

Published this 12th day of December at:



Unitec IT Solutions Limited

Software as a Service (SaaS) Agreement

Contents

1	Definitions and interpretation	3
2	Authorised Users.....	3
3	Indemnity	4
4	Changes to services and terms	4
5	Fees	4
6	Warranties	5
7	Customer's responsibilities	6
8	Limitation of liability	6
9	Suspension	7
10	Renewals	8
11	Term and termination	8
12	Consequences of termination	8
13	Entire agreement.....	8
14	Notices	9
15	Variation	10
16	Assignment and subcontracting.....	10
17	Set off.....	10
18	No partnership or agency.....	10
19	Severance	10
20	Waiver	11
21	Costs and expenses.....	11
22	Authority	11
23	Governing law	11
	The Schedule Definitions and interpretation.....	12

1 Definitions and interpretation

- 1.1 The definitions and rules of interpretation set out in the schedule shall apply to our Agreement.
- 1.2 In our Agreement each Order Form entered into by the Customer shall form a separate agreement, incorporating these Master SaaS Terms together with the Addendums, the Subscribed Service Specific Terms for the respective Subscribed Services & Unitec's Maintenance Service Level Agreement and the Policies (our **Agreement**);
- 1.3 Any obligation of the Supplier under our Agreement to comply or ensure compliance by any person or the Services with any law shall be limited to compliance only with laws within Ireland as generally applicable to businesses and to providers of software as a service solutions. Such obligations shall not be construed to create any obligation on the Supplier (or anyone acting on its behalf) or any part of the Services to comply with any laws or regulations which apply solely to specific commercial or other activities (such as insurance, legal advice or banking or other professional services) or which apply solely to a specific commercial or non-commercial sector (or part thereof) (such as the public, legal, accountancy, actuarial, insurance, banking or financial service sectors).

2 Authorised Users

- 2.1 The Customer shall ensure that only Authorised Users use the Subscribed Services and that such use is at all times in accordance with our Agreement. The Customer shall ensure that Authorised Users are, at all times while they have access to the Subscribed Services, the employees or contractors of the Customer or the Authorised Affiliates.
- 2.2 The Customer shall keep a list of all Authorised Users and shall notify the Supplier within Seven Business Days if any updates to any list of Authorised Users are made or required, including when Authorised Users cease to be employed or engaged by a relevant entity such that they are no longer entitled to be Authorised Users. Where termination of such relationship is known in advance, the Supplier shall provide such information as soon as reasonably possible prior to such termination of that relationship, together with the date such person shall cease to be an Authorised User.
- 2.3 The Customer accepts that if it no longer requires the Subscribed Services for an Authorised User that the Customer will continue to be responsible for the cost of the Subscribed Services for such an Authorised User for the particular Service Period. The Customer accepts that it is solely responsible for ensuring that Subscribed Services are not carried forward for such an Authorised User into the next Service Period.
- 2.4 The Customer shall ensure that the number of Authorised Users for each Subscribed Service do not exceed the number of Purchased Authorised Users Accounts/Licences for the relevant Subscribed Service at any time.

3 Indemnity

- 3.1 The Customer shall indemnify, keep indemnified and hold harmless the Supplier (on the Supplier's own behalf on behalf of each of the Supplier's Affiliates) from and against any losses, claims, damages, liability, Data Protection Losses, costs (including legal and other professional fees) and expenses incurred by it (or any of its Affiliates) as a result of the Customer's breach of our Agreement.
- 3.2 This clause 3 shall survive termination or expiry of our Agreement.

4 Changes to services and terms

- 4.1 The Supplier may at its absolute discretion make, and notify the Customer of, updated versions of the documents referred to in any part of our Agreement from time to time by notifying the Customer of such update by e-mail (**Update Notification**).
- 4.2 The document(s) subject to such Update Notification shall replace the preceding version of the same document(s) for the purposes of our Agreement from the date 10 Business Days' after Update Notification of such revised document(s) (the **Update**) (or at such later date as the Supplier may specify).

5 Fees

- 5.1 The Subscription Fee and any other charges (including expenses) expressly agreed between the parties in writing shall be paid by the Customer at the rates and in the manner described in the Pricing Terms.

- 5.2 The Supplier shall invoice the Customer:

5.2.1 [monthly in advance] for all Subscription Fees

due under our Agreement, and the invoices shall be paid within [30] calendar days of the date on the invoice unless otherwise agreed in writing.

- 5.3 The Fees are exclusive of VAT which shall be payable by the Customer at the rate and in the manner prescribed by law.
- 5.4 Fees payable to the Supplier under our Agreement shall be paid into the Supplier's bank account [by [BACS OR CHAPS OR *[other method]*] electronic funds transfer] unless otherwise notified by the Supplier to the Customer in writing in accordance with our Agreement.
- 5.5 The Supplier shall have the right to charge interest on overdue invoices at the rate of **4%** per year above the base rate of the ECB as published by the Central Bank of Ireland calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgment.

- 5.6 To the extent our Agreement terminates or expires the Customer shall not be entitled to any refund or discount of Fees paid for any parts of any month during which the Services cease to be provided.

6 Warranties

- 6.1 Subject to the remainder of this clause 6, the Supplier warrants that it shall provide each of the Services with reasonable care and skill.
- 6.2 The Services may be subject to delays, interruptions, errors or other problems resulting from use of the internet or public electronic communications networks used by the parties or third parties. The Customer acknowledges that such risks are inherent in cloud services and that the Supplier shall have no liability for any such delays, interruptions, errors or other problems.
- 6.3 If there is a breach of any warranty in clause 6.1 the Supplier shall at its option: use reasonable endeavours to repair or replace the impacted Services within a reasonable time or (whether or not it has first attempted to repair or replace the impacted Service) refund the Fees for the impacted Services which were otherwise payable for the period during which the Supplier was in breach of any such warranty (provided such period is at least *[insert]* consecutive days). To the maximum extent permitted by law, this clause 8.4 sets out the Customer's sole and exclusive remedy (however arising, whether in contract, negligence or otherwise) for any breach of any of the warranties in clause 6.1
- 6.4 The warranties in clause 6.1 are subject to the limitations set out in clause 8 and shall not apply to the extent that any error in the Services arises as a result of:
- 6.4.1 incorrect operation or use of the Services by the Customer or any Authorised User (including any failure to follow the Documentation or failure to meet minimum specifications);
 - 6.4.2 use of any of the Services other than for the purposes for which it is intended;
 - 6.4.3 use of any Services with other software or services or on equipment with which it is incompatible (unless the Supplier recommended or required the use of that other software or service or equipment in the *[User Manual or Description]*);
 - 6.4.4 any act by any third party (including hacking or the introduction of any virus or malicious code);
 - 6.4.5 any modification of Services (other than that undertaken by the Supplier or at its direction); or
 - 6.4.6 any breach of our Agreement by the Customer (or by any Authorised Affiliate or Authorised User).

7 Customer's responsibilities

- 7.1 The Customer shall (and shall ensure all Authorised Users shall) at all times comply with all applicable laws relating to the use or receipt of the Services, including laws relating to privacy, data protection and use of systems and communications.

8 Limitation of liability

- 8.1 The extent of the Supplier's liability under or in connection with our Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation or under any indemnity) shall be as set out in this clause 8.

- 8.2 Subject to clauses 8.2, 8.3 and 8.6 the Supplier's aggregate liability in respect of each individual Subscribed Service (and all Support Services provided in connection with the same) (howsoever arising under or in connection with our Agreement) shall not exceed the greater of:

8.2.1 an amount equal to the Subscription Fees for the relevant Subscribed Service paid to the Supplier by the Customer in the 12-month period immediately preceding the first incident giving rise to any claim under our Agreement; or

8.2.2 an amount equal to [12] times the Subscription Fees for the relevant Subscribed Service due or paid to the Supplier for the first month of the relevant Subscribed Service Period.

- 8.3 Subject to clause 8.6, the Supplier's total aggregate liability howsoever arising under or in connection with our Agreement shall not exceed the greater of:

8.3.1 an amount equal to the Fees for all Services paid to the Supplier in the 12-month period immediately preceding the first incident giving rise to any claim under our Agreement; or

8.3.2 an amount equal to [12] times the Fees due or paid to the Supplier for the Services provided in the first month of the Service Period.

- 8.4 Subject to clause 8.6, the Supplier shall not be liable for consequential, indirect or special losses.

- 8.5 Subject to clause 8.6, the Supplier shall not be liable for any of the following (whether direct or indirect):

8.5.1 loss of profit;

8.5.2 destruction, loss of use or corruption of data;

8.5.3 loss or corruption of software or systems;

8.5.4 loss or damage to equipment;

- 8.5.5 loss of use;
 - 8.5.6 loss of production;
 - 8.5.7 loss of contract;
 - 8.5.8 loss of commercial opportunity;
 - 8.5.9 loss of savings, discount or rebate (whether actual or anticipated); and/or
 - 8.5.10 harm to reputation or loss of goodwill
- 8.6 Notwithstanding any other provision of this Agreement, the Supplier's liability shall not be limited in any way in respect of the following:
- 8.6.1 death or personal injury caused by negligence;
 - 8.6.2 fraud or fraudulent misrepresentation; or
 - 8.6.3 any other losses which cannot be excluded or limited by applicable law.
- 8.7 This clause 8 shall survive the termination or expiry of our Agreement.

9 Suspension

- 9.1 The Supplier may suspend access to the Services (or any part) to all or some of the Authorised Users if:
- 9.1.1 the Supplier suspects that there has been any misuse of the Services or breach of our Agreement;
 - 9.1.2 the Customer fails to pay any sums due to the Supplier by the due date for payment; or
 - 9.1.3 required by law, by court or governmental or regulatory order.
- 9.2 Where the reason for the suspension is suspected misuse of the Services or breach of our Agreement, without prejudice to its rights under clause 11, the Supplier will take steps to investigate the issue and may restore or continue to suspend access at its discretion.
- 9.3 In relation to suspensions under clause 9.1.2, access to the Services will be restored promptly after the Supplier receives payment in full and cleared funds.
- 9.4 Fees shall remain payable during any period of suspension notwithstanding that the Customer, Authorised Affiliates or some or all of the Authorised Users may not have access to the Services.

10 Renewals

- 10.1 On expiry of the Subscribed Service Period indicated in the Order Form for each Subscribed Service the Subscribed Service Period shall continue and automatically renew for a further period of twelve months (**first Renewal Date**) and thereafter renew for a further period of twelve months on each anniversary of the first Renewal Date (each of the first Renewal Date and each such anniversary being a **Renewal Date**).
- 10.2 If either party wishes for the Subscribed Service Period to expire on the next Renewal Date, it may cause the Subscribed Service to expire on that Renewal Date by notice provided such notice is served at least [45] days prior to that Renewal Date. If notice is not served within the timeframes set out in this clause 10.2, the Subscribed Service shall renew at the next Renewal Date in accordance with clause 10.1.
- 10.3 Where the Customer increases the number of Authorised Users during a Renewal Period the Subscribed Services for all Authorised Users will automatically renew on the Renewal Date notwithstanding that some of the Authorised Users may only have been added during a Service Period.

11 Term and termination

- 11.1 Our Agreement shall come into force on Order Acceptance and, unless terminated earlier in accordance with its terms, shall continue for the duration of the Service Period after which it shall automatically renew on each Renewal Date.
- 11.2 Either party may terminate our Agreement or the provision of any of the Subscribed Services for convenience on not less than [45] days' prior written notice to the other in advance of the Renewal Date.
- 11.3 The Supplier may terminate our Agreement immediately at any time by giving notice in writing to the other party if the Customer has failed to pay any amount due under our Agreement on the due date and such amount remains unpaid within [20] Business Days after the Customer has received notification that the payment is overdue.

12 Consequences of termination

- 12.1 Immediately on termination or expiry of our Agreement (for any reason), the rights granted by the Supplier under our Agreement shall terminate and the Customer shall and shall procure that each Authorised User shall stop using the Services;
- 12.2 Termination or expiry of our Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiry and shall not affect any provision of our Agreement that is expressly or by implication intended to continue beyond termination.

13 Entire agreement

- 13.1 Our Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, understandings and arrangements between them in respect of its

subject matter, whether in writing or oral other than Unitec's Maintenance Service Level Agreement and any updates or alterations thereto.

13.2 Each party acknowledges that it has not entered into our Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in our Agreement.

13.3 Nothing in our Agreement shall limit or exclude any liability for fraud.

14 Notices

14.1 Any notice [or other communication] given by a party under our Agreement shall be:

14.1.1 in writing and in English;

14.1.2 signed by, or on behalf of, the party giving it (except for notices sent by email); and

14.1.3 sent to the relevant party at the address set out in clause 23.3.

14.2 Notices may be given, and are deemed received:

14.2.1 by hand: on receipt of a signature at the time of delivery;

14.2.2 by An Post Registered post: at 9.00 am on the [second] Business Day after posting;

14.2.3 [by email: on receipt of a [delivery OR read receipt] email from the correct address].

14.3 Notices [and other communications] shall be sent to:

14.3.1 in the case of those to the Supplier, to [*insert name of the Supplier*] [for the attention of [*insert name and/or position*]] at:

[*insert address*]

[[*insert email address*]]; and

[copied to [*insert name*] at [*insert address*]; and]

14.3.2 in the case of those to the Customer, to any email or physical address or contact details notified on the Order Form (as updated from time to time pursuant to clause 23.4).

14.4 Any change to the contact details of a party as set out in clause 14.3 shall be notified to the other party in accordance with clause 14.1 and shall be effective:

14.4.1 on the date specified in the notice as being the date of such change; or

14.4.2 if no date is so specified, [five] Business Days after the notice is deemed to be received.

14.5 This clause does not apply to notices given in legal proceedings or arbitration.

15 Variation

15.1 No variation of our Agreement shall be valid or effective unless it is:

15.1.1 an Update made in accordance with our Agreement; or

15.1.2 made in writing, refers to our Agreement and is duly signed or executed by, or on behalf of, each party.

16 Assignment and subcontracting

16.1 Except as expressly provided in our Agreement, the Supplier may at any time assign, sub-contract, sub-licence (including by multi-tier), transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under our Agreement.

16.2 Except as expressly permitted by our Agreement, the Customer shall not assign, transfer, sub-contract, sub-licence, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under our Agreement (including the licence rights granted), in whole or in part, without the Supplier's prior written consent.

17 Set off

Each party shall pay all sums that it owes to the other party under our Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

18 No partnership or agency

The parties are independent and are not partners or principal and agent and our Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither party shall have, nor shall represent that it has, any authority to make any commitments on the other party's behalf.

19 Severance

19.1 If any provision of our Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of our Agreement shall not be affected.

19.2 If any provision of our Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

20 Waiver

- 20.1 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under our Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 20.2 No single or partial exercise of any right, power or remedy provided by law or under our Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.
- 20.3 A waiver of any term, provision, condition or breach of our Agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.

21 Costs and expenses

Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of our Agreement (and any documents referred to in it).

22 Authority

Each party represents and warrants to the other that it has the right, power and authority to enter into our Agreement and grant to the other the rights (if any) contemplated in our Agreement and to perform its obligations under our Agreement.

23 Governing law

Our Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of Ireland.

THE SCHEDULE
DEFINITIONS AND INTERPRETATION

1 In our Agreement:

Addendums

means each of the following:

- (a) the addendum identifying certain respective rights and obligations of the parties' in respect of personal data and privacy under our Agreement (as Updated from time to time), which as at Order Acceptance is the latest version available at [Insert URL] (the Data Protection Addendum); and
- (b) the addendum identifying certain of the parties' respective rights and obligations in respect of security under our Agreement (as Updated from time to time), which as at Order Acceptance is the latest version available at [Insert URL] (the Information Security Addendum);

Authorised Affiliates

means, in respect of the relevant Subscribed Service, the Affiliates of the Customer (if any) identified in the Order Form as Authorised Affiliates in respect of that Subscribed Service;

Authorised Users

means, in respect of the relevant Subscribed Service, the named users authorised by the Customer to use that Subscribed Service in accordance with the terms of our Agreement;

Business Day

means a day other than a Saturday, Sunday or bank or public holiday in Ireland;

Customer

has the meaning given in the relevant Order Form;

Documentation

means:

- (a) the description of the relevant Subscribed Service (as Updated from time to time), which as at Order Acceptance is the latest version available at [Insert URL] (the Description);

	(b) in respect of each Subscribed Service, the relevant instructions as to how to use that part of the Services made available by the Supplier at [Insert URL] (as Updated from time to time) (the User Manual);
Fees	means the Subscription Fees together with any other amounts payable to the Supplier under our Agreement;
Force Majeure	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under our Agreement (provided that an inability to pay is not Force Majeure), including any matters relating to transfer of data over public communications networks and any delays or problems associated with any such networks or with the internet;
Order Acceptance	means the effective date of the relevant Order Form;
Order Form	means the electric or physical form (including its schedules, annexes and appendices (if any)) ordering the Subscribed Services entered into by or on behalf of the Customer and Supplier, incorporating these Master SaaS Terms and our Agreement (and as varied by the parties by agreement in writing from time to time);
Permitted Purpose	means use solely for the Customer's internal business operations and, in respect of each Subscribed Services, also for the internal business of operations of the Authorised Affiliates identified in respect of that Subscribed Service on the Order Form, in each case in accordance with the applicable Documentation and our Agreement. Permitted Purpose expressly excludes any of the following to the maximum extent permitted by law: (a) copying, reproducing, publishing, distributing, redistributing, broadcasting, transmitting, modifying, adapting, editing, abstracting, storing, archiving, displaying publicly or to third parties, selling, licensing, leasing, renting, assigning, transferring, disclosing (in each case whether or not for charge) or in any way

commercially exploiting any part of any Subscribed Service or Documentation;

- (b) permitting any use of any Subscribed Service or Documentation in any manner by any third party (including permitting use in connection with any timesharing or service bureau, outsourced or similar service to third parties or making any Subscribed Service or Documentation (or any part) available to any third party or allowing or permitting a third party to do any of the foregoing (other than to the Authorised Affiliates for the Permitted Purpose));
- (c) combining, merging or otherwise permitting any Subscribed Service (or any part of it or any Application) to become incorporated in any other program or service, or arranging or creating derivative works based on it (in whole or in part); or
- (d) attempting to reverse engineer, observe, study or test the functioning of or decompile the Applications or the Services (or any part),

except as expressly permitted under our Agreement.

Policies

means each of the following:

- (a) the Supplier's policy on acceptable use of the Services (as Updated from time to time), which as at Order Acceptance is the latest version available at [Insert URL] (the Acceptable Use Policy); and
- (b) the Supplier's privacy policy in relation to the Services (as Updated from time to time), which as at Order Acceptance is the latest version available at [Insert URL] (the Privacy Policy);

Pricing Terms

means the details of pricing and fees in respect of each part of the Services, as initially provided under the Order Form and updated from time to

	time in accordance with clause 5 or, in respect of any part of the Services for which prices are not expressly agreed, on the Supplier's Standard Pricing Terms;
Purchased Authorised User Accounts	means, in respect of each Subscribed Service, the number of Authorised Users who may use that Subscribed Service as set out in the Order Form;
Renewal Date	has the meaning given in clause 10.1;
Service Period	means the period beginning on Order Acceptance and ending with the last of the Subscribed Service Periods;
Services	means the Subscribed Services;
Subscribed Service Period	means in respect of each Subscribed Service, the duration during which such services are to be provided as initially set out in the Order Form and as varied in accordance with our Agreement;
Subscribed Service Specific Terms	means, in respect of each Subscribed Service, the specific additional or amended terms relevant to that Subscribed Service (as Updated from time to time) which as at Order Acceptance are available at [Insert URL];
Subscription Fee	means, in respect of each Subscribed Service, the fees payable by the Customer in consideration of that Subscribed Service as set out in the Pricing Terms;
Supplier	has the meaning given in the relevant Order Form;
Supplier's Standard Pricing Terms	means the Supplier's standard pricing terms for each part of the Services, as amended by the Supplier from time to time[, and as at the date of our Agreement the latest version available at [Insert URL]];]
VAT	means the applicable rate of value added tax, any other tax imposed in substitution for it in Ireland

and any equivalent or similar tax imposed outside Ireland.

2 In our Agreement, unless otherwise stated:

- 2.1 the table of contents, background section and the clause, paragraph, schedule or other headings in our Agreement are included for convenience only and shall have no effect on interpretation;
- 2.2 the Supplier and the Customer are together the **parties** and each a **party**, and a reference to a party includes that party's successors and permitted assigns;
- 2.3 words in the singular include the plural and vice versa;
- 2.4 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 2.5 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (including email);
- 2.6 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time and a reference to legislation includes all subordinate legislation made from time to time under that legislation; and
- 2.7 a reference to any Irish action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than Ireland, be deemed to include a reference to that which most nearly approximates to the Irish equivalent in that jurisdiction.