



## MASTER TERMS AGREEMENT

**Between The Opus Group of Companies and  
name**

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## MASTER TERMS AGREEMENT

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This Contract is a Master Terms Agreement that is signed as a framework agreement and works in conjunction with any future Orders and/or Agreements signed. This contract is dated the “Effective Date”:

BETWEEN:

**name** registered in England and Wales company number **isc\_companynumber** and referred to hereafter as “Customer”; and

**The Opus Companies**, are formed of:

- **Opus Business Systems Ltd T/A Opus Telecoms**  
registered in England and Wales company number **02695133**  
*(enabling telephony systems, cloud telephony services, collaboration, mobility and customer experience)*
- **Opus Network Services Ltd T/A Opus Networks**  
registered in England and Wales company number **03737752**  
*(enabling fixed & mobile connectivity, calls & lines, inbound call handling, SIP trunks, global SIP, broadband, MPLS, VPLS and mobile services)*
- **Opus Technology Ltd**  
registered in England and Wales company number **09851155**  
*(enabling cloud compute & apps, co-location, storage, backup, cyber security and business continuity)*

and referred to herein as “Opus”

each being singularly a “Party” and collectively the “Parties”.

### WHEREAS:

- A: Opus are a provider of connectivity, cloud, IT, telecoms and associated management and professional services; and
- B: The Customer wishes to purchase certain products and services from Opus which will be ordered using Order forms and/or Agreements where the supplying Opus company will clearly be stated; and
- C: Opus has agreed to provide the same to the Customer; and
- D: The Parties are entering into this Contract to give effect to the above.

### IT IS HEREBY AGREED AS FOLLOWS:

#### **1. Definitions, Interpretation and Precedence**

- 1.1. In this Contract, the following terms shall have the meanings assigned to them below:

“Acceptance Date”	shall be construed in accordance with Clause 5.4;
“Acceptance Test Period”	shall have the meaning given to it in Clause 5.2;
“Acceptance Test Plan / (ATP)”	shall have the meaning given to it in Clause 5.2;
“Acceptance Tests”	shall have the meaning given to it in Clause 5.2;

“Agreement(s)”	Any products or services provided with a term period, including but not limited to Support Agreement and Cloud Agreement;
“Annual Charge(s)”	the on-going fee for the provision of the Services as detailed in Opus Orders and/or Agreements to this Contract (and, if applicable, as amended in line with this Contract);
“Business Personal Data”	Personal Data relating to staff, agents and contractors of the Customer that Opus holds within its business to facilitate the business relationship between the Parties. For the avoidance of doubt, this does not include Stored Personal Data;
“Call Charges”	charges for calls made by Customer, calculated in accordance with usage recorded by call logging or recording data of Opus or its service providers which data shall be final and binding upon the parties;
“Change Management Process”	the process of requesting and recording changes to this Contract detailed in the Opus Change Management Process Document;
“Change Management Process Document”	the document set out at Appendix;
“Charge(s)”	the charges payable for the Services as detailed in Opus Orders and/or Agreements of this Contract and any other Charges set out in this Contract;
“Confidential Information”	any information concerning the business, accounts, finance, contractual dealings, customers, pricing, transactions or affairs of a Party which are designated as, or which should reasonably be considered as being, confidential but shall not include those bytes of Stored Data or Customer Content that Opus has had no visibility of which happen to be confidential;
“Connection Schedule”	Implementation documentation used to agree Mobile provisioning.
“Connectivity Services”	the Platform Connectivity described in Opus Orders and/or Agreements;
“Contract”	this document signed by the Parties (including all Opus Orders and/or Agreements) and any additional documents that are expressly stated herein to form part of this Contract;
“Customer Content”	the works of authorship, marks, data, information, materials and other content that is sent, received, transmitted, hosted, stored, replicated or otherwise made available by means of the Services, including (without limitation) names, domain names, logos, designs, computer software, recorded visual imagery (including video recordings and photographs), sounds, audio materials (including master recordings), musical compositions (including arrangements and lyrics), graphics (including animation), textual matter, and any combination of the above. For the avoidance of doubt, Customer Content does not include Materials. All Customer Content is and will remain the property of Customer;

"Customer Equipment"	items of equipment owned or leased by the Customer located either at the Customer Sites or at an Opus Site and used in order to provide and/or receive the Services;
"Customer Networks"	the local area network, network equipment, computer systems and local cable infrastructure at the Customer Sites, to which the Connectivity Services or Opus Equipment will be connected;
"Customer Personal Data"	any Personal Data in respect of which, for the purpose of this Contract, the Customer is the Data Controller;
"Customer Premises Equipment"	any Opus Equipment located at the Customer Sites pursuant to this Contract;
"Customer Sites"	the Customer locations at which the Services will be provided, as specified in Opus Orders and/or Agreements, which shall include any co-location racks within Opus's data centres provided to the Customer pursuant to this Contract to which the Customer has access;
"Data Controller"	shall have the meaning given to it in the Data Protection Act 2018;
"Data Processor"	shall have the meaning given to it in the Data Protection Act 2018;
"Documentation"	any documentation provided to the Customer by Opus for the purpose of providing the Services.
"Due Date"	the date payment of an invoice for the Charges as set out in Clause 22.3 needs to be paid by;
"Early Termination Charge"	the early termination charge applicable if the Customer elects to terminate this Contract early for convenience, as detailed in Clause 20.3;
"Effective Date"	the date this Contract is signed;
"Escalation Pathway"	the plan as defined in Opus Escalation Process, set out at Appendix;
"Exit Plan"	where there are extreme levels of complexity, for example around hosting Customer IT applications and data, a bespoke plan regarding exit of this Contract can be produced and maintained by Opus where requested
"Fixed Order"	a predefined Order for services, works, parts or labour with Charges fixed as defined by the Service Description and supplied by Opus Telecoms;
"Flex Order"	a supply of additional services or works provided by Opus Telecoms, where certain quantities or Charges are variable
"Force Majeure Event"	any circumstance beyond the control of either Party including, without limitation, Act of God, war, insurrection, riot, civil commotion, Government regulations, embargoes, explosions, strikes, labour disputes, illness, flood, fire, tempest. Circumstances beyond the control of Opus including power surges, pest damage, accidental damage, toll fraud, failure of subcontractors/manufacturers, technological attack (including, but not limited to denial of service attacks, attacks involving Malicious Code and computer hacking)
"High Level Project Plan"	the project plan where applicable, dependant on the complexity of the works to be carried out;

"Initial Term"	A minimum of 36 months for any Opus Order and/or Agreement, unless otherwise specifically defined in each case, from the relevant Service Commencement Date;
"Insolvent"	(i) the appointment of, or the application to a court for the appointment of a liquidator, provisional liquidator, administrator, administrative receiver or receiver or any other similar officer; or (ii) entering into a scheme of arrangement or composition, compromise, assignment or arrangement with or for the benefit of creditors generally or any class of creditors; or (iii) any reorganisation, moratorium or other administration involving its creditors or any class of creditors; or (iv) a resolution, or proposed resolution, to wind it up or strike it off; or (v) becoming unable to pay debts as and when they become due or becoming deemed to become unable to pay debts as and when they become due within the meaning of Section 123 of the Insolvency Act 1986. "Insolvent" shall not apply to any winding up petition which is frivolous or vexatious and is discharged, stayed or dismissed before it is advertised and in any event within 14 days of commencement. "Insolvency" shall be construed accordingly;
"Intellectual Property"	patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
"Laws"	all treaties and applicable statutory enactments (as amended, replaced, or re-enacted from time to time) and any bye-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made, required or granted thereunder and any condition attaching thereto, including any specific laws mentioned by name herein having force and affect in England and Wales;
"Licensors"	shall have the meaning given to it in Clause 15.1;
"Malicious Code"	viruses, logic bombs, worms, trojan horses or other types of destructive, disruptive or nuisance programs;

"Materials"	all literary works or other works of authorship (such as computer programs, program listings, programming tools, Documentation, reports, drawings and similar works) that are developed or provided by Opus to the Customer pursuant to this Contract or otherwise in connection with the Services. For the avoidance of doubt, Materials do not include Customer Content;
"Network Order"	any Order for products or services provided by Opus Networks;
"Network Service Assurance"	standard insurance to cover the Customer against any unexpected engineer and time related charges that occur on that specific active telephone number
"Non-Recurring Charges"	the one-off Charges for the Services, as detailed in Opus Orders and/or Agreements of this Contract (and, if applicable, as amended in line with this Contract);
"Normal Business Hours"	8:30 a.m. to 5.30 p.m. on any Working Day;
"Opus Equipment"	the equipment owned by Opus and/or its suppliers which is located either at the Customer Sites or the Opus Sites (as applicable) in order to provide the Services as detailed in the Service Description in Opus Orders and/or Agreements;
"Opus Personnel"	the staff and contractors of (i) Opus and (ii) Opus's contractors and suppliers engaged in the provision of the Services;
"Opus Site(s)"	the locations where the Services will be provided from including any data centres owned and operated by Opus or its suppliers;
"Order(s)"	any Fixed/Flex/Network/Technology Order for services, works, parts and/or labour;
"Personal Data"	shall have the meaning given to it in the Data Protection Act 2018; but shall not include those bytes of Stored Data or Customer Content that Opus has no visibility of which happen to contain personal data;
"Portal Terms of Use"	the terms of use applicable to, any portal access provided by Opus to the Customer for use with the Services or otherwise pursuant to this Contract;
"Process"	shall have the meaning given to it in the Data Protection Act 2018 and "Processing" and "Processed" shall be construed accordingly;
"Project Completion Document"	the Project Completion Document will be provided to the Customer following the completion of the project works for Customer signoff;
"Project Change Order"	the change order agreement prepared in accordance with Opus's Change Management Process;
"Project Initiation Documentation"	the Project Initiation Documentation to be provided by Opus to the Customer following the completion of all due diligence activity as per Clause 3.2;
"Relevant Accreditations"	ISO accreditations held by Opus and/or its underlying suppliers or any replacement or equivalent subsisting from time to time.
"RIPA Notice"	a notice issued by an investigative authority pursuant to the Regulation of Investigatory Powers Act 2000;

"Service Commencement Date"	the earlier of (i) where a Service is subject to Acceptance Tests the Acceptance Date of that Service or (ii) where a Service is not subject to Acceptance Tests, the date that the Customer is notified by Opus in writing that the Service is ready for use; or (iii) the date that the Customer actually starts using the Service;
"Service Description"	the description of the Services set out in Opus Orders and/or Agreements;
"Service Level Agreements"	the service levels agreements set out in Opus Orders and/or Agreement
"Services"	the Services to be provided by Opus to the Customer as set out in Opus Orders and/ or Agreements;
"Shared Infrastructure Service"	all Connectivity Services, the Shared IaaS Platform, the Shared Backup and Archive Platform and the Managed Hosting Service
"Software"	any software to which the Customer is provided with access pursuant to this Contract, or any third party software which the Customer purchases through Opus including any software embedded in the Opus Equipment and/or Customer Equipment;
"Stored Data"	the Customer Content that is stored within any Opus or supplier data centre
"Stored Personal Data"	Personal Data that is contained within the Stored Data;
"Technology Order"	any Order for product or services provided by Opus Technology;
"Working Day"	Monday to Friday (inclusive) 8.30am to 5.30pm, excluding all public and bank holidays in England and Wales.

1.2. In this Contract:

- 1.2.1. headings are inserted for convenience of reference only and shall not affect the interpretation or construction of this Contract;
- 1.2.2. the words and phrases "including" and "in particular" (and any variations of these words, or similar words) shall be deemed to be immediately followed by the words "without limitation";
- 1.2.3. references to Clauses, Orders, Paragraphs or Appendices are to clauses, schedules, orders or, paragraphs or appendices of this Contract, unless stated otherwise;
- 1.2.4. references to the singular include the plural and vice versa;
- 1.2.5. references to a 'person' include an individual, company, firm, partnership, public body, charity or other legal entity; and
- 1.2.6. words referring to a particular gender include every gender.

1.3. In the event of any conflict between the various parts of this Contract, the following order of precedence shall apply (highest precedence stated first):

- Main Body:
- Opus Orders and / or Agreements

1.4. The Customer acknowledges and agrees that details of the Customer's name, address and payment record maybe submitted to a credit reference agency, and personal data will be processed by and on behalf of Opus in connection with the Services.

1.5. Opus reserves the right to perform a credit check, with no prior notice, on the Customer and to pass your credit history on to the credit agencies and/or the Court if deemed necessary.

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## **2. Contract Commencement and Duration**

- 2.1. This Contract shall come into force on the Effective Date.
- 2.2. This Contract shall continue in force until the termination of each and every Opus Order and/or Agreement by either Party giving to the other Party not less than three (3) months' written notice prior to the Initial Term or subsequent anniversary date (to expire no earlier than the end of all of the Initial Terms).
- 2.3. All Services specified with Opus Orders and/or Agreements, shall be provided until the expiry of their "Initial Term" and thereafter year on year unless or until terminated by either Party giving to the other Party not less than three (3) months' written notice prior to the Initial Term or subsequent anniversary date.

## **3. Due Diligence and Project Plans**

- 3.1. Following the Effective Date, where applicable, Opus will conduct a due diligence exercise prior to the start of any implementation activity under this Contract to gather missing information and to test any assumptions made during written pre-contract representations. Reliance for the Customer to place orders for new major project implementations supplied by Opus can only be placed upon pre-contract representations provided within a "High Level Design Project Plan" or "Connection Schedule".
- 3.2. As soon as reasonably practicable following the completion of all due diligence activity and the amending of the Orders, if required, pursuant to Clause 3.1 above, Project Initiation Documentation (the "Project Initiation Documentation") shall be produced by Opus and submitted to the Customer. The Project Initiation Documentation will be maintained and regularly updated in line with PRINCE2 methodology throughout the implementation period.

## **4. Implementation**

- 4.1. Opus shall use all reasonable endeavours to meet the dates and timeframes set out in the Project Initiation Documentation but the Customer acknowledges that such dates are subject to many factors including confirmed supplier delivery dates, Customer Site surveys, Customer Site wayleaves, Force Majeure Events and the timely performance of the Customer's responsibilities set out in this Contract. Opus shall keep the Customer regularly informed of progress and promptly advised of any delays encountered.
- 4.2. To enable Opus to install the Equipment and Connectivity Services, the Customer shall:
  - 4.2.1. prepare the Customer Sites and the Customer Networks in accordance with Opus's reasonable instructions; and
  - 4.2.2. unless specified otherwise in the Service Description, connect any access circuits to the Customer Premises Equipment in accordance with Opus's reasonable instructions; and
  - 4.2.3. procure (and be responsible for the cost of procuring) any third party consents that may be required for Opus (and/or its contractors and suppliers) to install and retain the Connectivity Services and the Opus Equipment at the Customer Sites, including without limitation, any landlord wayleave consents.
  - 4.2.4. Every appointment date change and port date change at the Customers request for all services supplied by Opus may be charged at the prevailing rate and will be invoiced accordingly.

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## **5. Acceptance**

- 5.1. Opus may at its sole discretion accept any Contract, Order and/or Agreement. If Opus requires additional information from the Customer in order to accept any Contract, Order and/or Agreement it shall notify the Customer accordingly and the Customer shall provide such information.
- 5.2. The Project Initiation Documentation will detail what Services (or elements thereof) will be subject to acceptance testing and at what stage during the installation / migration and what the applicable acceptance test period for that Service (or element) will be (the "Acceptance Test Period") where relevant/required, discussed and agreed with the Customer. The Customer and Opus shall work together to produce an "Acceptance Test Plan" ("ATP") detailing the agreed acceptance tests criteria for each acceptance testing element set out in the Project Initiation Documentation ("Acceptance Tests").
- 5.3. Where an "Acceptance Test Plan" has been agreed and formalised, the Customer shall have the applicable "Acceptance Test Period" in which to carry out the applicable "Acceptance Tests". The Customer shall sign Opus's standard acceptance test certificate upon successful passing of the applicable "Acceptance Tests" and promptly return it to Opus. In the event that the Services (or element thereof) do not pass the applicable "Acceptance Tests", the Customer shall serve written notice to this effect on Opus. In the event that the Customer (i) has not signed and returned the acceptance test certificate or (ii) served notice that the Services (or element thereof) have failed to pass the applicable "Acceptance Tests", by the expiry of the applicable "Acceptance Test Period", the Customer shall be deemed to have signed the acceptance test certificate upon expiry of the applicable "Acceptance Test Period". If the Customer has served notice that the Services (or element thereof) have failed to pass the applicable "Acceptance Tests" before the expiry of the applicable "Acceptance Test Period" then Opus shall remedy any defect in the Services (or element thereof) as soon as reasonably possible and re-submit and/or re-deliver the Services (or element thereof) to the Customer for acceptance testing. Opus shall have the right, but not the obligation, to be present during the carrying out of any Customer "Acceptance Tests".
- 5.4. The Date on which the Customer signs, or is deemed to have signed, the "Project Completion Document" in accordance with the above shall be the relevant "Acceptance Date".

## **6. Service Provision**

- 6.1. Opus shall use the reasonable care and skill expected of a competent information technology and telecommunications provider in exercising its rights, and carrying out its obligations, under this Contract, Orders and/or Agreements.
- 6.2. The Services will be subject to the Service Level Agreements. No warranty is given by Opus that all faults will be fixed in entirety or will be fixed within a specified period of time where outside of Opus direct control.
- 6.3. Due to the technical nature of the Services, the Customer acknowledges and agrees that Opus cannot guarantee that the Service will be free of faults or interruptions, timely or secure to the extent the Service may be affected by events Opus cannot control, such as (without limitation) lack of network capacity, physical obstructions.

## **7. Uses of Services**

- 7.1. The Customer shall not (and shall procure that all users of the Services for whom it is responsible pursuant to Clause 7.4 below shall not):

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- 7.1.1. use the Services, Software, Opus Sites, or Opus Equipment in any way that knowingly violates any Laws, or act or omit to act in any way which will place Opus in breach of any Laws including but not limited to the Communications Act 2003; and/or
  - 7.1.2. use the Services, Software, Opus Sites or Opus Equipment in any way that would knowingly constitute or contribute to the commission of a crime, tort, fraud or other unlawful activity (including activities deemed unlawful under a complainant's jurisdiction); and/or
  - 7.1.3. allow any third party not authorised by the Customer access to, or use of the Customer Equipment, the Opus Equipment, the Opus Sites or the Services and shall take reasonable security measures consistent with good industry practice to prevent the same; and/or
  - 7.1.4. add to, modify or interfere in any way with the Software, Opus Equipment, any equipment which is not Customer Equipment, or the Services other than with Opus's permission or in accordance with Opus's instructions; and/or
  - 7.1.5. use the Software, Opus Sites, the Opus Equipment, the Customer Equipment, or the Services in any way that would or may be harmful or detrimental to the reputation of Opus and/or its suppliers.
  - 7.2. The Customer warrants that it will take all reasonable steps, considered as best practice, to ensure that any material and/or communication received, transmitted, hosted or otherwise processed using the Services (other than material and/or communications to the extent they are unsolicited) will not be menacing, of a junk-mail or spam-like nature, illegal, threatening, defamatory, discriminatory, promote illegal or unlawful activity, be otherwise actionable or in violation of any Laws to which the use of the Services is subject, or infringe the Intellectual Property rights of Opus or any third party.
  - 7.3. The Customer shall indemnify and keep Opus indemnified and hold Opus harmless from and against all losses, liabilities, damages, costs, claims, demands and expenses arising out of, or in relation to, any breach by the Customer (including any user of the Services for whom the Customer is responsible pursuant to Clause 7.4 below or the end user) of the provisions of Clauses 7.1.1 and/or 7.1.2 and/or any use of the Services in connection with the transmission of prohibited content. in breach of the Customer's obligations pursuant to clause 7.2 above unless, in each case, such breach only arose due to a breach of its obligations by Opus.
  - 7.4. The Customer is responsible for (and shall be liable to Opus in respect of) the use of the Services (including any incurred Charges) by any of its employees and any other person who has been given access to the Services by the Customer, and any person who gains access to the Customer Content or the Services as a result of the Customer's failure to use reasonable security precautions and/or comply with its security obligations stated in this Contract, even if such use was not authorised by the Customer.
  - 7.5. The Customer acknowledges that the Services are not designed to be used in circumstances in which errors or inaccuracies in the content, functionality, services, data or information provided by the Services or the failure of the Services, could lead to death, personal injury, or severe physical or environmental damage. The Customer agrees not to use the Services for any such purpose.
  - 7.6. Where the supplying network supports this service, the toll fraud provision scheme that they offer will be applied to your account as standard to cover the Customer against any fraudulent activity that occurs on that specific underlying supplier's network only at the prevailing rate and charged per active telephone/bearer number. Please note that each underlying suppliers toll fraud provision scheme does not cover the Customer against the use of that service to break onto an alternative underlying suppliers network to commit toll fraud. This is supplied based on the supplying networks defined provision (available on request) to minimise end user exposure to
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toll fraud. This service, whilst strongly recommended, is optional to the Customer. Cancellation of this service must be served by the Customer to the Opus billing department in writing which upon written acceptance and the change will be provisioned by Opus; the Customer agrees to accept full liability of any incidents of toll fraud on their account forthwith that do not have the toll fraud provision scheme.

## **8. Changes and Network Freeze**

- 8.1. Opus reserves the right, at any time, to make any modification, change or addition to, or replacement of, any Service (or part thereof) or the Opus Equipment, where this is required to conform with any applicable safety requirements or Laws.
- 8.2. Subject to Clause 8.1 above, all requested changes to the Services shall be dealt with in accordance with the Change Management Process Document (if applicable).
- 8.3. Opus and its suppliers, in accordance with best industry practice, operate a two-week network freeze during late December and/or early January and consequently, no Connectivity Services can be handed-over or changes effected to existing Connectivity Services during this period and lead-times shall be extended accordingly. For the avoidance of doubt, existing Connectivity Services will continue to be provided and supported as usual during the network freeze.

## **9. Opus' Obligations and Warranties**

- 9.1. Opus shall use all reasonable endeavours to meet any dates or timescales set out in this Contract, but Opus shall not be liable for damages for delay in providing the Services hereunder. Any commencement date shall be treated as an estimate. Opus shall not be liable for any failure to provide the Service by a specified date, as lead times are indicative only and not guaranteed. Time shall not be of the essence in relation to the performance by Opus of any obligation under this Contract, Orders and/or Agreement.
- 9.2. Opus shall agree to carry out its obligations and exercise its rights under this Contract regarding the Support Agreement once the Agreement authorisation code has been entered, which constitutes that Opus has carried out expected due diligence and/or a site survey to confirm pre contract representations.
- 9.3. Opus will use all reasonable skill and care to supply and maintain for the duration of this Contract all permissions, licences and consents necessary for Opus to deliver the Services being supplied.
- 9.4. Opus warrants that it has the legal capacity and authority to enter into this Contract.
- 9.5. Opus warrants that it shall comply with all applicable Laws in relation to this Contract.
- 9.6. Opus does not guarantee against loss of, alteration of, or improper access to, customer content.
- 9.7. Opus shall maintain for the duration of this Contract and for 12 months thereafter with a reputable provider a minimum cover of £10 million per instance on (i) public/products liability insurance; and (ii) professional indemnity insurance. Reasonable evidence of such insurances and confirmation that all premiums have been paid shall be provided to the Customer promptly following written request for the same.
- 9.8. Opus shall at the expense of the Customer provide Service where failure of the Customer's Equipment is subsequently found to be due to miss-operation or failure of the Customer's 3<sup>rd</sup> party suppliers and/or Customer/data centre hosted environments and/or electricity supply and/or other network or internet service providers (including alternative call carriers) and/or if any person not authorised by Opus to do so shall have tampered with the Customer Equipment. This provision will be handled outside

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- any contract SLA's when these conditions exist, however it is acknowledged that Opus will work with the Customer to reinstate Service with absolute best endeavours.
- 9.9. Opus can refuse to carry out work outside Normal Business Hours if requested by the Customer, and if Opus accepts such works, the Customer agrees such work will be charged at the prevailing out of hours rates including any out of hours Charges incurred from Opus' underlying suppliers or subcontractors.
- 9.10. Opus agrees that if there are repeated delivery or service failures then the Customer can commit Opus to its Escalation Pathway. Should the highest level of the escalation matrix be reached (i.e. escalation to Opus's managing director), then Opus's managing director, or if he or she is unavailable another director of Opus, will personally assign a member of Opus' senior management to take sole ownership of the issue, through to resolution to the Customer's satisfaction. The senior manager will report on progress in resolving the issue to the Customer at agreed regular intervals as deemed reasonable by both parties.

## **10. Customer Obligation and Warranties**

- 10.1. The Customer shall:
- 10.1.1. confirm and agree they are duly authorised to sign, for and on behalf of the Customer and that they have read and understood the terms of the Contract including any relevant terms and conditions and acknowledge that it creates a legally binding agreement, whether signed in person, digitally or electronically.
  - 10.1.2. acknowledge responsibility to carry out all necessary due diligence with any third parties that any of the Services being transferred do not have any outstanding term settlement fees or if they do, the Customer acknowledges they are responsible for the settlement in full directly
  - 10.1.3. follow Opus's reasonable instructions and guidelines in relation to the Services, including any set out in the Documentation; and
  - 10.1.4. provide Opus with such up-to-date information, co-operation and support as Opus may reasonably require pursuant to this Contract; and
  - 10.1.5. comply with its obligations and responsibilities set out in the Service Description in a timely manner; and
  - 10.1.6. only use the Services in accordance with any Policies defined within the service Orders; and
  - 10.1.7. take all reasonable steps (including testing with the latest commercially available detection software) to ensure that any software used with or in conjunction with the Services is not infected by Malicious Code; and
  - 10.1.8. provide and maintain suitable space and environment for the Equipment in a timely manner; and
  - 10.1.9. get confirmation in writing from Opus before running any major operating system updates and installation of 3rd party software applications on any devices, be it servers, pc's, laptops, mobile, tablet, etc. Opus cannot guarantee that any communications/IT software it has provided / installed for the Customer is compatible with any other vendor's operating system or software without confirmation from Opus' supplier that it has been tested and is compatible; and
  - 10.1.10. not to maintain, relocate, service, enhance, repair, adjust, tamper or alter the Customer Equipment and to comply with all reasonable advice given by Opus; and
  - 10.1.11. notify Opus of any alteration, repair, replacement or addition to the Equipment not carried out by Opus or its representatives; and

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- 10.1.12. at its own expense comply with all statutory requirements, bye laws, obligations, regulations (including but not limited to Payment Card Industry (PCI) compliance and Data Protection Act 2018), or instructions in relation to the testing and use of the Equipment /Software/Networks; and
  - 10.1.13. provide at its own expense mains electricity and any other facilities and co-operation as may be necessary for the proper and prompt maintenance or repair of the Customer Equipment to be completed; and
  - 10.1.14. pay Opus' standard Charge on presentation of an invoice for the re-programming and/or service visits as a result of the Customer requesting service where the fault is Customer induced due to mis-use or a programming error affected by the Customer or his agent; and
  - 10.1.15. ensure at its own expense that it complies with any mandatory software assurance schemes that the underlying Supplier requires and at all times the Customer Equipment or any devices using the Customer Equipment includes the current recommended version of any software required for it to operate; and
  - 10.1.16. pay any additional cost to Opus of performing the Contract arising out of the making passing or amendment of any law order regulation bye law, variation in the order or specification or similar matter after the date of the tender or offer shall be invoiced by Opus to the Customer and payable as an addition to the purchase price (and the Customer shall not be entitled to cancel or otherwise terminate the Contract on account thereof); and
  - 10.1.17. accept that no order which has been accepted by Opus may be cancelled by the Customer without the consent in writing of Opus. If Opus shall consent to such cancellation or if the Contract shall otherwise be terminated (except solely as a result of breach by Opus) the Customer shall pay to Opus its losses including, Service Charges due up to the end of the minimum term, any cancellation Charges from underlying Suppliers to Opus, loss of profit, loss of staff time and all Charges and expenses incurred by Opus for immediate settlement; and
  - 10.1.18. return Customer Equipment provided to the Customer by Opus as part of a service provision or on a rental basis once the service is ceased. If the Customer Equipment is not returned to Opus using a delivery carrier which insures its carriage appropriately (and can provide proof of delivery) within 4 weeks of the service being ceased, the Customer Equipment will be charged to the Customer at the prevailing rate on the Customer's next invoice; and
  - 10.1.19. maintain an adequate level of security in respect of Services including but not limited to protecting the handsets and voicemails with PIN numbers where relevant; and
  - 10.1.20. not use, nor allow any other(s) to use the Services for any improper, immoral, illegal or unlawful purpose; or to store, send, reproduce or receive a communication which is, or is intended to be, a hoax call to emergency services, or which is defamatory, offensive, abusive, indecent, obscene or menacing; or to violate or infringe any rights of, or to cause annoyance inconvenience or anxiety to, or to interfere with or damage, any other person; or in such a way that may impair, interfere with, damage or affect the operation or quality of the Services or the relevant deliverable; or fraudulently or illegally.

The Customer's compliance with this Clause 10.1 shall be entirely at the Customer's cost.

- 10.2. The Customer warrants it shall comply with all applicable Laws and any relevant licences and permits to operate the Customer Equipment and to provide the Customer Content to the extent required under this Contract.

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- 10.3. The Customer shall determine the suitability of the Customer Equipment for its intended use prior to signing this Contract and any future Orders and/or Agreements placed with Opus.
  - 10.4. The Customer must notify Opus immediately by telephone, email, web-chat/portal of any fault in the Customer Equipment or any repair which may be necessary. Opus shall not be liable for any defect in the Services unless the Customer shall have given to Opus written notice of such defect within 7 days of the date on which such defect came to the attention of the Customer (time being of the essence for the purpose). The Customer is to provide Opus at all times with access to the Customer Equipment as Opus shall reasonably require subject to reasonable advance notice and allow Opus to carry out its obligations and exercise its rights stated in an Opus Order and/or Agreements regarding the support and/or maintenance of the Customer Equipment. Any period of delay in providing Opus Personnel with access to the Customer Sites shall be excluded from any service level calculations. The Customer shall ensure that Opus Personnel have a safe working environment at the Customer Sites. Opus Personnel will comply with all reasonable health and safety and security policies of the Customer applicable to the Customer Site, provided in writing prior to, or at the time of entry to, the Customer Sites.
  - 10.5. Opus shall be excused from failures to perform its obligations under this Contract (including a failure to meet the Service Levels Agreements) if the Customer delays or fails to perform the customer obligations.
  - 10.6. The Customer is responsible for all planning, installation, configuration and testing of local area network devices and any other equipment or infrastructure beyond the Opus circuit terminating equipment unless specified within Opus Orders, Agreements, High Level Designs or Project Initiation Documents.
  - 10.7. If the Customer delays or fails to perform its obligations, Opus will be entitled to receive an equitable adjustment in the Project Initiation Documentation or agreed schedule timescales and/or Charge additional fees at the prevailing rates.
  - 10.8. The Customer acknowledges that it is their responsibility to ensure that any 3<sup>rd</sup> party supplier of any hardware connected to the services is set up to prevent alternate network break-out with regard to term 7.6 regarding toll fraud.
  - 10.9. Customer Equipment or Software supplied by Opus to the Customer without a support agreement is subject to a 14 day return period and will be replaced under the underlying suppliers/manufacturers warranty and carriage returns policy.
  - 10.10. Whilst best endeavours are made by underlying mobile suppliers to send indicator alerts if any thresholds are exceeded, this is not to be relied upon as they are not real time and provided on a best efforts basis. It is ultimately the Customer's complete responsibility to set and monitor their own end users' consumption of mobile call, text & data usage.

## **11. Staff and Contractors**

- 11.1. Opus shall ensure that Opus Personnel possess appropriate skills and experience and that they have been suitably vetted and are subject to appropriate duties of confidentiality. Opus reserves the right to replace any Opus Personnel with another person with the necessary training and skills to meet the obligations of the role, at any time without the Customer's consent.
- 11.2. Neither Party shall, without the other Party's prior written consent, actively initiate recruitment of any staff of the other Party directly involved in the provision and/or support of the Services during the currency of this Contract and for a period of 12 months following termination other than as a result of a bona fide recruitment campaign.

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## **12. Risk**

- 12.1. On delivery of each item of Opus Equipment to the Customer's premises, full risk of damage to, or loss of, such equipment shall pass to the Customer. The Customer shall be responsible for the safety, safe custody and safe use of the Opus Equipment whilst it is in the Customer's custody and the Customer shall be liable to Opus for any loss or damage to the Opus Equipment except for (i) fair wear and tear and (ii) any loss or damage caused by the negligent act or omission of Opus.

## **13. Software**

- 13.1. In the event that the Customer is provided with access to, or use of, third party Software by Opus under this Contract, the Customer agrees to abide by the terms and conditions set out in any relevant End User License Agreements (EULA) provided or made available to the Customer by Opus (whether via the portal, the Software or otherwise). The Customer shall (and shall procure that all users of the Software shall) only use the Software in accordance with such EULA. Opus shall only be liable in respect of such Software to the extent liability is limited in accordance with the terms of the applicable EULA.
- 13.2. The Customer shall not (i) reverse engineer, disassemble, decompile or otherwise attempt to access or determine the source code of the Software (except as and only to the extent any of the foregoing is permitted by the licensing terms governing use of any open sourced components included with the Software), (ii) copy, "frame" or "mirror" any content available on the Software on any other server or wireless internet-based device, (iii) re-distribute or sublicense the Software, or any part thereof, to any third party, (iv) operate the Software for use by third parties or otherwise operate the Software on a service bureau basis, without Opus's express prior written consent, (v) copy, or reproduce the Software in any way, in whole or in part, (vi) modify or create any derivative work based on the Software, or (vii) allow, permit or assist any third party to do any of the foregoing.
- 13.3. The Customer agrees that Opus may provide the Licensors with information regarding the Customer's use of their Software, including information on the number of licenses required for the Customer's use or access of the Software, the country in which the Customer is located and the Customer's name and address. The Customer agrees to co-operate with Opus in order to provide this information.
- 13.4. Opus and/or a Licensor (or its nominated representatives), may at Opus's expense, access the Customer Site and Customer systems and records relevant to usage of the Software, to ascertain compliance with any EULA and Clause 13.3 above, during Normal Business Hours and subject to reasonable prior notice.
- 13.5. If the Customer uses software it has purchased for itself in the receipt of the Services which has not been licensed by Opus, the Customer shall acquire permission to use the software from the person with the rights to the software and must comply with any restrictions regarding license mobility where applicable.

## **14. Customer Consent**

- 14.1. The Customer grants Opus a worldwide, irrevocable (except on Contract termination), royalty-free, non-exclusive, sub-licensable (to Opus's authorised subcontractors engaged in provision of all or part of the Services only) right for the duration of this Contract to transmit, host, replicate, store or otherwise handle by means of the Services, the Customer Content, to the extent reasonably necessary to perform its obligations under this Contract.

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- 14.2. Without prejudice to Opus's suspension and termination rights, Opus will notify the Customer if it becomes aware of (or aware of any allegation of) Customer Content that violates the terms of this Contract ("Prohibited Content") and such Prohibited Content shall promptly be removed from the Services. If the Customer fails to promptly remove the Prohibited Content, Opus may (without liability) remove the Prohibited Content from the Services or disable access to the Prohibited Content. Notwithstanding the foregoing, Opus may (without liability) remove or disable access to the Prohibited Content without prior notice as required by applicable legislation or to comply with any judicial, regulatory or other governmental order or request or order of any law enforcement office. If Opus removes Prohibited Content without prior notice, it will promptly notify the Customer thereafter, unless prohibited from doing so by law.

## **15. Intellectual Property**

- 15.1. Title to the Software and the Intellectual Property within the Services, the Software and the Documentation is held by Opus or its third party licensors ("Licensors").
- 15.2. Opus shall indemnify the Customer in respect of all claims, losses, reasonable costs and reasonable expenses (including reasonable legal fees) that are made against, or incurred by, the Customer as the result of a claim by a third party that the provision of the Services and/or Software by Opus to the Customer, infringes the Intellectual Property rights of any third party. Opus shall only be liable to indemnify pursuant to this Clause to the extent that: (i) Opus is promptly notified of any such claim; (ii) Opus is given sole control of the claim and the freedom to defend or settle the claim as it deems fit; (iii) the Customer provides all reasonable assistance to Opus at Opus's cost in respect of the claim; (iv) the Customer makes no statements or admits any liability in respect of the claim; (v) the claim does not arise from the use of the Services otherwise than as permitted under this Contract; (vi) the claim does not arise from the combining of the Services with any services or equipment not supplied by Opus; (vii) the claim does not arise from any modification to the Services or Software not carried out or authorised in writing by Opus; and (viii) the claim does not arise from the use of the Software other than in accordance with the applicable Software licence.
- 15.3. The Customer shall indemnify and hold harmless Opus in respect of all claims, losses, reasonable costs and reasonable expenses (including reasonable legal fees) that are made against, or incurred by, Opus as a result of a claim by a third party that Opus's installation, use, transmission, storage, possession or accessing of the Customer Equipment, Customer Content, material or third party software provided by the Customer in connection with the Services infringes the Intellectual Property or other rights of a third party. The Customer shall only be liable to indemnify pursuant to this Clause to the extent that: (i) the Customer is promptly notified of any such claim; (ii) the Customer is given sole control of the claim and the freedom to defend or settle the claim as it deems fit; (iii) Opus provides all reasonable assistance to the Customer at the Customer's cost in respect of the claim; (iv) Opus makes no statements or admits any liability in respect of the claim.

## **16. Personal Data Processing**

- 16.1. In relation to Customer Personal Data Processed by Opus on behalf of the Customer pursuant to the Contract, Opus shall at all times be the Data Processor and the Customer shall at all times be the Data Controller.
- 16.2. Opus will only Process (i) Business Personal Data as reasonably required to effectively administer its business relationship with the Customer and in accordance

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- with any legal written instructions received from the Customer; and (ii) Stored Personal Data to the extent reasonably necessary in order to provide the relevant Service(s) in accordance with the Contract.
- 16.3. Opus shall apply appropriate organisational and technical measures to protect Business Personal Data against any unauthorized access, theft, use or disclosure.
- 16.4. Stored Personal Data will only be Processed by Opus using facilities which are (i) located within the European Economic Area (EEA) and (ii) covered by the Relevant Accreditations and subject to the express provisions regarding security of the Stored Data set out in this Contract.
- 16.5. The Customer warrants that it has obtained all necessary consents from either (i) the data subjects concerned or (ii) any relevant data controller (if not the Customer) for the transfer of Stored Personal Data to Opus.
- 16.6. Opus will promptly notify the Customer about:
- (i.) any legally binding request for disclosure of Customer Personal Data by an appropriate authority unless otherwise prohibited;
  - (ii.) any known accidental or unauthorised access to, or transfer of, Customer Personal Data; and/or
  - (iii.) any request received directly from data subjects.
- 16.7. The Customer shall be responsible for deleting, correcting and blocking any Stored Personal Data required pursuant to applicable Law.
- 16.8. Opus shall be responsible for deleting, correcting and blocking any Business Personal Data required pursuant to applicable Law.
- 16.9. Opus shall not sell or rent any Customer Personal Data to any third party.
- 16.10. To the extent that Opus Processes any Personal Data on behalf of the Customer, Opus shall:
- 16.10.1. not otherwise modify, amend, disclose or permit the disclosure of any of such Personal Data to any third party unless specifically authorised to do so in writing by the Customer;
  - 16.10.2. ensure (a) the reliability of any of Opus Personnel with access to such Personal Data, (b) that such access is granted on a 'need to know' basis, and (c) that such Opus Personnel are subject to binding obligations of confidentiality with respect to such Personal Data;
  - 16.10.3. provide full cooperation and assistance to the Customer to allow the Customer to comply with its obligations as a Data Controller, including by maintaining written records of Personal Data Processing, as required and when applicable under the Data Protection Act 2018;
  - 16.10.4. not Process and/or transfer any such Personal Data in or to any country outside the European Economic Area (EEA) without the prior written consent of the Customer;
  - 16.10.5. not authorise any subcontractor to Process such Personal Data without the prior written consent of the Customer and provided that it (a) imposes obligations on any such subcontractors that are the same as or equivalent to those set out in Clause 16 and 17;
  - 16.10.6. promptly and without delay (but in any event within 24 hours of becoming aware of it), notify the Customer in writing of any suspected, potential or actual data incident, including any suspected, actual, alleged, or potential accidental, unlawful or unauthorised disclosure, loss, destruction, compromise, damage, alteration, access or theft, in relation to Personal Data Processed on behalf of the Customer or any incident which may give rise to a personal data breach (as such term is defined under the Data Protection Act 2018); and
  - 16.10.7. upon termination or expiry of this Contract, at the Customer's request, promptly delete or return all Customer Personal Data.
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**17. Confidentiality**

- 17.1. Subject to Clauses 17.1.1 and 17.1.2 below, neither the Customer nor Opus shall, without the other Party's prior written consent, disclose to any third party any Confidential Information of the other Party which comes to that Party's attention pursuant to this Contract. Each Party shall only use the Confidential Information of the other Party as reasonably required to exercise its rights and/or perform its obligations under this Contract and shall only disclose it to those of its employees, agents and contractors having a reasonable need to know pursuant to this Contract. Each Party shall use no lesser degree of care in respect of the other Party's Confidential Information than it uses in respect of its own Confidential Information and which in any event shall be not less than reasonable care. Upon termination of this Contract, if requested to do so by the other Party, a Party shall to the extent reasonably practicable promptly return or certify that it has destroyed all of the other Party's Confidential Information.
- 17.1.1. The Customer agrees that Opus may disclose relevant information pertaining to the Services, to its suppliers (to enable them to provide (but not limited to) service, customer surveys and promotional materials related to relevant products), and the Customer's landlords at the Customer Sites to the extent reasonably required by such third party in order to allow provision of the Services provided such third party suppliers are subject to duties of confidentiality
- 17.1.2. Each Party agrees that the other Party may disclose the Confidential Information belonging to the first party, required to be disclosed pursuant to any applicable law, court or regulatory authority. Each Party shall promptly notify the other Party of any such disclosure requirement to the extent that it is legally permissible to do so. Customer name and address may be divulged by Opus to the relevant investigative authority pursuant to a RIPA Notice without any such notification requirement applying.
- 17.2. Each Party agrees that damages alone would not be an adequate remedy for any breach of Clause 17.1 and accordingly, without prejudice to any other rights or remedies available, each Party shall be entitled to seek injunctive or other equitable relief to prevent any breach or threatened breach of Clause 17.1 by the other Party.

**18. Publicity**

- 18.1. Neither Party shall make, or permit any person to make, any public or press announcement concerning this Contract without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

**19. Suspension**

- 19.1. Opus may, without terminating and without incurring any liability, suspend all the Services or this Contract, suspend provision of any Services, in whole or in part:
- 19.1.1. with immediate effect if the Customer is in breach of Clause 7.1.1, 7.1.2 and/or Clause 7.2; and/or
- 19.1.2. immediately upon written notice if the Customer is in breach of any other material obligation under this Contract and, in the case of remediable breach, the Customer fails to remedy that breach within thirty (30) days of written notice of the breach; and/or
- 19.1.3. immediately upon written notice if the Customer becomes Insolvent; and/or

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- 19.1.4. with immediate effect if Opus is obliged to comply with the order, instruction or request of a court, government, emergency services organisation or other competent judicial, governmental, administrative or regulatory authority; and/or
  - 19.1.5. if necessary to carry out planned operational and/or emergency works in accordance with applicable Service Descriptions; and/or
  - 19.1.6. Opus reserves the right to suspend the Services temporarily in order to protect the Opus network and infrastructure in the event that the Customer has been notified of, or Opus has pursuant to the Services, detected, a denial of service attack or other act of cyber-terrorism; and/or
  - 19.1.7. with immediate effect if the Customer's use of any Shared Infrastructure Service is damaging or disrupting the proper functioning of the shared infrastructure used to provide services to Opus's other customers, including but not limited to, through use in breach of Portal Terms of Use or Acceptable Use Policy; and/or
  - 19.1.8. if any agreement giving Opus access to the Customer Network or any part thereof is cancelled, terminated or suspended; and/or
  - 19.1.9. a Service has been affected by a Force Majeure Event; and/or
  - 19.1.10. if Opus has a good reason to suspect fraudulent activity or misuse of the Service.
  - 19.2. Opus's right to suspend Services pursuant to Clause 19.1 above is without prejudice to Opus's termination rights under Clause 20 below, or any other right under this Contract or at law.
  - 19.3. Where Opus has suspended the Services pursuant to Clause 19.1.1, 19.1.4 or 19.1.7 above and it has not been practicable to provide written notice prior to such suspension, Opus shall inform the Customer as soon as is reasonably practicable thereafter.
  - 19.4. If, in providing the Services, Opus is 'caching' or 'hosting' as described in the Electronic Commerce (EC Directive) Regulations 2002, and if, in order for Opus and/or its suppliers not to be liable for any damages or any other pecuniary remedy or criminal sanction referred to in Regulations 18 and 19 of the EC Directive, Opus needs to act expeditiously to remove or disable access to the relevant Customer Content, Opus shall be entitled in its sole discretion to do so, without prejudice to any other rights or remedies it may have and, without liability for so doing, but it shall serve notice on the Customer as soon as reasonably practicable after any such exercise of this right.
  - 19.5. Opus shall reinstate any suspended Services as soon as reasonably possible once the circumstances giving rise to the suspension right no longer exist.
  - 19.6. The Customer shall continue to pay for Services during the period of suspension.

## **20. Termination**

- 20.1. Each Party shall have the right on immediate written notice to the other Party to terminate this Contract at any time in the event that the other Party
  - 20.1.1. has committed a material breach of this Contract and fails to remedy such breach within thirty (30) days of notice from the other Party requiring the breach to be remedied. The aforementioned thirty (30) day remedy period shall only apply where a breach is capable of remedy; if it is not capable of remedy, this Contract shall be terminable by immediate written notice; or
  - 20.1.2. becomes Insolvent, enters administration, becomes subject of a winding up order, is appointed a receiver or manager by competent jurisdiction or creditor, becomes bankrupt, ceases trading or is subject to a change of control;
- 20.2. Opus shall have the right to terminate:

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- 20.2.1. any Service, Opus Order/and/or Agreement and/or this Contract immediately upon written notice if instructed to do so by a court of law, regulator or other appropriate authority;
  - 20.2.2. due to the Customer's failure to pay undisputed Charges by the Due Date;
  - 20.2.3. due to a material breach by the Customer of the licence conditions set out in clause 15.2; or
  - 20.2.4. due to a material breach by the Customer of its obligations
  - 20.2.5. if Opus is unable to install or continue to provide the Services
  - 20.2.6. if Opus reasonably believes the Customer has provided false or misleading information
  - 20.3. If the Customer terminates any Services before the expiry of the Initial Term, the Customer will pay to Opus liquidated damages for the re-occurring revenues set out in the Contract / Orders and/or Agreements, along with ad-hoc Charges accrued with in each month based on the last 4 months' invoices; pro rata for the remainder of the due term from the Service Commencement Date. The liquidated damages have been calculated as and are a genuine pre-estimate of the loss likely to be suffered by Opus. The Customer acknowledges and agrees that the Early Termination Charge is based upon Opus's revenue expectation which was reflected in the Charges and is compensatory in nature and not a penalty or unconscionable. A minimum termination of the Contract / Orders and/or Agreements is an amount equal to one hundred per cent of the outstanding payments for the remainder of the Contract/ Order and/or Agreement period or the sum of two hundred and fifty pounds, whichever shall be the greater
  - 20.4. Termination of a Service and/or this Contract shall be without prejudice to the accrued rights and liabilities of either Party subsisting under this Contract prior to termination.
  - 20.5. Upon termination of a Service, Opus Order and/or Agreement and/or this Contract for any reason and subject always to the provisions of the Exit Plan where applicable:
    - 20.5.1. the Customer shall, subject to the provision of any applicable Exit Plan, immediately cease to make use of the relevant Services and the Opus Equipment; and
    - 20.5.2. the Customer shall, if required by Opus, allow Opus Personnel to enter the Customer Sites during Normal Business Hours, subject to reasonable advance notice, for the purpose of removing any Opus Equipment and de-installing the Services; and
    - 20.5.3. the Customer shall, upon the termination of this Contract within 14 days return at their expense, to Opus any Opus Equipment or pay Opus for the Opus Equipment at its then-current new purchase price if not so returned; and
    - 20.5.4. licences granted to the Customer by Opus under this Contract shall immediately terminate
    - 20.5.5. Once services are ceased, it will no longer be operational and any specific telephone numbers or IP addresses cannot be retained by the customer.
  - 20.6. Penalties will apply for early termination where free installation or equipment Charges are provided with the initial Contract term; whereby the full installation/equipment Charges are payable at any point during the Contract term, unless equipment provided by Opus is returned in good working order within 1 month of termination
  - 20.7. Any provisions forming part of this Contract which are agreed by the Parties to survive termination or which by their nature are clearly intended by the Parties to survive termination, shall survive and continue in full force and effect

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- 20.8. All payments payable to Opus under the Contract, Orders and/or Agreements shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract. Opus will at its absolute discretion stop any Customer Equipment in transit and recover any Customer Equipment from the Customer if Title has not been transferred to the Customer.
- 20.9. Cancellation of the direct debit does not constitute notice of cancellation of the Contract.

## **21. Exit Management**

- 21.1. The Parties shall comply with their respective obligations under any applicable Exit Plan.
- 21.2. Nothing in any applicable Exit Plan shall require Opus to continue to provide the Services to the Customer following termination of this Contract by Opus.

## **22. Charges and Payment**

- 22.1. The Charges shall become invoiceable as set out in Opus Orders and/or Agreements to this Contract or as detailed in any Change Order. Opus shall be entitled to make delivery of part only of any Equipment ordered and to invoice accordingly where required. Opus shall be entitled to invoice and be paid in addition to the Contract price a sum in respect of any variation in the order or the specifications requested by the Customer after the date of the Contract.
- 22.2. All Charges are payable in GBP and are exclusive of Value Added Tax and any other applicable taxes which shall be payable by the Customer in addition, in the manner prescribed by law. VAT, where applicable, shall be shown separately on all invoices as a strictly net extra Charge.
- 22.3. Any delay by Opus in invoicing the Customer for Orders and/or Agreements shall not prohibit Opus from raising an invoice at a later date in respect of the same, it shall not relieve the Customer of its liability to pay for the same.
- 22.4. At the request of the Customer, Opus is prepared to invoice the price of the Customer Equipment to be supplied as set out in an Order to any leasing company or other financial house provided that no such act on the part of Opus shall operate to release any obligation of the Customer hereunder. If the Order shall provide for the Customer to take goods on a lease, hire purchase or other financial arrangement with a third party then in the event that the third party shall not have concluded the lease, hire purchase or other arrangement with the Customer within 14 days of the Customer Equipment being ready for delivery, the Customer shall purchase the Customer Equipment from Opus at the recommended retail price (RRP). If an outright Purchase price has not been agreed prior, Opus will Charge the Customer Equipment, services and professional services at the prevailing RRP.
- 22.5. Invoices for the Charges shall be paid by the Customer by the invoice Due Date. Invoices shall be emailed to the Customer. The Customer shall pay all invoiced amounts without any deductions, with-holdings, counter-claims and/or set-offs (sums subject to reasonable and notified dispute in accordance with Clause 22.7 below excepted). Time for payment shall be of the essence of the Contract.

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- 22.6. Title to the Customer Equipment shall pass to the Customer, Opus or third party leasing or renting the Customer Equipment upon payment in full (in cash or cleared funds) of all sums due from the Customer to Opus (whether under this Agreement or otherwise). Risk in the Customer Equipment sold hereunder shall pass to the Customer on delivery and shall thereafter take all reasonable steps to preserve, maintain and insure the Customer Equipment its full value against all the usual risks, for example but not limited to damage (accidently or otherwise), theft or loss. In the case of sales of software, the Customer shall have such title or license as the manufacturer or originator of the software shall grant.
- 22.7. In the event that the Customer has a bona fide dispute as to sums invoiced, the Customer shall serve notice to this effect on Opus as soon as reasonably practicable and where disputed sums would have been reasonably apparent prior to the Due Date for payment, prior to the Due Date for payment thereof, detailing the sums disputed and the reason for the dispute. All non-disputed sums shall be paid by the Due Date. The Parties shall use all reasonable good faith endeavours to resolve any billing dispute prior to the Due Date for payment. In the event that a billing dispute remains outstanding thirty (30) days after the date of notice of the same to Opus, either Party may refer the matter for resolution in accordance with Clause 33. It is the responsibility of the Customer to check their invoice for billing inaccuracies. Opus will only consider billing queries from the Customer if made within 3 months of the date of Opus invoice/credit note for all Charges. Any disputes not raised within three (3) months of the date of the invoice are irrevocably waived.
- 22.8. If an undisputed invoice (or an undisputed part of an invoice) is not paid in full by the Due Date for payment thereof, then without prejudice to Opus' other rights and remedies Opus reserves the right to:
- 22.8.1. charge interest on the outstanding sum on a daily basis (before as well as after any judgement) until the date of payment, at the Bank of England base rate plus eight percent (8%); and/or suspend the Services (or any part thereof) in accordance with Clause 19;
- 22.8.2. suspend all Services until payment is made in full.
- 22.9. An Invoice Process Charge will be levied on each customer invoice at the prevailing rate.
- 22.10. Opus reserves the right to Charge a £5 administration fee per invoice for payments tendered by means other than Direct Debit.
- 22.11. Where a direct debit is unpaid due to insufficient funds or cancellation, a £25 administration Charge will be included on the Customer's next invoice.
- 22.12. The Customer is protected at all times by the Direct Debit Guarantee, available on request.
- 22.13. Opus reserves the right to Charge a £5 administration fee per printed invoice requested by post.
- 22.14. Opus shall be entitled to add a cease Charge for any product in addition to minimum term Charges. Our current cease Charge is £50 for each ceased Service.
- 22.15. If the Customer fails to pay undisputed sums to Opus on the Due Date set out in the Contract, Opus may hold the Customer liable for all costs and expenses incurred in attempting to obtain payment from the Customer. Opus reserves the right to recover from the customer/debtor any fees we pay to a third party including legal fees to a solicitor or a debt collection company.
- 22.16. Opus reserves the right to contra invoices if the Customer is also a supplier of Opus; therefore, Opus can deduct the amount owed from Customer's own supplier invoice to Opus.
- 22.17. Opus reserve the right to add a Charge of £50 per service to reinstate services barred due to non-payment of an invoice.
- 22.18. At the end of the initial Contract term, Opus reserves the right to increase Charges for any services that have been discounted during the Initial Term of the Contract.
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- 22.19. Opus reserves the right to vary the Charges at each anniversary by no more than 5.9%. In the event of any price increase greater than 5.9% during any calendar year (unless such an increase shall be as result of supplier increases being in excess of 5.9% in any calendar year) the Customer shall be entitled to cancel this Contract by providing written notice within 14 days after receipt of invoice.
- 22.20. Prices are guaranteed for 30 days from written proposal. After this period, Opus shall have the right at its sole discretion to increase the price of the Equipment supplied hereunder in the event that the price charged to Opus by the suppliers/manufacturers are increased between the date hereof and the date of delivery/implementation. Opus would only match the percentage increase and would be happy to provide the official notice of this increase by way of proof.
- 22.21. Network charges and bundle definitions
- 22.21.1. Local and national calls are numbers beginning with 01, 02 and 03 only. Mobile calls are numbers beginning with 07. Opus bundles which include Mobile calls only include calls to the Mobile Network operators '02', 'Vodafone', 'EE' (Orange and T-Mobile) and '3' (Three). Calls to other Mobile network operators, unless specified otherwise on the order form, will be charged at Opus standard tariff prices. The duration of all chargeable calls will be rounded up to sixty seconds and billed in sixty second increments. There is a 3p minimum Charge on all chargeable calls.
- 22.21.2. Our Network Service Assurance will be applied to your account as standard to cover the Customer against any unexpected engineer and time related charges that occur on that specific active number/reference only at the prevailing rate and charged per active telephone/bearer number. This service whilst strongly recommended is optional to the Customer. Cancellation of this service must be served by the Customer to the Opus billing department in writing which upon written acceptance and the change will be provisioned by Opus; the Customer agrees to accept full liability of any incidents of engineer and time related charges on their account forthwith that do not have the Network Service Assurance provision scheme. This service does not cover any pre-arranged works for installations, additional works, moves or shifts and any excess construction charges.
- 22.21.3. The Customer acknowledges that the incremental billing of all calls varies depending on the underlying supplier providing the service.
- 22.21.4. Where any elements of an order involve transfer/cancellation/port Charges to and from the underlying supplier to Opus, the Customer will be charged at the prevailing rates.
- 22.21.5. Where transfer orders have any associated features or services, e.g. care levels or phone directory entry Charges, they will continue to be charged to the Customer by Opus at the standard prevailing rate unless Opus is requested by the Customer to cease the committed service.
- 22.21.6. Where the customer requires a call divert applied to their telephone number, Opus reserves the right to Charge for this service at the prevailing rate.
- 22.21.7. All call types where prices are not listed on the Order form will be charged using Opus standard tariff prices, details of which are available on our website. Call types outside of the standard tariff sheet are not stated as the underlying supplier rates can be subject to minor fluctuations from time to time and are available upon request at the prevailing rate per instance.
- 22.21.8. The Opus 'Sip Superbundle' and 'Sip Superbundle Plus' includes local, national and mobile Call Charges for the term of the Contract subject to a fair usage policy of 2500 local/national minutes and 1000 mobile minutes per Sip trunk per month. If this fair usage policy is exceeded the terminating minutes will be charged at the prevailing rate ongoing for the remainder of that billing month.
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- 22.21.9. The Opus 'Medicloud' bundle includes inbound queuing and termination Call Charges for the term of the Contract, subject to a fair usage policy defined as 5000 minutes per ISDN channel, per month. If this fair usage policy is exceeded the terminating minutes will be charged at the prevailing rate ongoing for the remainder of that billing month. In addition, the bundle includes local/national & mobile minutes for the term of the Contract subject to a fair usage policy defined as 1000 minutes per ISDN channel and 1000 minutes per Sip trunk per month. If this fair usage policy is exceeded the terminating minutes will be charged at the prevailing rate ongoing for the remainder of that billing month.
- 22.21.10. The Opus 'Sip Medicloud' bundle includes inbound queuing and termination Call Charges for the term of the Contract, subject to a fair usage policy defined as 5000 minutes per Sip trunk, per month. If this fair usage policy is exceeded the terminating minutes will be charged at the prevailing rate ongoing for the remainder of that billing month. In addition, the bundle includes local/national & mobile minutes for the term of the Contract subject to a fair usage policy defined as 1000 minutes per Sip trunk per month. If this fair usage policy is exceeded the terminating minutes will be charged at the prevailing rate ongoing for the remainder of that billing month.
- 22.21.11. The Opus 'Sip Trunk Call Manager' bundle includes inbound termination Call Charges for the term of the Contract, subject to a fair usage policy defined as 5000 minutes per Sip trunk, per month to local and national terminations. Terminations to non local and national destinations will be charged at the prevailing rate. Should any endpoint exceed this amount in any month the customer will be notified of the breach and given an opportunity to increase the number of channels to incorporate the additional minutes. If this opportunity is not taken, Opus reserves the right to Charge a per minute price for the total volume of calls generated from that endpoint will be charged at the prevailing rate ongoing for the remainder of that billing month.
- 22.21.12. The Opus 'Horizon Hosted' bundle includes local/national & mobile minutes for the term of the Contract subject to a fair usage policy defined as 2000 minutes per connection per month. If this fair usage policy is exceeded, ALL terminating minutes for calls made in that billing month will be charged at the prevailing rate ongoing for the remainder of that billing month.
- 22.21.13. On all broadband connections Care Level 3 will automatically be applied and charged at the prevailing rate. (Care Levels detailed on our website)
- 22.21.14. The Customer acknowledges that the Call Charges are beyond the control of Opus as they are fixed by the underlying supplier and therefore may be subject to change at any time.
- 22.21.15. Same network migrations will incur a Charge, at the prevailing rate.

## **23. Force Majeure**

- 23.1. Neither Party shall be liable for any delay or failure in performing its obligations under this Contract caused by a Force Majeure Event. A Party affected by a Force Majeure Event shall serve prompt written notice of the Force Majeure Event and its expected duration on the other Party and shall take all reasonable steps to mitigate the effects of the same.

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**24. Warranties and Limitation of Liability**

- 24.1. All warranties, conditions, obligations and terms which would otherwise be implied into this Contract by statute, custom or law (including, without limitation, implied warranties with respect to merchantability, fitness for purpose and satisfactory quality), are hereby excluded to the maximum extent permitted by applicable law.
- 24.2. Neither party excludes or limits their liability under this Contract:
- 24.2.1. for death or personal injury caused by its (or its employees', agents' or contractors') negligence; and
- 24.2.2. in respect of any matters where liability cannot be limited or excluded under applicable law; and
- 24.2.3. for fraudulent misrepresentation; and
- 24.2.4. to indemnify the other party pursuant to this Contract; and
- 24.2.5. to pay any Early Termination Charge due pursuant to clause 20.3 above.
- 24.3. Without prejudice to clause 24.2 above, each party's entire liability for damage to the tangible property of the other party, caused by its negligence (or the negligence of its employees', agents' and contractors), shall not in any event exceed one million pounds (£1,000,000) per event or series of connected events and two million pounds (£2,000,000) in the aggregate for all events in any 12 month period.
- 24.4. Without prejudice to clause 24.2 above, neither party shall be liable to the other party for any
- loss of profits,
  - loss of business opportunity,
  - loss of revenue,
  - loss of anticipated savings
  - wasted expenditure
  - depletion of goodwill
  - loss of use
  - loss and/or corruption of data or information (unless otherwise specifically provided for in clause 24.5 below)
  - any special, indirect or consequential loss, cost, damage, Charge or expense
- 24.5. Opus shall be liable for loss and/or corruption of the stored data which is proven by the Customer to have occurred as a direct result of the breach or negligence of Opus but such liability shall be limited to the reasonable cost of either (at the Customer's option):
- (i.) Opus employing external third party consultants in order to help restore such lost data; or
- (ii.) Opus using reasonable endeavours to restore (where possible) such lost data itself, provided however that in either case, such costs shall not exceed the aggregate amount under this Contract of fifty-thousand pounds (£50,000). The payment by Opus of such restoration costs up to the maximum amount specified in this clause shall be Opus's sole obligation (and the customer's sole remedy) in respect of such loss of the stored data.
- 24.5.1. Opus shall have no liability under this Contract for any loss and/or corruption of the stored data which is caused by third party software
- 24.5.2. Loss and/or corruption of data shall only be deemed to have occurred where the actual data itself is lost (all copies) or corrupted; it shall not be deemed to have occurred where the data exists and is not corrupted but there is an issue with an application which makes it inaccessible and/or incoherent.

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- 24.6. Any liability of Either Party to the Other Party which is not (i) unlimited under Clause 24.2 above, (ii) capped under Clauses 13.1, 24.3 or 24.5 above and (iii) excluded under Clause 24.4 above, shall not in any event exceed a sum equal to six months Charges payable that are directly related Service stated within the specific Order or Agreement in the twelve (12) months preceding the claim.
- 24.7. The Customer shall have no claim against Opus in respect of any defective service provided by Opus hereunder provided that Opus shall rectify such service within a reasonable time of being given written notice to do so, regardless of whether such liability arises from a breach of Contract, in tort or otherwise.
- 24.8. The Customer acknowledges and agrees that the Charges reflect the level of liability undertaken by Opus and that the exclusions and limitations contained in this clause 24 are reasonable given the Charges that are payable.
- 24.9. Each party shall take all reasonable steps to mitigate its losses sustained as a result of the other party's breach of this Contract.
- 24.10. Where either party consists of more than one person or company then their liability shall be joint and several.
- 24.11. No failure or delay in exercising any rights hereunder on the part of Opus shall operate as a waiver of such rights.

## **25. Modification**

- 25.1. Opus may vary the terms of this Contract, Orders and/or Agreements at any time by posting the changes on its website and, if any variation of these terms and conditions is likely to cause material detriment to the Customer, by giving the Customer reasonable prior notice. Opus will only do this if it has a valid reason, for example to reflect changing arrangements with any operator of any telecommunications network or system over which Opus provides the Services or changing legal regulatory or business requirements.

## **26. Sub-Contracting**

- 26.1. Opus may enter into subcontracts for the performance of its obligations under this Contract.

## **27. Assignment and Transfer**

- 27.1. The Customer shall not at any time assign or transfer (or purport to assign or transfer) this Contract and/or any of its rights or obligations thereunder, in whole or in part, without the prior written consent of Opus. Opus reserves the right to assign, sub-contract or otherwise transfer the Contract to any third party at any time.

## **28. Waiver**

- 28.1. No delay, neglect or forbearance by either Party in enforcing its rights under this Contract shall be deemed to be a waiver of, or prejudice, of such rights.

**29. Notices**

- 29.1. Any notice required to be given to a Party under, or in connection with, this Contract, shall be in writing and shall be delivered by hand or sent by next Working Day delivery service providing proof of delivery, at its registered office (if a company) or (in any other case) its principal place of business. Any notice or communication shall be deemed to have been received on signature of a delivery receipt.

**30. Severability**

- 30.1. If any part of this Contract, or future Orders and/or Agreements is held by the courts to be unlawful, invalid or unenforceable, that part shall be considered struck-out and the remainder of this Contract shall remain in full force and effect. Opus and the Customer shall work together in good faith to agree an enforceable replacement provision capturing the spirit of the original.

**31. Prior Agreements**

- 31.1. This Contract supersedes any prior contracts, arrangements and undertakings between the Parties in relation to the subject-matter thereof and constitutes the entire agreement of the Parties relating to the subject-matter thereof. No terms and conditions set out on any Customer paperwork submitted to Opus pursuant to this Contract or during any tender process shall have any force or effect. The Customer shall have no remedy in respect of any statement made to it upon which it relied when entering into this Contract, unless such statement was made fraudulently by Opus.

**32. Bribery**

- 32.1. Both Parties shall:
- 32.1.1. comply with the Bribery Act 2010 at all times and shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and
  - 32.1.2. promptly report to the other Party any request or demand which if complied with would amount to a breach of Contract or would not be compliant with the Bribery Act 2010.
- 32.2. Breach of Clause 32.1 shall be deemed a material breach of this Contract which is not capable of remedy.

**33. Disputes**

- 33.1. Neither the Customer nor Opus shall be entitled to commence or pursue any legal proceedings under the jurisdiction of the courts in connection with any dispute, until the procedures set out in this Clause 33 have been exhausted, save for where urgent protection in the form of equitable relief is required.
- 33.2. All disputes between the Customer and Opus arising out of or relating to this Contract shall be referred by either party to the other for resolution via either Party's Escalation Pathway.
- 33.3. If any dispute cannot be resolved pursuant to Clause 33.2 within ten (10) Working Days, that dispute shall be referred to senior executives of the Parties who have authority to settle the same.

- 33.4. If the dispute has not been resolved by such senior executives within thirty (30) days of the escalation of the dispute to them, the dispute shall be referred to board directors of the Parties who have authority to settle the same.
- 33.5. If the dispute has not been resolved by such board directors within forty-five (45) days of the escalation of the dispute to them, the dispute may be referred by either Party to the courts.

## **34. Governing Law and Jurisdiction**

- 34.1. This Contract and all claims and matters arising out of or in conjunction with it shall be governed by, and interpreted in accordance with, the laws of England and Wales and the Parties hereby submit to the exclusive jurisdiction of the courts of England.

## **35. Third Party Rights**

- 35.1. This Contract is personal to the Customer and Opus. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract and unless specifically provided for in this Contract, no entity other than the Customer and Opus shall have any rights or obligations under this Contract and no entity other than the Customer and Opus shall have the right to enforce this Contract or have it enforced against them.

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This Contract is entered into on the Effective Date by the Parties by signing below.

Signed for and on behalf of **name:**

Name:

Title:

Date:

Signed for and on behalf of **Opus:**

Name:

Title:

Date:

By signing this Contract, the Customer confirms and agrees they are duly authorised to sign, for and on behalf of the Company and that they have read and understood the terms of the Contract including any relevant terms and conditions and acknowledge that it creates a legally binding agreement. Should this Contract, and any following separate orders and/or agreements be signed off by the Customers representatives using electronic signature services provided by companies including but not limited to Echo-Sign, E-Sign, Docu-Sign, then the parties agree these orders and agreements deemed to be in writing and agree to be bound by such electronic signatures, in accordance with the Electronic Communications Act 2000 where electronic signatures for business are deemed to be the same as written signature under law.