

Recitals

- A) Optimise operates a range of services allowing Affiliates to transfer visitors from their own Affiliate Medias to the Merchant and thereby earn commission according to the terms of the relevant service.
- B) Optimise wishes to offer to the Company the opportunity to be a Merchant on a Programme
- C) The Company wishes to become a Merchant in respect of those services offered by Optimise as described and on the terms and conditions contained in this Agreement. The Company may wish to take up further additional services as may be offered by Optimise.

1. Definitions and Interpretation

1.1. In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

Affiliate	means the owner or operator of a website who has an agreement with Optimise to participate in the Services, synonymous with Publisher
Affiliate Media	means any media owned or operated by an Affiliate and on which the Services are presented
Affiliate Programme	means one of the Services where individual advertising is placed with Affiliates
Affiliate Commission	means the element of Commission payable to Optimise under this agreement that Optimise subsequently pays onto the Affiliate
Call Charge Rate	means the rate used to calculate any call charges to be paid by the Company for call on a Cost Per Call Programme
Call Tracking Number Type	means the number type (i.e. 0845, 0800, etc.) provided to Affiliates to include within their promotions and be called by a customer and which allows the tracking of a Cost Per Call Programme
Cashback Affiliate	means any Affiliate who incentivises transactions to consumers by offering to share some or all of the Affiliate Commission with the consumer in the event of a completed transaction, whether through cash or points
Cashback Consumer	means a consumer who is signed up to a Cashback Affiliate and purchases the Company's products with the expectation of receiving cashback
Charges	means the amounts payable by the Company to Optimise under this agreement including but not limited to Commission, Set-up Fees and Reward Prepayment.
Clawback	means Commission paid to Optimise by the Company in respect of an abortive sale or application and which the parties agree in writing shall be repaid to the Company. For the avoidance of doubt Clawback will not operate on any campaign without the express, prior written agreement of both parties.
Commission	means commission payable by the Company to Optimise under this Agreement and which includes the Affiliate Commission and the Optimise Commission, where stated separately.

Extended Validation Criteria	means the criteria, as agreed in writing between Optimise and the Company and communicated to Affiliates, that a transaction must meet to be confirmed. For example, a retail transaction where the purchase must not be returned within the returns period or a policy with a monthly charge where the first months payment must be received)
Extended Validation Period	means the period required to assess whether a transaction meets the Confirmation Criteria
Content	means the content or appearance of any web page providing, describing or referring to the Services as may be provided to Affiliates by Optimise from time to time
Contact Person	means one or more persons appointed by the Company with authority to consider and approve or reject Affiliates or potential Affiliates and to terminate the Company's cooperation with any Affiliate.
Destination Number Type	means the phone number type (i.e. 0845, 0800 etc.) provided by the Company for Calls on a Cost Per Call Programme to be routed to
Fulfilment Fees	means the charge for despatching a Reward
Reward Implementation	means including but not limited to a set of web pages, emails and associated management processes required to provide and administer an incentivised promotion on behalf of the Company
Implementation Guide	means the document detailing all of the requirements needed to build or modify an Implementation that will be provided by Optimise to the Company including but not limited to each piece of consumer-facing or Company-facing content, the nature and value and timing of Reward, the Validation Process. This document also details the obligations of the Company in order for the solution to be produced.
Incentivised Promotion	means a promotion where a Reward is provided to a customer in return for an action such as a purchase.
Lead Rejection Policy	means Optimises Lead Rejection Policy that applies to all Cost Per Lead Programmes
Merchant Account	means the account of the Company on a secure area of the Optimise Website accessible only by the Company and Optimise
Merchant Website	means the website of the Company through which the Product is advertised or sold
Minimum Monthly Fee	where applicable the minimum amount of Optimise Commission chargeable each month.
Customer	means the individual in receipt of or who has registered or shown an interest in a promotion
Optimise	means Optimise Media (UK) Limited, Company Registration 4455319.
Optimise Commission	means any separate fees payable to Optimise for managing the activity on behalf of the Merchant
Optimise System	means the marketing system / various elements of software owned and developed by Optimise, to which the Company, Customers and Merchants, are given access through the hosted web environment, and which facilitate the provision of the Services
Optimise Tracking	means the system developed by Optimise or Optimises tracking partners to track transactions generated on the program and record such detail as is required to calculate the Commission and effectively manage each Program

Optimise Website	www.optimisemedia.com
Product	means the product(s) or services of the Company marketed [or to be marketed] through the Services
Product Content	means any product specific content (whether editorial banners or text links) provided by the Company to be used by Affiliates to present the Products on the Affiliate Medias. This includes Product Feeds as appropriate.
Cost Per Call Programme	means a Programme, where calls are generated on behalf of the Merchant
Cost Per Sale Programme	means a Programme, where a customers are directed to the Merchant Website and Commission is payable on the basis of Transactions generated
Cost Per Lead Programme	means a Programme where leads are generated on behalf of the Merchant and the relevant data provided to the Merchant
Product Feed	means an electronic file provided and updated by the Company including such details of the Products as are required to allow Affiliates to integrate these within the Affiliate Medias. The format and timing of the provision of such feeds shall be as agreed between the parties from time to time
Programme	means a campaign to promote a Product, through Affiliates, by Optimise on behalf of a Merchant, on a specific basis and with specific Commissions and Validation Criteria
Reward Charge	means the value of the Reward charged to the Company by Optimise for a Validated Transaction against the Reward Pre-Payment
Reward	means a voucher, physical gift or form of monetary payment paid / payable to a Customer
Reward Claim	means the action performed by the end user to request / perform the delivery of or download of their reward
Reward Claim Window	Means a period of sixty days from a Validated Transaction event during which a Referrer or Customer is entitled to gain access to a Reward
Reward Pre-Payment Top Up Trigger	This is the date two month prior to the estimated depletion date of the Reward Pre-Payment
Reward Pre-Payment	means the funds provided to Optimise to cover the Reward Charges
Set-up Fee	means any upfront charge for set-up as agreed between the parties.
Services	means the range of services detailed in Schedule 1 in which the Company will participate together with such services as Optimise may make available to the Company from time to time and as the Company may take up by agreement in writing in the form attached hereto at Schedule 1 including but not limited to the Affiliate Programme
Transaction	Means a commissionable event as defined in the Insertion Order or Technology Order, including but not limited to a sale, an install, a lead, a video view, a call, an impression, a click.
Transaction Query	means any query raised by a Cashback Consumer, regarding a product that may have been purchased by that consumer and on which they may be due cashback from the Cashback Affiliate
Valid Call	means a call on a Cost Per Call Programme which meets the relevant criteria and on which Commission is due

Valid Query	means any Transaction Query that is provided to Optimise by the Cashback Affiliate and which has been generated in accordance with the Cashback Rules
Validation Criteria	means the criteria, as agreed in writing between Optimise and the Company and communicated to Affiliates, that a transaction must meet to be validated. For the avoidance of doubt this includes Extended Validation Criteria, if applicable
Validated Transaction	means a transaction that meets the Validation Criteria

- 1.2. Words denoting the singular shall include the plural and vice versa;
- 1.3. Words denoting any gender shall include all genders;
- 1.4. References to persons shall include firms corporations and other associations or bodies of persons whether or not incorporated and any government state or agency of a state whether or not any of the foregoing has any separate legal personality;
- 1.5. Any reference to a statute or statutory provision shall be construed as including a reference to any statutory modification consolidation or re-enactment (whether before or in the case of consolidation or re-enactment only after the date hereof) from time to time and shall include reference to any provision of which it is a re-enactment (whether with or without modification) and any bye-laws, statutory instruments, rules, regulations, orders, directions, consents and permissions made or given thereunder and any conditions attaching thereto;
- 1.6. Clause headings are for ease of reference only and shall not affect the construction or interpretation of this Agreement;
- 1.7. Any reference to Clauses, sub-Clauses and paragraphs is to Clauses, sub-clauses and paragraphs of this Agreement.

2. Provision of Services

- 2.1. In consideration of the Charges Optimise will provide and the Company will take up the Services on the terms contained in this Agreement.
- 2.2. Optimise shall set up the Company on the Optimise System for each Service and where applicable, in accordance with the agreed Implementation Guide, subject to the Set-up Fee
- 2.3. The Company shall access its Merchant Account on a regular basis and shall at all times provide accurate and up to date information in respect of Products for inclusion by Optimise as appropriate in the Content. The Company shall ensure at all times that any variable elements of such information (e.g. interest rates or prices) are complete and accurate and are not misleading at all times.
- 2.4. The Company shall indemnify and keep indemnified Optimise against all and any claims, damages, losses or liability howsoever arising whether directly or indirectly as a result of incomplete, inaccurate or misleading data or information relating to its Products and provided by the Company, its agents, servants or employees.
- 2.5. The Company shall not use or enable any third party to use information or data obtained through the Merchant Account or otherwise as a result of this Agreement for the purposes of sending or generating unsolicited bulk e-mail or spam. The Company shall indemnify and keep indemnified Optimise against all and any claims, damages, losses or liability howsoever arising whether directly or indirectly as a result of such use of information or data.

- 2.6. The company will inform Optimise when an employee of the client leaves the Company or changes roles within the Company resulting in their access to the Merchant Account to be suspended.
- 2.7. Should an Implementation modification request be received from the Company following the commencement of the construction of an Implementation, Optimise will assess the impact that the change may have upon the project. Optimise shall provide a revised delivery plan and costs to the Company for approval.
- 2.8. If the Company is at any time unable to access the Merchant Account for the purposes of complying with its obligations under clause 2.2, it shall immediately notify Optimise. Optimise shall use its reasonable endeavours to resolve any such problem as soon as practicable provided that where in the reasonable opinion of Optimise the problem cannot be rectified within 48 hours, the Company consents to the Products being removed from the Services until such time as the Company's access is resolved.
- 2.9. Optimise shall ensure that each module of the system is available as per the table below, subject to Clause 2.7 and events beyond Optimises reasonable control:

	Optimise Tracking	Merchant Account
Core Hours (GMT)	6am – 12am	7am – 7pm
Uptime during Core Hours	99%	98%
Uptime during non-Core Hours	95%	90%

- 2.10. Optimise may suspend the Merchant Account for routine maintenance subject to providing at least 5 days' notice. Optimise reserves the right to withdraw from the Company, with immediate effect, any one or more of the Services in the event of any problem with the functionality of the Service in question which Optimise is unable to resolve within 48 hours of becoming aware of the same.
- 2.11. Optimise reserves the right to alter or change the Content from time to time, save that any change to the Product Content will not be made without the prior written consent of the Company.
- 2.12. Optimise will not be liable for any losses arising as a result of an Affiliate decision not to pursue an agreed incentivised promotion. Optimise will use its reasonable endeavours to work with the Company to resolve the issue or re-allocate the promotion to another Affiliate.
- 2.13. Company liable for the value of the Reward Prepayment if the associated reward company / agreed distributor goes into liquidation whether the vouchers are in stock or already sent to consumer

3. Charges

- 3.1. The Company shall pay to Optimise the Set-up Fee, Project Fees, Commission, Reward Pre-Payment and Fulfilment Fees in relation to each Service as set out or otherwise referred to in the relevant Insertion Order / Technology, or on such terms as the parties may agree from time to time. The Optimise Commission may be subject to a Minimum Monthly Fee, as detailed in the Insertion Order / Technology Order.
- 3.2. Where applicable, Optimise shall raise an invoice for the Set-up Fee and Reward Pre-Payment on the signing of this Agreement, where Pre-Payment top ups are required and upon the agreement to deliver any subsequent incentivised promotions. For the avoidance of doubt Charges for the Reward Prepayment will automatically apply to any top up

- required for an existing incentivised promotion. The Company shall be required to pay such invoices in advance of any activity. Where Optimise shall process payments or Rewards to Customers on behalf of the Company, Optimise shall only process such payments after receipt of the funds from the Company.
- 3.3. Except where the Company has agreed to different terms with an Affiliate, in which case the terms of the agreement with the Affiliate shall apply, the Company may alter those elements of the Affiliate Commissions, Validation Criteria, that are determined by the Company, at any time subject to giving Optimise at least 14 days' notice, such changes always to take effect from the beginning of a calendar month.
- 3.4. In respect of Cost Per Sale Programmes:
 - 3.4.1. the Company shall pay Commission for each Transaction, subject to the Validation Criteria agreed between the Parties. In the event that no Validation Criteria are stated then the Transactions will be auto-validated by the Optimise System
 - 3.4.2. A Programme may operate with Validation where the Validation Period is less than 15 days. Where a period in excess of 15 days is required to approve a Transaction, Extended Validation will apply.
- 3.5. In respect of Cost Per Call Programmes:
 - 3.5.1. the Company shall pay the Commission for each Valid Call, where a Valid Call is one that exceeds the Call Duration, agreed between the Parties within the Insertion Order / Technology Order. In the event that no Call Duration is stated in the Insertion Order / Technology Order it will be assumed to be zero minutes.
 - 3.5.2. In addition, the Company shall pay the Call Charges for the Programme at the prevailing Call Charge Rates for each month of the activity. The prevailing Call Charge Rates shall be made available at www.optimisemedia.com/call-charge-rates/ and updated from time to time.
 - 3.5.3. In the event that the Company fails to answer more than 10% of calls provided Optimise shall be entitled to calculate a Commission, in respect of the unanswered calls, based on the conversion rate of the answered calls or in the event that there is insufficient data, based on conversion rates for comparable programmes
- 3.6. In respect of Cost Per Lead Programmes
 - 3.6.1. The Company shall pay Commission for each Valid Lead, where a Valid Lead is any Lead that is not a Rejected Lead
 - 3.6.2. A Rejected Lead, is any Lead that falls under Optimises Lead Rejection Policy, available at: www.optimisemedia.com/lead-rejection-policy or which meets the Client Rejection Criteria, as agreed between the Parties within the Insertion Order / Technology Order. In the event that no Client Rejection Criteria are stated in the Insertion Order / Technology Order none shall apply.
- 3.7. In respect of Incentivised Promotions, Optimise will deduct the Reward Charge from the Reward Prepayment in respect of associated Validated Transactions
- 3.8. For the avoidance of doubt, there will be no Clawback of Commission by the Company on transactions which have been validated but which are subsequently cancelled or adjusted.
- 3.9. Except where Extended Validation applies, the Company shall validate and pay invoices within 30 days. For example: in the

case of a program that is Optimise Tracked (with validation) where 5 days are allowed for validation the Company shall pay the invoice within 25 days of the invoice date where no validation is required the Company shall pay within 30 days of the invoice date

- 3.10. Where Extended Validation applies, Optimise may require advance payment, prior to the completion of the Validation Period. In such instances, Optimise shall invoice activity based on estimated validation rates, in accordance with the process agreed between the Parties within the Insertion Order / Technology Order and the Company shall pay such invoices within 30 days.
- 3.11. The Company will use reasonable endeavours to ensure that invoices are paid within 30 days of the end of a calendar month following the month of the activity.
- 3.12. If the period for invoice payment exceeds 30 days, Optimise shall be entitled to interest on the sum overdue until payment at a rate equal to the minimum lending rate from time to time of National Westminster Bank plc. plus 4% per annum.
- 3.13. Optimise shall keep such records as are adequate to allow calculation by it of the Commission and shall allow the Company access on reasonable notice in writing to inspect such records at the offices of Optimise during usual business hours.
- 3.14. Any dispute regarding the amount of Commission due shall be referred to the Contact Person who shall negotiate in good faith with Optimise's appointed representative with a view to resolving such dispute. If the dispute is not resolved within one week, the matter shall be escalated to the next senior management level within the parties. If the matter is not resolved within 4 weeks of the dispute arising, Optimise shall be entitled to determine a reasonable resolution to the matter.
- 3.15. Should Optimise be required to complete a review of infrastructure or processes including but not limited to security reviews or penetration testing additional charges will apply to cover the cost of feedback preparation and any associated infrastructural modifications.

4. Tracking

- 4.1. Where Optimise Tracking is used:
 - 4.1.1. Optimise shall use appropriate industry recognised techniques to ensure the accurate attribution of all Transactions generated through the Services
 - 4.1.2. Unless otherwise defined, activity will be tracked in the time zone of the target audience of each individual product as defined in the Optimise System. The associated product time zone will form the basis of the billing period for each individual product.
 - 4.1.3. the Company shall provide to Optimise such assistance as it shall require to enable it to set up Optimise Tracking on the Merchant Website to facilitate monitoring of the performance of the Services.
 - 4.1.4. the Company is responsible for maintaining any elements of Optimise Tracking that are included on the Merchant Website and ensuring that they are not removed or altered in anyway without the prior agreement of Optimise.
 - 4.1.5. the Company shall indemnify and keep indemnified Optimise against all and any claims, damages, losses or liability howsoever arising whether directly or indirectly as a result of any problem with tracking caused by the Companies actions.
 - 4.1.6. The Company warrants that the Merchant Website complies with all required legislation to allow the

implementation and use of Optimise Tracking for the purposes of the Programme.

- 4.2. Where Merchant Tracking is used:
 - 4.2.1. the Company is responsible for ensuring the accurate reporting of all transactions generated on each program in sufficient detail to allow the accurate calculation of Commission.
 - 4.2.2. The Company shall indemnify and keep indemnified Optimise against all and any claims, damages, losses or liability howsoever arising whether directly or indirectly as a result of any a failure by the Company to provide such accurate reporting.
- 4.3. Should any problem be identified with the tracking such that it does not correctly allocate transactions to individual Affiliates then the Company will work with Optimise to agree a suitable proxy to calculate the Commission due.
- 4.4. The Company gives Optimise the right to use anonymised data obtained through tracking Programmes. Optimise may also use this data to compile and present analytics and benchmarking reports, save that all such data shall always be aggregated.

5. Affiliate approval and monitoring

- 5.1. Optimise shall provide in the Merchant Account information concerning any Affiliate or applicant Affiliate applying to participate in the Affiliate Programme together with the applicant's URL.
- 5.2. The Company shall appoint a Contact Person and the Company shall inform Optimise of the name(s) and contact details of its Contact Person. The Company is solely responsible for ensuring that a Contact Person is available at the Company between 09.00-17.00 GMT on working days and that any changes of such person(s) or their e-mail addresses are promptly communicated to Optimise.
- 5.3. The Contact Person shall check applications to become an Affiliate in the Merchant Account at least twice a week. The Company shall inform Optimise of the rejection of any application to become an Affiliate within thirty (30) business days from the date of the Application. In the absence of such notification the application shall be deemed to have been accepted by the Company.
- 5.4. Optimise agrees to put the Company's details into Optimise's data system and continuously to supervise, verify and control the function of the links and e-mail addresses and randomly to monitor and view the Affiliates' Websites to the extent Optimise deems necessary.
- 5.5. The Company is entitled to terminate the cooperation with any Affiliate at any time with immediate effect. Such termination must be made through the Merchant Account by the Contact Person. At the request of Optimise, the Company shall forthwith by e-mail furnish Optimise with a short explanation of the reasons for the termination.
- 5.6. The Company gives Optimise the right to conclude agreements with Affiliates wishing to join the Services on such terms as it may determine. Optimise reserves the right to reject any applicant wishing to become an Affiliate or to remove any Affiliate from the Services at its sole discretion at any time.
- 5.7. Although the Company is free to communicate with Affiliates as it sees fit, it will not during the period of this Agreement enter into any commission arrangements with any Affiliate.

6. Transaction Queries

- 6.1. Should the Merchant choose to work with Cashback Affiliate, the Merchant shall provide Optimise with any specific rules to govern the treatment of that activity (the "Cashback Rules"). Optimise shall ensure that the Cashback Rules are communicated to the relevant Cashback Affiliate.
- 6.2. Optimise shall provide the Company with a detailed report of consumer transaction queries (the "Customer Query Log"). The Customer Query Log shall be provided in the format and on the timescales agreed between the two parties from time to time, save that it shall always be provided in a timeframe that allows the Company to meet the response times in clause 6.3.
- 6.3. The Company agrees to provide resolution of all Valid Queries, in good faith, within 30 days of receiving the Customer Query Log.
- 6.4. In the event that the Company does not provide the resolution in 6.3 within the timeframes and this results in a liability for the Cashback Affiliate to pay the consumer, then Optimise shall validate the transactions and invoice the Company in the next monthly invoice.
- 6.5. If the Company terminates the Agreement with Optimise or ceases to work with Cashback Affiliates then it shall continue to any Valid Transaction Queries that are raised after such termination or closure.

7. Reward Fulfilment

Optimise provide Reward Fulfilment services to clients who elect to incentivise activity by means of a Reward. Such promotions function as standard affiliate marketing activity until the transactions in question is validated.

Upon receipt of Validated Transactions from the Company along with the associated personal details of the Customers in question, Optimise commence the Fulfilment process. This process is provided in detail within the Implementation Guide and follows the flow detailed below:

1. The Company provides Optimise with a Reward Pre-Payment
 2. Providing the Reward Pre-Payment is in surplus, Customers are sent an email including their Reward or inviting them to claim their Reward or a Reward is dispatched offline.
 3. A charge is made against the Reward Pre-Payment Account
 4. When the Reward Pre-Payment value falls below an agreed threshold, an invoice is raised to cover future Reward Fulfilment activity
 5. Upon closure of a promotion and providing all outstanding Reward Fulfilment obligations have been met, the remaining unused Reward Pre-Payment or held Rewards will be calculated and refunded to the Company
 6. At any stage, Optimise can provide the Company with a statement of all charges associated with the Reward Pre-payment account.
- 7.1. Where the Customer Reward is fulfilled in the form of Cash, Optimise shall process payments to the account details provided by the Customer. In the event that payment cannot be processed Optimise shall retain the funds until correct details have been received from the Customer or the associated Claim Window has expired as detailed in the Implementation Guide.
 - 7.2. Where a physical product or offline voucher is fulfilled to the Company's customers, Optimise may choose to appoint a sub-contractor to acquire, store, manage and liaise with courier businesses in order to distribute the item. In order to perform this task, Optimise will provide the customer name, postal address, reference number and delivery instructions to the 3rd party in question. Optimise will take necessary steps to ensure

that any Personal Data are transferred to the sub-contractor in line with Optimise's obligations within this contract.

- 7.3. Optimise shall not process payment or fulfil Rewards until it has received sufficient funds from the Company.
- 7.4. Optimise manage the processes surrounding the acquisition of physical or electronic stock required to fulfil a Reward on behalf of the Company. Where possible, stock acquisition will be restricted to cover demand and repeat orders will be placed so as to minimise stock value.

8. Intellectual Property Rights and Confidentiality

- 8.1. Optimise owns all copyrights, trademarks, intellectual property rights, know-how or any other rights connected with the Services, including but not limited to the software necessary for the Service developed by Optimise and the information that Optimise collects about Affiliates. The Company, by this Agreement, acquires no rights or licenses whatsoever connected with the Service and the software necessary for the Service or Optimise other than that explicitly set out in this Agreement.
- 8.2. The Company owns all copyrights, trademarks, intellectual property rights, know-how or any other rights connected with its brand and Products. Optimise, by this Agreement, acquires no rights or licenses whatsoever connected with the Products other than that explicitly set out in this Agreement.
- 8.3. The Company agrees to provide Optimise with, and allows Optimise to provide to its Affiliates, a non-exclusive, royalty free licence for the use of its brand and content for the purposes of promoting the Company under this Agreement.
- 8.4. Neither party shall reveal the trade secrets of the other party nor use such secrets except for the purpose of fulfilling its obligations under this Agreement. The parties shall take all precautions reasonably necessary to prevent an unauthorised disclosure or use of such trade secrets by employees or third parties.
- 8.5. The Company agrees in particular not to communicate details of its trading terms with Optimise to any Affiliate using the Affiliate Programme.

9. Termination of Services

- 9.1. Either party shall be entitled to terminate this Agreement in relation to any one or more of the Services by giving to the other 3 months' notice in writing.
- 9.2. Optimise reserves the right to withdraw from any Affiliate from one or more of the services.
- 9.3. Optimise reserves the right to withdraw from the Company with immediate effect any one or more of the Services in the event of:
 - 9.3.1. Any problem with the functionality of the Service in question which Optimise is unable to resolve within 48 hours of becoming aware of the same.
 - 9.3.2. Any breach by the Company of its obligations contained in this Agreement.
 - 9.3.3. Commission due under this Agreement remains outstanding for more than 60 days
- 9.4. Either party shall be entitled to terminate this Agreement forthwith if:
 - 9.4.1. the other party commits any repudiatory breach of any of the provisions of this Agreement;

- 9.4.2. in the case of a breach capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
 - 9.4.3. an encumbrancer takes possession or a receiver or trustee is appointed over any of the property or assets of that other party;
 - 9.4.4. that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;
 - 9.4.5. that other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agreed to be bound by or assume the obligations imposed on that other party under this Agreement);
 - 9.4.6. anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other party; or
 - 9.4.7. that other party ceases, or threatens to cease, to carry on business
- 9.5. For a period of six months following termination of this Agreement howsoever arising, the Company will not enter into communication with a view to negotiation or any form of direct or indirect business arrangement with any Affiliate or former Affiliate.

9. Data Protection

- 9.1. For the purposes of the Data Protection Act 1998, the Parties acknowledge that the Company will be the Data Controller and Optimise will be the Data Processor in respect of Customers' personal data (the "Personal Data").
- 9.2. Each Party shall comply with all relevant data protection legislation, and shall at all times reasonably assist the other Party to do so, as may be requested from time to time.
- 9.3. Optimise shall:
- 9.3.1. put in place appropriate technical and operational processes and procedures to safeguard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data;
 - 9.3.2. safeguard as private and confidential all the Personal Data received by it at all times and shall only carry out processing of the Personal Data in accordance with the Company's instructions;
 - 9.3.3. ensure that all the personnel used by it to provide the Services (so far as their duties relate to the processing of any Personal Data):
 - (A) are informed of the confidential nature of the Personal Data; and have undertaken training in data protection legislation; and
 - (B) are aware both of Optimise's duties and their personal duties and obligations under the relevant data protection legislation and this Agreement.

- (C) promptly notify the Company if it becomes aware of any unauthorised or unlawful processing, loss of, damage to or destruction of the Personal Data.
- 9.3.4. Optimise shall not disclose any Personal Data to any third party, save for any sub-contractors used in the fulfilment of this contract.
- 9.3.5. The Company is entitled, upon giving reasonable notice to Optimise, to inspect or appoint representatives to inspect the electronic data relating to Optimise's processing of Personal Data subject to charges outlined in the Technology Order.
- 9.3.6. Neither Optimise nor its agents or sub-contractors shall acquire rights in or to any of the Personal Data and shall only be entitled to process it in accordance with Optimise's obligations under, and any other applicable terms of, this Agreement. On the expiry or termination of this Agreement, Optimise shall immediately cease to use, and shall procure that its agents and sub-contractors cease to use, the Personal Data and shall arrange for its safe return or destruction as shall be agreed with the Company at the relevant time.
- 9.3.7. Optimise, its agents and sub-contractors, shall notify the Company immediately upon receipt of a notice from any regulatory or government body, including the Information Commissioner which relates directly or indirectly to the processing of personal data.
- 9.3.8. Optimise shall not, and will ensure that its agents or sub-contractors shall not, under any circumstances transfer Personal Data outside the European Economic Area unless authorised to do so by the Company.

10. Miscellaneous

- 10.1. If any provision of this Agreement or part thereof should to any extent be or become invalid or unenforceable, the parties shall agree upon any necessary and reasonable adjustments of the Agreement in order to secure the interests and objectives of the parties prevailing at the time of the Agreement.
- 10.2. Neither party shall assign its rights or obligations under this Agreement in whole or in part to any third party without the prior written consent of the other.
- 10.3. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other than the parties to this Agreement shall have any rights under it, nor shall it be enforceable under that Act by any person other than the parties to it.
- 10.4. The failure or delay by either party to exercise or enforce any right under this Agreement shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times thereafter.
- 10.5. This Agreement shall be governed by and construed in all respects in accordance with the laws of England and any dispute shall be subject to the exclusive jurisdiction of the English courts