



OPTUS

Jonesboro | Little Rock | Texarkana | Memphis | Houston | Dallas
3423 One Place, Jonesboro, AR 72404
800-678-8712 | FAX 870-974-7782

TERMS AND CONDITIONS

1. Effective Date. This Agreement shall be effective on the date accepted and executed by an authorized representative of Company (the "Effective Date"). Unless sooner terminated according to the provisions of paragraph 25 hereof and subject to renewal as described in paragraph 22 hereof, this Agreement shall continue in effect for the Initial Term, commencing on the date of Installation (as defined in paragraph 7 below). Customer will confirm the Installation of the Equipment by executing a delivery and acceptance certificate in form provided by the Company. It shall be conclusively presumed that Customer's execution of the delivery and acceptance certificate confirms the Customer's inspection, satisfaction and unqualified acceptance of the Equipment. Customer also agrees to execute any additional documentation required by any Lessor or Rentor of the Equipment necessary to confirm acceptance of the Equipment.

2. Applicable Terms and Conditions. These terms and conditions of sale, including any exhibits, schedules, addenda, and other attachments to this Agreement shall govern the Company's provision of the Equipment, support, and services described herein, including hardware products manufactured by third parties and software products created or licensed by third parties or provided to Customer by Company. While Company may acknowledge receipt of a purchase order issued by Customer by signing and returning the purchase order to Customer, any Customer terms and conditions and any specific order documentation, preprinted or otherwise, which conflict with the Agreement, shall be inapplicable and shall not modify this Agreement.

3. Payment. The payment schedule and payment terms are set forth on Page 1 of this Agreement or in a separate conditional sales, lease, or rental agreement executed by Customer. Company may charge interest for past due balances up to the maximum amount permitted by applicable law. For partial shipments, Equipment will be billed when shipped. Company may cancel or delay delivery of Equipment when Customer is delinquent on any payments under any orders with Company. Deposits or down payments, if any, are non-refundable and Company shall retain them as liquidated damages for any unauthorized termination or cancellation of this Agreement by Customer. If the transaction for the Equipment is other than a cash purchase, the transaction shall also be subject to the terms of a separate conditional sales, rental or lease agreement.

4. Title/Finance. Except as provided in paragraph 5 below, title to the Equipment shall vest in Customer only upon payment in full of the purchase price. Company shall retain, and Customer hereby grants Company, a security interest in the Equipment until all monies payable hereunder are paid in full. Customer hereby warrants to Company that all equipment traded in is free and clear of any liens or encumbrances. Company is hereby authorized to conduct a credit check of Customer and Customer authorizes third parties to promptly release all relevant information regarding Customer to Company. Customer hereby authorizes Company to file any financing statements deemed necessary or desirable by Company to perfect its security interest in the Equipment.

5. Leases/Rental. If Customer is acquiring use of the Equipment through a rental agreement ("Rental Agreement") or equipment lease (a "Lease") with an equipment lessor/rentor (a "Lessor/Rentor"), certain provisions of this Agreement will be modified as follows: (i) payment (the applicable Lessor/Rentor or Customer, as agreed by the parties will pay Company the purchase price for the Equipment per the terms of the applicable Company purchase order or agreement, including any applicable Company additional terms and conditions, or such other terms and conditions as shall be agreed to in writing by Company and the Lessor/Rentor); (ii) title transfer (Company will convey title to the Equipment to the applicable Lessor/Rentor per the terms of the applicable Company purchase agreement or order, including any applicable Company additional terms and conditions, or such other terms and conditions as shall be agreed to in writing by Company and the Lessor/Rentor); (iii) acceptance (as between Customer and the applicable Lessor/Rentor, the terms of Equipment acceptance shall be governed by the applicable Lease/Rental and other documentation entered into between Customer and such Lessor/Rentor; as between Company and such Lessor/Rentor, the terms of equipment acceptance shall be governed by the terms of the applicable Company purchase agreement or order, including any applicable Company additional terms and conditions, or such other terms and conditions as may be agreed to in writing by Company); (iv) warranties (subject to the last sentence of this section, all warranties hereunder shall

extend to and be enforceable by Customer); and (v) software licenses (Customer shall be an authorized end-user under any software licenses under this Agreement in connection with the Equipment, subject to the applicable license terms and conditions.) Notwithstanding this section, if the applicable Lessor/Rentor does not comply with the terms of this Agreement relating to items (i) and (iii) above, Customer continues to be responsible for the payment and acceptance obligations hereunder. As between the applicable Lessor/Rentor and Customer, the applicable Rental Agreement or Lease terms may modify the manner in which warranties hereunder are enforceable by Customer, provided that Company shall not be bound by any Rental Agreement or Lease terms that would modify Company's warranty obligations unless Company has agreed in writing to such modifications.

6. Customer Duties and Obligations.

- A. Customer represents and warrants to Company that Customer has obtained the requisite necessary permission and authority in order for Company's employees and agents to enter on Customer's premises and install the Equipment and all related apparatus at all times consistent with the requirements for installation.
- B. Installation, support and/or service will be performed during Company's normal working hours at no additional charge on the Customer's side of interface equipment connecting the Equipment to the communications system operated by the provider providing the service.
- C. Customer shall assure that the premises will meet temperature, humidity control, air conditioning and other environmental requirements set forth in applicable Equipment specifications, which Customer acknowledges receipt of and the premises will be dry and free from dust and in such condition as not to be injurious to the employees or agents of Company or the Equipment to be installed.
- D. Customer shall provide necessary openings and ducts for cable and conductors in floors and walls if required for installation of Equipment as specified by Company.
- E. Customer agrees to provide electric current for necessary purposes with suitable terminals in areas where it is required and in accordance with Equipment specifications. Customer acknowledges that the failure of Customer to provide dedicated electric current may cause Equipment malfunction. Customer agrees to install and maintain at all times AC power surge protection equipment in connection with the Equipment. If requested by Company, Customer shall immediately install central office and A/C "power conditioning" equipment. Customer agrees to provide installed metallic ground or grounds as required. Company shall not be responsible for any malfunctions or costs associated with the above.
- F. Customer, at its expense, agrees to provide for the termination of any existing service agreement with any telephone communication vendors in accordance with the terms of Customer's agreement with such vendors, and for removal of any existing equipment and cabling as the Company may require.
- G. Customer agrees to provide suitable and easily accessible floor space or wall space and to prevent storing of any materials, chemicals, or metallic objects that may be injurious to the Equipment or employees or agents of Company adjacent to where the Equipment will be used or installed.
- H. Customer agrees to provide an "agency letter" or other required documentation authorizing Company to act as agent for Customer in ordering and scheduling necessary services from the telephone communication vendors and any long distance carriers, equal access carriers, and specialized carriers, whenever applicable. Customer shall be solely responsible for payment of the expense of such services. The Company shall not be responsible in the event the applicable utility fails to make available the necessary interconnect.
- I. The Customer shall permit the Company reasonable access to the Customer's premises and the System for remedial maintenance service. The Customer shall also permit the Company to inspect the System under normal operating conditions.
- J. The Customer shall permit the Company reasonable access to the Customer's premises and the System for remedial maintenance service.
- K. The Customer shall also permit the Company to inspect the

Equipment under normal operating conditions.

L. The Customer shall maintain the Equipment with the manufacturer's or supplier's recommended and current software releases.

7. Completion of Installation of Hardware Product. Where Equipment is provided pursuant to this Agreement, completion of installation shall occur upon the earlier of (1) completion of installation of the Equipment by Company according to its standard procedures; (2) Customer's execution of Company's delivery and acceptance certificate. The delivery and acceptance certificate will be deemed executed and installation complete if the Customer should fail to return the delivery and acceptance certificate to Company within ten (10) business days of receipt thereof or, alternatively, fail to provide Company with written notice within such ten (10) day period of the specific defects or non-conformity; or (3) the use of any of the Equipment by Customer's agents, contractors, employees, or licensees, for any purpose after its receipt ("Installation"). Prior to the completion of Installation, Company may repair or, at its option, replace defective or non-conforming parts or service after receipt of notice of defect or non-conformity from Customer. After completion of Installation, Customer's remedies shall be solely as provided herein.

8. Payment Terms. The receipt or deposit of any monies received by Company as a down payment shall not be construed as acceptance of this Agreement. The down payment shall be due upon execution by Customer of this order and shall be returned to Customer if this order is not accepted. The price(s) and charge(s) stated herein are subject to change without notice, but shall remain firm through the date of scheduled delivery provided Company's scheduled delivery date is not postponed by Customer. If Customer requests service from Company not included in the warranty or support selected by Customer and as provided herein, Customer shall pay Company for all work, services and materials performed or provided within ten (10) days of the invoice date or as otherwise posted on Customer's invoice from Company. In the event Customer fails to make any payment to Company on or before its due date, Company may, without notice, impose a late penalty equal to the lesser of one and one-half percent (1½%) per month on the unpaid amount for each calendar month (or fraction thereof) that such payment is in default or the highest interest rate permitted by applicable law. All costs of collection or for breach of this Agreement, including attorney fees, shall be paid by Customer.

9. Additions. Customer agrees not to add to or modify the Equipment without the approval of Company. No unauthorized service or equipment vendors or technicians may add to or service the Equipment during the term of this Agreement, unless specifically authorized by Company. If Company approves additions to the Equipment, at the Company's option, an additional charge may be charged to the Customer under this Agreement to take into account the increased cost of servicing and maintaining the additional equipment.

10. Change Orders. Any modification or change to this Agreement shall be by written Change Order only signed by both Company and Customer, which shall be incorporated herein as if set forth herein.

11. Taxes. Customer shall pay Company any tax (except taxes based on Company's net income) on this Agreement, or measured by the prices, other charges, the Equipment, or services furnished, or their use, however designated, levied or based whenever Company must pay and/or collect the tax from Customer according to applicable law, as interpreted by the departmental authorities of the applicable taxing unit. It shall be Customer's sole obligation after payment to Company to challenge the applicability of any tax. Any personal property taxes assessable on the Equipment after delivery shall also be paid by Customer.

12. Risk of Loss or Damage.

A. Customer shall assume full risk of loss or damage to the Equipment immediately upon its delivery to Customer's location.

B. As long as Company holds a security interest in the Equipment, Customer shall:

(i) Maintain the Equipment in good operating condition; keep the Equipment free from liens and encumbrances; not use or permit use of the Equipment in any manner likely to be injurious to it; not remove or permit removal of the Equipment from its original location without the prior written consent of Company; not make or permit any alteration or repair of the Equipment without the prior written consent of Company; and permit inspection by Company at reasonable times; and

(ii) Unless included as part of the transaction type selected by Customer (e.g., Rental Agreement or Lease Agreement), procure and maintain insurance on the Equipment including but not limited to fire, water damage, extended coverage, vandalism and malicious mischief insurance for the full insurance value of the Equipment,

with loss payable to Company and Customer as their interests shall appear.

13. Manufacturers Warranties. The Company provides no separate warranties as to the Equipment but instead only warrants the support and services provided by Company to the extent described herein. Any warranties related to the Equipment itself shall be those provided solely by the manufacturer or supplier thereof Lesser of Manufacturers Warranty or 12 months. Where Company sells or licenses third party products or which are provided as replacement parts, any warranties given by the manufacturer or supplier of such third party products, which warranties are expressly made available by the manufacturer or supplier to be passed on to the Customer, shall be passed on by Company to Customer, subject to all limitations imposed on Company by the supplier or manufacturer. In no event shall Company have any liability with respect to such third party equipment, accessories, components, software, or warranties provided by such other suppliers or manufacturers, nor shall Company have any liability for failure of such suppliers or manufacturers to perform on their warranties. Warranties provided by the manufacturer or supplier of the Equipment vary by manufacturer and supplier and generally constitute a period for replacement of defective hardware components and do not include or cover charges for labor, advance replacement of materials or equipment, or for repair or replacement after the warranty period of the Equipment unless Customer maintains and timely pays for an additional maintenance support term. Equipment and hardware not supported by the manufacturer or supplier, but covered under a Company maintenance program is subject to best efforts only, for repair or replacement of a like product. Parts returned or removed during service shall become the property of the Company. Replacement parts may be new, remanufactured or refurbished, at the option of the Company.

No representation or other affirmation of fact, including but not limited to statements regarding capacity, suitability for use, or performance of the Equipment shall be or be deemed to be a warranty by Company for any purpose, nor give rise to any liability or obligation of Company whatsoever. Any modifications, relocation, alterations, additions, or repairs to the Equipment by anyone other than the supplier of manufacturer thereof may terminate the Equipment or hardware warranty; furthermore, such additions or modifications must be promptly registered with the Company. Failure to timely register the same may void the warranty provided by the manufacturer or supplier. Company shall not be liable for any damages caused by delay in delivery, installation or furnishing of the Equipment. Company is not responsible for issues created or caused through the connectivity of the Equipment through to the public network/carrier. Customer shall assume full responsibility for the overall effectiveness and efficiency of the operating environment in which the Equipment is to function.

14. Standard Support and Services Program. For a period of ninety (90) days following Installation, the Company shall provide without additional charge to Customer all labor and workmanship necessary to perform any necessary part replacements to the Equipment that are allowed by any manufacturer's or supplier's warranty covering the Equipment. The services will be provided by Company to Customer during normal business hours (8:00 am to 5:00 pm Monday through Friday except holidays). Emergency services provided by Company during such ninety (90) day period outside of Monday to Friday 8.00 am to 5.00pm will be billed at the Company's then current overtime rate. The Company will begin provision of services for major or minor failures within twenty-four (24) hours of notification. The coverage provided by Company under this paragraph shall not include any replacement parts. Additionally, provision of the services described in this paragraph are contingent on the Customer not being in material breach of the manufacturer's or supplier's warranty, coverage not being excluded under the provisions of paragraph 24 hereof, or any of the other provisions of this Agreement. After expiration of ninety (90) days from the date of Installation, unless Customer has selected the Extreme Maintenance Protection Program or the Customer is covered by the Monster Protection program (Rental Agreements only), all services provided by Company to Customer to perform any necessary parts replacements to the Equipment as covered by any manufacturer or supplier's warranty will be billed at Company's then published billable hourly rates. Other terms related to Company's Standard Support and Services Program are summarized in Appendix A attached hereto and incorporated by reference.

15. Optus Extreme Services Protection Program. If the Customer has selected the Optus Extreme Services Protection Program, the level of support and service shall be as summarized on Appendix A attached hereto and incorporated herein by reference.

16. Monster Protection Program. If the Customer has selected the Optus Monster Protection Program (available for Rental Agreements only), the level of support and service shall be as summarized on Appendix A attached hereto and incorporated herein by reference.

17. Labor – Workmanship Warranty. All labor and services provided by Company pursuant to the provisions of this Agreement are warranted by

Company for a period of ninety (90) days from the date of performance. In the event Customer notifies Company of a defect in the Company's performance within such period, the Company shall re-perform and replace the labor at no additional charge to Customer. Repair and replacement of the labor shall be the Customer's sole and exclusive remedy. In the event the Customer selects a support program pursuant to which Company is obligated to replace parts, the parts shall be warranted for a period of twelve (12) months following date of Installation (as defined in paragraph 7 hereof). In the event the Customer notifies Company of a defect for any part replaced by Company within such twelve (12) month period, Company shall repair or replace such part at no additional charge to Customer. Repair and replacement of defective parts shall be the Customer's sole and exclusive remedy.

18. Third Party Products. Company may resell or license third party equipment on a stand alone basis, as replacement parts, or as components of a Company manufactured product. Such equipment may be delivered to Customer with such third party supplier's usage guidelines and restrictions, software licenses, and/or warranties. In such situations, Customer agrees that its use of such third party equipment shall be subject to such guidelines, restrictions, licenses, and warranties. Third party manufacturer or supplier warranties passed indirectly to Customer through Company shall be governed by Section 13.

19. Proprietary Notices, Confidentiality, Trademarks, Logos, and Trade Names. Company or Company's suppliers or licensors own all right, title, and interest (including without limitation all intellectual property rights) in and to all drawings, designs, specifications, manuals, and software furnished by Company to the Customer. All such materials and software, as well as pricing information and any information marked by Company as "Confidential" or some other label indicating its confidentiality, are furnished in confidence to Customer, except as may be found in the public domain, and shall be held in strict confidence by Customer with the same degree of care with which Customer protects its own confidential information, but in no event less than reasonable care. Customer shall not remove, alter, or obscure any copyright, trademark, trade secret, government restricted rights, or other proprietary or confidentiality notices or legends from any copy of such materials and software that are (i) placed or embedded by Customer or its suppliers or licensors in the software, (ii) are displayed when the software is run, or (iii) are applied to the Equipment, their packaging, labels, or any other materials provided under this Agreement. All trademarks, logos, and trade names displayed on the Equipment and any related documentation are the property of Company or third parties, and Customer shall not use them without the prior written consent of Customer or the third party that owns them. Customer agrees to keep secret and not to disclose any Company trade secrets, processors, or pricing information to Company competitors.

- A. For purposes of this Agreement, "Confidential Information" shall mean information or material proprietary to the party disclosing such information ("Disclosing Party") or designated as Confidential Information by the Disclosing Party which the party receiving such information ("Receiving Party") may obtain knowledge of or access to as a result of the disclosure pursuant to this agreement. This Confidential Information includes, but is not limited to, discoveries, concepts, ideas, software in various stages of development, systems information, designs, drawings, specifications, techniques, data and databases, codes, marketing information and development plans, business plans, projections, customer names, financial data, trade secrets, and any other information that the party disclosing identifies as such either in writing or orally.
- B. Confidential Information shall not include information which: (i) has been published or disseminated without obligation or confidence or which otherwise is or becomes part of the public domain; (ii) is required to be disclosed by law or by order of any court or is authorized by the Disclosing Party, in writing, to be disclosed, (iii) was or is disclosed to the Receiving Party from a source other than the Disclosing Party without obligation of confidentiality; or (iv) was already known to the Receiving Party at the time of disclosure as evidenced by written documents or records.
- C. The Parties agree to accept the Confidential Information received by each in confidence, and further agree that the Confidential Information belongs exclusively to the Disclosing Party and that the Receiving Party will not acquire any rights to use the Confidential Information of the Disclosing Party for its own benefit, the benefit of a third party, or for any purpose other than that as noted by the Disclosing Party and for the benefit of the Disclosing Party. Each of the Parties further agrees to use the same care and discretion to avoid disclosure, publication, or dissemination of the Confidential Information as it uses with its own similar information that it does not wish to reveal, disclose, publish or disseminate.
- D. The Customer nor Company will not at any time, without the prior written authorization of the Disclosing Party, reveal, disclose, report, publish or transfer Confidential Information, or any part thereof, to any third party, other than those employees of the Receiving Party who have a need to know the Confidential Information in connection with the purposes designated by the Disclosing Party and agree to be bound by the terms of this Agreement.
- E. Upon request by the Disclosing Party, the Receiving Party will return to the Disclosing Party, without making or taking copies thereof, all documents pertaining to the business of the Disclosing Party, irrespective of whether such documents relate to or concern Confidential Information.
20. Cancellations and Modifications. No order accepted by Company may be terminated, canceled, or modified by Customer except by prior mutual written agreement between the parties. Where Customer breaches this clause, Customer agrees to forfeit its deposit or down payment, or, if no deposit or down payment was made, to pay to Company all damages incurred by Company, including costs incurred by Company, for equipment ordered for which manufacturing has begun, but has not been completed at the time of such breach, and a charge determined solely by Company to cover the reasonable costs of processing, order handling, retesting, repackaging, lost profits, and other damages, as determined in accordance with applicable law and this Agreement. This section shall not limit, and Company shall be entitled to pursue, any other remedies it may have under the law or in equity.
21. Term. This Agreement shall commence on the Effective date, and shall continue for the Initial Term, subject to renewal in accordance with paragraph 22 or early termination pursuant to paragraph 25 hereof.
22. Termination. Except as may be sooner terminated in accordance with the provisions of paragraph 25 below, this Agreement shall also remain in effect for the support and services period selected by Customer only so long as Customer continuously contracts for or receives support and/or service from Company for all of the Equipment covered by this Agreement from the time of acceptance of such Equipment. If Customer discontinues such support and/or service under this Agreement as to any portion of such Equipment, Company may immediately terminate this entire Agreement.
- At the end of the Initial Term, the term of this Agreement shall automatically extend for additional successive terms of one (1) year each unless either party hereto gives written notice to the other party at least thirty (30) days prior to expiration of the term then in effect of its desire not to renew the term of this Agreement. No refund will be due if Customer cancels support and services prior to the expiration of the term or if Company terminates this Agreement pursuant to its rights hereunder.
- The remedies provided herein shall be cumulative and shall be in addition to all other remedies provided by law or equity.
23. Assignment. Company may assign this Agreement and convey its interest in the Equipment, or assign the right to receive payments without the Customer's consent. Customer may not assign this Agreement without Company's prior written consent.
24. Excluded Services. The support and service to be provided by Company under this Agreement shall not include the following:
- A. Failure to follow the Company's, the sellers and/or manufacturer's installation, operation or maintenance instructions;
 - B. Performing services in connection with the use of the Equipment in conjunction with other equipment, the unauthorized relocation of the Equipment, the unauthorized modification of the Equipment, the rewiring or rerouting of cables, or the addition or removal of accessories, attachments, features, or other devices;
 - C. Maintenance of Equipment from which the original identification marks have been removed or altered;
 - D. Misuse, abuse or negligent acts of persons other than the authorized agents of the Company;
 - E. The acts of third parties and acts of God (fire, power surges, lightning, water damage, etc.);
 - F. Back-up or restoration of Customer data, information or computer programs, whether or not used in conjunction with the Equipment;
 - G. Equipment not specifically identified above, and both in building and out of building wiring;
 - H. Unauthorized use of common carrier communication services accessed through the products of the Company (i.e., toll fraud, etc.);
 - I. Failure due to causes from non-Company supplied equipment, parts or software;

- J. Defects due to unauthorized attempts to repair, relocate, maintain, service, add to or to modify the Equipment by the Customer or any third party or due to the attachment and/or use of non-Company supplied parts, equipment or software without Company's prior written approval;
- K. Equipment which is worn out or obsolete and cannot be reasonably repaired or replaced due to the unavailability of spare parts from the original equipment manufacturer or which is no longer supported by the original manufacturer;
- L. Computer viruses and other changes to the operating system or environment which adversely affects the Equipment);
- M. Defects, problems, or failures created by third party products (except those comprising parts or components of the Equipment);
- N. Failure of Customer to use or take any proper precautions under the circumstances; and
- O. Disruption or interruption of access to the Equipment caused by services provided by third parties.

If Company is called upon to service or repair the Equipment which falls under this paragraph, a separate invoice will be issued for labor, parts and expenses at prevailing per-call rates and prices.

25. **Default by Customer.** Customer shall be in default under this Agreement upon: (i) failure by Customer to make any payment due Company within ten (10) days of receipt of notice from Company that the payment was not made within the applicable payment period; (ii) a failure by Customer to perform any other obligation under this Agreement within thirty (30) days of receipt of notice from Company; (iii) a failure to grant Company access to the Equipment as set forth in paragraph 6 of this Agreement; (iv) a default by Customer or any affiliate of the Customer under any other obligation to or agreement with Company, or assignee of the foregoing (including, but not limited to, a promissory note, lease, rental agreement, license agreement or purchase contract); or (v) the commencement of any insolvency, bankruptcy or similar proceedings by or against the Customer (including any assignment by Customer for the benefit of creditors). Upon the occurrence of any event of default hereunder, Company may, in addition to any and all other remedies available under law, elect to: (i) immediately cease providing services under this Agreement and any and all other agreements between the parties until the default is cured or corrected, and the Customer shall remain liable to Company for all amounts payable under this Agreement and such other agreements during any such period, (ii) declare all sums due and to become due to be immediately due and payable under this Agreement, (iii) commence collection action for all sums due and payable under this Agreement, (iii) commence collection action for all sums due and to become due hereunder including, but not limited to, costs and expenses of collection and reasonable attorney's fees, or (iv) terminate this Agreement. Remedies shall be cumulative and there shall be no obligation for Company to exercise a particular remedy and the exercise of one or more remedies shall not preclude the Company from exercising the other remedies set forth herein or those allowable by applicable law.

Prior to resumption of services under this Agreement, Company may inspect the Equipment to determine if it is in good operating condition. Such inspection shall be charged to the Customer at Company's per-call rates and terms then in effect. Any repairs or adjustment which Company determines are required due to: (i) the use of any non-Company parts, (ii) the repair or service of the Equipment by the Customer or any third party during the suspension of services by Company, or (iii) any of the exclusions from coverage set forth in paragraph 24 of this Agreement, shall be made at Company's time and material rates then in effect and shall include charges for parts, with all such repairs or adjustments to be completed prior to the resumption of service under this Agreement.

26. **Default by Company.** Customer shall give Company written notice of any default by Company in the performance of any obligations to be performed by it hereunder, and if such default continues for a period of thirty (30) days after receipt by Company of a written notice from Customer specifying such default, then and in such event, Customer, at its election, shall be entitled to all remedies available at law or in equity, including termination of this Agreement and paying the fees only to the date of termination.

27. **Limitation of Liability.** Company's entire liability and Customer's exclusive remedy for damages from any cause whatsoever, and regardless of the form of action, whether liability in contract or in tort, arising under the Agreement or related hereto, shall not exceed an amount equal to one (1)

year's service and maintenance charges for the specific item of Equipment under the Agreement that caused the damage or is the subject matter of, or is directly related to, the cause of action. Such maintenance changes will be those in effect for the specific item of Equipment when the cause of action arose. The foregoing limitation of liability shall not apply to claims by Customer or third parties for personal injury or damage to real property or tangible personal property caused solely and directly by the gross negligence or willful misconduct of Company. In addition, Company shall have no liability hereunder to Customer to the extent that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or to the extent that the loss or damage is due to an act of God or other causes beyond the reasonable control of Company.

THIS IS A SERVICE AGREEMENT. THERE ARE NO COMPANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL COMPANY BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES, LOSS OF USE OR DOWNTIME (EXCEPT AS OTHERWISE PROVIDED HEREIN) OF FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY OR FORM OF ACTION, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE EQUIPMENT.

28. **Force Majeure.** Company will not be liable to Customer for any failure to fulfill its obligations under this Agreement due to causes beyond its reasonable control and without its fault or gross negligence including, but not limited to, governmental laws and regulations, acts of God or the public, war or other violence, civil commotion, blockades, embargoes, calamities, floods, fires, earthquakes, explosions, accidents, storms, strikes, lockouts, work stoppages, labor disputes, or unavailability of labor, raw materials, power or supplies.

29. **Exclusive Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas. In the event that any clause, section, or provision hereof may be deemed unenforceable, the remainder hereof shall continue in full force and effect as if such unenforceable provision had been omitted. For the purpose of resolving any dispute arising out of or relating to this Agreement or otherwise, the parties hereby submit to the exclusive jurisdiction of the State Courts of Craighead County, Arkansas (for claims arising under state law) and the Federal District Court for the State of Arkansas sitting in Jonesboro, Arkansas (for claims arising under State and Federal law, or under Federal law), and agree that venue therein is proper and convenient. The parties shall not raise in connection with, and hereby waive, any defenses based upon the venue, the inconvenience of the forum, the lack of personal jurisdiction, the sufficiency of service of process or the like in any such claim, action or suit brought in the State of Arkansas.

30. Waiver of Jury Trial. Customer hereby waives to the fullest extent permitted by law, any right they may have to a trial by jury of any dispute arising under or relating to this Agreement and agree that any such dispute shall be tried before a Judge sitting without a jury.

31. **Severability.** If any provision of this Agreement is invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted.

32. **Entire Agreement.** THIS AGREEMENT IS THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE EQUIPMENT AND SERVICES PROVIDED HEREUNDER AND SUPERSEDES ALL PRIOR AGREEMENTS, PROPOSALS OR UNDERSTANDINGS, WHETHER WRITTEN OR ORAL. THIS AGREEMENT MAY NOT BE AMENDED EXCEPT BY A WRITTEN CHANGE ORDER SIGNED BY THE AUTHORIZED REPRESENTATIVE OF THE COMPANY AND AN AUTHORIZED REPRESENTATIVE OF CUSTOMER. EXCEPT AS OTHERWISE PROVIDED HEREIN, ALL SUPPORT AND/OR SERVICE IS PROVIDED "AS IS". THE COMPANY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND DISCLAIMS ALL WARRANTIES INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Appendix A

Guidelines for Optus Support Coverage offerings

Appendix A Guidelines for Optus Support Coverage	Standard Service & Support	Optus Extreme Service Protection	Optus Monster Protection
Feature / Benefit	SSSWP	OESSP	OMP
Equipment Warranty	Limited*	Included	Included
Labor Warranty	8x5, 90 Days	8x5**	24x7
Emergency\Major Outage Response Time (By Phone or On-Site)	6 Hours	4 Hours	2 Hours
Minor Outage Response Time (By Phone or On-Site)	8 Hours	6 Hours	4 Hours
Move,Add,Change Response Time	5 Days	3 Days	2 Days
Billable Service Discount	NA	5%	10%
Coordination with Telephone Service Providers	NA	Included	Included
Annual Telecommunications Business Review	NA	Included	Included
Annual Carrier Review	NA	Included	Included
Preventive Maintenance Inspection	NA	Annual	Semi-Annual
Disaster Recovery System Backup	NA	Annual	Semi-Annual
Remote System Monitoring	NA	Optional	Optional
Helpdesk Support	NA	NA	Included
Software Revision Updates	NA	NA	Included
Ongoing End User\Administration Training	NA	NA	Included
System Replacement Insurance Coverage (Includes Lightning Protection)	NA	NA	Included
Guaranteed Renewal Option	NA	NA	Included
Fixed Price Add-ons (Term of the Agreement)	NA	NA	Optional
Seasonal Payment Option	NA	NA	Optional
Deferred Payment Option	NA	NA	Optional
Technology Refresh Option	NA	NA	Optional

*Varies by Manufacturer

**Remote Support Only and 24x7 Options are Available