

# Fibre Ethernet

## Terms & conditions

### Definitions

“**Agreement**” means the Subscription Agreement and these Terms & Conditions in conjunction with the General Terms and Conditions.

“**Agreement Date**” means the date which the “Subscription Agreement” and documentation was raised.

“**Activation Date**” means the Date by which the services become live and are first made available for use by the Customer or the End User of the Services as specified in the Service Contract.

“**Committed Delivery Date**” (or “CDD”) means the date by which we anticipate the Activation date of the Services to begin. This is also the date by which OryxAlign is measured against service credits for failing to deliver on or before the CDD.

“**CPE**” (Customer Premises Equipment) – such as network devices, routers and micro-filters necessary to use any Access Connection, supplied by OryxAlign or their third parties where their provision is for the express use of provisioning the Customer Services, or End User Services as described in the Customer Order.

“**Customer Equipment**” means apparatus belonging to the Customer not forming part of the Griffin Equipment but which may be connected to the Griffin Equipment.

“**OryxAlign Equipment**” means any apparatus or equipment provided by OryxAlign or any third party to the Customer to enable provision of the Service under this Agreement.

“**Initial Term**” means the Term of the Agreement as specified in the Subscription Agreement – e.g. 12 months. The minimum Initial Term is always 12-months unless otherwise stated in Subscription Agreement

“**MRC**” Refers to the Monthly Recurring Charge for service.

“**MTB**” Stands for Multi-Tenanted Building. OryxAlign operates a specific Internet service for MTB’s, and customers within an MTB already connected to the OryxAlign Network can typically expect their service to be delivered within 10 working days. MTB Internet services are delivered to the same SLA’s as any Leased Line or Ethernet Circuit. It is only the connectivity methods within the building infrastructure which change.

“**NTE**” (Network Termination Equipment) – Typically 3rd party equipment supplied by OryxAlign or their third parties where their provision is for the express use of provisioning the Customer Services, or End User Services as described in the Customer Order. This equipment may reside within the Customer Premises, the End User Premises, or OryxAlign and or their third parties premises.

“**PoP**” Stands for Point of Presence, and is a node within the OryxAlign network, sited within a Data Centre. It is the local point within our network, to where Internet circuits are terminated.

“**PSTN**” Stands for Public Switched Telecoms Network – in the UK this is generally assumed to be a BT product, referring to a copper wire, analogue telephone line, or ISDN circuit.

“**Service Contract**” means the complete document which includes the “Subscription Agreement” and these Terms & Conditions

“**Service**” means the services described in the details within the Subscription Agreement, and forming part of this Agreement.

“**Service Levels**” means the service levels relating to the Services which is contained in the SLA.

“**SLA**” means the Service Level Agreement as in Clause 3.0 of this document or such other service level agreement which is agreed in writing between the parties from time to time.

“**Target Ready For Service Date**” means the initial date which is supplied by the OryxAlign provisioning team as the estimation for an Activation Date. This is not a binding date, nor is it a CDD, and should be used as a guide only as to the likely Activation Date.

“**Third Party Services**” means any part of the Services which Griffin procures from a third party any third party telecommunications services and/or equipment which Griffin uses in order to provide the Services.

“**Third Party Service Provider**” means the provider of any Third Party Services.

### 1. Introduction

1.1 The terms of this agreement form part of the conditions of sale, and shall be incorporated into the Subscription Agreement signed by the customer.

1.2 These Product Terms and Conditions are to be read in conjunction with the General Terms and Conditions. No individual set of terms will individually constitute a full Service Contract for this or any other product.

1.3 In addition to above, and subject to 10.1 of the General Terms and Conditions, in the event of any conflict or inconsistency between the terms within this service schedule and the General Terms and Conditions, then the terms within the Product Terms and Conditions Schedule will prevail (as per section 2.3 of the General Terms and Conditions).



## 2. Order Process

2.1 OryxAlign will supply the customer with the services in accordance with these terms, the General Terms and the accompanying signed Subscription Agreement. The combination of which, will form a Service Contract between the customer and OryxAlign.

2.2 OryxAlign reserves the right to make any changes to these terms or to the Service Contract, including changes to the service and the SLA as is required from time to time, to reflect:

- a) Technical and operational changes to the core OryxAlign network or that of one of our 3rd party providers provided such changes do not materially affect the applicable service provided to the customer.
- b) Changes enforced by law, regulation or codes of conduct which may be altered or issued from time to time.

2.3 OryxAlign will notify acceptance of a Subscription Agreement by email within a target of 5 working days. Orders will be accepted on the basis that the customer has provided (i) a fully completed and signed copy of the Subscription Agreement (in duplicate)

2.4 OryxAlign will endeavour to issue a Target Ready For Service date (TRFS) at the same time at which they acknowledge receipt and confirm the Customer Order. The TRFS is the day on which we expect (under normal circumstances) the Service Activation Date commences, and therefore the date which the Service Contract starts.

2.5 Throughout the provisioning process, OryxAlign will need to communicate with named member(s) of the Customer's staff (or their nominated representatives) to arrange access to the Customer or the End User's premises, for OryxAlign and/or their 3rd party suppliers. Any delays to these requests either by the Customer, their representatives, the End User, or the Landlord of the termination premises will delay OryxAlign from meeting the TRFS and from issuing a CDD.

2.6 Typically within 10 working days of acceptance of an order, OryxAlign or their 3rd party representative will perform a termination location, premises survey, also known as a „site survey“. It is typical that within a further 30 working days of the site survey, that OryxAlign will be able to issue a Committed Delivery Date (CDD). This is subject to the influence of 3rd party delays.

2.7 The CDD is the date by which OryxAlign agree to have service ready for use (the Activation Date).

2.8 In the event that the customer takes a dual circuit solution from OryxAlign, where the tail circuits are provided by alternate carriers (or the same carrier but via geographically diverse OryxAlign PoP's) and one is configured as primary, with the other as a back-up, then OryxAlign will provide a TRFS and a CDD for each circuit.

The processes outlined within this document for delivery, will apply to each. Where the solution is quoted and sold at a fixed monthly, quarterly or annual price, OryxAlign reserve the right to charge for separate services as they are delivered. E.g. Customer takes 100Mb leased line, with a 10Mb leased line backup (Internet is to be provisioned on each and available in „failover“). In this event, OryxAlign will charge for the first circuit and accompanying hardware (such as, but not limited to, routers, firewalls or cable trays) delivered on a pro-rata basis, as this is a useable Internet connection.

The final charges will be applied on delivery of the second circuit and its confirmed live backup status presented in a working condition. At this stage, the Contract Term of the Agreement for the solution will start. E.g. Customer taking a 36 month term contract, with a 100Mb primary and a 10 Mb backup circuit. The 100Mb circuit is delivered (as working) 2 months before the backup circuit. Not until the delivery of the back-up circuit will the 36 month term of the Agreement start. This means that the Customer will be liable to pay the installation, monthly rental and reasonable set up costs as described above, for the primary circuit for an additional 2 months in this example. In all cases, unless otherwise stated by the Customer, OryxAlign and their third party suppliers as applicable will endeavour to provide both or any circuits as part of any given solution at the same time. However, when this is not practicable or any third part service provider will not accommodate such requests, then the Customer will be liable for all Service charges as they arise on the Activation Date of said services.

2.9 In the event that a customer takes an ADSL back-up service to their primary circuit, OryxAlign will deliver the ADSL service and the primary circuit as close to the leased line CDD as possible using all reasonable endeavours. The exception to this will be when a Customer asks for the ADSL service to be supplied in lieu of the primary circuit being fulfilled. In this instance, OryxAlign will charge pro-rata for the delivery and rental of the ADSL service and accompanying hardware (such as, but not limited to, routers, firewalls or cable trays). The final charges will be applied on the Activation Date of the primary circuit.



2.10 For ADSL back-up services, at no time will the provision of an ADSL service be subject to service delivery credits.

2.11 Where ADSL backup services are taken, it is the Customer's responsibility to ensure that there is an adequate, uncompromised BT analogue PSTN (Public Switched Telephone Network) circuit. Should the customer not provide a valid telephone number for this PSTN circuit, then OryxAlign will not be able to provide the ADSL service. Similarly, if the PSTN termination is not in the correct location (should be within 3Metres of the planned Leased Line termination point) then OryxAlign will not be able to provide the ADSL service as a back-up.

2.12 Delivery terms of all ADSL Services are outlined in the ADSL Product Terms and Conditions Schedule document.

2.13 For all services, when an installation fee is levied (as per the Subscription Agreement) OryxAlign reserve the right to invoice this fee, which must be paid before we hand over the service to the customer or end user.

2.14 Subject to 2.8 and 2.9, the term of the Service Contract as indicated on the Subscription Agreement will not start until the final circuit or complete solution is delivered. i.e. the service charges and start dates of individual circuits may be staggered, but the Service solution term of contract will start and end at the same time.. This means that the first circuit to be provisioned will be invoiced prior to the term of the contract starting, and the invoice period in lieu of the backup or secondary circuit(s) will vary depending on the independent tail circuit CDD's. Wherever possible however, we will try to ensure that the CDD for each circuit in a multi circuit solution are as close together as possible.

### 3. Service Level Agreement

3.1 During active service, OryxAlign offer a 99.9% uptime Service Level for all Ethernet Circuit Products based on a 24 hour clock, 7 days per week.

3.2 OryxAlign provides optional „Active Alerts“ on all Direct Internet Access circuits or any circuits which are provided with Customer Premises Equipment (CPE) which is owned by OryxAlign, and provided as part of a managed service by OryxAlign. This means that in the event of any problems detected on your circuit, OryxAlign will, with best endeavours, be able to notify a named member (or members) of the Customers staff of such issues via SMS or email.

The following rules are set as a target only.

- Fault or Problem Detected: OryxAlign IP Monitor flags alert that would appear to mean customer circuit has failed. Immediate investigation to confirm if this is real or glitch, and where the fault lies.
- Time of Day Target Response: Mon – Fri 08:30-17:30
- Time Method of Response: SMS alert or Email (automated generation) of a potential issue with the service, followed up with a phone call

3.3 OryxAlign's target to repair all logical faults on Leased Lines is 6-clock hours. Logical faults are those relating to any equipment, either the Customer Premises Equipment (CPE) provided by OryxAlign as part of the managed service, or Network Termination Equipment (NTE) within the OryxAlign and their suppliers network.

3.4 Where there is a physical fault, which relates to fibre or copper wire faults, then the target time to resolve is within 24-48 clock-hours.

3.5 Service Availability is a measure of the relative amount of time a circuit is available for Customer use during a given calendar month. "Service Unavailability" is defined as any period for which the Service is unavailable, and is measured from the time (a) that the Customer reports Service Unavailability to OryxAlign, and opens a support ticket (customer must obtain a reference number for their call – this is automatically given with email logged calls), until the time (b) that OryxAlign advises the Customer that the Service is restored and operating in accordance with agreed specifications, and OryxAlign closes the support ticket. Any periods of time during which a support ticket is kept open at Customer's request following notification by OryxAlign that Service has been restored, is not included in measuring the duration of a period of Service Unavailability.

3.6 When ADSL back-up services are taken, then OryxAlign will provide a 99.99% Service Level Agreement for the solution as a whole. OryxAlign agrees to provide a solution whereby should one circuit fail, then the backup line will be activated automatically within 5 minutes of the primary circuit failing. Should the secondary (back-up) circuit fail to engage within 1-clock hour, then additional Service Unavailability penalties will apply in the following way:

a) Where ADSL backup is provided, OryxAlign will pay service credits to the value of 1.25x that which is stipulated within 3.8. Exceptions are for when the back-up service fails due to reasons beyond OryxAlign's control. Such reasons can be, but are not limited to; 3rd party activity, network failure outside of OryxAlign and their suppliers networks, power-cuts, atmospheric and weather induced problems, natural disasters or terrorist incidents.



3.7 For Customers taking back-up services, should the primary circuit fail, and the backup service engage within the 5 minute period then OryxAlign will only be liable for service credits on the primary line, as described in table 3.8 but, subject to points 3.9 – 3.16 below. OryxAlign will provide this pro-rata to the value of the rental of the primary circuit for Customer's on fixed single payment contracts.

3.8 Service Credits: In the event of Service Unavailability, OryxAlign will credit the Customer in accordance with the below:

Total Service Unavailability in the month	Credit
Less than 1 clock hour	0% of MRC
1-6 clock hours	5% of MRC
6-24 clock hours	10% of MRC
24 clock hours and above	20% of MRC

3.9 In no event will SLA credits in any calendar month exceed 100% of the total MRCs payable by Customer for the Service in that month.

3.10 As a condition of entitlement to SLA credits, the Customer shall cooperate with OryxAlign in addressing any reported Service problems.

3.11 SLA credits are applied only upon Customer's written request, which must be submitted within 15 working-days of a valid support call reporting the incident, and backed up by a reference number to support that claim. This can be submitted to the relevant OryxAlign staff by 1st class recorded mail, or by email.

3.12 All approved SLA credits claimed by a Customer for a given month will be totalled and applied to that customer's next invoice for the Service, or as promptly thereafter as is practical in the event of a dispute.

3.13 No SLAs apply to newly installed services or to Service reconfigurations requested by Customer, until five business days after (i) the Service Activation Date or (ii) completion of the Service reconfiguration, as applicable.

3.14 The SLAs above apply only in respect of service that is provisioned on OryxAlign's Network and, where applicable, to local access circuits provided by OryxAlign (via third party providers). Service credits will not be approved for network faults or fibre issues outside of our control. See section 3.16 for further detail.

3.15 SLA credits provided for in these terms and conditions are customer's exclusive remedy with respect to items covered in these terms and conditions.

3.16 Exclusions: No SLA credit shall apply to the failure of the Service to comply with an SLA, or to any period of Service Unavailability, caused, in whole or part, by any of the following:

- a) A failure of customer's premises equipment or equipment of a customer's vendor;
- b) A failure in local access facilities connecting the Customer to OryxAlign's network which are not provided by OryxAlign;
- c) Force majeure events as defined under the General Terms and Conditions;
- d) any act or omission of Customer or any third party (including but not limited to, customer's agents, contractors or vendors), including, but not limited to
  - i. failing to provide OryxAlign adequate access to facilities for testing,
  - ii. failing to provide access to Customer premises as reasonably required by OryxAlign (or its agents) to enable OryxAlign to comply with its obligations regarding the Service,
  - iii. failing to take any remedial action in relation to a Service as recommended by OryxAlign, or otherwise preventing OryxAlign from doing so, or
  - iv. any act or omission which causes OryxAlign to be unable to meet any of the SLAs;
- e) Customer's negligence or wilful misconduct, which may include customer's failure to follow agreed-upon procedures;
- f) Any scheduled maintenance periods when Customer has been informed of such maintenance, and emergency maintenance; or
- g) Disconnection or suspension of the Service by OryxAlign pursuant to a right to do so under the General Terms and Conditions or these terms and conditions.
- h) Outages attributable to "Off-Net Circuits," that is
  - i. long-haul domestic local access circuits in the USA, between an OryxAlign POP and a Customer premises which is in a different Local Access Transport Area (LATA) and/or
  - ii. long-haul international local access circuits provided in countries in which OryxAlign does not operate its own Network and provides the Service using the services of third party providers.



#### 4. Term of 'Service Contract' and Termination

4.1 The term of each Service Contract shall start from the date on which either the only, or the final circuit is installed and made available for service (the Activation Date).

4.2 The termination notice period for the subscription/s listed in the Subscription Agreement is no less than 30 days prior to the end of the initial minimum term or any subsequent term. If no termination notice is received it shall be accepted as a tacit response to extend the subscription service by a further periodic 12 month term. In the case of termination by the Customer, any such written notice shall not be effective unless

i. given by 1st class recorded post, or an email to a relevant, named member of staff within OryxAlign, and by an authorised member of the customer's staff. Such notice must also outline full details of the Service Contract including all circuit details and addresses to be terminated, and that

ii. OryxAlign has confirmed receipt of such termination notice by email or letter within five working days of its receipt.

4.3 In addition to OryxAlign's other rights, OryxAlign may end any Service Contract and/or suspend the provision of any Service under a Service Contract in the following circumstances:

- a) Immediately following the expiry of 5 working days" written notice from OryxAlign to the Customer for non-payment of any Charges and payment has not been made following such notice; or
- b) Immediately in writing if the Customer materially breaches these Terms (see Clause 9.1.1 in the General Terms and Conditions for definitions of breach); or
- c) Immediately if bankruptcy or insolvency proceedings are brought against the Customer (or its parent company), a receiver or administrator is appointed over any of the Customer's (or its parent company's) assets or the Customer (or its parent company) goes into liquidation or enters into a voluntary arrangement with its creditors other than for the purposes of reorganisation (or any similar event in its country of incorporation takes place); or
- d) As soon as required if OryxAlign is obliged to, by a decision or direction of any governmental body or regulatory authority.

4.4 Upon termination of a Service Contract, all Charges incurred by the Customer for the use of the Services up to the date of termination shall be due and payable in full and on demand and the Customer shall have no right to withhold, deduct or set off any such amounts.

4.5 Upon termination of a Service Contract for whatever reason the Customer shall immediately stop using the Services prescribed in such Service Contract and the Customer's right to use such Services shall immediately terminate.

4.6 Where OryxAlign suspends service for Customer breach and subsequently reconnects Services, the Customer may be liable for a reasonable reconnection fee which shall be notified to the Customer in advance.

4.7 If the Customer cancels an order, or requests that an order already placed is significantly modified (e.g. changes in address; Service type; point of presence or presentation), after the acceptance of any identified installation or excess construction charges and prior to the confirmation of the Committed Delivery Date (CDD), the Customer shall pay all costs incurred by OryxAlign including all 3rd party installation charges as a result of such cancellation or modification. Additionally, OryxAlign will charge the Customer for all costs which it has incurred in relation to the provision of the service/s (e.g. costs associated with project management, network or infrastructure builds or obtaining way leaves, etc) up to and prior to the date upon which it receives the early cancellation request from the Customer.

4.8 If the Customer cancels a Service without cause after the CDD and prior to the end of the Initial Term, then all Charges that would have been payable until the end of the Initial Term (together with the notice period of 30 days) shall immediately become due and payable.

4.9 For customers taking leased line back-up or ADSL back-up products, please note section 2.14 with regard to Service Contract start dates.

#### 5. Severance

If any provision of these Conditions is found by any Court or administrative body of competent jurisdiction to be invalid or unenforceable such invalidity or unenforceability shall not affect the rest of these Conditions which shall remain in full force and effect.



## 6. Non-Waiver

The failure to exercise or delay in exercising a right or remedy provided by these Conditions or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.

## 7. Governing Law

These Conditions are governed by and shall be construed in accordance with the Laws of England and both parties submit to the exclusive jurisdiction of the English Courts

