Services in a way that breaches any Relevant Laws, any guidelines, regulations or instructions of any regulator or any licence applicable to the Customer or that is in any way unlawful or fraudulent;

E.4.5 not conduct any unauthorised monitoring of, or access to, or use of data, networks or systems, including any attempt to probe, scan or test the vulnerability of a network and/or system or to breach security or authentication measures without proper authorisation;

E.4.6 not interfere with, disrupt or disable any service to any user, host or network via means including but not limited to overloading, flooding, mail-bombing, denial of service attacks or crashing;

E.4.7 not use manual or electronic means to avoid any use limitations placed on a system, such as access or storage restrictions; and not attempt to circumvent or alter any method of measuring or billing for the Hosting Services.

E.5 The Hosting Services are provided solely for the Customer's use and the Customer may not resell or attempt to resell the Hosting Services (or any part of them) to any third party.

E.6 Optimity shall not be liable to the Customer for any interruption or other failure in the Hosting Services to the extent that such interruption or failure arises directly or indirectly from:

E.6.1 the IT Equipment, the Customer's network or system or any part thereof;

E.6.2 any act or omission of the Customer, its agents, representatives or users;

E.6.3 the Customer's breach of the Agreement;

E.6.4 the Customer's failure or delay in complying with Optimity's reasonable instructions and/or failure or delay in providing any information requested by Optimity;

E.6.5 anything beyond the reasonable control of Optimity as defined more particularly in condition 7.4;

E.6.6 planned outages, server relocation, or maintenance advised to the Customer by Optimity;

E.6.7 server maintenance/support or application maintenance/support carried out by the Customer or by Optimity on the Customer's instructions; and/or

E.6.8 suspension of the Hosting Services in accordance with the Agreement.

E.7 Optimity may at any time change the location of the Facility in which Hosting Services are performed upon notice to the Customer.

E.8 In the event of termination or expiry of an Agreement for Hosting Services, Optimity shall (at Optimity's option) return or delete all data which is held by Optimity in connection with the Hosting Services. Save in the event of expiry, or termination by Optimity without cause, the Customer shall be liable for all costs which Optimity incurs in returning or deleting the Hosted Data.

E.9 Unless the Customer purchases back-up services from Optimity, Optimity shall not be obliged to perform a back-up or otherwise replicate any of the content which the Customer provides to Optimity as part of the Hosting Services.

E.10 Notwithstanding any other provision of this Agreement, the Customer's sole and exclusive remedy for any breach of this condition by Optimity and/or for any negligence, default or breach of duty by Optimity which leads to loss or corruption of Hosted Data shall be for Optimity to use its reasonable endeavours to restore the Hosted Data to the most recent unimpaired and uncorrupted generation of Hosted Data (where available) created prior to such breach, negligence or default.

E.11 Notwithstanding anything to the contrary in the Agreement, Optimity shall be entitled to make changes to the Hosting Services (or any part thereof) which do not have a material adverse effect on the Hosting Services and shall where Optimity deems it practical to do so give the Customer written notification of the same.

E.12 The Customer warrants, represents and undertakes that it is the owner of, or that it is authorised by the owner of, (and has the right to use) any trade mark or name that the Customer wishes to use as or in its registered domain name (or any of them) ("**Domain Names**") and/or as part of the Customer's uniform resource locator ("**URL**").

E.13 If Optimity undertakes Domain Names and/or URL registration on behalf of the Customer, the Customer will reimburse Optimity for any registration fees paid by Optimity to the relevant internet registration authorities. Optimity does not guarantee that any Domain Names or URL requested by the Customer will be available. The Customer acknowledges and agrees that the registration of the requested domain name and its ongoing use by the Customer shall be subject to the relevant naming authority's terms and conditions of use.

E.14 **Service Level Agreement – Hosting Services**

1. **Hosting Services SLA**. This service level agreement "("SLA") for Optimity-provided Hosting Services covers only the Equipment, software and Services provided by Optimity. Targets for Service Availability and Response Time for Optimity's Hosting Service are set out below.

2. **SLA Severity Definitions**. .
   a. **P1**. **Critical**. A severity one issue is a catastrophic production problem which may severely impact Customer's production systems, or in which Customer's production systems are down or not functioning; loss of production data and no procedural work around exists.
   b. **P2**. **Major.** A severity two issue is a problem where Customer's service is functioning but in a severely reduced capacity. The situation is causing significant impact to portions of Customer's business operations and productivity. The system is exposed to potential loss or interruption of service.
   c. **P3**. **Minor**. A severity three issue is a medium-to-low impact Incident which involves partial non-critical functionality loss, one which impairs some operations but allows the client to continue to function. This may be a minor issue with limited loss or no loss of functionality or impact to the client's operation and issues in which there is an easy circumvention or avoidance by the end user. This includes documentation errors
   d. **P4**. **Request**.. A severity four issue is for a change request for a remote configuration change to existing Services or a general usage question or recommendation for a future product enhancement or modification. There is no impact on the quality, performance or functionality of the product.

3. **Reporting an SLA Event**. Reporting and tracking of Service-affecting incidents is handled by means of Optimity's support system, which is accessed online by email to support@optimity.co.uk or by telephone during Business Hours to 0207 749 1000 or to such other email address and/or phone number as Optimity may notify from time to time. Optimity's support ticketing system tracks incidents from initial reporting through to resolution.

4. **Response Time SLA**. The time it takes Optimity to respond to a Customer request for support after it is raised through Optimity's support system per the immediately preceding clause above and Optimity opens a support ticket is the "Response Time" for purposes of this Hosting SLA. Optimity is deemed to have responded when it has replied to the Customer's initial request, whether by phone or email, to either provide a solution or request further information. The Response Time targets are shown in the table below and are correlated to the severity of the incident.

   RESPONSE TIME SLA TARGET

Severity Level of Incident	**P1**	**P2**	**P3**	**P4**
Response Time Target	30 minutes	1 hour	2 hours	4 hours
Regularity updates	Hourly	2 hours	4 hours	24 hours

Optimity will provide updates to Customer on a regular basis following the opening of the ticket until such time as Optimity confirms that the incident is resolved. The frequency of such updates will vary depending upon the severity of the incident. The Customer shall cooperate with Optimity in providing information and reasonable assistance in order to aid in the resolution of the incident.

The Response Times are measured and apply during Business Hours only unless the Statement of Work expressly provides for out of hours support.

5. **Hosting Service Availability SLA.** "Hosting Service Availability" is a measure of the relative amount of time during which the Hosting Service is available for Customer's use during a thirty (30) day calendar month. "Hosting Service Unavailability" is defined as any period for which the Hosting Service experiences a complete loss of service as measured by Optimity. The Hosting Service Availability target is 99%.

6. **SLA Credits**. Subject to the provisions of clause 7 below, in the event that Optimity fails to meet the foregoing targets for Response Time and/or Hosting Service Availability, Optimity will issue a credit ("SLA Credit") against Customer's invoice for Hosting Services in the month next following Customer's written request therefor and Optimity's confirmation thereof.

7. **SLA Limitations**. Notwithstanding any other provision of this Service Schedule or the Optimity Terms and Conditions to the contrary:
   a. the total of all SLA Credits for Optimity's failure to meet the Response Time and Hosting Service Availability SLAs in any calendar month shall not exceed fifty percent (50%) of the Monthly Recurring Charges for the affected Hosting Service(s);
   b. Service Unavailability shall not include, and no SLA Credits shall be due to Customer in the event that the loss of Service(s) is caused by (i) any act or omission of Customer or its End Users, or its or their representatives, contractors, agents, authorized invitees, successors or assigns: (ii) the configuration, failure or malfunction of non-Optimity equipment or systems; (iii) scheduled maintenance or planned enhancements or upgrades to Optimity's network; (iv) Optimity not being given reasonable access to the premises; or (v) an event beyond the control of Optimity as referenced in clause 7.4.
   c. The issuance of SLA Credits pursuant to this Service Schedule is Optimity's sole obligation and Customer's sole remedy for any failure to or non-performance of the Hosting Services under this Agreement.
   d. Where Optimity's Hosting Services incorporate services provided by a third party, including, for example, interconnect services, Optimity's SLA (including any available credits for non-performance) is subject to the service-specific terms and performance metrics associated with such third-party's terms with Optimity. Upon Customer's written request, Optimity will use commercially reasonable efforts to obtain and pass through to Customer the benefit of any applicable SLA Optimity may have with such third party.
   e. SLA Credits must be requested in writing by Customer no later than the last Business Day of the month following the month during which the Service-affecting incident was resolved and the incident ticket closed by Optimity.