

# Master Terms Agreement



OPUS®

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## Master Terms Agreement

This Master Terms Agreement (also referred to as the Contract) provides the base terms and conditions which apply to all Agreements with Opus which are signed or otherwise agreed between the **Customer** (being the organisation named on the relevant Opus Order).

and

### **Opus Business Systems Limited**

incorporated and registered in England and Wales with company number 02695133 (enabling telephony systems, cloud telephony services, collaboration, mobility and customer experience); and

### **Opus Technology Limited**

incorporated and registered in England and Wales with company number 09851155 (enabling cloud compute & apps, co-location, storage, backup, cyber security and business continuity)

referred to herein individually and together as “Opus”;

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

### **Background:**

- A. Opus are a provider of connectivity, cloud, information technology, telecoms and associated management and professional services.
- B. The Customer wishes to procure products and services from Opus.
- C. Opus has agreed to provide the same to the Customer.
- 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”, “Acceptance Test Period”, “Acceptance Test Plan/(ATP)”  
“Acceptance Tests”  
“Agreement”

shall each have the meanings given in Clause 5; shall be construed in accordance with Clause 5; the legally binding agreement for the provision of Services and/or Opus Equipment made pursuant to and incorporating the terms of this Contract, and which comprises an Order together with (where applicable) any Amendments, Special Provisions, Service Specific Terms, Service Level Agreement(s) referenced in or referring to the Order, and other relevant supporting Documentation; where applicable, any amendments to an Agreement which are recorded in writing and attached or otherwise incorporated into the Agreement;

“Amendments”

“Annual Charge(s)”

the on-going fee(s) for the provision of the

	Services as detailed in the relevant Order and/or Agreement;
"Business As Usual" or "BAU"	when the Services are in day-to-day operational service (following any Acceptance Date, if applicable) and subject to applicable Service Level Agreement(s);
"Business Personal Data"	Personal Data relating to staff, agents and contractors of the Customer that Opus holds to facilitate the business relationship between the Parties (for example, business contact information). This does not include Stored Personal Data;
"Call Charges"	Charges for calls made by the Customer, calculated in accordance with usage data recorded by Opus's Underlying Suppliers (for example, network operators), which data shall be final and binding upon the Parties;
"Cancellation Charges"	(i) the charges incurred by Opus from its Underlying Suppliers at the point of cancellation of an Agreement by the Customer prior to the Acceptance Date, and (ii) the cancellation charges for Opus's administration and cancellation of an Agreement as set out in the Miscellaneous Charges Document;
"Charge(s)"	the charges payable for the Services as detailed in an Order and/or Agreement including, where applicable, Annual Charge(s), Call Charges, charges due under the Miscellaneous Charges Document, Cancellation Charges and any other relevant charges;
"Confidential Information"	any information concerning the business, accounts, finance, strategy, planning, forecasts, contractual dealings, customers, suppliers, business partners, pricing, transactions or affairs of a Party which are designated as confidential or which by their nature should reasonably be considered confidential. "Confidential Information" does not include information which: (i) was in the receiving Party's lawful possession prior to disclosure; (ii) is or becomes publicly known other than through an act or omission of the receiving Party; (iii) is lawfully disclosed to the receiving Party by a third party without restriction on disclosure; (iv) the receiving Party can show has been independently developed;
"Connection Schedule"	implementation documentation used to agree mobile provisioning;
"Connectivity Services"	any platform connectivity services included in an Agreement;
"Contract"	this Master Terms Agreement (including any

“Customer Content”	agreed schedules); the works of authorship, marks, data, information, materials and other content sent, received, transmitted, hosted, stored, replicated or otherwise made available by means of the Services. For the avoidance of doubt, Customer Content does not include Materials. All Customer Content is and will remain the property of the Customer;
“Customer Equipment”	items of equipment owned or leased by the Customer located either at a Customer Site or an Opus Site and used to provide and/or receive the Services, and including equipment sold to the Customer by Opus;
“Customer Networks”	the local area network, network equipment, computer systems and local cable infrastructure at the Customer Site(s) and 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 an Agreement, the Customer is the Data Controller;
“Customer Site”	the Customer location at which the Services will be provided, as specified in an Agreement and which shall include any co-location racks within Opus’s data centres to which the Customer has access;
“Data Controller”	has the meaning given in the UK GDPR;
“Data Processor”	has the meaning given in the UK GDPR;
“Data Protection Legislation”	the Data Protection Act 2018, the UK GDPR (as defined in the Data Protection, Privacy and Electronic Communications Regulations 2019) and the Privacy and Electronic Communications Regulations 2003, and including, where applicable, the guidance and codes of practice issued by the Information Commissioner’s Office (or successor UK data protection authority) and all applicable local laws and regulations where these apply to Opus in respect of its performance under an Agreement relating to the processing of personal data and privacy;
“Data Subject”	has the meaning given in the UK GDPR;
“Data Subject Request”	a request made by a Data Subject to exercise any rights of Data Subjects under Chapter III of the UK GDPR in relation to Personal Data Processed by Opus pursuant to an Agreement;
“Designated Representative”	has the meaning given in Clause 35;
“Dispute”	is a dispute between the Parties (including any dispute arising out of any amount due to a Party) which does not qualify for handling under the

“Dispute Notice”	Escalation Pathway pursuant to Clause 8.12;
“Documentation”	has the meaning given in Clause 35; documentation provided to the Customer by Opus (if any) for the purpose of providing the Services;
“Due Date”	the period set out in the Order which commences from the date of the invoice;
“Early Termination Charges”	the charges payable by the Customer for early termination of the Agreement which equate to: (i) any installation Charge(s) which may have been amortised over the Initial Term; (ii) all Charges incurred and due up to the termination date; (iii) all Charges that would have been payable but for the Agreement’s early termination up to expiry of the later of the Initial Term and, (if) applicable, the then current additional period pursuant to Clause 2.3.1; and (iv) any administration charges imposed by any Underlying Supplier on Opus as a result of or otherwise in connection with termination of the Agreement;
“Equipment”	the Opus Equipment and the Customer Equipment;
“Escalation Pathway”	the escalation process at <a href="#">Escalation Process - Opus Tech</a> ;
“Force Majeure Event(s)”	any event or circumstance beyond a Party’s reasonable control including: <ul style="list-style-type: none"><li>a) war or other military action, preparation for war, riot, insurrection or other civil unrest, terrorism and acts of terrorism;</li><li>b) civil emergency (whether an emergency is declared or not);</li><li>c) imposition of sanctions, embargo, blockade, or breaking off of diplomatic relations;</li><li>d) radioactive, nuclear, chemical or biological contamination;</li><li>e) law, or governmental order, rule, regulation or direction, judgment, order or decree;</li><li>f) severe delays or disruptions to the use of public or private transport where required by a Party to perform the Agreement;</li><li>g) any unavoidable change in applicable Laws which materially affects a Party’s ability to perform an Agreement;</li><li>h) any action taken by a government or public authority, including but not limited to a failure to grant a necessary licence, permit or consent, or the imposition of an export restriction, import restriction,</li></ul>

	<p>quota or other restriction or prohibition;</p> <p>i) epidemic (including any public health emergency) or pandemic;</p> <p>j) damage or destruction to premises, equipment, cabling or network infrastructure not attributable to the Party seeking to rely on such event or circumstance;</p> <p>k) breakdown of equipment, plant or machinery not attributable to the Party seeking to rely on such event or circumstance;</p> <p>l) interruption or failure of technology (including internet connectivity) or telecommunications networks and other telecommunications services not directly attributable to the Party seeking to rely on such event or circumstance;</p> <p>m) interruption or failure of utility services (including power surges, failure or shortage of power supplies);</p> <p>n) cyber or other technological attack, including but not limited to denial-of-service attacks, attacks involving Malicious Code and computer hacking;</p> <p>o) acts of God, including earthquake, landslide, tempest, storm, fire, explosion, flood, drought or other natural disaster;</p> <p>p) industrial action, strikes or lock-outs by employees of third parties (excluding subcontractors and suppliers of the Party seeking to rely on such event or circumstance unless no substitute is reasonably available);</p>
<p>“High Level Project Plan” or “High Level Design” “Initial Term”</p>	<p>where applicable, the agreed project plan and/or design;</p> <p>a minimum of 36 months for any Service, unless otherwise specifically defined in an Order and/or Agreement, commencing from the relevant Service Commencement Date;</p>
<p>“Insolvency Event”</p>	<p>in relation to a Party: (i) the appointment or the application to a court for the appointment of a liquidator, provisional liquidator, administrator, administrative receiver or receiver or any other similar officer; (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; (iii) any reorganisation, moratorium or other administration involving its creditors or any class of creditors; (iv) a resolution, or</p>



“Intellectual Property”

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 be construed accordingly; “Insolvency Event” 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;

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;

“IT Fair Use Policy”

the IT fair use policy set out in Opus’s Fair Use Policy – IT Services – 7174 (a copy of which is available on request);

“Laws”

all laws, 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, codes of practice or anything similar, required or granted thereunder and any condition attaching thereto, including any specific laws mentioned by name herein having force and effect in England and Wales;

“Malicious Code”

computer code, files or programs which may prevent, impair, affect the reliability of, destroy, damage, interfere with, corrupt, or cause undesired effects on any program, computer, system, software, code, network, data or other information (including all viruses, logic bombs, worms, spyware, trojan horses and other types of destructive, disruptive or nuisance files,



“Materials”	scripts, programs, agents or devices); 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 an Agreement or otherwise in connection with the Services. For the avoidance of doubt, Materials do not include Customer Content;
“Miscellaneous Charges Document”	the Opus document applicable to Opus customers generally (and available on request) which sets out the miscellaneous charges that the Customer may be liable to pay Opus, and which may be updated from time to time by Opus;
“Normal Business Hours”	8:30 a.m. to 5.30 p.m. on any Working Day;
“Opus Equipment”	items of equipment owned or leased by Opus located either at an Opus Site or a Customer Site and used to provide and/or receive the Services;
“Opus Personnel”	the staff and contractors of (i) Opus and (ii) Opus’s contractors and sub-contractors engaged in the provision of the Services;
“Opus Site”	the location(s) where the Services will be provided from, including any data centres owned and operated by Opus or its suppliers;
“Order”	an order for Services and/or Equipment;
“Personal Data”	shall have the meaning given in the UK GDPR;
“Personal Data Breach”	any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Personal Data;
“Portal Terms of Use”	the terms of use applicable to any portal access provided by Opus to the Customer;
“Processed”, “Processing”, “Process”	have the meaning given to them in the UK GDPR;
“Project Completion Document”	the project completion document provided to the Customer for sign-off following completion of project works;
“Project Initiation Documentation”	the project initiation documentation to be provided by Opus to the Customer following completion of all due diligence activity as per Clause 3.1;
“Relevant Accreditations”	ISO accreditations held by Opus and/or its Underlying Suppliers, and equivalent subsisting from time to time;
“Resource(s)”	supply of RAM, CPU, disk storage, IP addressing, hardware, network bandwidth and professional services required by a system in order to function effectively;
“RIPA Notice”	a notice issued by an investigative authority pursuant to the Regulation of Investigatory

“Service Commencement Date”	Powers Act 2000; the earliest of: (i) where a Service is subject to Acceptance Tests, the date on which a Service has successfully passed Acceptance Tests; (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; (iii) the date that the Customer starts using the Service;
“Service Description”	the name of the Services set out in an Order (and, where applicable, as more particularly described in the Service Specific Terms);
“Service Level Agreement”	the service levels agreement(s) set out in or referenced in an Order;
“Service Specific Terms”	the service specific terms set out in or referenced in an Order and any other special terms relating to a Service;
“Services”	the Services provided by Opus to the Customer as set out in an Order;
“Shared Infrastructure”	the shared infrastructure (designed, provisioned and maintained for normal levels of service usage) which is used by Opus to provide Services to multiple customers generally;
“Software”	in relation to an Order, any software to which the Customer is provided use or access and any third-party software which the Customer purchases through Opus including any software pre-installed or otherwise embedded in Opus Equipment;
“Special Provisions”	any specifically agreed terms for a Service which are included in an Order;
“Stored Data”	Customer Content that is stored within any Opus or supplier data centre;
“Stored Personal Data”	Personal Data that is contained within the Stored Data;
“UK GDPR”	means the General Data Protection Regulation (Regulation (EU) 2016/679) as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom from time to time);
“Underlying Supplier(s)”	third party organisations that provide, sell and/or resell products and services to Opus which form part of the Services;
“Working Day”	Monday to Friday (inclusive) 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 expressions “include”, “including”, “in particular” and “for example”, and

- any similar expressions, shall not limit the preceding words;
- 1.2.3 references to Clauses or Schedules are to clauses or schedules 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;
  - 1.2.6 words referring to a particular gender include every gender;
  - 1.2.7 references to laws, statutory instruments and regulations include any modification, amendment, extension or re-enactment thereof from time to time.
- 1.3 In the event of any conflict between the various parts of an Agreement, the following order of precedence shall apply (highest precedence stated first):
- Amendments;
  - Special Provisions;
  - Order;
  - Terms of this Contract;
  - Service Level Agreement(s);
  - Service Description(s);
  - Any supporting Documentation referred to in an Order.
- 1.4 The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be 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 with no prior notice to perform a credit check on the Customer.
- 2 Contract Commencement and Duration**
- 2.1 This Contract shall come into force generally between the Parties on the date of the Customer's first Order under it.
- 2.2 This Contract shall continue in force until terminated by one Party giving to the other Party not less than three (3) months' written notice to take effect on or after the last Agreement formed pursuant to this Contract. Termination of this Contract shall not cause any Agreement to terminate automatically; all Agreements shall remain in force until they are terminated or expire in accordance with their terms.
- 2.3 All Services specified in an Agreement shall be provided for an Initial Term unless expressly stated otherwise.
- 2.3.1 Where an Initial Term applies, either Party may terminate the Services by giving the other not less than three (3) months' written notice expiring at the end of the Initial Term. Following an Initial Term (if not terminated) the Services and the corresponding Agreement shall continue for additional periods of 12 months, terminable by either Party giving the other not less than three (3) months' written notice prior to the end of the then current additional term.
  - 2.3.2 Where there is no Initial Term, either Party may terminate the Services by giving the other notice as specified for the Services, and if not so specified by giving the other not less than three (3) months' written notice.
- 3 Due Diligence and Project Plans**
- 3.1 Where applicable under an Agreement Opus will conduct a due diligence exercise prior to the start of any implementation activity in order to gather any missing information. Depending on the type of Services to be provided, a High Level Design or High Level Project Plan or a Connection Schedule may be provided by Opus to the Customer.
- 3.2 As soon as reasonably practicable and where applicable following the completion of any required due diligence pursuant to Clause 3.1, Project Initiation Documentation shall be

produced by Opus and submitted to the Customer. Project Documentation will be maintained and regularly updated during any implementation period.

## **4 Implementation**

- 4.1 Opus shall use all reasonable endeavours to meet dates and timeframes set out in the Project Initiation Documentation (where applicable) but the Customer acknowledges that such dates are subject to many factors including (but not limited to) confirmed supplier and Underlying Supplier delivery dates, Customer Site surveys, Customer Site wayleaves, Force Majeure Events and the timely performance of the Customer's responsibilities set out in the Agreement and any High Level Design or High Level Project Plan, and that such dates and timeframes are therefore subject to change. Opus shall keep the Customer regularly informed of progress and promptly advised of 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 Customer Networks in accordance with Opus's reasonable instructions;
  - 4.2.2 unless specified otherwise in the Service Description, connect any access circuits to the Customer Equipment in accordance with Opus's reasonable instructions;
  - 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.
- 4.3 For the avoidance of doubt, every change of appointment or port date made at the Customer's request for Services supplied by Opus may be charged at the prevailing rate and invoiced accordingly.

## **5 Order and Acceptance**

- 5.1 The Customer may request the provision of Services and/or Opus Equipment from time to time by placing an Order on Opus. Opus may at its sole discretion accept any Order. If Opus requires additional information from the Customer in order to accept any Order, it shall notify the Customer and the Customer shall duly provide such information.
- 5.2 Each Order accepted by Opus shall form a separate Agreement in its own right. The Parties may agree additions and other changes to Orders from time to time; in such instances Opus may at its discretion require the Customer to execute new Order(s) to cover.
- 5.3 Certain Services do not require an Order but are, with their applicable terms, an Agreement subject to this Contract; for example, Services which are subject to auto-enrolment with opt-out.
- 5.4 The Project Initiation Documentation (where applicable) will detail what specific Services (or elements thereof) will be subject to acceptance testing where this is relevant or required, at what stage during the installation/migration this will take place, and what the applicable acceptance test period for that Service (or element of Service) will be (the "Acceptance Test Period"). Where an acceptance test plan ("Acceptance Test Plan" or "ATP") is required and applicable, the Customer and Opus shall work together to produce an agreed ATP detailing the agreed acceptance test criteria for each acceptance testing element set out in the Project Initiation Documentation.
- 5.5 Where an ATP has been agreed and documented pursuant to Clause 5.4, the Customer shall have the applicable Acceptance Test Period during 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 deliver it to Opus. To the extent the Services (or an element thereof) do not pass the applicable Acceptance Tests, the Customer shall promptly serve written notice to this

effect on Opus.

- 5.6 In the event that the Customer has not by the expiry of the applicable Acceptance Test Period: (i) signed and returned the acceptance test certificate; or (ii) served notice that the Services (or an element thereof) have failed to pass the applicable Acceptance Tests, 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 an 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.
- 5.7 The date on which the Customer signs or is deemed to have signed the Project Completion Document shall be the relevant Acceptance Date for the applicable Services.
- 5.8 After the Acceptance Date the Services enter into Business As Usual support.

## **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 each Agreement and will use reasonable endeavours to ensure the same from any Underlying Supplier or subcontractor it may use.
- 6.2 Services may be subject to Service Level Agreements. Where Underlying Suppliers change their respective service levels with Opus, Opus reserves the right (with due notice to the Customer) to amend Service Level Agreements accordingly. No warranty is given by Opus that any and all faults will be fixed in their entirety or will be fixed within a specified period of time set out in the Service Level Agreement. Service credits (as set out in the applicable Service Level Agreement) shall be the Customer's sole and exclusive remedy in respect of a breach of the Service Level Agreement by Opus.
- 6.3 Due to the technical and interconnected nature of the Services, the Customer acknowledges and agrees that Opus cannot guarantee that any Service will be free of faults or interruptions, timely or secure to the extent the Service may be affected by events and matters Opus does not or cannot control, such as: lack of network capacity or capability; physical obstructions; faults or failures in services provided by an Underlying Supplier or other third party; the expiry or termination of inter-provider service agreements; the withdrawal of products, Equipment or Services resold by Opus or becoming unavailable due to unforeseen circumstances.

## **7 Uses of Services**

- 7.1 The Customer shall not (and shall procure that all users of the Services for whom the Customer is responsible pursuant to Clause 7.4 shall not):
- 7.1.1 use the Services, Software, Opus Sites or Opus Equipment for any illegal, unlawful or improper purpose or in any way that would harm or compromise Opus's information or cyber security;
  - 7.1.2 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;
  - 7.1.3 add to, modify or interfere in any way with the Services, Software, Opus Equipment and any equipment which is not Customer Equipment other than with Opus's permission or in accordance with Opus's instructions;
  - 7.1.4 use the Services, Software, Opus Sites, the Opus Equipment and the Customer Equipment in any way that would or may be harmful or detrimental

to the reputation of Opus or its suppliers.

- 7.2 The Customer warrants that it will take all reasonable steps to ensure that any material and/or communication received, transmitted, stored, hosted or otherwise processed using the Services (other than material and/or communications to the extent they are unsolicited) will not be of a junk-mail or spam-like nature or comprise or include Malicious Code, will not be indecent, obscene, illegal, threatening, defamatory or discriminatory, will not facilitate or promote illegal or unlawful activity, and will not be otherwise actionable or in breach of any Laws to which use of the Services is subject (including section 1 of the Malicious Communications Act 1988, section 127 of the Communications Act 2003, and offences created in Part 10 of the Online Safety Act 2023) or which 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 relating to any breach by the Customer (including any user of the Services for whom the Customer is responsible pursuant to Clause 7.4 below) of the provisions of Clauses 7.1 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 except where and only to the extent such breach arose due to a breach by Opus of its obligations.
- 7.4 The Customer is responsible for (and shall be liable to Opus in respect of) 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 to comply with its security obligations, 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 or personal injury, or severe physical or environmental damage. The Customer agrees not to use the Services for any such purpose.

## **8 Opus Obligations and Warranties**

- 8.1 Opus shall use reasonable endeavours to meet any dates or timescales set out in an Agreement, but Opus shall not be liable for damages for any delays in providing the Services hereunder. Any proposed 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 are not guaranteed.
- 8.2 Opus shall carry out its obligations and exercise its rights in relation to support only after Opus has (i) carried out its expected due diligence and/or a site survey to confirm pre-contract representations by the Customer; and (ii) issued an invoice to the Customer.
- 8.3 Opus will use all reasonable skill and care to supply and maintain for the duration of each Agreement all permissions, licences and consents necessary for Opus to deliver the Services.
- 8.4 Opus warrants that it has the legal capacity and authority to enter into this Contract and each Agreement formed under it.
- 8.5 Opus warrants that it will comply with all applicable Laws in relation to this Contract and each Agreement formed under it.
- 8.6 Opus agrees to take reasonable precautions to preserve the integrity of any data which it processes for the Customer and to prevent any corruption or loss of data. The Customer agrees that Opus may, where it reasonably considers necessary, make a back-up copy of such data and record the copy on media from which the data can be reloaded if there is any corruption or loss of the data.



- 8.7 Opus does not guarantee against loss of, alteration of, or improper access to Customer Content.
- 8.8 Opus shall maintain with a reputable provider for the duration of this Contract and each Agreement under it, and for 12 months thereafter, cover capped at £10 million for public/products liability insurance (per instance for public liability; in aggregate for products liability) and cover capped at £10 million per instance for 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.
- 8.9 Opus shall provide Services in accordance with each Agreement, however where failure of the Customer's Equipment is subsequently found to be due to any of the following:
- 8.9.1 mis-operation or failure of the Customer's third-party suppliers;
  - 8.9.2 Customer/data centre hosted environments and/or electricity supply;
  - 8.9.3 other network or internet service providers (including alternative call carriers);
  - 8.9.4 any person not authorised by Opus having tampered with the Customer Equipment;
- then such failure will be handled outside any Service Level Agreement and the Customer agrees to work with Opus in attempting to reinstate the Services.
- 8.10 Opus will ensure that all Opus Personnel will comply with all reasonable health and safety and security policies of the Customer applicable to the Customer Site(s) and provided in writing prior to or at the time of entry.
- 8.11 The Customer can request Opus to carry out work outside Normal Business Hours, and if Opus accepts such work the Customer agrees it will be charged at the prevailing out of hours rates including any out of hours Charges incurred from Opus's Underlying Suppliers or subcontractors, such Charges to be agreed in advance with the Customer in writing.
- 8.12 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 Pathway be reached, Opus's chief executive officer or, if they are unavailable, another director of Opus, may personally assign a member of Opus's senior management to take sole ownership of the matter through to resolution. The assigned Opus representative will report on progress in resolving the issue to the Customer at agreed regular intervals as deemed reasonable by both Parties.

## **9 Customer Obligations and Warranties**

- 9.1 The Customer warrants and represents, in respect of this Contract and each Agreement formed under it, that:
- 9.1.1 it has: (i) the full capacity and authority to enter into and perform this Contract and each Agreement and that this Contract and each Agreement are executed by a duly authorised representative of the Customer; and (ii) read and understood all relevant terms and conditions and acknowledges that execution creates a legally binding agreement, whether signed in person, digitally or electronically;
  - 9.1.2 it has obtained or (as applicable) will obtain and maintain all those licences (including, where necessary, licences to Opus), consents, permissions, approvals and rights to use, including in relation to software and other materials not ordered from Opus, necessary for the fulfilment of the Customer's obligations and receipt and use of the Services ("Required Consents"), and agrees to confirm or supply evidence of any Required Consents to Opus on request;
  - 9.1.3 it is responsible for the acts and omissions of third parties engaged by the Customer to provide any equipment, systems, software, services, network or



other infrastructure which is deployed or required for Opus to perform the Services (including where the Services supplied by Opus are replacing those supplied by those third parties) and for settling in full and promptly any outstanding fees payable to such third parties.

- 9.2 The Customer warrants, in respect of each Agreement, that it:
- 9.2.1 will comply with all reasonable instructions and guidelines of Opus in relation to Opus's performance of the Services and the Customer's use and operation of the Services, including as set out in applicable Opus Documentation;
  - 9.2.2 will provide Opus in a timely manner with all information, assistance and support, and access to appropriately experienced and skilled personnel, as may be necessary to assist Opus to perform the Services;
  - 9.2.3 will in a timely manner comply with its obligations and perform its responsibilities set out in the relevant Service Description, Project Initiation Documentation, High Level Project Plan, High Level Design and Connection Schedule (as applicable), and as otherwise specified in the Agreement;
  - 9.2.4 will ensure that all written information given by it to Opus is accurate and comprehensive in all material respects when given;
  - 9.2.5 will only use the Services in accordance with any policies referred to in the relevant Agreement;
  - 9.2.6 will, where applicable, comply with Underlying Supplier required terms and conditions provided or made available to the Customer by Opus or as published by the Underlying Supplier(s) and notified by Opus.
  - 9.2.7 will 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;
  - 9.2.8 will provide and maintain suitable space and environment for the Equipment in a timely manner;
  - 9.2.9 is responsible for any third-party software it uses and installs which is not provided by Opus and is aware that such software may affect any Software provided by Opus as part of the Services. Routine patching of underlying operating systems and servers to the same generation level is permitted in accordance with accepted best practice for those platforms. Opus does not guarantee or otherwise represent that any Software provided or installed for the Customer is compatible with other 3rd party systems or software without confirmation from Opus's supplier that it has been tested and is compatible;
  - 9.2.10 will not relocate, adjust, tamper with or alter the Customer Equipment and will comply with all reasonable advice given by Opus in relation to the same;
  - 9.2.11 will notify Opus of any alteration, repair, replacement or addition to the Equipment not carried out by Opus or its representatives;
  - 9.2.12 will at its own expense comply with all Laws, obligations and instructions in relation to the testing and use of the Equipment, Software and Customer Networks;
  - 9.2.13 will pay Opus's standard Charge for, where applicable, re-programming and/or service visits performed as a result of the Customer requesting service where the fault is Customer-induced due to misuse or a programming error by the Customer or its agent;
  - 9.2.14 will ensure at its own expense that it complies with any mandatory software assurance schemes required by an Underlying Supplier, and the Customer Equipment and any devices using the Customer Equipment will at all times include the current recommended version of software required for them to operate with the Services;
  - 9.2.15 will, on notice from Opus, pay any additional Opus Charges connected with

provision of the Services and arising out of the making, passing or amendment of any law, order, regulation or bye-law, or any variation in the Order or specification or similar matter after the date of the applicable Agreement. Such charges shall be invoiced by Opus to the Customer and be payable as an addition to the Charges (and the Customer shall not be entitled to cancel or otherwise terminate the Agreement on account thereof);

- 9.2.16 accepts that no Order which has been accepted by Opus (thereby an Agreement) may be cancelled by the Customer without Opus's prior consent in writing. If Opus consents to such cancellation or if the Agreement shall otherwise be terminated (except solely as a result of breach by Opus) the Customer agrees to pay to Opus the Cancellation Charges and an amount up to the total Service Charges due to the end of the minimum term;
- 9.2.17 will, once the Service has ceased, return Opus Equipment provided by Opus as part of Service provision or on a rental basis. If the Opus Equipment is not returned to Opus using a delivery carrier (insuring carriage appropriately and providing proof of delivery) within four (4) weeks of the Service being ceased, the Opus Equipment will be charged at the prevailing rate on the Customer's next invoice and the Customer agrees to pay such invoice;
- 9.2.18 will maintain an adequate level of security in respect of Services, including but not limited to protecting all Services with adequate passwords where available;
- 9.2.19 will not use nor allow any other person(s) to use the Services for any improper, immoral, illegal or unlawful purpose; or to store, send or reproduce 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 which breaches or infringes, or threatens to breach 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(s); or fraudulently or illegally. The Customer shall notify Opus as soon as it becomes aware of any such event.

The Customer's compliance with this Clause 9.2 shall be entirely at the Customer's cost.

- 9.3 The Customer warrants that it will 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.
- 9.4 The Customer is responsible for determining the suitability of the Customer Equipment for its intended use, including prior to signing an Order.
- 9.5 Promptly upon becoming aware of any fault in Customer Equipment or any required repair, the Customer will notify Opus by telephone, email or webchat/portal. Opus shall not be liable for any related defect or omission in the Services unless the Customer has given Opus written notice of such defect or omission within seven Working Days of the date on which it came to the Customer's attention (time being of the essence for this purpose). The Customer agrees to provide Opus at all times with such access to the Customer Equipment as Opus shall reasonably require (Opus providing reasonable advance notice) and will allow Opus to carry out its obligations and exercise its rights under each Agreement regarding installation, support and/or maintenance of the Customer Equipment. Any period of delay in providing Opus Personnel with access to the relevant Customer Equipment or Customer Sites shall be excluded from any service level calculations. The Customer will provide Opus Personnel with a safe working environment at Customer Sites.
- 9.6 Subject to any back-up service purchased by the Customer from Opus which applies to

the Services, the Customer agrees, as necessary in support of Opus's obligations, to make, maintain and store any back-ups which Opus directly manages for the Customer under an Agreement. Industry best practice is to take back-ups and store them in an easily accessible secure cloud-based environment; so Opus is able to restore the Customer's systems in the event of major system failures. The Customer can opt out of storage by notice in writing, but in such event Opus shall not be responsible for any Service Level Agreement targets not being met.

- 9.7 Unless otherwise specified in an Agreement or applicable High Level Project Plan, Project Initiation Documentation or Connection Schedule, 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.
- 9.8 The Customer accepts that, as technology evolves, Resource requirements can increase (for example, in order to support newer software versions). Where there is an increase in Resource requirements, for example as a result of changes required, recommended or implemented by Underlying Suppliers or other third-party vendors, Opus may need to increase Resource in order to maintain best practice functionality and the quality, integrity and security of the Customer's systems. Opus reserves the right to implement any increase in Resource and agrees to consult with and obtain the consent of the Customer to the extent practicable (the Customer accepting that Opus may increase Resource without consultation or consent if the Resource is required urgently to prevent substantial and/or irreparable degradation to the Services or, in Opus's reasonable opinion, the quality, integrity and security of the Customer's systems). If the Customer does not consent to an increase in Resource, Opus shall not be responsible for any resultant degradation or non-availability of the Services. Where increased Resource is implemented, the Customer agrees to pay all associated Charges.
- 9.9 If the Customer delays or fails in the performance of its obligations Opus: (i) may apply an equitable adjustment to the agreed schedule timescales and/or charge the Customer for any agreed one-off or recurring Charges as applicable to provision of the Services; and (ii) shall be excused for any failure to perform its obligations (including any failure to meet Service Level Agreements).
- 9.10 Customer Equipment and Software supplied by Opus to the Customer without a support agreement will only be replaced under the warranty or carriage returns policy of the Underlying Supplier or manufacturer (as applicable).
- 9.11 The Customer is responsible for all Charges incurred in respect of the Services and, in the case of usage-based Services, all usage charges even if incurred as the result of fraudulent or unauthorised use of or access to the Services by end users and/or any third party, save only to the extent that Opus is solely responsible for causing the same in providing the Services.
- 9.12 The Customer acknowledges and agrees that any Order submitted utilising its company credentials to gain administration access to any portals or management system shall constitute a valid and binding Order from the Customer, and Customer shall be responsible for any and all Charges associated with such Order except where the Customer has previously notified Opus in writing and Opus accepts the Order.
- 9.13 The Customer is responsible under Regulation 9 of the Waste Electrical and Electronic Equipment Regulations 2013 (WEEE Regulations) for the costs of collection, treatment, recovery, recycling and environmentally sound disposal of any Equipment that has become waste electrical and electronic equipment. The Customer is responsible for any information recording or reporting obligations imposed by the WEEE Regulations.

## **10 Staff and Contractors**

- 10.1 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 individual with the necessary training and skills to meet the obligations of the role at any time without the Customer's consent.

- 10.2 During the term of this Contract and for a period of six (6) months after its expiry or termination, neither Party shall (except with the prior written consent of the other Party) directly or indirectly solicit or entice away from the other Party any person employed or engaged by such other Party who has had material contact or dealings with the first Party in (as applicable) the provision or receipt of the Services, other than by means of a national job advertisement or recruitment campaign open to all-comers and not specifically targeted at any staff of the other Party.

## **11 Risk**

- 11.1 Full risk of damage to or loss of Opus Equipment shall pass to the Customer on delivery to the Customer Site. The Customer shall be responsible for the safety, safe custody and safe use of the Opus Equipment whilst it is in the Customer's or its agent'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(s) or omission(s) of Opus Personnel.

## **12 Software**

- 12.1 In the event that the Customer is provided with access to or use of Software, the Customer agrees to abide by the terms and conditions set out in any relevant end user licence agreement or terms of use ("EULA") provided or made available to the Customer by Opus or the relevant licensor (whether via a 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.
- 12.2 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 expressly permitted by the licensing terms governing use of any open source 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 an as-a-service 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; (vii) alter any of the pre-existing branding or remove any copyright notices from the Software; or (viii) allow, permit or assist any third party to do any of the foregoing.
- 12.3 The Customer agrees that Opus may provide the licensors with information regarding the Customer's use of the Software, including information on the number of licences required for the Customer's use of or access to 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.
- 12.4 Opus and/or any licensor (or their nominated representatives) may at Opus's expense access the Customer Site and Customer systems and records relevant to usage of relevant Software to ascertain compliance with any EULA or other applicable licence terms and Clause 12.3. Such access shall be during Normal Business Hours and subject to reasonable prior notice and agreement with the Customer of a reasonable protocol to be followed by Opus and/or the licensor whilst on the Customer Site or otherwise accessing Customer systems and records to verify compliance.
- 12.5 If the Customer uses, in receipt of the Services, software not ordered from Opus, the Customer shall be responsible for compliance with any applicable restrictions on licence mobility.

- 12.6 The Customer acknowledges that some Software provided may contain open-source software.
- 12.7 Subject to any back-up service purchased by the Customer from Opus which applies to the Services, the Customer shall be responsible at its own expense for making and retaining back-ups in connection with use of the Software, the Services and Equipment, and shall follow proper back-up procedures and take regular back-up copies of all data in accordance with good computing practice to protect against loss or error resulting from use of the Software, the Services and Equipment. The Customer is responsible for confirming their chosen back-up retention periods to Opus and confirming (with reasons) any change to such periods. Both such confirmations shall be made in writing and are subject to Opus acceptance.
- 12.8 The Customer agrees to comply with all applicable Laws in respect of use of the Software.
- 12.9 The Customer is responsible for ensuring that its computer systems are fully functional (including having software installed at the latest version(s) recommended or required by the licensors) and that appropriate members of its staff are available on agreed dates to undergo training provided by Opus or its Underlying Suppliers or subcontractors. Opus can provide further training to the Customer's staff who do not attend the initial agreed session, but additional sessions will be carried out on a chargeable basis at Opus's prevailing rates.
- 12.10 Except as otherwise agreed by the Parties in writing, the obligations and liabilities of Opus and the remedies of the Customer with respect to embedded third-party software will be limited to whatever recourse may be available against the licensor or other provider of such embedded third-party software and are subject to such additional restrictions and other limitations as may be displayed in or referenced by such embedded third-party software.
- 12.11 If the Customer does not, in respect of the Software, permit the software provider to install and/or implement a vulnerability update immediately after a Software release date, then the applicable product warranty shall not apply until such time as the vulnerability update is installed to the extent that the vulnerability update would have avoided or rectified any issue of non-compliance with the Software. If the installation or implementation of a vulnerability update is not permitted by the Customer within the scheduled times, the Customer may invalidate its compliance with the Software and the applicable licence terms for which the Customer shall be fully liable.
- 12.12 In the event of any verification activities (as contemplated by this Clause 12) in relation to the Customer's installation, use or deployment of the Software, the Customer (and not Opus) is responsible for notifying the relevant compliance assessors of any non-compliance.

## **13 Customer Consent**

- 13.1 In relation to each Agreement as applicable, the Customer grants Opus a worldwide, irrevocable (except on termination), royalty-free, non-exclusive licence for the duration of the Agreement to transmit, host, replicate, store or otherwise handle by means of the Services, the Customer Content to the extent reasonably necessary for Opus to perform its obligations.
- 13.2 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 breaches the terms of an Agreement ("Prohibited Content") whereupon the Customer shall promptly remove such Prohibited Content 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 Law or to comply with any judicial, regulatory or other governmental order or request, or any 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.

## **14 Intellectual Property**

- 14.1 Title to the Software and the Intellectual Property in the Services, the Software and the Documentation is held by Opus or its licensors.
- 14.2 Opus shall indemnify and hold harmless the Customer in respect of all claims, losses, reasonable costs and expenses (including legal fees) that are made against or incurred or suffered 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, provided that the Customer: (i) promptly notifies Opus in writing of the claim; (ii) allows Opus to have sole control of the claim and the defence and settlement of the claim; (iii) provides Opus with all reasonable assistance (at Opus's cost) in respect of the claim; (iv) makes no statements or admissions of liability in respect of the claim; and (v) mitigates its losses to the fullest extent possible. Opus has no obligation based on: (i) claims arising from use of the Services other than as permitted under this Contract or the relevant Agreement; (ii) combination of the Services with any services or equipment not supplied by Opus; (iii) any modification to the Services or Software not carried out or authorised in writing by Opus; or (iv) use of the Software other than in accordance with the applicable Software licence.
- 14.3 The Customer shall indemnify and hold harmless Opus in respect of all claims, losses, reasonable costs and reasonable expenses (including legal fees) that are made against or incurred or suffered by Opus as the result of a claim by a third party that: (i) Opus's installation, use, transmission, storage, possession or accessing of the Customer Equipment or Customer Content; (ii) use of the Services and/or Software in combination with equipment or other services not approved by Opus; or (iii) material or third party software provided by the Customer in connection with the Services, infringes their Intellectual Property or other rights. The Customer shall only be liable to indemnify pursuant to this Clause to the extent that Opus: (i) promptly notifies the Customer in writing of the claim; (ii) allows the Customer to have sole control of the claim and the defence and settlement of the claim; (iii) provides the Customer with all reasonable assistance (at the Customer's cost) in respect of the claim; (iv) makes no statements or admissions of liability in respect of the claim; and (v) mitigates its losses to the fullest extent possible.

## **15 Personal Data Processing**

- 15.1 For the purposes of the Data Protection Legislation, in relation to Customer Personal Data Processed by Opus on behalf of the Customer pursuant to this Contract or an Agreement, Opus shall at all times be the Data Processor and the Customer shall at all times be the Data Controller. Both Parties shall comply with all applicable requirements of the Data Protection Legislation.
- 15.2 Opus will only Process Customer Personal Data on Customer's documented instructions as reasonably required to effectively administer its business relationship with the Customer to the extent reasonably necessary to provide the relevant Service(s) in accordance with the relevant Agreement, unless Opus is required to process the Customer Personal Data otherwise by applicable law, in which case Opus will, unless prohibited by law, inform the Customer of the relevant legal requirement as soon as reasonably practicable before processing for that purpose. Opus will immediately inform the Customer if instructions given by Customer, in Opus's opinion, infringe any applicable laws.
- 15.3 Opus shall apply appropriate organisational and technical measures to protect

- Customer Personal Data against any accidental, unlawful or unauthorised destruction or loss, alteration, unauthorised disclosure or access. The Customer confirms the appropriateness of these measures.
- 15.4 Except as expressly provided in this Clause 15.4, and subject always to the express provisions regarding security of the Stored Data set out in this Contract: (i) Stored Personal Data will only be Processed by Opus using facilities which are located within the United Kingdom and/or the European Economic Area (EEA); (ii) provided it is necessary for performance of the Services, Opus may Process and/or transfer Stored Personal Data outside these areas using the roaming service on a portable device and Underlying Suppliers acting as Opus's sub-processor(s) (in accordance with Clause 15.10.1) may Process and/or transfer Stored Personal Data outside these areas provided also that they have in place appropriate data transfer mechanisms as required or permitted by data protection laws.
- 15.5 The Customer warrants that it has obtained and will maintain all necessary consents from Data Subjects and Data Controllers (if not the Customer) for: (i) the transfer of Stored Personal Data to Opus; and (ii) the Processing of Stored Data by Opus as provided in this Clause 15.
- 15.6 Opus will promptly notify the Customer of:
- 15.6.1 any legally binding request for disclosure of Customer Personal Data by an authority of competent jurisdiction unless otherwise prohibited from doing so;
  - 15.6.2 any known accidental, unlawful or unauthorised access to, or transfer of, Customer Personal Data;
  - 15.6.3 any request received directly from a Data Subject.
- 15.7 The Customer shall be responsible for deleting, correcting and blocking any Stored Personal Data required pursuant to applicable Law.
- 15.8 Opus shall be responsible for deleting, correcting and blocking any Business Personal Data required pursuant to applicable Law.
- 15.9 Opus shall not sell or rent any Customer Personal Data to any third party.
- 15.10 To the extent that Opus Processes any Personal Data on behalf of the Customer, Opus shall:
- 15.10.1 be permitted to appoint sub-processors (being Opus subcontractors and Underlying Suppliers) to Process Personal Data on behalf of Opus where such Processing is integral and necessary to providing the Services, billing or generally to support the Customer in connection with the relevant Agreement, and provided that Opus imposes obligations on such sub-processors that are the same as or equivalent to those set out in this Clause 15 and Clause 16, and Opus remains liable to the Customer for the performance of these obligations or the sub-processor confirms such obligations directly with the Customer. The Customer grants Opus a general authorisation to make such appointments. Opus shall notify the Customer of any changes concerning the addition or replacement of sub-processors. If the Customer objects to any new or replacement sub-processor on reasonable grounds related to data protection, it shall notify Opus of such objections within ten (10) days of the Opus notification and the Parties will seek to resolve the matter in good faith. If the Customer does not provide a timely objection to any new or replacement sub-processor in accordance with this clause, the Customer will be deemed to have consented to the sub-processor and waived its right to object;
  - 15.10.2 ensure: (a) the reliability of any Opus Personnel having 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;



- 15.10.3 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 Data Protection Legislation; assisting the Customer to respond to data subject rights requests (for which additional Charges may apply); assisting the Customer to maintain appropriate organisational and technical measures in accordance with UK GDPR article 32; assisting the Customer to perform a data protection impact assessment (where relevant) in accordance with UK GDPR article 35; assisting the Customer to consult the competent supervisory authority (where relevant) in accordance with UK GDPR article 36; assisting the Customer to comply with its notification obligations in the event of a Personal Data Breach;
- 15.10.4 except as expressly provided in this Clause 15.10.4, not Process or transfer such Personal Data in or to any country outside the United Kingdom or the European Economic Area (EEA) without the prior written consent of the Customer. However, Opus may Process and/or transfer Personal Data outside these areas using the roaming service on a portable device where necessary for the performance of the Services, and Underlying Suppliers acting as Opus's sub-processor(s) in accordance with Clause 15.10.1 may Process and/or transfer Personal Data outside these areas provided this is necessary for their performance of the Services and they have in place appropriate data transfer mechanisms as required or permitted by data protection laws;
- 15.10.5 without undue delay notify the Customer in writing of any actual or suspected data incident in relation to Personal Data Processed on behalf of the Customer or any incident which may give rise to a Personal Data Breach;
- 15.10.6 make available to the Customer such information as is reasonably necessary to demonstrate Opus's compliance with its obligations under Article 28 of the UK GDPR, and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose, subject to the Customer:
- 15.10.6.1 giving Opus reasonable prior notice of such information request, audit and/or inspection;
  - 15.10.6.2 ensuring that all information obtained or generated by the Customer or its auditor in connection with such inspection or audit is kept strictly confidential (save for disclosure to a data protection supervisory authority or as otherwise required by applicable law);
  - 15.10.6.3 ensuring that such audit or inspection is undertaken no more than annually and during Normal Business Hours, with minimal disruption to Opus's business operations;
  - 15.10.6.4 paying Opus for all work, time, costs and expenses incurred in connection with the provision of information and allowing for and contributing to the inspections or audit.
- 15.10.7 upon termination or expiry of this Contract or an applicable Agreement, at the Customer's request promptly and securely delete or return all Customer Personal Data except where necessary to retain it for the purposes of compliance with applicable Laws.

## **16 Confidentiality**

- 16.1 Subject to Clauses 16.1.1 and 16.1.2 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. Each Party shall only use the other's Confidential

Information as reasonably required to exercise its rights and/or perform its obligations under this Contract or the relevant Agreement and shall only disclose it to those of its employees, agents and contractors having a reasonable need to know the Confidential Information pursuant to this Contract or the Agreement. 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 which it does not wish to disclose, and which in any event shall be not less than reasonable care. Upon termination of this Contract or a relevant Agreement, if requested to do so by one Party the other Party shall to the extent reasonably practicable promptly return or certify that it has destroyed all of the requesting Party's Confidential Information.

16.1.1 The Customer agrees that Opus may disclose Confidential Information pertaining to the Services to: (i) Opus's suppliers; (ii) the Customer's landlord (or the landlord's agent or other representative as necessary) at the Customer Sites; (iii) others who have a need to know the Confidential Information; in each case to the extent such Confidential Information is reasonably required by such third party for the performance or provision of the Services and provided such third party is subject to obligations of confidentiality equivalent to those in this Clause 16.

16.1.2 Each Party agrees that the other Party may disclose the first party's Confidential Information where required to do so under applicable law or by order or direction of any court or regulatory authority of competent jurisdiction. The disclosing Party shall promptly notify the other Party of any such disclosure requirement to the extent it is legally permissible to do so. The Customer expressly consents to its name and address being disclosed by Opus to the relevant investigative authority pursuant to a RIPA Notice without notification.

16.2 Each Party agrees that damages alone would not be an adequate remedy for any breach of Clause 16.1 and accordingly, and 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 16.1.

## **17 Publicity**

17.1 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 applicable Laws, any governmental or regulatory authority (including any relevant securities exchange) or any court or other authority of competent jurisdiction.

## **18 Suspension**

18.1 Opus may, without terminating and without incurring any liability, suspend the Services under an Agreement in whole or in part:

18.1.1 with immediate effect if the Customer is in breach of Clause 7.1 or Clause 7.2;

18.1.2 immediately upon written notice if the Customer is in breach of any other material obligation under the Agreement and, in the case of remediable breach, the Customer fails to remedy the breach within thirty (30) days of written notice of the breach;

18.1.3 immediately upon written notice if the Customer becomes Insolvent;

18.1.4 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;

18.1.5 if necessary to carry out planned maintenance, other operational and/or emergency works;

18.1.6 with immediate effect in order to protect the Opus network and infrastructure

- in the event that the Customer has been notified of, or Opus has detected, a denial-of-service attack or other form of cyber-attack;
  - 18.1.7 with immediate effect if the Customer's excessive or disproportionate use or misuse of any Shared Infrastructure is damaging or disrupting the proper functioning of the Shared Infrastructure, including through use in breach of the Portal Terms of Use, any Opus acceptable use policy or fair use terms;
  - 18.1.8 if any agreement giving Opus access to the Customer Networks or any part thereof is cancelled, terminated or suspended;
  - 18.1.9 on not less than seven (7) days' notice where an undisputed invoice amount has not been paid by the Due Date;
  - 18.1.10 when a Service is affected by a Force Majeure Event;
  - 18.1.11 with immediate effect if Opus has good reason to suspect fraudulent activity or misuse of the Service.
- 18.2 Opus's right to suspend Services pursuant to Clause 18.1 is without prejudice to its termination rights under Clause 19 and any other right under this Contract, the applicable Agreement or at law.
- 18.3 Where Opus has suspended the Services pursuant to Clause 18.1.1, 18.1.4, 18.1.5 or 18.1.7 and it has not been practicable to provide written notice prior to such suspension, Opus shall inform the Customer as soon as reasonably practicable thereafter.
- 18.4 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, 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 liability, and without prejudice to its other rights and remedies, but it shall serve notice on the Customer as soon as reasonably practicable after any exercise of this right.
- 18.5 Opus shall reinstate any suspended Services as soon as reasonably practicable once the circumstances giving rise to the suspension no longer exist.

## 19 Termination

- 19.1 Each Party may terminate an Agreement at any time by giving notice in writing to the other if the other Party:
  - 19.1.1 commits a material breach of the Agreement and fails to remedy such breach within thirty (30) days of notice from the first Party requiring the breach to be remedied. Such thirty (30) day remedy period shall only apply where a breach is capable of remedy; if it is not capable of remedy, the relevant Agreement shall be terminable by immediate written notice;
  - 19.1.2 becomes Insolvent, ceases trading or is subject to a change of control.
- 19.2 Opus may terminate an Agreement:
  - 19.2.1 or this Contract immediately upon written notice if instructed to do so by a court of law, regulator or other authority of competent jurisdiction;
  - 19.2.2 if the Customer fails to pay any undisputed Charges by the Due Date and remains in default not less than 7 days after being notified in writing to make such payment;
  - 19.2.3 if Opus is unable to install or continue to provide the Services as the result of either an external dependency outside Opus's reasonable control or as a consequence of acts or omissions of the Customer which prevent or substantially impede Opus's provision of the Services;
  - 19.2.4 if Opus reasonably believes the Customer has provided false or misleading information in relation to the Services.
- 19.3 If the Customer terminates for convenience any Services before expiry of the Initial Term

(or a subsequent anniversary date), or if Opus terminates the Agreement pursuant to Clause 19.1 or 19.2, the Customer will pay Opus the Early Termination Charges along with, where relevant, expected usage Charges accrued within each month based on the last four (4) months' invoices pro-rated for the remainder of the Initial Term from the Service Commencement Date. The foregoing are liquidated damages and 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 Charges and any usage Charges referred to in this Clause 19.3 are based upon Opus's revenue expectation which was reflected in the Charges and is compensatory in nature, consistent with Opus's legitimate business interests, and not a penalty or unconscionable.

19.4 Termination or expiry of a Service and/or an Agreement will not affect any accrued rights and liabilities of either Party subsisting prior to termination or expiry.

19.5 Upon termination of a Service or an Agreement:

19.5.1 the Customer shall, if required by Opus, allow Opus Personnel to enter the Customer Site(s) during Normal Business Hours, subject to reasonable advance notice, for the purpose of removing any Opus Equipment and uninstalling the Services;

19.5.2 the Customer shall, on 14 days' notice from Opus, return to Opus at the Customer's expense any Opus Equipment not already removed pursuant to Clause 19.5.1. For any Opus Equipment retained by the Customer and not so returned, Opus shall be entitled to charge, and the Customer agrees to pay, a sum equal to the then current new purchase price for the retained Opus Equipment, and on receipt of this payment in full, title to the retained Opus Equipment shall transfer to the Customer;

19.5.3 licences granted to the Customer by Opus in connection with the Service(s) shall immediately terminate and the Customer accepts responsibility for licensing following the effective date of termination;

19.5.4 any subscription service which forms part of the Service shall terminate (and is not renewed), and if an Agreement with Opus expires at a certain date then the Customer's right to use the Service(s) will also terminate on that date. All saved data will continue to be available to the Customer from Opus for chargeable download or backup for thirty (30) days after the date when termination is effective;

19.5.5 technical Services will cease and no longer be operational and any specific IP addresses cannot be retained by the Customer. Specific telephone numbers will be lost if not migrated prior to cessation. The Customer will be charged a minimum of 7 working days' rental after the termination or migration of any Service.

19.6 All payments payable to Opus under each Agreement shall become due and payable immediately on termination of the Agreement, despite any other provision. This condition is without prejudice to any right Opus may have to claim interest under applicable Law or the Agreement. Opus will at its absolute discretion stop any Customer Equipment in transit and recover any Customer Equipment from the Customer if title to it has not transferred to the Customer.

19.7 Cancellation of the Customer's direct debit mandate does not constitute notice of termination of any Agreement or Services.

## **20 Exit Management**

20.1 The Customer accepts that an Exit Plan may not necessarily be viable or needed depending on the circumstances surrounding termination of the Services. To the extent Opus considers an Exit Plan to be viable and needed, the following provisions shall

apply:

- 20.1.1 The Parties shall comply with their respective obligations under any applicable Exit Plan.
- 20.1.2 Nothing in any applicable Exit Plan shall require Opus to continue to provide the Services to the Customer following termination of this Contract or an Agreement by Opus.
- 20.1.3 Charges may apply in relation to production and delivery by Opus of an Exit Plan.

## **21 Charges and Payment**

- 21.1 Charges are invoiced as set out in each Order and shall be paid in full in cleared funds by the Customer by the Due Date. The Customer agrees to pay the Charges without any deduction, withholding, counterclaim or set-off. Time for payment is of the essence.
- 21.2 All Charges are payable in pounds sterling (GBP) and are exclusive of Value Added Tax (VAT) and other applicable taxes which shall be payable by the Customer in addition and in the manner prescribed by law. VAT, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 21.3 Any delay by Opus in invoicing the Customer for Services shall not prohibit Opus from raising an invoice at a later date in respect of the same Services nor relieve the Customer of its liability to pay.
- 21.4 On the Customer's prior written request, Opus will invoice the price of Customer Equipment or Services in an Order to the Customer's designated leasing company or other financing organisation provided that no act on the part of Opus shall operate to release any obligation of the Customer hereunder. Where an Order provides for the Customer to take goods or Services 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. If an outright purchase price has not been agreed prior, Opus will charge the Customer Equipment at the then applicable recommended retail price and charge the Services at Opus's then applicable undiscounted Charges.
- 21.5 Invoices may be supplied electronically by Opus to the Customer.
- 21.6 Where the Customer purchases Customer Equipment from Opus, title to such Customer Equipment shall pass to the Customer (or the Customer's designated leasing company or other financing organisation where applicable) upon payment of the relevant Opus invoice(s) in full in cleared funds. Risk in Customer Equipment shall pass to the Customer on delivery and the Customer shall thereafter take all reasonable steps to preserve, maintain and insure it to its full value against all usual risks, including damage (accidental or otherwise), theft and loss. In the case of Software, the Customer agrees to comply with the applicable vendor's end user licence agreement or equivalent terms.
- 21.7 Opus shall be entitled to arrange delivery of part only of any Opus Equipment or Services where necessary or appropriate to facilitate and fulfil Opus's obligations under an Agreement. Provided that Opus has delivered Opus Equipment or Services (whether in whole or part), or where an Order has been accepted but the Customer has not instructed the Services to be commenced within six months of such acceptance, Opus shall be entitled to invoice the Customer, and the Customer agrees to pay such invoices. Opus may invoice the Customer before the Service Commencement Date (for example where Opus has ordered services from an Underlying Supplier in order to implement initial Services such as installation and configuration).
- 21.8 In relation to configuration/programming changes carried out as part of works agreed and approved which Opus orders for the Customer and which are not paid for by their Due Date (unless they have been disputed under Clause 21.9), Opus may, at its own



- discretion and acting reasonably, remove or reverse such changes.
- 21.9 All non-disputed sums shall be paid by their applicable Due Date. If, acting in good faith, the Customer has a bona fide dispute as to amounts invoiced, the Customer shall as soon as reasonably practicable (and prior to the Due Date where disputed amounts are or should have been reasonably apparent prior to their Due Date) raise such dispute by written notice to Opus detailing the amounts disputed and the reason for the dispute. The Parties shall use all reasonable good faith endeavours to resolve any invoice or other billing dispute prior to the Due Date. In the event that a billing dispute remains outstanding thirty (30) days after the Customer's notice of dispute to Opus, then either Party may refer the matter for resolution under Clause 35. It is the responsibility of the Customer to check invoices for billing inaccuracies. Opus will only consider billing queries from the Customer if made within three (3) months of the date of the relevant Opus invoice/credit note. Any disputes not raised within this period are irrevocably waived by the Customer. Any amounts not disputed in accordance with this Clause 21.9 shall be deemed accepted and must be paid by the Customer in accordance with Clause 21.1.
- 21.10 If an undisputed invoice (or an undisputed part of an invoice) is not paid in full by the Due Date, then without limiting its other rights and remedies Opus may:
- 21.10.1 charge simple interest on the undisputed amount (accruing on a daily basis from the final date for payment until the date of actual payment, before as well as after any judgment). Such interest shall be calculated at a rate of 5% per year above the Bank of England base rate which is current at the date the payment became due;
  - 21.10.2 suspend all or any part of the Services in accordance with Clause 18.1.9 until payment is made.
- 21.11 Where a direct debit is unpaid due to insufficient funds or cancellation, an administration charge (as set out in the Miscellaneous Charges Document) will be included on the Customer's next invoice.
- 21.12 Opus reserves the right to charge an administration fee per invoice (as set out in the Miscellaneous Charges Document) for payments other than by Direct Debit.
- 21.13 If the Customer fails to pay undisputed sums to Opus on the Due Date, 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 any fees Opus pays to a third party including legal fees to a solicitor or a debt collection company.
- 21.14 Opus reserves the right to contra invoices (setting off amounts owed by and to) if the Customer is also a supplier of Opus, meaning that Opus may at its option deduct as payment for Services amounts owed by Opus to the Customer.
- 21.15 Opus reserves the right to add a reasonable charge per Service (as set out in the Miscellaneous Charges Document) to reinstate Services barred due to non-payment of an invoice.
- 21.16 In relation to an Order or Agreement, Opus reserves the right to increase Charges at the end of the Initial Term for any Services that have been discounted during the Initial Term.
- 21.17 Opus reserves the right to pass on to the Customer any Charges from Underlying Suppliers for additional Services provided.
- 21.18 Opus may increase Charges for the Services annually:
- 21.18.1 by 5.9% or the Retail Price Index (RPI), whichever is higher. For example, at an RPI rate (available at <https://www.ons.gov.uk/>) of 9% an annual fee for services totalling £1,000 would see an increase to £1,090 per annum); or
  - 21.18.2 by more than is permitted by Clause 21.18.1 subject to the Customer being entitled to cancel the affected Agreement(s) within fourteen (14) days after receipt of Opus's first invoice bearing such increase by providing Opus written notice specifying the effective date of cancellation;

- 21.19 Opus may increase Charges for the Services at any time upon Opus's written notice to the Customer in the event that an Underlying Supplier increases its charges for Services and/or where there has been change under applicable Laws and/or to the extent of industry changes or major world-wide events impacting pricing.
- 21.20 Prices are guaranteed for thirty (30) days from Opus's written proposal. After this period, Opus shall have the right at its sole discretion to increase the price of Equipment or Services in the event that the price charged to Opus by the Underlying Supplier is increased between the date of the Order and the date of delivery/implementation of the corresponding Equipment or Services. The price increase to the Customer may not exceed the Underlying Supplier's percentage increase to Opus and Opus agrees to provide the Customer on request with evidence to confirm.
- 21.21 Any Services priced by an Underlying Supplier in a currency other than pounds sterling (GBP) are subject to exchange adjustment by Opus.

## **22 Force Majeure**

- 22.1 Except as relates to payments, neither Party shall be liable to the other or be in breach for delay or failure to perform any of its obligations arising from or attributable to a Force Majeure Event provided that the other Party is notified of such event and its expected duration and the first Party uses all reasonable endeavours to mitigate the effects of the Force Majeure Event.
- 22.2 If a Force Majeure Event described in Clause 22.1 lasts for more than three (3) months from the date of its commencement and prevents Opus from performing its obligations in whole or in part during that period, either Party shall be entitled (but not obliged) to terminate this Contract and any associated Agreement forthwith by giving not less than 30 days' written notice to the other Party.

## **23 Exclusions and Limitations of Liability**

- 23.1 The Customer assumes responsibility for results obtained from their use of the Services. Opus shall have no liability for any losses or damage caused by errors or omissions in any information or instructions provided by the Customer in connection with the Services, or any actions taken by Opus at the Customer's direction.
- 23.2 The Customer acknowledges that the Services may assist the Customer in compliance with Laws and industry practices applicable to the Customer. Unless expressly stated in the Agreement, the Services do not constitute legal or regulatory compliance advice (or similar), nor are they to be relied upon as means of complying with the Customer's legal, regulatory and other obligations. The Customer remains responsible for its own compliance, including its internal policies and procedures and enforcement measures, and Opus disclaims any liability for the same.
- 23.3 Except for the warranties expressly stated in this Contract, all warranties, conditions, obligations and terms, whether express or implied by statute, common law or custom (including implied warranties of non-infringement, quiet enjoyment, merchantability, fitness for purpose and satisfactory quality), are excluded to the maximum extent permitted by law.
- 23.4 Neither party excludes or limits their liability under each Agreement:
- 23.4.1 for death or personal injury caused by negligence;
  - 23.4.2 for fraud or fraudulent misrepresentation;
  - 23.4.3 for breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979;
  - 23.4.4 in respect of any other liability which cannot be limited or excluded under applicable law;
  - 23.4.5 to indemnify the other Party as expressly provided in this Contract; and
  - 23.4.6 in the case of the Customer, to pay the Charges including any Early Termination Charges pursuant to Clause 19.3.



- 23.5 Subject to Clause 23.4, each Party's entire liability for damage to the tangible property of the other Party caused by its negligence (including 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.
- 23.6 Subject to Clause 23.4, neither Party shall be liable, whether in contract, tort (including negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, and whether anticipated or not, for any:
- 23.6.1 indirect, special, incidental, punitive or consequential losses, costs, damages, charges or expenses;
  - 23.6.2 loss of profits; loss of revenue, business or commercial opportunity; loss of savings (actual or anticipated); business interruption; wasted expenditure; loss of agreements, contracts or orders; loss of use or benefit; loss of production; loss or corruption of data or information; loss of goodwill; fines, penalties or any other liability for non-compliance with applicable regulatory requirements incurred by the other Party; in each case whether direct or indirect.
- 23.7 Subject to Clause 6.2 (service credits being the Customer's sole and exclusive remedy in respect of breach by Opus of a Service Level Agreement), Clause 12.10 (liabilities in relation to embedded third party software) and the limitations and exclusions in Clauses 23.3, 23.5 and 23.6, each Party's total aggregate liability in contract, tort (including negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with an Agreement shall be limited to a sum equal to 100% of the Charges paid or payable for the Service which is the subject of the claim in the twelve (12) months preceding the claim.
- 23.8 The Customer must give Opus an opportunity to resolve a complaint or issue (whether affecting Service or otherwise) which the Customer may have. Opus shall use all reasonable endeavours to resolve such complaint or issue within a reasonable period.
- 23.9 The Customer agrees that any cause of action they may have against Opus must be commenced within two (2) years after the cause of action arose, otherwise such cause of action is permanently barred.
- 23.10 The Customer acknowledges and agrees that the Charges are commensurate with the levels of responsibility, liability and risk undertaken by Opus, and that the exclusions and limitations contained in this Clause 23 are reasonable given the Charges that are payable.
- 23.11 Each Party shall take all reasonable steps to mitigate its losses sustained as a result of the other Party's breach of this Contract or any Agreement.

## **24 Modification**

- 24.1 Without prejudice to clauses 21.17 and 21.18.3:
- 24.1.1 Where an Underlying Supplier imposes a change to its agreement with Opus in respect of a service and the change applies or is to be applied on a wholesale basis to all of Opus's customers receiving the service, including the Customer, Opus may at any time, by providing thirty (30) days' notice to the Customer, vary the terms of an affected Agreement in order to implement such change;
  - 24.1.2 Where an Underlying Supplier or Opus imposes a change which applies to the Customer only and in the Customer's reasonable opinion the change is likely to cause material detriment to the Customer and/or the Services provided, the Customer shall engage promptly with Opus to explain the circumstances and potential material detriment, and Opus will (as applicable) endeavour to negotiate an alternative with the Underlying Supplier or itself provide a

commercially acceptable alternative working solution. Opus gives no guarantee that it will be able to successfully negotiate an alternative with an Underlying Supplier. For the Customer's information, Opus will generally only implement such changes for good reason; for example, to reflect changing arrangements with any operator of a telecommunications network or system over which Opus provides the Services.

## **25 Sub-Contracting**

- 25.1 Opus may enter into subcontracts for the performance of its obligations under this Contract and any Agreement.
- 25.2 Opus shall remain responsible for all acts and omissions of its subcontractors and the acts and omissions of those employed or engaged by the subcontractors as if they were its own.

## **26 Assignment and Transfer**

- 26.1 The Customer may not assign (or purport to assign) this Contract and/or any Agreement, or any of its rights thereunder, in whole or in part, without the prior written consent of Opus (such consent not to be unreasonably withheld or delayed). Opus reserves the right to assign, delegate or otherwise transfer the Contract or any Agreement, or any or all of its rights and obligations thereunder.

## **27 Waiver**

- 27.1 No failure or delay by a Party to exercise or enforce any right or remedy under this Contract or any Agreement, or by law, shall constitute or be deemed to be a waiver of that right or remedy, or otherwise prejudice such right or remedy, nor shall it prevent or restrict the further exercise or enforcement by the same Party of that or any other right or remedy.

## **28 Notices**

- 28.1 Except as expressly provided at Clause 35.1, any notice required to be given to a Party under or in connection with this Contract or any Agreement shall be in writing and emailed:
- 28.1.1 to Opus at: [customerservices@opustech.co.uk](mailto:customerservices@opustech.co.uk);
- 28.1.2 in the case of the Customer, to the email address which Opus uses to send its invoices to the Customer.
- 28.2 A notice is deemed received on the earliest of: (i) receipt of a delivery or read receipt email; and (ii) 24 hours from sending provided no automatically generated out of office, bounce-back, message failure or similar notification has been received by the sender. For the avoidance of doubt, if Opus has not acknowledged receipt of a notice within five (5) Working Days of sending, the Customer must contact Opus and Opus may request the Customer to resend the notice whereupon Opus will promptly confirm receipt and the notice shall be deemed served upon the date of such confirmation.

## **29 Severability**

- 29.1 If any part or provision of this Contract or an Agreement is held by any court or other authority of competent jurisdiction to be unlawful, invalid or unenforceable, that part or provision shall be considered struck out, and the legality, validity and enforceability of the remainder of this Contract and/or the relevant Agreement shall not be affected. In such instance, Opus and the Customer shall work together in good faith to agree the terms of a mutually acceptable and enforceable alternative part or provision that, to the greatest extent possible, achieves the intended commercial result of the original.

## **30 Survival**

- 30.1 Any provision of this Contract or an Agreement that expressly or by implication is intended to come into or continue in force after termination of this Contract or an Agreement shall remain in full force and effect after termination or expiry.

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**31 Entire Agreement**

- 31.1 Each Agreement constitutes the entire agreement between the Parties and replaces and supersedes all prior and contemporaneous agreements, arrangements, promises, assurances and undertakings, whether written or oral, relating to the subject matter of the Agreement. Terms and conditions set out in any Customer documentation (in any form) submitted to Opus pursuant to the Agreement or during any tender process shall have no force or effect. Without prejudice to Clause 23.4.2, each Party acknowledges that in entering into this Contract and any Agreement it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract or the Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract or any Agreement.

**32 Anti-Bribery**

- 32.1 Both Parties shall:
- 32.1.1 comply with all applicable Laws relating to anti-bribery and anti-corruption including the Bribery Act 2010;
  - 32.1.2 have and shall maintain in place, throughout the term of this Contract and any Agreement, its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the relevant requirements and will enforce them where appropriate;
  - 32.1.3 promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received by the other Party in connection with the performance of this Contract or an Agreement.
- 32.2 Breach of Clause 32.1.1 shall be deemed a material breach of this Contract.
- 32.3 Either Party shall provide such supporting evidence of compliance with the provisions of this Clause 32 as the other Party may reasonably request.
- 32.4 Each Party shall ensure that any person associated with them (including any sub-contractor) who is performing services in connection with this Contract or an Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on each Party in this Clause 32. Each Party shall be responsible for the observance and performance by such persons of this Clause 32 and shall be directly liable to the other Party for any breach by them of this Clause 32.

**33 Modern Slavery Act 2015**

- 33.1 Both Parties shall:
- 33.1.1 comply with all applicable Laws relating to anti-slavery and human trafficking, including but not limited to the Modern Slavery Act 2015;
  - 33.1.2 have and maintain in place throughout the term of this Contract and any Agreement its own procedures to ensure compliance with the relevant requirements and will enforce them where appropriate;
  - 33.1.3 promptly report to the other Party any suspected or investigated contravention to anti-slavery and human trafficking under the Modern Slavery Act within the reporting Party's organisation.

**34 Export Controls**

- 34.1 Both Parties will comply with all applicable export control and economic sanctions laws. The Customer will not use the Services for any activities involving a country subject to comprehensive economic sanctions or involving a party in violation of such applicable trade control laws, or that require government authorisation, without first obtaining the written consent of Opus and the required authorisation.

**35 Disputes**

- 35.1 If a dispute arises under or in connection with this Contract or an Agreement ("Dispute") then before bringing any legal proceedings or commencing any alternative dispute

resolution procedure in connection with such Dispute, a Party must first give written notice (“Dispute Notice”) to the other Party describing the Dispute and requesting that it is resolved under the dispute resolution procedure described in this Clause 35.

35.1.1 for Opus, Dispute Notices should be sent to:

[customerservices@opustech.co.uk](mailto:customerservices@opustech.co.uk);

35.1.2 for the Customer, Dispute Notices should be sent to the email address which Opus uses to send its invoices to the Customer.

35.2 If the Parties are unable to resolve the Dispute within 30 days of delivery of the Dispute Notice, each Party shall promptly (and in any event within five (5) Working Days):

35.2.1 appoint a representative who has authority to settle the Dispute (“Designated Representative”); and

35.2.2 notify the other Party of the name and contact information of its Designated Representative.

35.3 Acting reasonably and in good faith, the Designated Representatives shall discuss and negotiate to resolve the Dispute including agreeing the format and frequency for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one Party to the other Party shall be complied with as soon as reasonably practicable.

35.4 If the Parties are unable to resolve the Dispute within 30 days after the appointment of both Designated Representatives, either Party may proceed with any other available remedy.

35.5 Notwithstanding any other provision of this Contract, a Party may seek interim or other equitable relief necessary (including an injunction) where damages would not be an adequate remedy.

## **36 Governing Law and Jurisdiction**

36.1 This Contract, any Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it, any Agreement, or their subject matter or formation, shall be governed by and construed in accordance with the laws of England and Wales.

36.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract, any Agreement, or their subject matter or formation.

## **37 No Partnership or Agency**

37.1 Nothing in this Contract or any Agreement made pursuant to it is intended, nor shall be deemed, to establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

## **38 Third Party Rights**

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