

Date Issued 1st October 2021



Unitec IT Solutions Limited

Unitec IT Solutions Master Terms and Conditions

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BETWEEN:

- (1) **UNITEC IT SOLUTIONS**, a company incorporated and registered in Ireland (registered number 470843) whose registered office is at Carrigeen Business Park, Clonmel, County Tipperary (“**Unitec**”); and
- (2) **INSERT CLIENT NAME**, a company incorporated and registered in [Ireland] whose registered office is at INSERT CLIENT ADDRESS (the “**Customer**”) – As per signed Service Level Agreement

RECITALS:

- (A) Unitec is the provider of a wide range of IT services, including the supply of hardware, software, maintenance services and project services.
- (B) The parties wish to enter into this Agreement in order to provide a contractual framework for the supply of such IT services by Unitec to the Customer.
- (C) When the Customer requests services from Unitec, and Unitec is able to provide such services, the parties shall enter into a Statement of Work (hereinafter “the SOW”) or Service Level Agreement (hereinafter “the SLA”) in respect of such services which will be governed by the terms of this Agreement.

NOW IT IS AGREED as follows:**1. Interpretation****1.1 Definitions**

In this Agreement, unless the context requires otherwise:

“**Acceptance Tests**” means the tests to be agreed in writing between the Customer and Unitec, which tests are designed to show that Deliverables work materially in accordance with its specifications.

“**Acceptance**” means acceptance of a Deliverable or any part of it under the Acceptance Tests.

“**Monthly Base Rate**” means term as documented in Service Level Agreement

“**Business Day**” means a day other than a Saturday or Sunday on which banks are generally open for business in Ireland.

“**Change**” means any change to a SOW, SLA, or this Agreement other than a change that would have no material impact on the Charges or the relevant Services or Deliverables to be provided or any terms upon which such Services or Deliverables are to be provided under such SOW or SLA.

“Charges” means the charges payable by the Customer to Unitec as set out in a SOW or SLA.

“Claim” means any claim, demand, action or proceeding.

“Computer Virus” means any malware, undocumented malicious data, code, program, or other internal component (e.g., computer worm, computer time bomb or similar component), which could damage, destroy, alter, or disrupt any computer program, firmware, or hardware or which could, in any manner, reveal, damage, destroy, alter, or disrupt any data or other information.

“Customer Representative” means the person (and any replacement) duly appointed by the Customer and notified in writing to Unitec to act as the Customer’s representative under this Agreement, or in default of notification any senior officer for the time being of the Customer.

“Cyber-Attack” means any attempt to expose, alter, disable, destroy, steal, gain unauthorised access to computer information systems, infrastructure, computer networks or personal or business computer devices and includes may include any unauthorised access or any offensive manoeuvre that targets computer information systems, infrastructure, computer networks or personal or business computer devices

“Cyber- Security” means the application of controls, technologies, processes, and practices designed to protect or defend networks, devices, servers, electronic systems, programmes, data from attack, damage, or unauthorised access.

“Data Protection Law” means all applicable data protection laws including, with effect from 25 May 2018, the General Data Protection Regulation (Regulation (EU) 2016/679).

“Defect” shall include, but shall not be limited to, any fault, error or omission in a Deliverable caused by design defect, faulty materials, bad workmanship or other reason or a failure to meet the applicable Specification.

“Deliverables” means all deliverables, including any Software, Hardware and Documentation, if applicable, to be provided by Unitec or a Third-Party Supplier, as set out under a SOW or SLA.

“Documentation” means all documents to be provided by Unitec under a SOW or SLA.

“Effective Date” means the date of this Agreement.

“Hardware” means all hardware to be provided by Unitec under a SOW or SLA.

“Intellectual Property Rights” means patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights (to include any design, specification, ideas, know-how, techniques, documentation, software, reports that may be developed herein and/or supplied herein), in

each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

“**Law**” means any law applicable in Ireland (without further enactment) and shall include without limitation, common law, statute, statutory instrument, proclamation, bye-law, directive, decision, regulation, rule, order, notice, code of practice, code of conduct, rule of court, instruments, or delegated or subordinate legislation.

“**Licensor Terms and Conditions**” means any terms and conditions imposed by a Third-Party Supplier in connection with the provision of a Deliverable, including under any Third-Party Supplier Agreements.

“**Loss**” means any loss, damage, cost, expense, charge, fee, or liability.

“**Reference Charges**” means the reference charges set out in Service Level Agreement.

“**Relevant Information**” means but is not limited to the following which may be required as relevant to the scope for provision of the Services as detailed in this Agreement, SOW or SLA or which may materially affect the provision of Services or the availability of Unitec to provide the Services: Customer health & safety policies & procedures; Customer Cyber-Security, IT, security, privacy and data policies and employee training records

“**Service Levels**” means the service levels which apply in respect of the Services, as set out in a SOW or SLA.

“**Services**” means all services to be provided by Unitec under a SOW or SLA, including the provision of Deliverables.

“**SLA**” means a SLA, in the form set out in this Agreement, entered by the parties in accordance with Clause 3.

“**SLA Commencement Date**” means the date of commencement of a SLA, as set out in the relevant SLA.

“**Software**” means any computer software to be supplied by Unitec under a SOW or SLA and shall include any replacements, modifications or additions of software supplied under a SOW or SLA.

“**SOW Commencement Date**” means the date of commencement of a SOW, as set out in the relevant SOW.

“**Specification**” means a written specification in respect of a Deliverable.

“**Statement of Work**” or “**SOW**” means a statement of work, in the form set out in this Agreement, entered by the parties in accordance with Clause 3.

“**Third Party Supplier**” means the third-party supplier of Hardware, Software, Documentation, Services, or other Deliverables.

“**Third Party Supplier**” has the meaning given to it in Clause 5.

“**Unitec Representative**” means the person (and any replacement) duly appointed by Unitec and notified in writing to the Customer to act as Unitec’s representative under this Agreement, or in default of notification any senior officer for the time being of Unitec.

1.2 In this Agreement, unless the context requires otherwise:

- (a) words importing the singular number shall include the plural number and vice versa;
- (b) words importing a particular gender include all genders;
- (c) any reference to a “**person**” shall be construed as a reference to any individual, partnership, firm, trust, body corporate, government, governmental body, authority, emanation, agency or instrumentality, unincorporated body of persons or associations;
- (d) save as otherwise provided herein any reference to a section, clause, paragraph, or sub-paragraph shall be a reference to a section, clause, paragraph, or sub-paragraph (as the case may be) of this Agreement and any reference in a clause or paragraph shall be a reference to the clause or paragraph in which the reference is contained unless it appears from the context that a reference to some other provision is intended;
- (e) the provisions of any Schedules to this Agreement shall form an integral part of this Agreement and shall have as full effect as if they were incorporated in the body of this Agreement and the expressions “**this Agreement**” and “**the Agreement**” shall be deemed to include any Schedules to this Agreement;
- (f) any reference in this Agreement and/or in the Schedules to any statute or statutory provision shall be deemed to include any statute or statutory provision which amends, extends, consolidates, re-enacts, or replaces same, or which has been amended, extended, consolidated, re-enacted, or replaced (whether before or after the date of this Agreement) by same and shall include any orders, regulations, instruments, or other subordinate legislation made under the relevant statute;
- (g) any reference to an Irish legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than Ireland, be deemed to include a reference to what most nearly approximates in that jurisdiction to the Irish legal term;
- (h) any words following the terms “**including**”, “**include**”, in particular, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (i) any reference to “**day**” shall, unless otherwise stated, mean the period of time which begins with one midnight and ends with the next;

- (j) all references to time of day shall be a reference to whatever time of day shall be in force in Ireland;
 - (k) the section headings and captions to the clauses in this Agreement are inserted for convenience of reference only and shall not be considered a part of or affect the construction or interpretation of this Agreement.
- 1.3 For the avoidance of doubt, all SoWs (as more particularly described in clause 3 of this Agreement) will be governed by the terms and conditions of this Agreement. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of any SOW or SLA, unless specifically provided otherwise in the relevant SOW or SLA, the terms and conditions of this Agreement shall prevail to the extent of such conflict.

2. **Term**

- 2.1 This Agreement has an initial term of thirty six months from the Effective Date (the “**Initial Term**”), which shall be renewed automatically without notice for a further period of twelve months on the last day of the Initial Term (the “**Renewal Date**”) and on each anniversary of the Renewal Date, unless either party gives to the other party written notice of termination not later than ninety days before the Renewal Date (or next anniversary thereof, as applicable) or unless this Agreement has otherwise been terminated in accordance with its terms. Where the Customer terminates the Agreement early an early Termination Fee will apply as set out in paragraph 18 of this Agreement.
- 2.2 Any Statement of Work shall commence on the relevant SOW Commencement Date and, unless terminated earlier in accordance with the terms of this Agreement, shall continue in accordance with the terms of the Statement of Work.
- 2.3 Any SLA shall commence on the relevant SLA Commencement Date and, unless terminated earlier in accordance with the terms of this Agreement, shall continue in accordance with the terms of the SLA.

3. **SOWs and SLAs**

- 3.1 This Agreement contains general terms for the provision of Deliverables and Services to the Customer by Unitec. The Customer may procure any Services and/or Deliverables by agreeing a SOW or SLA with Unitec pursuant to this clause.
- 3.2 Each SOW shall be agreed in the following manner:
- (a) the Customer shall ask Unitec to provide Deliverables and/or Services and provide Unitec with as much information as Unitec reasonably requests in order to prepare a draft SOW or SLA for the Deliverables and/or Services requested;
 - (b) following receipt of the information requested from the Customer, Unitec shall, as soon as reasonably practicable, either:
 - (i) inform the Customer that it declines to provide the requested Services

or Deliverables; or

- (ii) provide the Customer with a draft SOW or SLA;
- (c) if Unitec provides the Customer with a draft SOW or SLA pursuant to clause 3.2(b)(ii), Unitec and the Customer shall discuss and seek to agree that draft SOW or SLA; and
- (d) both parties shall sign the agreed SOW or SLA.

3.3 Unless otherwise agreed, the Charges under a SOW or SLA shall be calculated in accordance with the Reference Charges.

3.4 Unitec may charge for the preparation of any SOW or SLA on a time and materials basis in accordance with Unitec's standard daily fee rates as set out in the Reference Charges.

3.5 Each SOW and each SLA entered into in accordance with this clause 3 shall be part of this Agreement and shall not form a separate contract to it.

4. **Services**

4.1 In consideration of the payment by the Customer of the Charges in accordance with clause 12, Unitec shall supply the Services and Deliverables to the Customer in accordance with the terms of this Agreement and the provisions of the relevant SOW or SLA.

4.2 Unitec shall ensure that the Services are performed in accordance with any applicable Service Levels.

5. **Third Party Suppliers**

5.1 Unitec will source and procure Deliverables and/or Services for supply to the Customer by Third Party Suppliers as required by the SOW or SLA. The Customer shall enter into such agreements (including licences) as each Third-Party Supplier requires in relation to the Deliverables that are supplied by that Third Party Supplier ("**Third Party Supplier Agreements**").

5.2 The Parties acknowledge and agree that, except as expressly set out in this Agreement, Unitec shall not be liable or responsible for the acts or omissions of the Customer or the Third-Party Suppliers in relation to the Third-Party Supplier Agreements or the Deliverables and Services supplied under the Third-Party Supplier Agreements.

6. **Governance and Change Management**

6.1 Each party shall appoint a representative for the purpose of this Agreement (the "**Customer Representative**" and the "**Unitec Representative**", respectively), and shall notify the other party of any change in the identity of their representative.

6.2 If either party wishes to make any change to a SOW or SLA, that party's representative shall submit to the other party's representative details of the requested change in writing (a

“Change Request”).

6.3 The parties shall discuss the Change Request and, if both parties agree to the Change, shall enter into a variation agreement in the form set out in Schedule to this Agreement in order to record any amendment to this Agreement or the relevant SOW or SLA. For the avoidance of doubt, Unitec shall not be obliged to enter into any variation agreement. If the parties do not enter into a variation agreement, the requested change shall not have any effect.

7. Employees of Unitec

7.1 Unitec shall provide sufficient trained, competent, and suitable staff with the necessary qualifications, skills, and experience to provide the Services.

8. Facilities to be Provided

8.1 Whenever necessary during the provision of the Services, the Customer shall provide for each employee and/or agent of Unitec engaged in work at the Customer's premises, a suitable place of work and necessary supplies and amenities.

8.2 The Customer Representative shall afford to appropriate personnel of Unitec and its sub-contractors at all reasonable times, such access to the Customer's premises as may be necessary for the performance of Unitec's services hereunder.

9. Recommendations/Advice

9.1 Where Unitec advises or makes a recommendation to the Customer regarding Hardware, Software or any other matter relating to the provision of Services whether in the format of the Quarterly Business IT Review, by email, verbally or in person the Customer is wholly responsible for acting on the recommendations or advice. Unitec will not be liable in any manner for a failure of the Customer to implement or act on recommendations or advice whether such action is complete in full or partially.

9.2 Where a Customer wishes to change the scope of a project or instruction to include granting access to any other party within the organisation of the Customer or any third-party Unitec will require this instruction in writing. The Customer makes such change at its own risk and Unitec will not be liable for any damage, security breach, Cyber-Attack, downtime, virus, loss, or any other negative impact experienced by the Customer as a result of the change of scope.

10. Exclusions

Unitec reserves the right to remove Equipment and parts of Equipment not covered by vendor/manufacture warranty or support. The Customer will be given 30 days' notice that Unitec intends to remove Equipment and part of Equipment not covered by vendor/manufacture warranty or support. Once removed, such Equipment or parts of such Equipment will not be covered under the terms of this Agreement.

- 10.1 If any part of the equipment noted in the Schedule of Equipment can no longer be maintained in good operating condition by the repair or replacement of components or if the equipment is damaged beyond economic repair otherwise than through the fault of Unitec, Unitec reserves the right to terminate this Agreement immediately, by giving written notice to the Customer, in respect of the whole or any part of the equipment which can no longer be maintained. In this event, Unitec shall repay to the client pro rata any charges for Unitec services which will not be provided, and which have been paid for in advance under the relevant Schedule of Equipment by the client.
- 10.2 Any Software no longer supported by its manufacturer will also be deemed out of support by Unitec.
- 10.3 Unitec will be held harmless in respect of any Cyber- Attack.

11. **Systems Access**

The Customer accepts that it is a fundamental condition that no third party or person in the Customer's organisation shall service or attempt to repair any defect or in any way interfere with the hardware except under the specific authorised instruction of a Unitec representative. Any such interference shall void any obligations Unitec has under this Agreement or under any SOW or SLA. Unitec representatives shall have full and free access to and usage of the equipment and to all documentation relating thereto, and to any machines, attachment, **devices**, or equipment, which in the opinion of Unitec is necessary to perform the services thereon.

12. **Charges, Terms of Payment, Suspension, Price Adjustment & Fair Usage**

Charges shall be invoiced by Unitec in accordance with the Payment Schedule set out in the relevant SOW or SLA. Charges shall be paid by the Customer within thirty days of receipt of invoices. All Hardware is billable at point of order. Point of order is issuing of a PO by customer to Unitec. All Hardware shall remain the sole and absolute property of Unitec until unconditional payment in full has been received by Unitec for the Hardware.

Payment of the Monthly Base Rate is due on the first day of each month during the term of this Agreement.

- 12.1 All sums payable to Unitec under this Agreement:
- (a) are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
 - (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 12.2 If the Customer fails to pay any amount by its applicable due date under this Agreement, Unitec shall be entitled (but not obliged) to:

- (a) charge the Customer interest on the overdue amount, from the due date up to the date of payment, at the rate of four per cent (4%) per annum above the EURIBOR monthly deposit rate as published by the European Central Bank for the time to time; and
 - (b) suspend the provision of Services and/or Deliverables under any SOW or SLA until payment has been made in full
 - (c) enter the Customer's premises in order to recover any hardware supplied by Unitec and not paid for by the customer/
- 12.3 Except where this Agreement provides otherwise, each party shall pay its own costs relating to the negotiation, preparation, execution, and implementation by it of this Agreement and of each document referred to in it.
- 12.4 From time to time, it may be necessary for Unitec to update its terms of business which will result in an update to the terms of this Agreement. The Customer will be notified of such changes in advance and the updates will be incorporated into this Agreement within 7 days unless stipulated otherwise in the notification. The Customer will be notified by email of the impending changes and receipt of the email will be deemed to be acceptance by the Customer of the update.
- 13. Malicious Damage**
- 13.1 The Customer is wholly responsible to ensure that adequate Cyber-Security Systems and that appropriate security policies are in place. The customer must ensure that the infrastructure is kept up to date.
- 13.2 Unitec will not be responsible for maintaining or keeping the Customer's Cyber-Security Software where it has been supplied by a third party.
- 13.3 Where the Customer is a victim of malicious damage to its system as a result of external interference, such as Software hacking, unauthorised access, or damage or data loss, as a result of an Cyber-Attack Unitec will offer support and assistance to the Customer. The costs associated with such support and assistance in dealing with virus/malware/spyware/breach or any other mode used to attack or gain unauthorised access will be chargeable in addition to any other services already in place.
- 14. Microsoft Office 365**
- (a) The Customer will at all times, including on termination of this Agreement, be wholly responsible for all obligations arising under any Microsoft Office 365 agreement in place to which the Customer is a party notwithstanding that Unitec may have created the Microsoft Office account on behalf of the Customer.
 - (b) Where Unitec creates a Microsoft Office 365 on behalf of a Customer the Customer shall indemnify and keep indemnified Unitec from and against all Claims and Losses arising from or incurred by reason of any infringement or alleged infringement of any Microsoft Office 365 Agreement by the Customer or by Unitec.
 - (c) Where this Agreement is terminated for any reason, the Customer will execute all

necessary paperwork and carry out any necessary action required by Microsoft to ensure the release of Unitec from any commitments, obligations or responsibilities that may arise under a Microsoft Office 365 Agreement

15. **Customer Obligations**

- 15.1 The Customer acknowledges that in agreeing to provide the Services, Unitec has relied upon the Customer to make full disclosure of all relevant information.
- 15.2 The Customer shall transmit promptly to Unitec any new relevant information that becomes available or any other information that may materially affect the Services
- 15.3 The Customer acknowledges that it is responsible for the training and supervision of its employees, agents or other authorised third party when using any Hardware or Software provided by Unitec and the Customer will ensure that all training is up to date to minimise the risk of a Cyber-Attack.

16. **Warranties And Representations**

- 16.1 Unitec warrants that, save in respect of Services and Deliverables that are supplied under a Third-Party Supplier Agreement, and unless otherwise set out in a SOW or SLA:
- (a) the Services shall be provided by appropriately experienced, qualified, and trained personnel and that the Services shall be provided with due skill, care, and diligence;
 - (b) Deliverables shall be performed in accordance with their Specification and shall be free from material defects in normal use for a period of ninety days from delivery; and
 - (c) Unitec shall use recognized industry standard virus scanners (updated with the then-most current virus signatures and data sets) to seek to ensure that any Software to be supplied under a SOW or SLA shall be free from Computer Viruses at the time of delivery. If any Software is found to have contained a Computer Virus at the time of delivery, Unitec shall provide all reasonable assistance to the Customer in reducing the effects of the Computer Virus including the effects of any loss of operational efficiency and/or loss of data. Unitec does not make any representations or warranties in respect of Software found to have contained a Computer Virus after the time of delivery.
- 16.2 Each party warrants that:
- (a) it has the power and authority to enter into this Agreement and perform its obligations hereunder; and
 - (b) it shall comply with all applicable Laws to that extent that such Laws affect the performance of its obligations under this Agreement.
- 16.3 The Customer warrants that it has adequate Cyber-Security controls in place and that such

controls are regularly reviewed and updated. The Customer further warrants that staff is fully trained in respect of the Customer's Cyber-Security controls and policies.

- 16.4 The Customer warrants that it has adequate back-up processes and systems in place and that its staff is fully trained on how to carry out backups of the Customer's systems safely and correctly.
- 16.5 The Customer shall give notice to Unitec as soon as practicable upon becoming aware of any breach of the warranty in clause 15.1(a) or 15.1(b), but in any event within 30 days of becoming aware of such breach. Unitec shall after receipt of notice of a breach of the warranty in clause 15.1(a) or 15.1(b) remedy same by re-performing the relevant Services or by the correction of any errors or Defects so as to ensure that the relevant Deliverable complies with the requirements of clause 15.1(a) or 15.1(b). This shall be the Customer's sole and exclusive remedy for breach of the warranties in clause 15.1(a) or 15.1(b).
- 16.6 The Customer warrants that it will ensure that all Hardware, Software, processes, and systems are of a reasonable quality and standard to maintain adequate backups and maintain the Customer's operations.
- 16.7 To the maximum extent permitted by Law and except for the express warranties in this Agreement, Unitec provides the Deliverables and Services on an "as-is" basis. Unitec disclaims and makes no other representation or warranty of any kind, express, implied, or statutory, including representations, guarantees or warranties of merchantability, satisfactory quality, fitness for a particular purpose, title, non-infringement, or accuracy.

17. **Limitation of Liability**

- 17.1 Save in respect of death or personal injury caused by the negligence of Unitec, breach of this Agreement by virtue of fraud or wilful default, or any other liability that cannot be limited or excluded by Law, Unitec's liability for any Claim whether in contract, tort (including negligence) or otherwise, for any Loss, arising out of or in connection with this Agreement or otherwise shall in no case exceed one hundred per cent (100%) of the sums paid by the Customer in the previous 12 months under the SOW or SLA to which the Claim relates.
- 17.2 In no event shall Unitec be liable for any damages or costs incurred because of loss of time, loss of savings, loss of data, loss of profits, loss of business, loss of or damage to goodwill, or any special, incidental, indirect or consequential damages.
- 17.3 In no event shall Unitec be liable for any damage resulting from general environment condition, accident, or disaster (including fire, earthquake and water damage, failure of electrical power related incidents or failure due of air conditioning or humidity control).
- 17.4 In no event will Unitec be liable for end-user or client's neglect, misuse, or abuse of system.
- 17.5 In no event shall Unitec be liable for any damage or loss suffered by the Customer as a result of a Cyber-Attack.
- 17.6 The Customer agrees that it will not bring any Claim against Unitec after one year from the earlier of the date the Customer (a) became aware of the event or circumstances giving rise

to the Claim, or (b) should, with reasonable diligence, have been so aware.

- 17.7 In no event shall Unitec be liable for any backup failure whether as a result of a corrupted file and or otherwise.
- 17.8 The Customer indemnifies Unitec for any Loss incurred as a result of the Customer failing to implement any backup processes or changes recommended or suggested by Unitec whether such recommendation or suggestion is made directly to the Customer or set out in a report addressed to the Customer. The Customer will further indemnify Unitec for any Loss incurred as a result of a backup error where Unitec identified an error or risk of an error in any report submitted to the Customer.
- 17.9 Unitec will not be held liable for any damages or costs incurred due to a failure to identify an error with a backup.
- 17.10 The Customer indemnifies Unitec in respect of any loss, damage, claim, or liability incurred by the Customer or any third party arising (directly or indirectly) from the Customer's failure to maintain sufficient Cyber-Security controls such controls to include adequate training of the Customer's staff, representatives, and agents.

18. **Intellectual Property Rights**

- 18.1 All Intellectual Property Rights and all other rights in the Services and Deliverables shall be owned by Unitec or its licensors. Unitec hereby grants a limited, non-exclusive, non-transferable licence to the Customer to enable the Customer to make reasonable use of the Deliverables and the Services provided under each SOW or SLA, subject to any limitations setout in the relevant SOW or SLA and any Licensor Terms and Conditions.
- 18.2 Unitec shall indemnify and keep indemnified the Customer from and against any and all Claims and Losses arising from or incurred by reason of any infringement or alleged infringement of any third-party Intellectual Property Rights in consequence of the authorised use or possession of the Deliverables, or the supply of the Services (or any part thereof) by Unitec under this Agreement, subject to the following:
- (a) the Customer shall promptly notify Unitec in writing of any alleged infringement of which it has notice;
 - (b) the Customer must make no admissions without Unitec's prior written consent;
 - (c) the Customer, at Unitec's request and expense, shall allow Unitec to conduct any negotiations or litigation and/or settle any Claim. The Customer shall give Unitec all reasonable assistance. The costs incurred or recovered in such negotiations or settled Claim shall be for Unitec's account; and
 - (d) Unitec shall not indemnify the Customer for Claims and Losses that arise from the act, omission or negligence of a Third-Party Supplier or the Customer's use or possession of the Deliverables and Services otherwise than in accordance with this Agreement.
- 18.3 If at any time an allegation of infringement of Intellectual Property Rights is made in respect

of the Deliverables and/or the Services (or any part thereof) or, if in Unitec's reasonable opinion such an allegation is likely to be made, Unitec may at its own expense modify or replace the Deliverables and/or the Services (or any part thereof) so as to avoid the infringement, without detracting from overall performance, Unitec making good to the Customer any loss of use during modification or replacement.

- 18.4 The indemnity in clause 17.2 shall not extend to Deliverables or Services which are procured by Unitec on behalf of the Customer, and which are supplied to the Customer pursuant to a Third-Party Supplier Agreement.

19. Termination

- 19.1 A party (the "**Initiating Party**") may terminate this Agreement and/or any SOW or SLA with immediate effect by written notice to the other party (the "**Defaulting Party**") on or at any time after the occurrence of one or more of the events specified in clause 18.2 in relation to the Defaulting Party.

- 19.2 Each of the following shall be an Event of Default:

- (a) **Default**
The Defaulting Party being in material breach of this Agreement or any SOW or SLA and, if the material breach is capable of remedy, failing to remedy the breach within thirty days starting on the day after receipt of written notice from the Initiating Party giving full details of the breach and requiring the Defaulting Party to remedy the breach; or
- (b) **Insolvency**
 - (i) a petition is presented, or an order is made, or a resolution is passed for the winding-up of the Defaulting Party (unless such order or resolution is part of voluntary scheme for the reconstruction or amalgamation of the party as a solvent corporation and the resulting corporation, person, undertakes to be bound by this Agreement); or
 - (ii) any action is taken by its officers or any other person for the winding-up, dissolution or striking off of the Defaulting Party; or
 - (iii) the Defaulting Party becomes insolvent or is unable to pay its debts as they fall due, or the Defaulting Party stops or threatens to stop making payments generally or declares or threatens to declare a moratorium with respect to all or any part of its debts or enters into any composition or other arrangement with its creditors generally; or
 - (iv) any action is taken by any person to appoint a receiver, administrator, administrative receiver, examiner, trustee, or similar officer of the Defaulting Party or any property or assets of the Defaulting Party or any such receiver, administrator, administrative receiver, examiner, trustee, or similar officer is appointed; or

- (v) anything analogous to any of the foregoing events occurs in any applicable jurisdiction; or

In the event of insolvency all data including, without limitation, Confidential Information, and personal data (as defined in the Data Protection Acts) provided by the Customer to Unitec and hosted or processed by Unitec on behalf of the Customer ("Customer Data") shall at all times vest in and be the absolute property of the Customer. The Customer shall be entitled on expiry or termination of this Agreement, to the return of all or any of the Customer Data on written request to Unitec, subject to the Customer paying all reasonable fees in connection with the return of the Customer Data.

- (c) Cessation of Business

The Defaulting Party ceases or threatens to cease to carry on business.

19.3 Consequences of Termination of a SOW or SLA

- (a) Termination of any SOW or SLA shall not affect any other SOW or SLA or this Agreement.
- (b) Each party's further rights and obligations under a SOW or SLA cease immediately on termination of the SOW or SLA, but termination of a SOW or SLA shall not prejudice any rights of either party which may have arisen on or before the date of termination or any provisions which expressly or by implication have effect after termination.
- (c) Upon the termination of a SOW or SLA, if the Customer has paid any Charges in advance, those Charges shall be non-refundable in all circumstances.

19.4 Consequences of Termination of this Agreement

Each party's further rights and obligations under this Agreement cease immediately on termination of this Agreement, but termination of this Agreement shall not prejudice:

- (a) any rights of either party which may have arisen on or before the date of termination or any provisions which expressly or by implication have effect after termination; or
- (b) any SOW or SLA then in force at the date of such termination, which shall continue in full force and effect for the remainder of the term of such SOW or SLA, unless earlier terminated in accordance with the terms of this Agreement.
- (c) All outstanding invoices, outlays and fees without deduction shall become immediately payable to Unitec.

19.5 Early Termination Fee

- (a) The Customer accepts that where this Agreement is terminated early by the Customer that an early termination fee will be payable.
- (b) The early termination fee will equate to three months of the fee chargeable under

this Agreement and must be paid in advance of Unitec releasing the Customer from this Agreement.

20. Transfer of Undertakings

- 20.1 It is not anticipated by the parties that the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (as amended) (the “**Regulations**”) will apply on the commencement of any SOW or SLA such that employees currently providing the Services or part of the Services will transfer to Unitec. If, notwithstanding such obligation, the Regulations apply to transfer the employment of any person employed by the Customer (or its previous service providers) to Unitec (“the **Transferring Employees**”), then the Customer shall indemnify and keep indemnified Unitec against all Liabilities which Unitec may suffer or incur arising out of or in connection with the deemed transfer of Transferring Employees under the Regulations, including, if applicable, the termination of the Transferring Employees’ employment by Unitec following the transfer or the termination of the employment of another employee of Unitec where Unitec is required by law to terminate the employment of the other employee instead.
- 20.2 It is not anticipated by the parties that the Regulations shall apply on termination of any SOW or SLA.
- 20.3 For the purposes of clause 15.1 “**Liabilities**” means costs (including the cost of wages, salaries and other remuneration or benefits), expenses, taxation, PRSI payments, health contributions, levies, losses, claims, damages, demands, actions, fines, penalties, awards, liabilities, and expenses (including legal expenses on an indemnity basis), in each case howsoever arising.

21. Data Protection

- 21.1 The parties acknowledge that in providing the services under a SOW or SLA, Unitec may process personal data within the meaning set out in Data Protection Law on behalf of the Customer. In such circumstances, the SOW or SLA shall record that personal data will be processed by Unitec in relation to the provision of the Services and the parties agree that:
- (a) Unitec will only process such personal data in accordance with the documented instructions of the Customer, including with regard to transfers of personal data to a third country and solely as strictly necessary for the performance of its obligations under this Agreement and the relevant SOW or SLA;
 - (b) Unitec shall ensure that the persons authorised by Unitec to process such personal data are bound by appropriate confidentiality obligations;
 - (c) Unitec shall implement such technical and organisational security measures as are required to comply with the data security obligations under Data Protection Law;
 - (d) Unitec shall be authorised to engage sub-processors without the prior written consent of the Customer, and shall make the details of such sub-processors available to the Customer on request together with details of any amendments or additions;

- (e) where any sub-processor of Unitec will be processing such personal data on behalf of the Customer, Unitec shall ensure that a written contract exists between Unitec and the sub-processor containing clauses that comply with the requirements set out under Data Protection Law. In the event that any sub-processor fails to meet its data protection obligations, Unitec shall remain fully liable to the Customer for the performance of the sub-processor's obligations;
- (f) Unitec shall inform the Customer without undue delay in the event of receiving a request from a data subject to exercise their rights under Data Protection Law and provide such co-operation and assistance as may be required to enable the Customer to deal with such request in accordance with the provisions of Data Protection Law;
- (g) Unitec shall assist the Customer by implementing appropriate technical and organisational measures to allow the Customer to comply with requests from data subjects to exercise their rights under Data Protection Law;
- (h) Unitec shall assist the Customer in ensuring compliance with the Customer's obligations in respect of security of personal data, data protection impact assessments and prior consultation requirements under Data Protection Law;
- (i) when Unitec ceases to provide services relating to data processing, Unitec shall: (i) at the choice of the Customer, delete or return all such personal data to the Customer; and (ii) delete all existing copies of such personal data unless EU law or the laws of an EU Member State require storage of the personal data;
- (j) Unitec shall: (i) make available to the Customer all information necessary to demonstrate compliance with the obligations laid down in this clause 16.1; and (ii) allow for and assist with audits, including inspections, conducted by the Customer or another auditor mandated by the Customer, in order to ensure compliance with the obligations laid down in this clause 16.1, including its data security obligations under Data Protection Law, provided however that the Customer shall be entitled, at its discretion, to accept adherence by Unitec to an approved code of conduct or an approved certification mechanism to aid demonstration by Unitec that it is compliant with the provisions of this clause 16.1;
- (k) Unitec shall inform the Customer without undue delay if, in its opinion, it receives an instruction from the Customer which infringes Data Protection Law;
- (l) Unitec shall notify the Customer without undue delay after becoming aware of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored, or otherwise processed and provide the Customer with such co-operation and assistance as may be required to mitigate against the effects of, and comply with any reporting obligations which may apply in respect of, any such breach; and
- (m) no such personal data shall be transferred outside of the European Economic Area by the Customer or any of its agents or sub-processors without the prior written

consent of the Customer, which consent may be subject to terms and conditions (including, without limitation, that the data importer enters into model clauses in the form approved by the European Commission and, where relevant, complies with the provisions regarding sub-processors contained in such model contracts in respect of any sub-processors). Unitec shall comply with the requirements of Data Protection Law in respect of transfers of such personal data outside of the European Economic Area, to the extent that the Customer consents to any such transfer.

22. Confidentiality

- 22.1 In this Clause 21 “**Confidential Information**” means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly and whether specifically designated as ‘confidential’ or which ought reasonably be regarded as confidential) under or in connection with this Agreement by one party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) whether before, on or after the Effective Date including, without limitation, information relating to the Disclosing Party’s products, services, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs.
- 22.2 During the term of this Agreement and after termination or expiration of this Agreement for any reason the Receiving Party:
- (a) will not use Confidential Information of the Disclosing Party for a purpose other than the performance of its obligations or exercise or enforcement of its rights under this Agreement;
 - (b) will not disclose Confidential Information of the Disclosing Party to a person except with the prior written consent of the Disclosing Party other than in accordance with clauses 21.3 and 21.4 and
 - (c) shall make every effort to prevent the unauthorised use or disclosure of Confidential Information.
- 22.3 The Receiving Party may disclose Confidential Information of the Disclosing Party to any of its directors, officers, employees, or advisers (a “**Recipient**”) to the extent that disclosure is reasonably necessary for the purposes of this Agreement. The Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party’s obligations of confidentiality under this Agreement.
- 22.4 The obligations in this clause shall not apply to the extent that:
- (a) the disclosure of Confidential Information is required by the law of any relevant jurisdiction or pursuant to an order of a court of competent jurisdiction;
 - (b) the information is disclosed on a strictly confidential basis to the professional advisers, auditors, and bankers of that party;
 - (c) the information has come into the public domain through no fault of that party;

- (d) the information was in the possession of the Receiving Party before such disclosure by the Disclosing Party, as aforesaid;
- (e) the information was obtained by the Receiving Party from a third party who was free to divulge the same; or
- (f) the Disclosing Party has given prior written approval to the Receiving Party in respect of the disclosure, such approval not to be unreasonably withheld or delayed.

22.5 The obligations of both parties as to disclosure and confidentiality shall continue in force for a period of three years following the termination of this Agreement.

23. Force Majeure

23.1 If a party (the “**Affected Party**”) is prevented, hindered, or delayed from or in performing any of its obligations under this Agreement (other than in respect of payment of the Charges) by a Force Majeure Event and such non-performance, hindrance or delay could not have been prevented by reasonable measures:

- (a) the Affected Party’s obligations under this Agreement are suspended while the Force Majeure Event continues and such Affected Party continues to use reasonable endeavours to recommence performance and to the extent that it is nonetheless prevented, hindered, or delayed;
- (b) as soon as reasonably possible after the start of the Force Majeure Event the Affected Party shall notify the other party (the “**Other Party**”) in writing of the Force Majeure Event, the date on which the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement;
- (c) if the Affected Party does not comply with clause 22.1(b) it shall forfeit its rights under clause 2.1(a);
- (d) the Affected Party shall make commercially reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement; and
- (e) as soon as reasonably possible after the end of the Force Majeure Event the Affected Party shall notify the Other Party in writing that the Force Majeure Event has ended and resume performance of its obligations under this Agreement.

23.2 If the Force Majeure Event continues for more than thirty days starting on the day the Force Majeure Event starts, a party may terminate this Agreement by giving not less than seven days’ written notice to the Other Party after the expiry of the said thirty day period, provided that such notice shall be deemed not to have been given in the event that notice of cessation of the Force Majeure given pursuant to clause 22.1(e) is received by the Other Party prior to the expiry of the seven days’ notice.

23.3 In this clause 22 “**Force Majeure Event**” means an event beyond the reasonable control of

the Affected Party including, without limitation, strike, lock-out, labour dispute, act of God, war, riot, civil commotion, act of terrorism, military operations, malicious damage, compliance with Law, restrictions due to the spread or possible spread of disease among humans or animals, accident, breakdown of plant or machinery, fire, flood.

24. **Non-Solicitation**

24.1 During the term of this Agreement and for a period of twenty-four months thereafter the Customer shall not on its own behalf or on behalf of any person directly or indirectly entice or endeavour to entice away from Unitec or any company in its group, any employee who was at any time during the term of this Agreement directly involved in the supply of the Services.

24.2 In the event of any breach of clause 23.1 by the Customer, the Customer shall promptly pay to Unitec as liquidated damages a sum equal to one hundred per cent (100%) of the annual compensation payable by Customer to the person so hired.

25. **Assignment and Sub-Contracting**

25.1 The Customer shall not be entitled to assign, transfer, or novate this Agreement or any SOW or SLA or any rights or obligations under this Agreement or any SOW or SLA without the prior written consent of Unitec.

25.2 Unitec may assign, transfer, charge, sub-contract, or deal in any other manner with all or any of its rights or obligations under this Agreement at its discretion.

26. **Dispute Resolution**

26.1 Any dispute arising out of or in connection with this Agreement shall be referred at first instance to the Customer Representative and Unitec Representative who shall endeavour in good faith to resolve the dispute.

26.2 In the event that the dispute cannot be resolved by such persons within five Business Days of referral of the dispute to them, the matter will then be referred to a senior representative of the Customer and a senior representative of Unitec who will also endeavour in good faith to resolve the dispute.

26.3 Nothing in this Agreement shall prevent either party from seeking injunctive or other relief in a court of law to protect or enforce its legal rights.

26.4 Each party shall continue to perform its obligations under this Agreement notwithstanding any dispute or the implementation of the procedures set out in this clause 25.

27. **Publicity**

27.1 Unitec may make public references to the Customer being a client, including on its website, and may refer to the Customer as a client in its advertising literature, presentations, and tender documents.

28. Notices

- 28.1 Notices or other communications given pursuant to this Agreement shall be in writing and shall be sufficiently given:
- (a) if delivered by hand or sent by post to the address and for the attention of the person set forth in this clause of the party to which the notice or communication is being given or to such other address and for the attention of such other person as such party shall communicate to the party giving the notice or communication; or
 - (b) if sent by email to the correct email address of the party to which it is being sent.
- 28.2 Any notice, or communication, given or sent by post under this clause, shall be sent by ordinary post and each person giving a notice or communication by email in accordance with this clause shall promptly post the original copy to the person to whom the notice or communication was given but the absence of such posting shall not affect the validity of the notice or communication.
- 28.3 Any notice, or communication, given or sent by post under this clause, shall be sent by registered post and every notice or communication given in accordance with this clause shall be deemed to have been received as follows:

Means of Dispatch	Deemed Received
Delivery by hand:	the day of delivery;
Post:	three Business Days after posting; and
Email	twenty-four hours after the email leaves the sender's email server

Provided that if, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside working hours (being 9 a.m. to 5 p.m. on a Business Day) such notice, or other communication shall be deemed to be given or made at the start of working hours on the next Business Day.

- 28.4 The relevant addressee, address, and email Address of each party for the purposes of this Agreement, subject to clause 27.5 are as documented in Service Level Agreement
- 28.5 Each party shall notify the other of a change to its name, relevant addressee, address, or email address for the purposes of clause 27.4. Such notification shall only be effective on:
- (a) the date specified in the notification as the date on which the change is to take place; or
 - (b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date falling five Business Days after notice of any

such change has been given.

29. General

- 29.1 This Agreement, and any documents referred to in it, constitute the entire agreement between the parties with respect to their subject matter, supersede any previous drafts, arrangements, understandings, or agreements between them relating to the subject matter they cover and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on and shall have no remedies in respect of, any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.
- 29.2 A variation of this Agreement is valid only if it is in writing and signed by or on behalf of each party.
- 29.3 Except where this Agreement provides otherwise the rights and remedies contained in this Agreement are cumulative and not exclusive of rights or remedies provided by law.
- 29.4 A failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of that right or remedy or the exercise of another right or remedy.
- 29.5 Any liability to any party under the provisions of this Agreement may in whole or in part be released, varied, compounded, or compromised by such party in its absolute discretion as regards any party under such liability without in any way prejudicing or affecting its rights against any other party under the same or a like liability whether joint and several or otherwise.
- 29.6 This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when executed and delivered, shall constitute but one and the same instrument.
- 29.7 Nothing in this Agreement shall create or be deemed to create a partnership or the relationship of principal and agent or employer and employee between the parties hereto.
- 29.8 If at any time any provision of this Agreement (or any part of a provision of this Agreement) is or becomes illegal, invalid, or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair:
- (a) the legality, validity, or enforceability in that jurisdiction of any other provision of this Agreement (including the remainder of a provision, where part thereof has become illegal, invalid, or unenforceable); or
 - (b) the legality, validity, or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

30. **Governing Law**

- 30.1 This Agreement shall be governed by and construed in accordance with the laws of Ireland and, subject to clause 25, the parties hereto submit to the exclusive jurisdiction of the Irish Courts for the resolution of disputes arising in respect of or in connection with this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Variation Agreement on the date first written above.**IN WITNESS WHEREOF** the parties hereto have executed this Agreement on the date written above – As per signed Service Level Agreement.