

## Onecom Limited

# IT Managed Service Terms & Conditions

1	<b>Interpretation</b>		<b>Force Majeure Event</b>	an event or circumstance beyond a party's reasonable control
		The following definitions and rules of interpretation apply in the Contract.		
1.1	<b>Definitions</b>		<b>Good Industry Practice</b>	the generally accepted standards in Onecom's industry for the provision of services which are substantially similar to the Services
	<b>Acceptable Use Policy</b>	Onecom's acceptable use policy, a copy of which can be found at <a href="https://www.onecom.co.uk/terms-and-conditions/">https://www.onecom.co.uk/terms-and-conditions/</a> (or any other online address that Onecom advises the Customer of)	<b>Help Desk Support</b>	support provided by Onecom's help desk technicians
	<b>Applicable Law</b>	the laws of England and Wales and any other laws and regulations that apply to providing or receiving the Services	<b>Intellectual Property Rights</b>	patents, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, 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
	<b>Authorised Contacts</b>	individuals authorised to act on behalf of the Customer in relation to the Services	<b>IT Managed Service</b>	the services detailed in clause 3.1
	<b>Back-up Services</b>	shall have the meaning given to it in the Back-up Service Terms	<b>IT System</b>	the Customer's computers, network, software, server instances and any other IT equipment located at the Customer's premises
	<b>Back-up Software</b>	shall have the meaning given to it in the Back-up Service Terms	<b>Live Chat</b>	Onecom's live chat service, which can be accessed by visiting <a href="https://www.onecom.co.uk/contact/">https://www.onecom.co.uk/contact/</a> (or any other online address that Onecom advises the Customer of)
	<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business	<b>Minimum Standards</b>	the minimum requirements of the Supported Equipment and Supported Software as communicated to the Customer by Onecom from time to time
	<b>Contract</b>	shall have the meaning given to it in the Commercial Terms	<b>Minimum Term</b>	the minimum term applicable in respect of each Service Element as detailed in the Commercial Terms, which shall commence on the Service Commencement Date of each applicable Service Element (unless stated otherwise in the Commercial Terms)
	<b>Charges</b>	together the: (a) Recurring Charges; (b) One-Off Charges (if any); (c) Variable Charges (where applicable); and (d) any other fees or charges payable by the Customer as detailed in the Price Guide	<b>Notice</b>	a notice given by one party to the other under the Contract in accordance with clause 24.10
	<b>Claim</b>	any legal claims, actions or proceedings against a party, whether threatened or actual, whether by a third party or the other party to the Contract	<b>OneCloud</b>	Onecom's online portal
	<b>Commercial Terms</b>	the terms set out in an Order Form, OneCloud Order or any other document identified as the "Commercial Terms", which details the commercial offer to the Customer for the Services	<b>OneCloud Customer Agreement</b>	the OneCloud customer agreement (as updated from time to time) a copy of which can be found at <a href="https://www.onecom.co.uk/terms-and-conditions/">https://www.onecom.co.uk/terms-and-conditions/</a> and which shall be accepted by the Customer on first use of OneCloud
	<b>Conditions</b>	the terms and conditions set out herein	<b>OneCloud Order</b>	an order that is placed by the Customer via OneCloud
	<b>Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing, and appropriate technical and organisational measures</b>	shall have the meaning given to it in the Data Protection Legislation	<b>OneCloud User Terms</b>	the OneCloud user terms (as updated from time to time) a copy of which can be found at <a href="https://www.onecom.co.uk/terms-and-conditions/">https://www.onecom.co.uk/terms-and-conditions/</a> and which shall be accepted by each User on first use of OneCloud
	<b>Core Support Service</b>	the support and maintenance services provided by Onecom to the Customer in connection with the Supported Equipment and Supported Software, which shall include Help Desk Support and the services detailed in <a href="https://www.onecom.co.uk/hubs/PDF/0574-03-ITMS-MSA-Scope-of-Managed%20Service-Doc-v0.2.pdf">https://www.onecom.co.uk/hubs/PDF/0574-03-ITMS-MSA-Scope-of-Managed%20Service-Doc-v0.2.pdf</a> , but excludes the Out-of-scope Services	<b>Onecom</b>	Onecom Limited (company number 04031272) whose registered office is Onecom House, 4400 Parkway, Whiteley, Fareham, Hampshire PO15 7FJ
	<b>Customer</b>	the party identified as the Customer in the Commercial Terms	<b>Optional Service Elements</b>	together the Back-up Services, the Security Services and the SupportPAK Services (each an <b>Optional Service Element</b> )
	<b>Data Protection Legislation</b>	all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, as each of the foregoing may be updated, replaced or amended from time to time; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications)	<b>Order</b>	an order (in an Order Form, OneCloud Order or as otherwise agreed between the parties) that is placed by the Customer for Services and that is accepted by Onecom
	<b>Effective Date</b>	the date of the Commercial Terms, or where no date is detailed, it shall be: (a) the date upon which all parties have signed the Commercial Term; or (b) where the Customer is the sole signatory to the Commercial Terms, the date of signature by the Customer	<b>Order Form</b>	a document headed 'Order Form' which sets out the Services that the Customer has requested
			<b>One-Off Charges</b>	the non-recurring charges payable by the Customer in relation to the Services as described in the Commercial Terms and/or in an Order
			<b>Out-of-scope Services</b>	the out-of-scope services (as amended from time to time) detailed at <a href="https://www.onecom.co.uk/hubs/PDF/0574-03-ITMS-MSA-Scope-of-Managed%20Service-Doc-v0.2.pdf">https://www.onecom.co.uk/hubs/PDF/0574-03-ITMS-MSA-Scope-of-Managed%20Service-Doc-v0.2.pdf</a> (or any other online address that Onecom advises the Customer of)
			<b>Portal</b>	the online portal at <a href="https://Onecom.myportallogin.co.uk">https://Onecom.myportallogin.co.uk</a> (or any other online address that Onecom advises the Customer of)

<p><b>Price Guide</b> the price guide (as amended from time to time) at <a href="https://onecom.co.uk/pricing">https://onecom.co.uk/pricing</a> (or any other online address that Onecom advises the Customer of);</p> <p><b>Privacy Policy</b> Onecom's privacy policy (as amended from time to time) at <a href="https://onecom.co.uk/privacy-policy/">https://onecom.co.uk/privacy-policy/</a> (or any other online address that Onecom advises the Customer of)</p> <p><b>RDP</b> remote desktop protocol</p> <p><b>Recurring Charges</b> the regular and recurring charges payable by Customer for use of the Services on a monthly or annual basis as set out in the Commercial Terms</p> <p><b>Security Services</b> shall have the meaning given to it in the Security Service Terms</p> <p><b>Security Software</b> shall have the meaning given to it in the Security Service Terms</p> <p><b>Service(s)</b> the IT Managed Service, or any part thereof</p> <p><b>Service Commencement Date</b> unless stated otherwise in the Commercial Terms, the date as advised to the Customer by Onecom when the Service is available and ready for use</p> <p><b>Service Elements</b> the individual components of the IT Managed Service as detailed in the Commercial Terms, which shall comprise (as applicable):</p> <p style="margin-left: 20px;">(a) the Core Support Service; and</p> <p style="margin-left: 20px;">(b) each Optional Service Element,</p> <p style="margin-left: 20px;">(each a <b>Service Element</b>)</p> <p><b>Help Desk Service Levels</b> the response times referred to in the table set out in clause 6.5</p> <p><b>Service Terms</b> the service terms applicable to the Optional Service Elements, identified by reference to the service name e.g. 'Back-up Service Terms'</p> <p><b>Site(s)</b> a place at or to which the Service is to be supplied, as agreed by Onecom</p> <p><b>Standard Support Hours</b> 8am to 6pm UK time on a Business Day</p> <p><b>Supported Equipment</b> the Customer's computers, network, server instances and such other items at one or more Sites, which Onecom agrees to support and/or maintain, as part of the Services as updated from time to time</p> <p><b>SupportPAK Hours</b> shall have the meaning given to it in the SupportPAK Service Terms</p> <p><b>SupportPAK Services</b> shall have the meaning given to it in the SupportPAK Service Terms</p> <p><b>Help Desk Support Request</b> a request made by the Customer for Help Desk Support in accordance with clause 6</p> <p><b>Supported Software</b> together:</p> <p style="margin-left: 20px;">(a) the software licenced to the Customer pursuant to the Contract or any other contract between Onecom and the Customer; and</p> <p style="margin-left: 20px;">(b) any other software which Onecom agrees to support and/or maintain, as part of the Services as updated from time to time</p> <p><b>Sub-Processor</b> has the meaning given in clause 22.6</p> <p><b>Termination Charges</b> the aggregate of:</p> <p style="margin-left: 20px;">(a) the charges for any Service (or part thereof) supplied but for which no invoice has yet been submitted; and</p> <p style="margin-left: 20px;">(b) the Recurring Charges due to the end of the Minimum Term.</p> <p><b>UK GDPR</b> has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018</p> <p><b>UEM Software</b> unified endpoint management software licenced by Onecom</p> <p><b>User</b> any person who uses the Service</p> <p><b>Variable Charges</b> the charges payable by Customer for use of the Services which may vary from time to time, and which shall include (as applicable) usage charges and software subscription charges</p> <p><b>VPN</b> virtual private network</p>	<p>1.2 a <b>person</b> includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);</p> <p>1.3 a reference to a <b>party</b> includes its personal representatives, successors or permitted assigns;</p> <p>1.4 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;</p> <p>1.5 unless stated otherwise, references to clauses in any document forming part of the Contract are to clauses in that document;</p> <p>1.6 clause headings shall not affect the interpretation of the Contract;</p> <p>1.7 any phrase introduced by the terms <b>including</b>, <b>include</b>, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;</p> <p>1.8 a reference to <b>writing</b> or <b>written</b> includes email, but excludes fax; and</p> <p>1.9 a <b>party</b> or the <b>parties</b> refer to the parties to the Contract.</p> <p><b>2 Application of Conditions</b></p> <p>2.1 These Conditions shall:</p> <p style="margin-left: 20px;">2.1.1 apply to and be incorporated in the Contract; and</p> <p style="margin-left: 20px;">2.1.2 prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.</p> <p><b>3 IT Managed Service</b></p> <p>3.1 The IT Managed Service shall comprise the Core Support Service and may also include, where set out in the Commercial Terms, one or more of the Optional Service Elements.</p> <p>3.2 Onecom shall provide each Service Element to the Customer from the Service Commencement Date of each Service Element.</p> <p>3.3 The Customer accepts that each Service Element may have a different Service Commencement Date.</p> <p><b>4 Core Support Service</b></p> <p>4.1 Onecom shall provide the Core Support Service during Standard Support Hours.</p> <p>4.2 The Core Support Service shall be provided on a remote, off-site basis (such as over the telephone or by e-mail).</p> <p>4.3 The provision of the Core Support Service outside the Standard Support Hours or at a Site shall be charged for at the applicable time and materials rates as detailed in a quotation provided by Onecom, and acceptance of such quotation shall constitute an Order.</p> <p><b>5 Help Desk Support</b></p> <p>5.1 As part of the Core Support Service, Onecom shall provide Help Desk Support during Standard Support Hours to Authorised Contacts to assist with the diagnosis and, where possible, the correction of faults relating to the Supported Equipment and Supported Software.</p> <p>5.2 The Customer may request Help Desk Support by way of a Help Desk Support Request and Onecom shall use reasonable endeavours to respond to a Help Desk Support Request in accordance with the Help Desk Service Levels.</p> <p><b>6 Help Desk Support Requests</b></p> <p>6.1 Subject to clause 6.2, the Customer may make a Help Desk Support Request:</p> <p style="margin-left: 20px;">6.1.1 by telephoning 03300 888 999 (or such other telephone number that Onecom advises the Customer of);</p> <p style="margin-left: 20px;">6.1.2 by emailing <a href="mailto:ITMSServiceDesk@onecom.co.uk">ITMSServiceDesk@onecom.co.uk</a> (or such other email address that Onecom advises the Customer of);</p> <p style="margin-left: 20px;">6.1.3 via Live Chat; or</p> <p style="margin-left: 20px;">6.1.4 via the Portal.</p> <p>6.2 A Priority 1 Help Desk Support Request (as described in the table at paragraph 6.5) shall be logged via telephone only.</p> <p>6.3 When making a Help Desk Support Request, the Customer shall provide to Onecom as much information as is reasonably available in the circumstances, including but not limited to the following:</p> <p style="margin-left: 20px;">6.3.1 the reporter's name and telephone number;</p> <p style="margin-left: 20px;">6.3.2 the full address (including postcode) of the applicable Site;</p> <p style="margin-left: 20px;">6.3.3 a description as to the support required, for example details as to any error messages received and any action taken to diagnose or resolve any fault before making the Help Desk Support Request; and</p> <p style="margin-left: 20px;">6.3.4 such other information, assistance, data and other access to information or to the Site as are reasonably necessary to assist Onecom in responding to the Help Desk Support Request.</p> <p>6.4 Following a Help Desk Support Request, Onecom shall allocate it with a priority in line with the following criteria based on its reasonable assessment of the severity level.</p>
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Priority Level	Description
<b>Priority 1</b>	Complete system failure, network down, total loss of functionality of the Supported Equipment and/or Supported Software
<b>Priority 2</b>	Partial outage, severe limitation to Customer's operation or partial loss of system functionality. Production is capable but business is severely impacted
<b>Priority 3</b>	Certain non-essential features of the Supported Equipment and/or Supported Software are impaired while most major components of the Supported Equipment and/or Supported Software remain functional.
<b>Priority 4</b>	Errors that are non-disabling or cosmetic and clearly have little or no impact on the normal operation of the Supported Equipment and/or Supported Software.

- 6.5 Onecom shall use reasonable endeavours to respond to a Help Desk Support Request within the response time targets set out in the table below.

Action	Response Time Target
Priority 1	1 Business Hour
Priority 2	2 Business Hours
Priority 3	4 Business Hours
Priority 4	10 Business Hours

- 6.6 A response by Onecom to a Help Desk Support Request shall include an acknowledgement of the Help Desk Support Request and may include a request for other information reasonably required to progress with the response to the Help Desk Support Request.

## 7 UEM Software

- 7.1 In order to facilitate the delivery of the Core Support Service, Onecom shall provide UEM Software to the Customer, which shall be installed on all or any item of Supported Equipment.
- 7.2 In the event the Customer refuses to allow Onecom to install the UEM Software, Onecom reserves the right to increase the Charges or, without prejudice to its rights set out elsewhere in the Contract, terminate the Contract or the Service (in whole or in part).
- 7.3 The Customer acknowledges that ownership of the UEM Software shall remain vested in Onecom (or its licensors) at all times.

## 8 Scoping and Recommendations

- 8.1 Prior to the Service Commencement Date, Onecom shall perform an audit of the IT System.
- 8.2 Following completion of the audit, Onecom will supply the Customer with a report containing: (i) recommendations for improvements to the IT System (**Recommendations**); and (ii) a list of the IT System which Onecom is able to support as part of the Services.
- 8.3 In the event the Customer does not wish to adopt all or any of the Recommendations:
- 8.3.1 the Customer acknowledges that this may impact on the support which Onecom is able to provide in relation to the IT System;
- 8.3.2 Onecom may refuse or limit support in respect of that issue or the relevant part of the IT System, in which case the Customer will remain liable for the full Charges; and/or
- 8.3.3 Onecom may increase the Charges to reflect the additional effort and risk associated with supporting the IT System with that issue unresolved.
- 8.4 From time to time the Customer may request changes to the Supported Equipment and/or Supported Software. Onecom will assess each such request and confirm the additional Charges (if any) for such additional Services in a proposal. The Customer's acceptance of Onecom's proposal will constitute an Order.
- 8.5 If the Supported Equipment and Supported Software together grows in numbers of devices, users, licences, workstations or server instances by 10% or more (in aggregate) over any given period, Onecom may increase the Charges by notifying the Customer in writing.

## 9 Optional Service Elements

In the event the Customer purchases any Optional Service Elements the applicable Service Terms shall apply in addition to the terms set out elsewhere in the Contract.

## 10 Commencement and duration

- 10.1 The Contract shall commence on the Effective Date and shall continue for the Minimum Term, unless it is terminated earlier by either party in accordance with the terms of the Contract.
- 10.2 Unless otherwise specified in the Commercial Terms, upon expiry of the Minimum Term, the Contract shall automatically renew for periods of 12 months (each a "**Subsequent Term**"), unless the Customer provides three months' written notice of its intention to terminate the Services, such notice not to expire before the end of the Minimum Term or any Subsequent Term (unless terminated earlier by either party in accordance with the terms of the Contract).

## 11 OneCloud

- 11.1 In the event the Customer has access to OneCloud, the Customer agrees that it shall:
- 11.1.1 comply with the OneCloud Customer Agreement; and
- 11.1.2 ensure that each User complies with the OneCloud User Terms.

## 12 Customer's obligations

- 12.1 The Customer shall:
- 12.1.1 co-operate with Onecom in all matters relating to the Services;
- 12.1.2 follow all reasonable instructions from Onecom from time to time in connection with the Services, including preparation activities that may be required to enable the Customer to receive the Services;
- 12.1.3 provide Onecom with such information and materials as Onecom may reasonably require to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 12.1.4 be responsible for ensuring that the Supported Equipment and Supported Software meets the Minimum Standards in all respects at all times during the term of the Contract;
- 12.1.5 provide Onecom with administrator-level access to the IT System and/or Supported Equipment and Supported Software at all times in order to supply the Services;
- 12.1.6 authorise Onecom to deal with its third-party suppliers on its behalf to the extent reasonably required by Onecom in order to supply the Services;
- 12.1.7 provide the names and contact details of Authorised Contacts (and agree levels of authority where requested by Onecom);
- 12.1.8 not resell the Services, or any part thereof (unless expressly authorised to do so elsewhere in the Contract);
- 12.1.9 comply with, and procure that all Users comply with, Applicable Law and all terms of the Contract; and
- 12.1.10 provide any Onecom personnel attending Sites or other Customer premises with a safe and suitable working environment.

## 13 Onecom obligations

- 13.1 Onecom will:
- 13.1.1 reasonably co-operate with the Customer in all matters relating to the Services;
- 13.1.2 perform the Services in accordance with Good Industry Practice;
- 13.1.3 obtain and at all times, maintain during the term of the Contract, all necessary licences and consents and comply with all Applicable Laws in relation to the Services; and
- 13.1.4 ensure that personnel involved in the provision of the Services have suitable skills and experience to enable them to perform the tasks assigned to them, and that such personnel are in sufficient number to enable the Supplier to fulfil its obligations under the Contract.

## 14 Charges

- 14.1 The Customer will pay and is responsible for the Charges.
- 14.2 The Customer will not be entitled to any reduction in Charges if it does not use all or any part of the Service.
- 14.3 Unless otherwise stated in the Commercial Terms, all prices are exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature and all other taxes and charges in respect of the Services, which shall be payable by the Customer in addition.
- 14.4 Onecom may amend the Charges:
- 14.4.1 in April of each year, by introducing an increase to all or any Charges by a percentage up to or equal to the UK Consumer Prices Index (CPI) rate published by the Office for National Statistics (or by any other body to which the functions of that office may be transferred) in January of that year plus 3.9%. If the CPI rate is a negative, Charges will be increased by 3.9%. If the CPI is not published for the given month, Onecom may use a substituted index or index figures published by that office for that month; and/or
- 14.4.2 at any time to reflect an increase in the cost to Onecom of supplying such Services due to Onecom's subcontractors or suppliers increasing charges, in which event Onecom shall use

reasonable endeavours to give the Customer prior notice of such increase where reasonably practicable.

## 15 Invoicing and Payment

- 15.1 Unless specified otherwise in the Commercial Terms, Onecom shall invoice the Customer for:
- 15.1.1 the Recurring Charges monthly or annually (as may be applicable) in advance;
  - 15.1.2 the One-Off Charges (if any) on or at any time after an Order;
  - 15.1.3 the Variable Charges (if any) monthly in arrears; and
  - 15.1.4 other fees or charges payable by the Customer as detailed in the Price Guide on or at any time after such fees or charges are incurred by the Customer.
- 15.2 Onecom will invoice, and the Customer will pay, in pounds sterling.
- 15.3 The Customer will pay all Charges by direct debit, unless Onecom agrees otherwise in writing.
- 15.4 Where the Customer does not pay by direct debit, unless Onecom agrees otherwise in writing, Onecom will:
- 15.4.1 charge a payment processing fee as set out in the Price Guide; and
  - 15.4.2 deduct the payment processing fee from any money received before any payment is allocated against the Charges.
- 15.5 If Onecom issues an invoice on OneCloud, it will notify the Customer by email.
- 15.6 The Customer shall pay each invoice submitted by Onecom within the number of days from the date of such invoice as set out in the Commercial Terms (or if no such number is so set out then within 14 days) (**Due Date**), and in full and in cleared funds to a bank account nominated in writing by Onecom.
- 15.7 Onecom may credit assess the Customer from time to time to determine the credit limit on the Customer's account. The Customer will provide Onecom with any information it reasonably requires for this. If Onecom is not satisfied as to the creditworthiness of the Customer, it may
- 15.7.1 notify the Customer that no further credit will be allowed;
  - 15.7.2 require all Charges owing by the Customer to Onecom to be paid immediately;
  - 15.7.3 require the Customer to pay Charges in advance;
  - 15.7.4 require the Customer to provide a guarantee as security for payment of future invoices; and/or
  - 15.7.5 require the Customer to pay a deposit.
- 15.8 Without limiting any other right or remedy of Onecom, if the Customer fails to make any payment due to Onecom under the Contract or any other contract between Onecom and the Customer by the Due Date, Onecom shall be entitled to:
- 15.8.1 cancel any Order or suspend any further provision of the Services to the Customer;
  - 15.8.2 restrict or suspend the Service as set out in clause 16.1.3;
  - 15.8.3 charge a late payment charge, as described in the Price Guide; and/or
  - 15.8.4 charge interest on the overdue amount at the highest rate permitted by Applicable Law from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment.
- 15.9 The Customer will pay all reasonable costs that Onecom incurs when recovering any overdue amount, including debt collection agency and legal costs.
- 15.10 If the Customer disputes the amount of any Onecom invoice in good faith and on bona fide grounds:
- 15.10.1 the Customer shall pay any undisputed portion of the invoice;
  - 15.10.2 the Customer shall write to Onecom within 10 Business Days of the date of the invoice providing details of:
    - (a) the nature and reason for the dispute;
    - (b) the amount in dispute; and
    - (c) any evidence to support the disputed amount;
  - 15.10.3 if Onecom can demonstrate that the invoice is correct Onecom shall be entitled to charge interest in accordance with clause 15.8.4; and
  - 15.10.4 if Onecom determines that the disputed invoice is incorrect Onecom shall issue a corrected invoice and/or apply the relevant credit to the Customer's account.
- 15.11 Any invoice which is not disputed in accordance with clause 15.10 shall be deemed to be fully accepted by the Customer and Onecom shall have no liability in respect of any invoice which is otherwise disputed.

- 15.12 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by Applicable Law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Onecom in order to justify withholding payment in whole or in part. Onecom may, without limiting its other rights and remedies, set-off any amount owing to it by the Customer against any amount payable by Onecom to the Customer.

## 16 Customer Default

- 16.1 If Onecom's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 16.1.1 Onecom shall without limiting its other rights or remedies have the right to suspend provision of the Services pursuant to clause 16.1.3, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Onecom's performance of any of its obligations;
  - 16.1.2 Onecom shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Onecom's failure or delay to perform any of its obligations as set out in this clause 16; and
  - 16.1.3 the Customer shall reimburse Onecom on written demand for any costs or losses sustained or incurred by Onecom arising directly or indirectly from the Customer Default.

## 17 Liability

- 17.1 Without prejudice to clause 16.1.3 and subject to clause 17.5:
- 17.1.1 neither party shall be liable under any circumstances to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
    - (a) any loss of profits, sales, business, or revenue;
    - (b) loss or corruption of data, information or software;
    - (c) loss of business opportunity;
    - (d) loss of anticipated savings;
    - (e) loss of or damage to goodwill; or
    - (f) any indirect or consequential loss; and
  - 17.1.2 a party's total liability to the other arising in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the lower of (i) £100,000.00 and (ii) the Charges in the 12 months prior to the date the loss arose.
- 17.2 The Customer's obligations to make payments to Onecom pursuant to the Contract are in addition to and will not be counted towards the limitations set out in clause 17.1.2.
- 17.3 Any warranties, conditions or other terms implied by common law or statute are, to the fullest extent permitted by law, excluded from the Contract.
- 17.4 Onecom will not be liable if it fails to do something under the Contract (including not carrying out any of its obligations, carrying them out late or not meeting any service levels), whether or not there is a Force Majeure Event (in which case, clause 24.2 applies), to the extent that Onecom's failure is due to:
- 17.4.1 the Customer's failure to carry out, or delay in carrying out, any of its obligations under the Contract, in which case the Customer will pay Onecom for any costs and losses sustained or incurred as a result of such failure or delay;
  - 17.4.2 anyone other than Onecom or Onecom's subcontractors or suppliers doing something, or not doing something, they need to do; or
  - 17.4.3 any restriction or prevention by Applicable Law, a court order, an application for interlocutory relief or injunction.
- 17.5 Nothing in the Contract excludes or limits the liability of a party for:
- 17.5.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 17.5.2 fraud or fraudulent misrepresentation; or
  - 17.5.3 any other matter for which it would be unenforceable or invalid to seek to limit or exclude liability.
- 17.6 This clause 17 shall survive termination of the Contract.

## 18 Suspension

- 18.1 Onecom may restrict or suspend the provision of the Services:
- 18.1.1 for any maintenance, modification, or technical failure of the Network or Service;
  - 18.1.2 to safeguard the security and integrity of the Network;
  - 18.1.3 for any breach of the Customer's obligations under the Contract, including clauses 15 or 6, or any failure to pay Onecom pursuant to the terms of any other contract between the Customer and Onecom; or

- 18.1.4 if the Customer becomes subject to any of the events listed in clauses 19.3.3 to 19.3.11, or if the Customer fails to pay any amount due under the Contract on the Due Date.
- 18.2 Onecom shall keep all suspensions to a minimum and shall give the Customer prior notice of such suspensions where reasonably practicable.
- 18.3 If Onecom restricts or suspends the Service pursuant to clauses 18.1.3 or 18.1.4:
  - 18.3.1 the Customer will continue to be liable to pay the Charges for the Service; and
  - 18.3.2 Onecom may charge the Customer to start the Service again.
- 19 Termination**
- 19.1 Without limiting its other rights or remedies, Onecom may terminate the Contract in whole or part:
  - 19.1.1 with immediate effect by giving Notice to the Customer where Onecom has suspended the Service under clause 18.1.3 or clause 18.1.4;
  - 19.1.2 on no less than 30 days' Notice to the Customer at any time after expiry of the Minimum Term.
- 19.2 Either party can terminate a Service at any time by giving such Notice as specified for that Service in the Service Terms (or if no such period of Notice is so specified, on no less than 90 days' Notice), in which event, the provisions of clause 20 shall apply.
- 19.3 Without limiting its other rights or remedies, a party may terminate the Contract with immediate effect by giving Notice to the other party if:
  - 19.3.1 the other party fails to pay any amount due under the Contract (and which has not been disputed in accordance with clause 15.10.2) on the Due Date and remains in default no less than 30 days after being notified in writing to make such payment;
  - 19.3.2 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after being notified in writing to do so;
  - 19.3.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
  - 19.3.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 19.3.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
  - 19.3.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 19.3.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
  - 19.3.8 the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 19.3.9 a floating charge holder over the assets of the other party has become entitled to appoint or has appointed an administrative receiver;
  - 19.3.10 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 19.3.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 19.3.3 to 19.3.10 (inclusive); or
  - 19.3.12 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.
- 19.4 Where more than one Service is provided under the Contract and the Contract is not terminated in whole, the Contract shall only terminate in respect of the terminated Service, and shall continue in respect of any continuing Service.

**20 Consequences of termination**

- 20.1 If the Customer terminates the Contract, the Service or any Order (or part thereof) using its rights set out in clause 18, the Customer will pay Onecom:
  - 20.1.1 the Termination Charges (unless the Customer terminates pursuant to clause 19.3, in which case no Termination Charges will be payable); and
  - 20.1.2 all Charges that are or would have been performed during the Notice period set out in clause 19.2.
- 20.2 If Onecom terminates the Contract, the Service or any Order using its rights set out in clause 19.1.1 or clause 19.3, the Customer will pay Onecom the Termination Charges.
- 20.3 If the Contract, any Service or any Order is cancelled, terminated or expires, for any reason:
  - 20.3.1 the Customer will immediately stop using the relevant Service;
  - 20.3.2 the Customer will immediately pay Onecom any money and interest that is due up to the date of termination;
  - 20.3.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
  - 20.3.4 the following clauses shall continue in force: clause 1 (Interpretation), clause 17 (Liability), clause 20 (Consequences of termination), clause 22 (Data protection), clause 23 (Intellectual property), clause 24.5 (Confidentiality), clause 24.6 (Entire agreement), clause 24.8 (Waiver) and clause 24.13 (Governing law and jurisdiction).

**21 Complaints**

If the Customer wishes to make a complaint about the Services, the Customer agrees that it shall follow Onecom's complaints procedure detailed at <https://onecom.co.uk/complaints-procedure-2/> (or any other online address that Onecom advises the Customer of).

**22 Data protection**

- 22.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 22 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 22.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Onecom is the Processor when providing the Customer with Services pursuant to the Contract.
- 22.3 The following table sets out the scope, nature and purpose of processing by Onecom, the types of Personal Data and categories of Data Subject being processed for the purposes of the Contract:

<b>Subject matter</b>	The processing of the Data Subjects' Personal Data in order to provide the Customer with Services pursuant to the Contract.
<b>Duration</b>	The duration required for the performance of the Contract.
<b>Categories of data</b>	Any Personal Data transferred by the Customer to Onecom under this Contract, including, but not limited to: <ul style="list-style-type: none"> <li>i. title;</li> <li>ii. full name;</li> <li>iii. job title; and</li> <li>iv. telephone numbers and other contact details.</li> </ul>
<b>Categories of Data Subjects</b>	<ul style="list-style-type: none"> <li>i. Employees and staff of the Customer (or such other persons authorised by the Customer to make use of the Services); and</li> <li>ii. Employees and staff of customers of the Customer.</li> </ul>
<b>Nature of processing</b>	Storing and using the information to fulfil the Contract.
<b>Purposes of processing</b>	To provide the Customer with Services pursuant to the Contract.

- 22.4 Without prejudice to the generality of clause 22.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer and processing of any Personal Data to and by Onecom for the duration and purposes of the Contract, and will transfer to Onecom only the Personal Data that Onecom requires in order to perform its obligations under the Contract.
- 22.5 Without prejudice to the generality of clause 22.1, Onecom shall, in relation to any Personal Data processed by Onecom as Processor in connection with the Contract:
  - 22.5.1 process the Personal Data only in accordance with the Contract or on the documented instructions of the Customer unless Onecom is required by Applicable Law to otherwise process that Personal Data. Where Onecom is relying on Applicable Law as the basis for processing Personal Data, Onecom shall notify the Customer of this before performing the processing required by the Applicable Law unless that Applicable Law prohibits Onecom from so notifying the Customer. Onecom shall inform the Customer if, in the opinion

- of Onecom, any of its instructions infringes or may infringe Data Protection Legislation;
- 22.5.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 22.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 22.5.4 assist the Customer, insofar as this is possible (taking into account the nature of processing and the information available to Onecom), at the Customer's cost and written request, in responding to any request from a Data Subject and in ensuring compliance with the Customer's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 22.5.5 notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- 22.5.6 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the Personal Data. For the purposes of this clause 22.5.6, Personal Data shall be considered deleted where it is put beyond further use by Onecom; and
- 22.5.7 maintain records to demonstrate its compliance with this clause 21 and allow for the Customer or the Customer's designated auditors to review, audit and inspect such records for the purposes of verifying such compliance.
- 22.6 The Customer hereby provides its prior, general authorisation for Onecom to:
- 22.6.1 appoint third-party processors of Personal Data (**Sub-Processors**). Onecom shall inform the Customer of any intended changes concerning the addition or replacement of the Sub-Processors. If the Customer objects it shall give written notice to Onecom within 10 days of notice of any such additional or replacement Sub-Processor, which includes a description of the objection including if the objection is due to an actual or likely breach of Data Protection Legislation. On Onecom's receipt of the objection, the parties shall attempt in good faith to resolve the objection. If the parties are unable to resolve the objection within 30 days from the Customer's objection then Onecom may either: (i) continue the Contract without appointing the new or replacement Sub-Processor; or (ii) terminate the Contract, without liability to the Customer. Onecom confirms that it has entered or (as the case may be) will enter with each Sub-Processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 22. As between the Customer and Onecom, Onecom shall remain fully liable for all acts or omissions of any Sub-Processor appointed by it pursuant to this clause 22.6; and
- 22.6.2 transfer Personal Data outside of the UK or EEA as required for the purposes as described in clause 22.3, provided that Onecom ensures that all such transfers are affected in accordance with Data Protection Legislation.
- 22.7 Onecom may, at any time on not less than 30 days' notice (pursuant to clause 24.7.2), revise this clause 22 (in whole or in part) or update, amend and/or enhance the data protection provisions of this Contract (in whole or part) to incorporate any applicable controller to processor standard clauses or similar terms in each case adopted under the Data Protection Legislation or forming part of an applicable approved certification scheme under Data Protection Legislation or otherwise to comply with Data Protection Legislation.
- 23 Intellectual property**
- 23.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Onecom or its licensors.
- 23.2 If the Customer's use of the Service infringes, or allegedly infringes, a third party's Intellectual Property Rights, Onecom will indemnify the Customer for court awarded damages payable to a third party for a proven infringement of that third party's Intellectual Property Rights directly resulting from the use by the Customer of the Services provided the Customer:
- 23.2.1 notifies Onecom promptly about the Claim;
- 23.2.2 allows Onecom to conduct all negotiations and proceedings and to settle the Claim;
- 23.2.3 provides Onecom with its reasonable assistance regarding the Claim; and
- 23.2.4 does not attempt to settle the Claim or make any admission or public statement relating to it, or do anything that may harm Onecom's defence of it.
- 23.3 The indemnity in clause 23.2 will not apply to any part of a Claim that results from or is connected with:
- 23.3.1 the Customer's use of the Service with equipment, software or another service not supplied by Onecom;
- 23.3.2 any modification of the Service, other than by or on behalf of Onecom;
- 23.3.3 any content, designs or specifications that have not been supplied by or on behalf of Onecom; or
- 23.3.4 the Customer using the Service in a way not agreed in writing by Onecom.
- 23.4 The Customer will indemnify Onecom for Claims, losses, costs or liabilities brought against Onecom that result from or are connected with:
- 23.4.1 the Customer's use of the Service with equipment, software or another service not supplied by Onecom;
- 23.4.2 any modification of the Service, other than by or on behalf of Onecom;
- 23.4.3 any content, designs or specifications that have not been supplied by or on behalf of Onecom; or
- 23.4.4 the Customer using the Service in a way not permitted by this Contract.
- 23.5 If using the Service leads, or is likely (in Onecom's reasonable opinion) to lead, to a Claim against the Customer as described in clause 23.2, Onecom may (at its own expense):
- 23.5.1 procure the right to continue the Customer's use of the Service; or
- 23.5.2 modify or replace the relevant parts of the Service so that using the Service no longer infringes third party Intellectual Property Rights, provided performance of the relevant parts of the Service is not materially affected.
- 23.6 The indemnity in clause 23.2 and the actions in clause 23.5 are the Customer's only remedies for Claims that use of the Service infringes a third party's Intellectual Property Rights.
- 24 General**
- 24.1 Anti-bribery**
- Each party will comply in all respects with the Bribery Act 2010 and other relevant Applicable Law, regulations and sanctions relating to anti-bribery and anti-corruption. Each party will maintain adequate procedures designed to prevent bribery and appropriate anti-bribery and corruption policies and procedures.
- 24.2 Anti-slavery and human trafficking**
- 24.2.1 In performing its obligations under the Contract, each party shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015; and
- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in England and Wales.
- 24.2.2 Each party represents and warrants that it has not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 24.3 Force majeure**
- Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 2 months, the party not affected may terminate the Contract in respect of the affected Service immediately by giving Notice to the affected party.
- 24.4 Assignment and other dealings**
- 24.4.1 Onecom may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 24.4.2 The Customer shall not, without the prior written consent of Onecom (such consent not to be unreasonably withheld or delayed), assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 24.5 Confidentiality**
- 24.5.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 24.5.2.
- 24.5.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 24.5; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

#### 24.6 Entire agreement

- 24.6.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 24.6.2 The Customer acknowledges that it has not relied on, and shall have no remedies in respect of, any statement, promise, representation, assurance or warranty made or given (whether innocently or negligently) by or on behalf of Onecom that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 24.6.3 Any samples, drawings, descriptive matter or advertising issued by Onecom and any illustrations or descriptions of the Services on Onecom's website are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 24.6.4 No terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing shall apply to the Contract.
- 24.6.5 Onecom's employees or agents are not authorised to make any representations concerning the Services unless confirmed by Onecom in writing. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

#### 24.7 Variation

- 24.7.1 The provisions in this clause 24.7 are without prejudice to the respective rights of the parties (including Onecom's rights to make changes to Services and/or prices) as set out elsewhere in the Contract.
- 24.7.2 Onecom may amend the General Terms or Service Terms at any time by:
- (a) publishing the amendment online at <https://onecom.co.uk/terms-and-conditions/> (or any other online address that Onecom advises the Customer of); and/or
- (b) by giving Notice to the Customer.
- 24.7.3 Onecom shall have the right to make any changes to the Services which are necessary to comply with any Applicable Law or safety requirement or which do not materially affect the nature or quality of the Services.
- 24.7.4 Any typographical, clerical or other accidental errors or omissions in an Order and/or any sales literature, quotation, price list, invoice or other document or information issued by Onecom shall be subject to correction without any liability on the part of Onecom.

- 24.7.5 No other variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### 24.8 Waiver

A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- 24.8.1 waive that or any other right or remedy; or
- 24.8.2 prevent or restrict the further exercise of that or any other right or remedy.

#### 24.9 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

#### 24.10 Notices

- 24.10.1 Save where specified otherwise, any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be:
- (a) delivered to the other party personally; or
- (b) sent by prepaid post, recorded delivery or by commercial courier, at its registered office (where sent by the Customer) or the billing address set out in an Order (where sent by Onecom); or
- (c) sent by email to [notices@onecom.co.uk](mailto:notices@onecom.co.uk) (where sent by the Customer) or to the email address set out in the Commercial Terms (where sent by Onecom),

or such other address or email address as a party may have specified to the other party in writing in accordance with this clause.

- 24.10.2 Any notice or other communication shall be deemed to have been duly received if delivered personally when left at such address or, if sent by prepaid post or recorded delivery at 9.00 am on the second Business Day after posting or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed. Notices sent by email will be deemed served one Business Day after transmission.

- 24.10.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

#### 24.11 Third party rights

No one other than a party to the Contract shall have any right to enforce any of its terms.

#### 24.12 Counterparts

The Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of the Contract but all the counterparts shall together constitute the same agreement.

#### 24.13 Governing law and jurisdiction

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.