

## OPTIMIZERS GENERAL TERMS AND CONDITIONS

### UNITED STATES (VERSION AUGUST 2021)

These terms and conditions ("Terms and Conditions") govern the purchase of Services (as defined below) by a Customer (as defined below) from an Optimizers Group Entity (**INCLUDING THE LEGAL ENTITY APP4SALES INC.**). Optimizers Group B.V. is a company with limited liability, incorporated and registered in the Netherlands with company number 75348217 whose registered office is at Ampèrestraat 3 d, in (3861NC) Nijkerk, the Netherlands.

#### AGREED TERMS

##### 1. INTERPRETATION

The definitions and rules of interpretation in this Section apply to these Terms and Conditions.

##### 1.1 Definitions:

**"Apps"**: software applications that offer distinct functionality (including, but not limited to, App4Sales, App4Customers, Portal4Sales, Portal4Salespro, App4Picking, Portal4SalesPIM, App2Track, Tweakwise) as selected in Schedule 1.

**"Authorized Users"**: those employees and independent contractors of the Customer who are entitled to install the Apps and Web Applications via the Optimizers Cloud Platform through the Subscription Services under an Optimizers Agreement, as further described in Section 20.5(b).

**"Business Day"**: generally accepted working day in the country from which Optimizers maintenance and support services are provided, with the exception of official public holidays.

**"Confidential Information"**: information that is proprietary or confidential for a Party and is either clearly labelled as such or identified as Confidential Information in Section 10.4 or Section 10.5.

**"Configuration Services"**: the configuration and related work, to be performed by Optimizers for the initial set-up, and to configure the Optimizers Cloud Platform so that the Optimizers Cloud Platform conforms to the Software Specification.

**"Consultancy Services"**: the provision of advice that can relate to, among other things, the implementation, installation, setting up, or training on the use of, the Software.

**"Customer"**: means a Person that enters into an Optimizers agreement with Optimizers or is negotiating an Optimizers Agreement with Optimizers.

**"Customer Data"**: the data that was entered into the information fields of the Software or into the database to

which the Software is connected by the Customer, by the Authorized Users, API Connectors, or by Optimizers on the Customer's behalf.

**"Customer Personal Data"**: as defined in Section 6.3.

**"Customized Software"**: the software and/or components developed in accordance with the Software Specifications by Optimizers on the instructions of the Customer that are not part of the Optimizer's standard software (i.e. Optimizers Cloud Platform).

**"Deliverable"**: a defined level of functionality within a particular phase of the Configuration Services, to be elaborated and more particularly described in the Project Plan.

**"API Connectors"**: any connectors that connect the Optimizers Cloud Platform and the Customer's ERP system and that are specially created for the Customer.

**"Errors"**: as defined in Section 18.2.

**"Force Majeure"**: as defined in Section 14.1.

**"Licensing Services"**: the services provided by Optimizers that allow Authorized Users to access and use the Software via (on-premise or private cloud) servers.

**"Maintenance"**: any error corrections, updates and upgrades that Optimizers may provide or perform with respect to the Software and Subscription Services, as well as any other support services provided to the Customer under these Terms and Conditions or other Optimizers Agreements, all as described in Sections 21 - 23.

**"Maintenance Events"**: as defined in Section 21.1.

**"Normal Business Hours"**: 08:30 to 17:00 Central European Time (CET), during each Business Day.

**"Optimizers"**: the relevant Optimizers Group Entity that agrees to provide the Optimizers Service(s) to Customer as documented in the Optimizers Agreement.

**"Optimizers Agreement"**: Any agreement concluded between the Parties in respect of one or more Optimizers Services, including any amendment of such agreement, all factual and legal acts to prepare such agreement, offers and order confirmations and these Terms and Conditions.

**"Optimizers Cloud Platform"**: the software platform as developed by Optimizers, through which a Customer can download, install and run Apps and Web Applications as further defined in Schedule 1.

**"Optimizers Group Entity"**: Either Optimizers Group B.V. or one of its subsidiaries. A "subsidiary" is an entity that meets the definition provided in Section 2:24a of the Dutch Civil Code, or is a legal entity for which Optimizers Group B.V. has (i) more than 50% of either the share capital or the voting rights, and (ii) the ability to direct its management and affairs.

**"Optimizers Services" or "Services"**: The Configuration Services, Consultancy Services, Subscription Services, Licensing Services, Private Cloud Services and or Maintenance when applicable, and all as defined in these Terms and Conditions and further described in the Optimizers Agreement and/or Project Plan.

**"Party/Parties"**: Optimizers and the Customer.

**"Person"**: means a natural person or legal entity or company with legal personality.

**"Privacy Policy"**: the privacy policy of Optimizers, made separately available on Optimizers' website, which applies to Optimizers' processing of the Customer Personal Data and is in accordance with the applicable laws and regulations.

**"Private Cloud Services"**: those services as described in the Optimizers Agreement and/or Project Plan.

**"Private Cloud Software"**: the software as described in the Optimizers Agreement and/or Project Plan.

**"Project Plan"**: the plan to be developed in the planning stage of the Configuration Services and/or Consultancy Services.

**"Seats"**: as defined in Section 20.5.

**"Service Level Agreement"**: the service level agreement set out in Schedule 2.

**"Software"**: Optimizers' proprietary software in machine-readable object code form only, consisting of the Optimizers Cloud Platform, API Connectors, Web Applications and Apps, including any error corrections, updates, upgrades, modifications and enhancements to it provided to the Customer under an Optimizers Agreement.

**"Software Specification"**: the functionality and performance specifications for the Software, as set out in the release notes that are published on the Optimizers Cloud Platform and Customized Software.

**"Subscription Services"**: the services provided by Optimizers that allow Authorized Users to access and use the Optimizers Cloud Platform.

**"Support"**: as defined in Section 23.1.

**"System Requirements"**: the minimum requirements that Optimizers sets for the Customer's hardware and software to be able to run the Optimizers Services.

**"Terminal"**: any computer device on which the Apps are installed and/or which runs the Web Applications, that at a minimum complies with the System Requirements and any other specifications and/or requirements, that have been specified in the release notes that are published on the Optimizers Cloud Platform.

**"Terms and conditions"**: as defined in the Recitals above.

**"Update"**: a version of the Software in which an adjustment or an improvement is made.

**"Virus"**: any thing or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

**"Web Application"**: software applications that offer distinct functionality, and may be accessible via the internet by a web browser.

## PART A – GENERAL PROVISIONS

*The General Provisions apply to every use, maintenance and support of all Software and all Services provided by Optimizers. The special provisions as included in Part B, C, D, E and F specifically apply to the purchase of specific products or instruction by Customer regarding the specific service to be provided by Optimizers.*

### 2. GENERAL

2.1 These Terms and Conditions apply to every Optimizers Agreement.

2.2 Optimizers expressly rejects the applicability of the Customer's purchasing or general terms and conditions to any Optimizers Agreement.

2.3 Optimizers is solely responsible and liable for the correct and timely performance of its obligations under the applicable Optimizers Agreement. No other Optimizer Group Entity is responsible for or liable to the Customer under such Optimizers Agreement.

2.4 Optimizers is entitled to revise these Terms and Conditions from time to time with prior written notice to the Customer. The amendments to the Terms and Conditions will be effective on the date mentioned in the notice provided by Optimizers to the Customer. If the Customer does not agree to the revised Terms and Conditions, the Customer may terminate the applicable Optimizers Agreement by providing at least 30 days' prior written notice.

2.5 Terms, documents or other communications between the Parties that deviate from these Terms and Conditions will be binding only if they have been agreed in writing by both Parties and will apply only to the case in question.

2.6 Section, Schedule and paragraph headings shall not affect the interpretation of these Terms and Conditions. A reference to **writing** or **written** includes e-mail communication.

2.7 If there is a conflict between the provisions of these Terms and Conditions and the provisions in another Optimizers Agreement, the provisions in the other Optimizers Agreement will control. If there is an inconsistency between any of the provisions in the main body of these Terms and Conditions and the Schedules, the provisions in the main body of the Terms and Conditions shall prevail.

### 3. OFFER AND AGREEMENT

3.1 All offers or quotations by Optimizers regarding the Optimizers Services are non-binding and revocable.

3.2 The Customer can place an order for Optimizers Services in the manner indicated by Optimizers. Each order is subject to Optimizers' acceptance and Optimizers may accept or refuse an order at its sole discretion.

#### 4. PRICES, CHARGES AND PAYMENT

4.1 All prices and rates applied by Optimizers are exclusive of any taxes, tariffs, levies and surcharges of any nature imposed now or in the future by any governmental authority.

4.2 Payments by the Customer must be made without deferment, set-off, or deduction within 14 days of the invoice date.

4.3 The Customer owes Optimizers the fees for the Optimizers Services, irrespective of whether the Customer actually uses them or not.

4.4 Optimizers is authorised to increase the amount of the fees, at its sole discretion, within 30 days of the start of any calendar year on the basis of the percentage change, over the prior year, in the Consumer Price Index published by the Bureau of Legal Statistics of the U.S. Department of Labor. This adjustment will be communicated to the Customer by email or other written communication.

4.5 Separate from price index-based increase as per Section 4.4, Optimizers can additionally increase the fees, at its sole discretion, by providing Customer with a minimum of 60 days' prior notice. In the event that the Customer does not accept such fee increase, the Customer may terminate the applicable Optimizers Agreement as of the date on which the fee increase would take effect by providing at least 30 days' prior written notice.

4.6 Optimizers may, at its sole discretion, allow the Customer to pay the fees in installments. Upon expiry or termination of the Optimizers Agreement, Optimizers may immediately claim any outstanding amounts not yet paid by the Customer in accordance with such agreement, along with any accrued and unpaid interest.

4.7 Optimizers may, at its sole discretion, offer Customer various payment methods. To the extent Optimizers offers a specific payments method to the Customer and the Customer accepts it, the Customer agrees that additional conditions may be imposed by Optimizers or third parties related to that payment method.

4.8 If the Customer and Optimizers have agreed that payment will be performed via direct debit collection, the Customer will provide Optimizers with the correct authorization to make electronic debit transactions through the Automated Clearing House (ACH) system and will execute any documents requested by Optimizers for this purpose. To the extent a direct debit transaction is not possible, the invoiced amount must be paid within 14 days of the invoice date.

4.9 If Optimizers has not received payment within five days after the due date, and without prejudice to any other rights and remedies of Optimizers:

(a) Optimizers may suspend provision of any or all of the Optimizers Services while the invoice(s) concerned remain unpaid;

(b) Interest shall accrue on a daily basis on such due amounts at a rate that is the lower of (i) 1.5% per month (18% per annum), or (ii) highest lawful interest rate permitted under applicable law; and

(c) Optimizers will be entitled to collect from the Customer the higher of (i) all internal and external collection costs, including but not limited to the any legal, collection agency or court costs, incurred by Optimizers, or (ii) an administrative fee in the amount of USD \$50, for each instance of late payment.

(d) In addition, Optimizers will be entitled to nullify applicable (payment) discounts agreed between Optimizers and Customer in the Optimizers Agreement.

#### 5. COOPERATION, DELIVERY PERIOD AND COMPLAINTS

5.1 The Parties acknowledge that the success of activities in the field of information and communication technology generally depends on proper and timely mutual cooperation. Optimizer's timely fulfilment of its obligations under any Optimizers Agreement, is conditioned on the Customer cooperating fully in a timely manner and providing Optimizers with all data or information that Optimizers deems to be useful, necessary and desirable for such purpose.

5.2 If a Customer fails to deliver data, documents, hardware, software, materials or employees that Optimizers deems useful, necessary or desirable for the purpose of performing its obligations under any Optimizers Agreement, then Optimizers is not liable for any resulting damage, delays, errors or non-conformities and Optimizers shall be entitled to suspend the execution of such Optimizers Agreement in part or in full.

5.3 All delivery periods are determined by Optimizers to its best knowledge, on the basis of the information available at that time, and are observed as much as possible, but are not strict deadlines. Exceeding the delivery period does not entitle the Customer to compensation for damages, repayment or discounts, or terminate the Optimizers Agreement.

5.4 The Customer must inform Optimizers in writing within 2 weeks after the Optimizers Services are made available by Optimizers of any complaints in respect of an incorrect delivery or performance of an incorrect or faulty service by Optimizers. Such a notification does not suspend the Customer's payment obligations.

5.5 Except as otherwise provided herein, Optimizers is not responsible nor liable for any loss, theft, embezzlement or

damage of items, data (including usernames, codes and passwords), documents, software or data files that are created, provided or used in the context of the performance of the Optimizers Agreement, and these risks are Customer's alone.

are pro -forma only, and Optimizers expressly disclaims any representations related to the accuracy and appropriateness of such data.

## 6. CUSTOMER DATA

6.1 The Customer shall own all rights, titles, and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Customer guarantees that it and/or the applicable Authorized Users have all rights to any and all data that is generated or uploaded by the Authorized Users, and the Customer will indemnify Optimizers in full with respect to any third-party claim and liability in that respect.

In the light of the above, the Customer warrants that its use of the Software and Customer Data is in full compliance with all applicable federal and state laws in the United States and the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, on the protection of natural persons in regards to the processing of personal data and on the free movement of such data, as well as all applicable legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data. Upon a Customer's written request, Optimizers shall perform any and all reasonable efforts to assist the Customer with its compliance in consideration for payment of Optimizers standard time and materials rates that are then in place.

6.2 Any Customer Data provided to Optimizers will be stored and processed by Optimizers in accordance with the Privacy Policy. [Additionally, the Customer may be required to provide certain personal data (such as name and email address) to Optimizers as a part of the registration process ("Customer Personal Data") prior to using Optimizers Services or Software. The Customer expressly agrees that Optimizers may store, use and otherwise process Customer Personal Data in accordance with the Privacy Policy. Customer may request information regarding the Customer Personal Data, or request correction or deletion of such data by contacting Optimizers.

6.3 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Optimizers to use commercially reasonable efforts to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Optimizers. Optimizers shall not be responsible for any loss, destruction, alteration, or disclosure of Customer Data caused by any third party.

6.4 Optimizers cannot be held liable for Customer Data that is required to be input into the Software by Customer such as variable rates, fees and percentages including but not limited to applicable tax and social insurance (or other mandatory contribution) percentages. The variable percentages pre-populated by Optimizers in the Software

## 7. OPTIMIZERS' OBLIGATIONS

7.1 Optimizers hereby agrees that the Optimizers Services will be performed substantially in accordance with the Software Specification.

7.2 If the Software does not conform to the foregoing undertaking, Optimizers will, at its expense, use all commercially reasonable efforts to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. If the non-conformity persists without relief for more than 30 days after Customer has provided written notice to Optimizers, then the Customer may terminate the affected Subscription Services, and Optimizers shall refund to Customer any prepaid fees covering the remainder of the term of the affected Subscription Services after the date of termination. This Section 7.2 sets forth the Customer's sole and exclusive right to remedy (and Optimizers' sole liability) in connection with Optimizers' obligation to provide the Subscription Services. Notwithstanding the foregoing, the Subscription Services are provided "as-is" and Optimizers does not warrant that the Customer's use of the Software and the Optimizers Services will be uninterrupted or error-free.

7.3 Optimizers' obligations in Section 7.1 shall not apply to any defect, issue or non-conformity caused by use of the Software contrary to Optimizers' instructions or any modifications or alterations to the Software made by any Person other than Optimizers.

7.4 EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THESE TERMS AND CONDITIONS AND TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, OPTIMIZERS DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING WARRANTIES ARISING UNDER STATUTE, WARRANTIES OF MERCHANTABILITY, ACCURACY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OPTIMIZERS SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE SUBSCRIPTION SERVICE, SOFTWARE, CONFIGURATION SERVICES, CONSULTANCY SERVICES, MAINTENANCE, DOCUMENTATION, OR DELIVERABLES WILL MEET THE REQUIREMENTS OF THE CUSTOMER OR OTHERS OR THAT THEY WILL BE ACCURATE OR OPERATE WITHOUT INTERRUPTION OR ERROR. CUSTOMER ACKNOWLEDGES THAT IN ENTERING ANY OPTIMIZERS AGREEMENT IT HAS NOT RELIED ON ANY PROMISE, WARRANTY, OR REPRESENTATION NOT EXPRESSLY SET FORTH HEREIN.

7.5 These Terms and Conditions shall not prevent Optimizers from entering into agreements with third -parties, or from independently developing, using, selling, or licensing

materials, products, or services which are similar to those provided under any Optimizers Agreement.

not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software, Optimizers Services or any related documentation.

## 8. CUSTOMER'S OBLIGATIONS

The Customer and its Authorized Users shall:

- (a) use the Software and the Optimizers Services in full compliance with these Terms and Conditions and any applicable Optimizers Agreement;
- (b) provide Optimizers with:
  - (i) all necessary cooperation in relation to any applicable Optimizers Agreement; and
  - (ii) all necessary access to such information as may be required by Optimizers;
  - (iii) in order to render the Optimizers Services, including but not limited to Customer Data, security access information, and software interfaces to the Customer's other business applications;
- (c) provide such assistance, as may be reasonably requested by Optimizers from time to time;
- (d) comply with all applicable laws and regulations with respect to its activities under any applicable Optimizers Agreements;
- (e) comply with applicable U.S. export laws or regulations, and not directly or indirectly provide or otherwise make available any Optimizers Services and Software in violation of any such restrictions, laws or regulations. Neither the Optimizers Services or Software nor the underlying information or technology may be downloaded or otherwise provided or made available, either directly or indirectly, into any country subject to U.S. trade sanctions, to individuals or entities controlled by such countries, or to nationals or residents of such countries other than nationals who are lawfully admitted permanent residents of countries not subject to such sanctions; and
- (f) carry out all other Customer responsibilities set out in any applicable Optimizers Agreement or these Terms and Conditions (including in any of the Schedules) in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Optimizers may adjust any timetable or delivery Schedule set out in any applicable Optimizers Agreement as reasonably necessary.

- 9.2 The Customer may not fully or partially change, remove or render unrecognizable Optimizer's trademark, design, and logo from the Software, Optimizers Services or any related documentation. The Customer may not use or register any trademark, design, logo or domain name of Optimizers or any corresponding name of sign in any jurisdiction worldwide.

## 10. CONFIDENTIALITY

- 10.1 Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under the applicable Optimizers Agreements. A Party's Confidential Information shall not include information that:
  - (a) is or becomes publicly known other than through any act or omission of the receiving party; or
  - (b) was in the other Party's lawful possession before the disclosure; or
  - (c) is lawfully disclosed to the receiving Party by a third-party without restriction on disclosure, and without breach of any agreement entered into with a Party; or
  - (d) is independently developed by the receiving Party, which independent development can be shown by written evidence; or
  - (e) is required to be disclosed by an order of any court of competent jurisdiction or any regulatory or administrative body.
- 10.2 Each Party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third-party, or use the other's Confidential Information for any purpose other than for activities conducted pursuant to an Optimizers Agreement.
- 10.3 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents (including Authorized Users) in violation of the terms of these Terms and Conditions.
- 10.4 The Customer acknowledges that the Software, the results of any tests of the Software and the Optimizers Services constitute Optimizers' Confidential Information.
- 10.5 Optimizers acknowledges that the Customer Data is the Confidential Information of the Customer.
- 10.6 No Party shall make, or permit any person to make, any public announcement concerning any Optimizers Agreement without the prior written consent of the other

## 9. PROPRIETARY RIGHTS

- 9.1 The Customer acknowledges and agrees that Optimizers and/or its licensors own all intellectual property rights in the Software and the Optimizers Services. Except as expressly stated herein, these Terms and Conditions do

parties (such consent is not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, but not limited to, any relevant securities exchange in which such Party's stock is listed), any court or other authority of competent jurisdiction.

10.7 Clause 10 shall survive expiration or termination of these Terms and Conditions, however arising.

## 11. INDEMNITY

11.1 The Customer shall defend, indemnify and hold harmless Optimizers against claims, actions, proceedings, losses, damages, expenses, and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Software or Optimizers Services, including with respect to any data that is generated or uploaded through the Software, provided that:

- (a) the Customer is given prompt notice of any such claim;
- (b) Optimizers provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.

11.2 Optimizers shall defend the Customer, its officers, directors, and employees against any claim that the Software infringes any copyright, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- (a) Optimizers is given prompt notice of any such claim;
- (b) the Customer provides reasonable co-operation to Optimizers in the defence and settlement of such claim, at Optimizers' expense; and
- (c) Optimizers is given sole authority to defend or settle the claim.

11.3 Neither Party shall be responsible for any loss, destruction, alteration, or disclosure of Confidential Information caused by any third-party, unless such third-party received access to the Confidential Information as a result of a breach of these Terms and Conditions.

11.4 In the defence or settlement of a claim, Optimizers may obtain for the Customer the right to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate the applicable Optimizers Agreement without liability to the Customer. Optimizers shall have no liability if the alleged infringement is based on:

- (a) a modification of the Software by anyone other than Optimizers; or

(b) the Customer's use of the Software in a manner contrary to the instructions given to the Customer by Optimizers; or

(c) the Customer's use of the Software after notice of the alleged or actual infringement from Optimizers or any appropriate authority.

11.5 The foregoing states the Customer's sole and exclusive rights and remedies, and Optimizers' entire obligations and liability, for copyright infringement.

## 12. LIMITATION OF LIABILITY

12.1 This Section 12 sets out the entire liability of Optimizers (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

- (a) arising under or in connection with any Optimizers Agreement;
- (b) in respect of any use made by the Customer of the Optimizers Services, the Software, the Deliverables or any part of them; and
- (c) in respect of any representation, misrepresentation, guarantee, statement or tortious act or omission, arising under or in connection with an Optimizers Agreement.

12.2 Except as expressly and specifically provided in these Terms and Conditions:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Software and the Optimizers Services by the Customer, and for conclusions drawn from such use. Optimizers shall not be held liable for any damages caused by errors or omissions in any information, instructions or scripts provided to Optimizers by the Customer in connection with the Optimizers Services, or any actions taken by Optimizers at the Customer's direction;
- (b) Optimizers shall not be held liable for any damages, costs, or expenses that arise as a result of, or are caused by any defect, malfunction, non-conformity or unavailability of software and/or API Connectors that are (wholly or partially) provided or created by third -parties, which hamper the use of the Software in any way;
- (c) Optimizers shall not be held liable for any damages, costs, or expenses that arise as a result of, or are caused by any use of Terminals that are not in compliance with System Requirements or any release notes; and
- (d) Optimizers Services and Software are provided to the Customer "as-is" and all warranties, representations, conditions, and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, disclaimed by Optimizers.

- 12.3 Nothing in these Terms and Conditions shall limit or exclude the liability of either Party for:
- (a) damage resulting from intentional or wilful misconduct, gross negligence, or fraud by a Party, its agents or employees (including Authorized Users); or
  - (b) mandatory liability arising under applicable product liability laws, if any.
- 12.4 The Service Level Agreement state the Customer's full and exclusive right and remedy, and Optimizers' only obligation and liability in respect of, the performance and/or availability of the Services, or their non-performance and non-availability.
- 12.5 Without prejudice to Section 12.3(b), Optimizers disclaims all liability for any:
- (a) loss of revenue or profit;
  - (b) loss of goodwill;
  - (c) loss of business or business opportunity;
  - (d) loss or corruption of data or information
  - (e) loss of anticipated saving;
  - (f) loss of use or other intangible losses;
  - (g) cost of procurement of substitute software or services; or
  - (h) special, indirect, incidental, punitive, or consequential damage,
- suffered by the Customer under or in connection with any Optimizers Agreement.
- 12.6 Without prejudice to Section 12.3(b), Optimizers' total liability arising under or in connection with any Optimizers Agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to the fees paid under such Optimizers Agreement in the prior 12 months.
- 12.7 Each Party acknowledges and agrees that the relationship formed in accordance with the Optimizers Agreements is not a fiduciary or other special relationship.
- 13. TERM AND TERMINATION**
- 13.1 Optimizers Agreements shall commence on the effective date of such agreement and shall continue for an indefinite period of time, unless the Parties have agreed otherwise. To the extent that Parties agreed to a fixed term, then at the end of the fixed term, the Parties agree that the term of the Optimizers Agreement will be automatically extended, for a duration equal to the prior term, unless either Party notifies the other Party of its intent not to renew the Optimizers Agreement 60 days prior to the then applicable expiration or termination date.
- 13.2 An Optimizers Agreement may be terminated by either Party by providing the other Party a 60 days' prior written notice, unless the Parties have agreed otherwise in the Optimizers Agreement.
- 13.3 The Customer is not entitled to early termination of an Optimizers Agreement that has been entered into for a definite period of time.
- 13.4 Without affecting any other right or remedy available to it (including Optimizer's right to seek full payment), either Party may terminate the applicable Optimizers Agreement with immediate effect by giving written notice to the other Party if:
- (a) the other Party fails to pay any amount due under an Optimizers Agreement on the due date for payment, and remains in default for not less than 15 days after being notified in writing to make such payment;
  - (b) the other Party breaches any other term of an Optimizers Agreement that justifies the termination of such agreement, and its consequences are then irremediable or (if such breach is remediable) fails to remedy such breach within a reasonable period of time which will be at least fifteen 15 days after being notified by the other Party in writing;
  - (c) the other Party (a) becomes insolvent or unable to pay its debts as they mature; (b) makes an assignment for the benefit of its creditors; (c) seeks relief, or if proceedings are commenced against such other Party or on its behalf, under any bankruptcy, insolvency or debtors' relief law and such proceedings have not been vacated or set aside within 7 days from the date of commencement thereof;
  - (d) 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 that other Party;
  - (e) an application is made to the 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);
  - (f) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 13.5 On termination of an Optimizers Agreement for any reason:
- (a) all rights and licences granted under such Optimizers Agreement shall immediately terminate;
  - (b) each Party shall return and make no further use of any equipment, property, materials, and other items (and all copies of them) belonging to the other Party;

- (c) Optimizers may destroy or otherwise dispose of any of the Customer Data in its possession unless Optimizers receives, no later than 10 days after the effective date of the termination of the applicable Optimizers Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Optimizers shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Optimizers in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of an Optimizers Agreement which existed at or before the date of termination shall not be affected or prejudiced.

between the Parties relating to its subject matter and will supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties, and arrangements of any nature, whether in writing or oral, relating to such subject matter. General terms and conditions of Customer are expressly excluded. Such general terms and conditions do not apply and are not incorporated into the Optimizers Agreement, even if subsequent documentation should make reference to any such general terms and conditions. No variation of an Optimizers Agreement shall be effective unless it is in writing and signed by the Parties (or their authorized representatives).

**14. FORCE MAJEURE**

- 14.1 Neither Party will be liable for any failure or delay in performing an obligation under an Optimizers Agreement that is due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, any failure of Optimizer's suppliers, any failure of an API provided by third party, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, generalized lack of availability of raw materials or energy ("Force Majeure"). For the avoidance of doubt, Force Majeure does not include (a) financial distress nor the inability of either Party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a Party's financial inability to perform its obligations hereunder. A Party experiencing a Force Majeure cause shall immediately notify the other Party of the matters constituting the Force Majeure, and shall keep that Party fully informed of the continuance of the Force Majeure, and of any relevant change of circumstances whilst such force majeure continues.
- 14.2 If the Force Majeure continues for longer than 60 days, either Party may at any time while such Force Majeure continues immediately terminate the applicable Optimizers Agreement by prior written notice to the other Party.

**15. ENTIRE AGREEMENT**

- 15.1 The applicable Optimizers Agreement, together with any documents referred to in it, and these Terms and Conditions will constitute the complete agreement

**16. ASSIGNMENT**

- 16.1 The Customer shall not, without the prior written consent of Optimizers, assign, transfer, or sub-contract all or any of its rights or obligations under any Optimizers Agreement. Any assignment and or transfer in violation of the foregoing will be void and have no effect.
- 16.2 Optimizers may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under an Optimizers Agreement without the need for any prior notice to or consent from the Customer. In the event that any documents or other action is required to effectuate such assignment or transfer, Customer hereby appoints Optimizers as its attorney-in-fact and authorizes Optimizers to execute such documents and perform such action in the name and on behalf of Customer.

**17. GOVERNING LAW AND CHOICE OF FORUM**

- 17.1 The Optimizers Agreements shall be governed by the laws of the state of New York, without regard to its conflict of law principles. The Parties specifically agree that the United Nations Convention on Contracts for the International Sale of Products (CISG), regardless of conflict of law principles, is not applicable to any Optimizers Agreements.
- 17.2 Any disputes arising from or in connection with an Optimizers Agreement, whether in contract, tort, or otherwise shall be exclusively adjudicated by state and federal courts located in New York. Each of the Parties consents to personal jurisdiction in such venue for such a proceeding and agrees that it may be served with process in any action with respect to an Optimizers Agreement or the transactions contemplated therein by certified or registered mail, return receipt requested. Each of the Parties hereby irrevocably and unconditionally waives and agrees, to the fullest extent permitted by law, not to plead any objection that it may now or hereafter have to the laying of venue or the convenience of the forum of any action or claim with respect to an Optimizers Agreement or the transactions contemplated therein. Further, each Party hereby waives their rights to a jury trial for any claim or cause of action based upon or arising out of an Optimizers Agreement or the transactions contemplated therein.



The costs relating to legal proceedings including but not limited to the actual costs Optimizers incurs for lawyers, bailiffs and translators, will be payable in full by the Customer if the Customer is the party that is completely or mostly unsuccessful in such proceedings.

*Agreement (also) relates to Consultancy Services as concluded between the Parties.*

**PART B – SPECIAL PROVISIONS IN RESPECT OF CONFIGURATION SERVICES**

*The provisions included in this part B apply, in addition to the General Provisions of these terms and conditions, if the Optimizers Agreement (also) relates to Configuration Services as concluded between the Parties.*

**18. CONFIGURATION SERVICES**

- 18.1 Optimizers shall perform the Configuration Services in accordance with the timetable set out in the Optimizers Agreement and Project Plan. Optimizers shall use commercially reasonable efforts to meet the performance dates, but any such dates shall be estimates only, and time shall not be of the essence in such Optimizers Agreement.
- 18.2 On delivery of each Deliverable, the Customer shall be able to access the Deliverable online. Within 2 weeks of Optimizers' delivery to the Customer of any Deliverable, the Customer shall review the Deliverable to confirm that it functions in material conformance with the applicable portion of the Software Specification. If the Deliverable fails in any material respect to conform to the applicable portion of the Software Specification, the Customer shall give Optimizers a detailed description of any such non-conformance ("Error"), in writing, within the 2 weeks review period.
- 18.3 With respect to any Errors contained in any Deliverables delivered to the Customer during the Configuration Services, Optimizers shall use commercially reasonable efforts to correct any such Error within a reasonable time and, on completion, submit the corrected Deliverable to the Customer. The provisions of this Section 18.3 shall then apply again, up to three additional times. If Optimizers is unable to correct such Error after three attempts, either Party may terminate the Optimizers Agreement, without further liability, upon prior written notice to the other Party.
- 18.4 If the Customer does not provide any written comments in the 2 week period described above, or if the Deliverable is found to conform to the Software Specification, the Deliverable shall be deemed Accepted.
- 18.5 "Acceptance" as used in the Agreement shall mean that the Customer waives any claims in relation to the Services that are based on any non-conformity, fault, or defects.

**19. CONSULTANCY SERVICES**

- 19.1 Where agreed in an Optimizers Agreement, Optimizers will perform the Consultancy Services to the best of its ability, where relevant in accordance with the arrangements and procedures determined with the Customer in writing. Optimizers shall make every effort to ensure that the Consultancy Services that are provided under the Optimizers Agreement are provided with due care and in accordance with the arrangements and procedures agreed in writing with Customer where applicable. Optimizers is not subject to an obligation to produce a certain result.
- 19.2 Optimizers will send the Customer an order confirmation and add a schedule for the performance of the Consultancy Services. After receipt of the order confirmation signed for approval by the Customer, Optimizers will draw up a Project Plan in consultation with the Customer if this has been agreed in the order confirmation. Optimizers will start the actual performance of the Consultancy Services, exclusively in accordance with the Project Plan.
- 19.3 If Optimizers is providing services on the basis of information to be provided by Customer, this information shall be prepared by Customer in accordance with the conditions to be imposed by Optimizers and provided at the risk and expense of Customer. Customer shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to Optimizers for the purpose of providing the services is accurate and complete and that all data media issued to Optimizers meet Optimizers' specifications. The use made by Customer of services or advice issued by Optimizers shall in all cases be at Customer's risk and expense.
- 19.4 Consultancy Services will be performed in stages, as such, Optimizers is entitled to postpone the commencement of the services that form part of a next stage until the Customer has approved the results of the preceding stage in writing.
- 19.5 In the provision of the Consultancy Services, Optimizers is entitled to use or instruct, in its sole discretion, any Person, who will work as a subcontractor of Optimizers under the management and supervision of Optimizers. Optimizers is entitled to replace such subcontractor, at its sole discretion, and without any need for notice to or consent from Customer. If the Customer has entered into the Optimizers Agreement with a view to performance by a certain Person, Optimizers will always be authorised to replace that Person with one or more other Persons, at its sole discretion.

**PART C – SPECIAL PROVISIONS IN RESPECT OF CONSULTANCY SERVICES**

*The provisions included in this part C apply, in addition to the General Provisions of these terms and conditions, if the Optimizers*

*Agreement (also) relates to Consultancy Services as concluded between the Parties.*  
 Consultancy Services will be performed on Business Days during Normal Business Hours. Depending on the activities, the Consultancy Services can be performed remotely or at the Customer's business location, at Optimizer's sole discretion.

19.6 Up to 5 Business Days before the agreed start date of the Consultancy Services, the Customer can cancel the purchase of the Consultancy Services or request Optimizers to determine a new start date which new start date will not be before the original start date. If the Customer does not provide such 5 Business Days' prior notice, Optimizers is entitled to charge the Customer for the Consultancy Services that the Customer agreed to purchase in accordance with the applicable Optimizers Agreement, and for any costs incurred by Optimizers in connection with the Consultancy Services.

19.7 All Consultancy Services prices and rates are exclusive of applicable taxes and exclusive of travel, accommodation and hotel expenses. Consultancy Services on site are invoiced for at least 4 hours per visit per consultant. On Business Days after 6 P.M., the hourly rates are increased up to 150% of the normal rate and up to 200% during the weekend.

## PART D – SPECIAL PROVISIONS IN RESPECT OF SUBSCRIPTION SERVICES

*The provisions included in this part D apply, in addition to the General Provisions of these terms and conditions, if the Optimizers Agreement (also) relates to Subscription Services as concluded between the Parties.*

### 20. SUBSCRIPTION SERVICES

20.1 In these terms and conditions, "subscription" means Optimizer's provision of a right to use the Software as further described in Section 20.5 of these Terms and Conditions, and/or Service Level Agreement as referred to in Schedule 2.

20.2 Optimizers shall perform the Subscription Services on the Optimizers Cloud Platform. The Service Level Agreement shall apply effective from the start of the month after the Configuration Services have been completed.

20.3 The Customer owes Optimizers a monthly subscription fee for each part of the Software for which a right of use is granted pursuant to the Optimizers Agreement as well as for the Service Level Agreement.

20.4 To the extent that Customer wishes to extend the right of use to additional users that exceed the agreed-upon number of Authorized Users, the Customer shall promptly inform Optimizers. Optimizers will charge the subscription fee for the use of the Software by the Authorized Users, as well as any additional users requested by the Customer.

20.5 In relation to Authorized Users:

- (a) the Customer's access to the Subscription Services shall be limited to the number of "mac addresses" that can be used by individual Authorized Users, employees or independent contractors of the Customer, as shown in the order ("Seats");

- (b) the Customer shall maintain a written list of current Authorized Users of the Software, and the Customer shall provide such list to Optimizers as may be reasonably requested by Optimizers from time to time;

- (c) the Customer shall ensure that each Authorized User keeps a secure password for his or her use of the Software, that such password is changed no less frequently than monthly and that each Authorized User keeps his or her password confidential;

- (d) Optimizers may audit the use of the Software regarding the name and mac address(es) for each Authorized User. Such audit may be conducted no more than once per quarter, at Optimizers' expense, and shall be exercised with reasonable prior notice, in a manner so as to not substantially interfere with Customer's normal conduct of business; and

- (e) if such audit reveals that the number of actual users exceeds the number of Seats which were purchased as per Article 20.5(a), and without prejudice to Optimizers' other rights, the Customer shall pay any and all license fees for the excess actual users.

20.6 In relation to the Software:

- (a) Optimizers hereby grant the Customer on and subject to the terms and conditions of the applicable Optimizers Agreement a non-exclusive, non-transferable right to allow Authorized Users to access the Optimizers Cloud Platform through the Subscription Services and to use the Optimizers Cloud Platform solely for the Customer's business purposes;

- (b) Optimizers hereby grant the Customer on and subject to the terms and conditions of the applicable Optimizers Agreement a non-exclusive, non-transferable license to allow Authorized Users to download, install and run the Apps and/or Web Applications that have been ordered for supported Terminals that Customer owns or controls solely for the Customer's business purposes. The Optimizer Apps and Web Applications may not be available for all devices;

- (c) the Customer shall not store, distribute or transmit any Virus, or any material through the Subscription Services that is (i) unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (ii) facilitates illegal activity; (iii) depicts sexually explicit images; (iv) promotes unlawful violence; or (v) promotes discrimination based on race, gender, colour, religious belief, sexual orientation, disability or any other illegal activities;

- (d) the rights provided under this Section 20.6 are granted to the Customer only, and shall not be

- considered granted to any subsidiary, affiliate or holding company of the Customer;
- (e) the Customer shall not:
- (i) use the Software in excess of contractual limitations on usage or in a manner that circumvents the limitations on usage or the technological measures to control access;
  - (ii) license, sub-license, sell, re-sell, rent, lease, transfer, distribute or timeshare or otherwise make any of the Software available for access by third -parties except as otherwise expressly provided in the applicable Optimizers Agreement;
  - (iii) attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software except to the extent expressly set out in the applicable Optimizers Agreement or as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties; or
  - (iv) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, except as may be allowed by any applicable mandatory law which is incapable of exclusion by agreement between the Parties; or
  - (v) access all or any part of the Software or Subscription Services in order to build a product or service which competes with the Software and/or the Services
  - (vi) use the Software or Subscription Services to provide services to third -parties; or
  - (vii) subject to Section 16.1, transfer, temporarily or permanently, any of its rights under the Optimizers Agreement, or
  - (viii) attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this Section 20.6(e); and
  - (ix) to the extent not covered by the foregoing, attempt to circumvent or breach the security of the Software including the performance of any penetration tests at Customer's initiative except with Optimizers' prior written approval.
- (f) the Customer shall use reasonable endeavours to prevent any unauthorized access to, or use of, the Software and notify Optimizers promptly of any such unauthorized access or use.
- 20.7 Optimizers does not commit and/or warrant that the Customer's use of the Software and the Services will be uninterrupted or error-free, and disclaims responsibility and liability in that respect. Where determined to be needed in Optimizers sole discretion, Optimizers shall perform maintenance to the Software in accordance with the parameters set out in Schedule 2, during which the Software may be completely inaccessible or in a degraded state of performance.
- 21. MAINTENANCE EVENTS**
- 21.1 Scheduled maintenance of any (hosting) equipment, facility, Software or other aspects of the Subscription Services that may require interruption of the Subscription Services ("**Maintenance Events**") shall not be performed during Normal Business Hours. Optimizers may interrupt the Services to perform emergency maintenance. In addition, Optimizers may interrupt the Subscription Services outside Normal Business Hours for unscheduled maintenance, provided that it has given the Customer at least two days' advance notice. Any Maintenance Events which occur during Normal Business Hours, and which were notified to or caused by the Customer, shall not be considered downtime for the purpose of service availability measurement. Optimizers shall at all times use commercially reasonable efforts to keep any service interruptions to a minimum.
- 22. MAINTENANCE**
- 22.1 Maintenance includes all regularly scheduled error corrections, software updates and those upgrades limited to improvements to features described in the Software Specification. Optimizers shall in its sole discretion decide in what manner and frequency maintenance of the Software is performed. Support for additional features developed by Optimizers, as requested by the Customer, may be purchased separately at Optimizers' then -current rates.
- 22.2 The Customer shall promptly apply any application upgrade that Optimizers determines is necessary to maintain the security, performance, or availability of the Subscription Service.
- 22.3 Should the Customer determine that the Software includes a defect, the Customer may at any time file error reports. During maintenance periods, Optimizers may, at its sole discretion, choose to upgrade versions, install error corrections, and apply patches to the hosted systems. Optimizers shall use all reasonable endeavours to avoid unscheduled downtime for Software maintenance.
- 22.4 Optimizers may charge the Customer for the costs of repair in case of errors caused by the Customer and/or its Authorized Users. Maintenance does not include activities relating to and/or caused by inexpert use, negligence, lack of alertness, intent, changes of a user nature, changes in

the equipment, or changes in the Software that have not been applied by Optimizers.

## 23. SUPPORT

23.1 “Support” means the right to support in respect of the use and the functioning of the Software where the Customer or one of its employees can ask questions via the customer portal and where Optimizers can also offer support by phone or email.

23.2 Support can only be requested by the Customer and its employees.

23.3 If the Customer or one of its employees requests Support, the computer system on which the Software is installed must be in the immediate vicinity of the Customer or that employee and be continually available to the Customer or that employee.

23.4 If Optimizers in its sole discretion establishes that the Customer was not entitled to the Support or if it turns out that Optimizer's efforts do not fall under the scope of Support and/or would qualify as Consultancy Services, Optimizers can charge the Customer for the cost of the Support offered to the Customer at the standard prices applicable at that time and the Customer shall pay Optimizers such fees accordingly.

23.5 Any Support provided will be subject to these Terms and Conditions and the terms of any applicable Optimizers Agreements.

## PART E – SPECIAL PROVISIONS IN RESPECT OF PRIVATE CLOUD SERVICES

*The provisions included in this part E apply, in addition to the General Provisions of these terms and conditions, if the Optimizers Agreement (also) relates to Private Cloud Services as concluded between the Parties.*

### 24. PRIVATE CLOUD SERVICES AND SLA

24.1 These terms and conditions apply in addition to the conditions for Subscription Services concluded between the Customer and Optimizers.

24.2 Optimizers grants the Customer the non-exclusive and non-transferable right to use the Private Cloud Services during the term of the Optimizers Agreement. Customer's use of the Private Cloud Services is exclusively for the Customer's internal business operations and is limited to the type of Private Cloud Software and the number of Authorized Users that the Customer has contractually laid down in the Optimizers Agreement.

24.3 The Customer is expressly not allowed to use the Private Cloud Service for, or have it used by, more types of Private Cloud Software than the number that Optimizers made available to the Customer.

24.4 The Customer is not allowed to use the Private Cloud Services for the benefit of third -parties, or for commercial use of timeshare.

24.5 Optimizers has the right to adjust the Private Cloud Services at its sole discretion. Optimizers will provide reasonable notice to the Customer of any adjustments insofar as these are relevant to the use of the Private Cloud Services, at Optimizer's sole discretion.

24.6 The Customer owes Optimizers a hosting fee pursuant to the Optimizers Agreement. The fee is due on a monthly basis in advance and is based on i) the type of Private Cloud Software and ii) any additional services that Optimizers provides to the Customer pursuant to the Optimizers Agreement.

24.7 The Customer shall only access the Private Cloud Software via the login procedure using login details that Optimizers has provided to the Authorized Users. These details are personal to the individual Authorized User and cannot be transferred to another Person, inside or outside the Customer's organization.

24.8 The Customer shall only access the Private Cloud Services and use these in accordance with the provisions as described in these terms and conditions and the applicable laws and regulations.

24.9 The Customer is not allowed to i) use or attempt to use the Private Cloud Services for any illegal or unlawful purposes and/or to publish or otherwise distributing materials that are offensive, defamatory or in conflict with intellectual property rights of third -parties, ii) use or attempt to use the Private Cloud Services in a manner that disrupts, limits or interferes with the delivery of the Optimizers Services, iii) gain access or attempt to gain access to any part of the Private Cloud Services which the Customer is not authorised to access, iv) use any form of automated integration other than automated integration via the API's, or v) reverse engineer, decompile, copy, distribute, disseminate, sublicense, modify, translate, scan, adjust or in any other way modify and/or reproduce Software that forms part of the Private Cloud Services.

24.10 If the Customer discovers at any time that it can enter Optimizer's network layers, it must report this immediately to Optimizers.

24.11 If Optimizers believes the undisturbed operation of its infrastructure and/or the provision of services to its Customers is at risk for reasons including but not limited to Virus infections, denial of service attacks, port scans, hacking, spam from or on behalf of the Customer or otherwise, it may issue instructions that must be immediately followed by the Customer and Optimizers may suspend all or part of its Optimizers Services for as long as the relevant risks exists, at its sole discretion.

24.12 Optimizers will make commercially reasonable efforts to ensure that the Private Cloud Services are available for use by the Customer, as specified in the Service Level Agreement.

- 24.13 Optimizers may amend the Service Level Agreement at its sole discretion. The Customer will receive reasonable prior notice of any amendments of the Service Level Agreement. Optimizers may, with prior notice, permanently or temporarily block or disable access to the Private Cloud Services or restrict their use to the extent this is reasonably necessary from time to time: i) to perform preventive or regular maintenance or upgrades in respect of the Private Cloud Services, ii) perform Maintenance, ii) if an actual or suspected security breach occurs, and/or iv) another emergency occurs, all with the Customer being entitled to seek, reasonable compensation from Optimizers.
- 24.14 The Customer will always remain the proprietor of the Customer Data and is solely responsible for the content and accuracy of the Customer Data.
- 24.15 Optimizers cannot guarantee that no loss of data will occur.

aspects and aspects regarding the design of user interfaces.

## **PART F – SPECIAL PROVISIONS IN RESPECT OF CUSTOMISED SOFTWARE**

*The provisions included in this part F apply, in addition to the General Provisions of these terms and conditions, if the Optimizers Agreement (also) relates to Customized Software as concluded between the Parties.*

### **25. CUSTOMISED SOFTWARE**

- 25.1 Unless stipulated otherwise in this part F, the special provisions of part E of these terms and conditions apply mutatis mutandis to the Customized Software, in so far as this is relevant.
- 25.2 Customer agrees that all intellectual property rights in the Customized Software and the relevant documentation will be the sole and exclusive property of Optimizers. Optimizers grants the Customer the non-exclusive right and the non-exclusive license to use the Customized Software in accordance with the provisions of the Optimizers Agreement. Customer may only use the Customized Software in the compilation and for the license for which the Customized Software has been developed by Optimizers in accordance with the Optimizers Agreement.
- 25.3 For the Customized Software to be developed for the Customer, Optimizers will draw up the Software Specifications in detail and in writing and make these known to the Customer. The agreements in respect to the Customized Software are laid down in the Optimizers Agreement. Optimizers will develop the Customized Software to the best of its ability on the basis of the Software Specifications.
- 25.4 If it has been agreed that the Customized Software will be developed in stages, Optimizers can postpone the commencement of the work that forms part of the next stage until the Customer has approved the results of the preceding stage in writing and Optimizers has received the fee for the work in this preceding stage.
- 25.5 The Customer shall test the Customized Software for 14 days after delivery.
- 25.6 The Customer is deemed to have accepted the Customized Software if Optimizers has not received a written response from the Customer within 14 days after delivery of the Customized Software which shows in detail that the Customized Software does not meet the Software Specifications and also fails to function substantially in accordance with the accompanying documentation.
- 25.7 Acceptance of the Customized Software cannot be withheld due to the existence of small errors. "Small errors" being errors that do not reasonably prevent operational and productive use of the Customized Software, without prejudice to Optimizer's obligation to remedy these small errors. Acceptance also cannot be withheld due to aspects of the Customized Software that can only be assessed subjectively, such as aesthetic

## Schedule 1: Software and Terminals

The Software consists of the following components:

### 1. OPTIMIZERS CLOUD PLATFORM

1.1 The Optimizers Cloud Platform is the software platform as developed by Optimizers, through which a Customer can download, install and run Apps and Web Applications.

1.2 This platform includes the following apps and webservices and corresponding functionalities

- App4Sales: An App to register and complete sales orders by Authorised Users (i.e. sales representatives).
- An App to register and complete sales orders by end users (not being Authorized Users)
- Portal4Sales: A Web application allowing Customers to configure a Business-to-Business (B2B) sales portal connected to the Customer's ERP system.
- Portal4Sales pro: in addition to the Portal4Sales offering Customers more functionality within the B2B sales portal as described in the product specification.
- PIM4Sales: a software component helping Customers to manage product information which is visible within Portal4Sales(pro), App4Sales and App4Customers.
- App4Picking: An App to process primary logistic transactions (i.e. order picking, counts and displacements) through a tablet.
- App2Track: An App to navigate the route on a mobile device or tablet and to track and trace deliveries in real time.
- Tweakwise: a SAAS software component to optimize and manage Webshop functionalities including site search, product sorting and filtering, categorizing, recommendations and personalizing.

### 2. OTHER SOFTWARE (COMPONENTS)

2.1 Netivity Core: a cloud based digital e-commerce platform, build on a headless architecture and progressive web app front-end. Netivity Core is a standardized core which can be extended with client-specific bespoke features.

### 3. TERMINALS

3.1 The Customer is responsible to ensure that the Terminals as used by the Customer and/or Authorized Users will at a minimum comply with the specifications and/or requirements as published in the release notes and /or Project Plan(s). System Requirements will be part of the Optimizers Agreement.

## Schedule 2: Service Level Agreement

### 1. SERVICE AVAILABILITY

Optimizers shall provide at least a 99.5% uptime service availability level ("**Uptime Service Level**") [during Normal Business Hours. This availability refers to an access point on Optimizers hosting provider's backbone network. It does not apply to the portion of the circuit that does not transit the hosting provider's backbone network, as the Customer is responsible for its own internet access and/or connectivity from / to the ERP system. Availability does not include Maintenance Events as described in the Terms and Conditions, Customer-caused or third Party -caused outages or disruptions (except to the extent that such outages or disruptions are caused by those duly authorized third parties sub-contracted by Optimizers to perform the Services), or outages or disruptions attributable in whole or in part to force majeure events. Service availability could be consulted on the product specific statuspages.

### 2. SERVICE CREDITS

2.1 If availability falls below the Uptime Service Level (as defined in paragraph 1 of 02) in a given calendar month, Optimizers shall credit the Customer's account by an amount calculated as the product of the total cumulative downtime (expressed as a percentage of the total possible uptime minutes in the month concerned), and the total Monthly Subscription Fee and Monthly Software Licence Fee owed for that month ("**Service Credit**") as a sole and exclusive remedy.

2.2 A Service Credit shall not be payable unless the Customer requests it within 40 Business Days of the service-affecting event(s). The maximum Service Credit allowable in a given month is limited to an amount equal to the Subscription Fee owed by the Customer for that month.

### 3. SUPPORT PROCES

3.1 Support can only be requested by the Customer and its employees via the customer portal (via the SAAS software platform or product specific support emailaddresses).