UNARO LIMITED

TERMS AND CONDITIONS

These terms and conditions apply to all subscription services, applications or other services provided by Unaro Limited. Please read them carefully.

1   DEFINITIONS

1.1   "**Affiliate**" means any person or entity that controls, is controlled by, or is under common control with a party to this Agreement. The term "control" as used in the immediately preceding sentence means the right to exercise, directly or indirectly, more than fifty percent of the voting rights attributable to the shares, partnership interests, membership shares, or similar evidences of ownership of an entity.

1.2   **"Agreement"** means the combination of a Sales Order and these terms and conditions.

1.3   "**Agreement Term**" has the meaning set forth in Clause 6.1, below.

1.4   "**Application**" means any software program, platform, solution suite supplied by Unaro pursuant to this Agreement.

1.5   **"Customer"** means the person agreeing to purchase Unaro's Services under the Agreement.

1.6   "**Customer Data**" means the data, information or other content, in any form, that is loaded into an Application by or on behalf of Customer, its Affiliates (where permitted) and/or any Users (or generated by the Application based on such information, data or content).

1.7   "**Documentation**" means documentation provided by Unaro which describes the principles of the operation or functionality of the applicable Application, including, but not limited to, any such files that are embedded within such Application (*e.g.*, help files).

1.8   "**Entitlements**" means the license or usage metrics and other restrictions or scope limitations applicable to Customer's rights to any Application or Services, as detailed in the applicable Sales Order (*e.g.*, numbers of Users, volume of messages, the Subscription Term, *etc*.).

1.9   "**Intellectual Property Rights**" means all trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trademarks), service marks, trade names, copyrights, moral rights, database rights, design rights, rights in know-how, rights in Confidential Information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, any application for the foregoing, and all rights to enforce the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.

1.10   "**Personal Data**" means any information relating to an identified or identifiable natural person.

1.11   "**Process**" or "**Processing**" means any operation or set of operations which is performed on Customer Data or on sets of Customer Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

1.12   "**Sales Order**" means any mutually agreed order to purchase a subscription to use one (or more) of Unaro's Services or Applications, whether agreed online via a click through process on Unaro's website or otherwise agreed in writing, referencing and made subject to these terms and conditions, detailing the Application(s) ordered, fees, and any special terms for using the Applications that Customer has ordered.

1.13   **"Services"** means Unaro's provision of any Application, or other services.

1.14   "**Fees**" means any fees relating to Subscription Services (including fees for exceeding the Entitlements).

1.15　"**Subscription Term**" means the period of time in which Customer has the right to use or receive Subscription Services as detailed in the applicable Sales Order.

1.16　"**Support Services**" means availability, ongoing maintenance and technical support services provided by Unaro for the applicable Application or Services.

1.17　"**Users**" means individuals authorised by Customer to use the applicable Application or Services subject to the Entitlements and who have been supplied Unaro-issued user identifications and passwords by Customer. "Users" may include, but is not limited to, Customer's, and (where permitted) any of the Customer's Affiliates', employees, consultants, contractors and agents.

1.18　"**Virus**" means any computer code, programming instruction or set of instructions that is intentionally and specifically constructed with the ability to damage, corrupt, destroy, interfere with or otherwise adversely affect computer programs, data files or hardware without the consent or intent of the computer user. This definition includes, without limitation, self-propagating programming instructions commonly called viruses, trojans or worms. This definition expressly excludes code contained within any Application which: (i) is authored by Unaro; and (ii) functions to deactivate a User's ability to access and/or use the Application upon the expiration, suspension or termination of a Subscription Term.

2　OWNERSHIP

2.1　The Services. Except for the rights and licenses provided hereunder, as between Unaro and Customer, Unaro and its licensors retain all right, title, and interest to: (i) all software, products, works, and other intellectual property created, used, or provided by Unaro for the purposes of the Agreement, including, but not limited to, each Application, the Services and all Documentation; and (ii) all modifications, adaptations and derivatives of, and improvements to, each Application, the Services and all Documentation. Customer shall and hereby makes all assignments necessary to provide Unaro such ownership rights. Customer's sole right to the Services is as set forth in the Agreement.

2.2　Customer Data. All rights, title and interest in and to Customer Data are and shall remain the property of Customer.. Subject to the terms of the Agreement, Customer hereby grants to Unaro throughout the term of the Agreement (and after the term solely as reasonably necessary for the performance of Unaro's post-termination obligations to Customer) the rights to use, reproduce, store, distribute, modify, cache, and transmit Customer Data via the applicable Application solely to the extent necessary for Unaro to provide the Services or otherwise perform its obligations under the Agreement.

2.3　Improvements Feedback. If Customer provides any feedback to Unaro concerning the functionality and performance of any Application or Services (including identifying potential errors and improvements) (the "**Improvement Feedback**"), Customer hereby assigns to Unaro all right, title, and interest in and to such Improvement Feedback, and Unaro is free to use that Improvement Feedback without payment or restriction and it shall be deemed to be a derivative work of the Application or Services. Improvement Feedback expressly excludes Customer Data. Additionally, Unaro may use Customer's and its Users' Services usage history, statistics and telemetry ("**Enhancement Data")** solely for Unaro's internal analytical purposes related to its provision of Services, including to improve and enhance the Services. Unaro may make information derived from its analysis of Enhancement Data available to its service providers on an aggregated and anonymised basis, provided that such information does not contain any Personal Data. Aggregated and anonymised data is not Confidential Information of Customer.

3　PROVISION OF THE SERVICES

3.1　General. Unaro shall make the Application available and provide Support Services to Customer and its Users as detailed herein.

3.2　Use of the Application and Documentation. Subject to the Entitlements and otherwise subject to the terms of the Agreement, Unaro hereby grants to Customer and each of its Users a non-exclusive,

non-transferable (except as otherwise provided in the Agreement), non-sublicensable, royalty-free, worldwide, subscription license, to: (i) access via a web-based interface, execute and otherwise use the Application provided by Unaro on a hosted basis, solely for Customer's operations in its ordinary course of business; and (ii) use reproduce, modify, and distribute and display the applicable Documentation, in each case solely for Customer's operations in its ordinary course of business. Unaro reserves all other rights not expressly granted in the Agreement. Unless expressly stated in the Sales Order, the licence in this Clause 3.2 does not include the Customer's Affiliates.

3.3 <u>Use Limitations</u>. Customer agrees that it shall not exceed the Entitlements. Without limiting the generality of the foregoing, where the Sales Order indicates that an Application is provided on a per-User basis, Customer agrees that: (i) the maximum number of Users authorised to access and use each such Application shall not exceed the number of User subscriptions purchased; and (ii) it shall not allocate (or share) any User subscription among more than one individual User unless such User subscription has been reassigned in its entirety to another individual User.

3.4 <u>Standard Support Services</u>. Unaro shall keep the Applications up to date and will endeavor to respond to reasonable queries if the Customer experiences problems with the operation of the Applications. However, without prejudice to the performance warranties offered by Unaro, a licence to use an Application does not include the provision of a formal support service. For certain of Unaro's Applications, Unaro may offer enhanced support on a subscription basis or as an addition Entitlement, subject to a fee. The terms of such support shall be set out in the applicable Sales Order.

4 CUSTOMER'S RESPONSIBILITIES

4.1 Compliance and Use. Customer shall:

4.1.1 be solely responsible for maintaining the status of its User base and shall safeguard all User authentication credentials and account information within its possession or under its control;

4.1.2 be solely responsible for its Users' compliance with the Agreement and the acts or omissions of its Users relating to the Agreement to the same extent as if they were Customer's own;

4.1.3 be solely responsible for the accuracy, quality, integrity and legality of Customer Data provided to Unaro and of the means by which such Customer Data was acquired;

4.1.4 use commercially reasonable efforts to prevent unauthorised access to or use of each Application, apply all relevant Virus protection updates and all Documentation and immediately notify Unaro in writing of any such unauthorised access or use or violation by Customer or its Users of the Agreement;

4.1.5 use each Application only in accordance with the Documentation;

4.1.6 cooperate and assist Unaro as reasonably necessary to prevent or terminate unauthorised use of the Application or Documentation.

4.2 <u>Use Restrictions.</u> Except as (i) otherwise expressly provided in the Agreement, or (ii) may be allowed by applicable law which is incapable of exclusion by agreement between the parties, the Customer shall not and shall ensure that the Customer's Users shall not, and shall not permit or authorise third parties to:

4.2.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Application or Documentation in any form or media or by any means; or attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Application;

4.2.2 access all or any part of the Application or Documentation in order to build a product or service that competes with the Application, Services or the Documentation;

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4.2.3   license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit the Application, Services or Documentation, (e.g., as a service bureau);

4.2.4   knowingly make the Application or Documentation available to anyone other than the Users;

4.2.5   attempt to gain unauthorised access to the Application or related systems or networks or otherwise circumvent or disable any security or other technological features or measures of the Application;

4.2.6   attempt to probe, scan, penetrate or test the vulnerability of an Unaro system or network absent Unaro's prior express written consent in each case;

4.2.7   use the Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material;

4.2.8   upload, transmit or otherwise process regulated data or information in violation of any applicable law or regulation;

4.2.9   upload, transmit or otherwise process and Payment Card Information (PCI) in violation of any Payment Card Information Security Standards or other similar requirements;

4.2.10 knowingly use the Application to store or transmit Viruses or other malicious code;

4.2.11 knowingly interfere with or disrupt the integrity or performance of the Application.

5   PAYMENT AND FEES

5.1   Sales Orders; Fees. Customer shall pay Unaro the fees specified in the applicable Sales Order, taxes, and any other amounts owing under the Agreement in the currency specified in the applicable Sales Order. Except as otherwise expressly provided in this Agreement or the applicable Sales Order, all amounts payable to Unaro under the Agreement are: (i) subject to the Entitlements; and (ii) non-cancellable and non-refundable. The Customer shall not be entitled to any refund of fees paid or relief from fees due if the volume of Entitlements actually used by Customer is less than the Entitlements purchased, and Customer may not carry over any of the unused Entitlements to a subsequent Subscription Term.

5.2   Modifications to Entitlements. Customer may, from time to time during the Agreement Term elect to purchase rights to exceed some or all of the Entitlements (*e.g.*, increases to the number of Users, purchases of additional messaging volume, *etc*.) by applying for the applicable upgrade on Unaro's website.

5.3   Invoices and Payment Terms. Fees for Services shall be invoiced at the time and frequency specified in the relevant Sales Order – typically monthly or annually in advance.

5.4   Disputed Invoices. If Customer reasonably and in good faith disputes all or any portion of any invoice, Customer shall notify Unaro in writing of its objection within twenty (20) days from the date of the applicable invoice, providing a detailed description of the reasons for the objection, and shall pay the portion of the invoice, if any, which is not in dispute. If Customer does not does not object in a timely manner as set forth above, the amount invoiced shall be conclusively deemed correct by the parties, the amount invoiced shall be conclusively deemed correct by the parties.

5.5   Late Payments. Unaro shall notify Customer in writing, which may be by email, of any undisputed invoice which is thirty (30) or more days past due. In the event Customer has not promptly cured such default, then Unaro may, on not less than five (5) business days' prior written notice to Customer, in its sole discretion, and without prejudice to its other rights following material breach and failure to cure, until such breach has been cured in full, suspend performance of some or all of Unaro's obligations to provide Services under the Agreement. In the event of Customer's default in the payment of any undisputed invoice(s) for a period in excess of sixty (60) days past due, Unaro may, upon not less than ten (10) business days' prior written notice to Customer, declare the entire principal sum payable under the Agreement immediately due and payable. Further, Customer shall reimburse any costs or expenses (including, but not limited to, collection agency fees, reasonable

legal fees and court costs) incurred by Unaro to collect any undisputed amount past due. Amounts due to either party under the Agreement may not be withheld or offset by either party for any reason.

5.6 <u>VAT</u>. Where Subscription Fees are quoted exclusive of VAT, the Customer shall pay VAT in addition (where applicable).

6 TERM, RENEWAL AND TERMINATION

6.1 <u>Agreement Term</u>. This Agreement shall commence upon the date specified in the Sales Order and continue until the Subscription Term specified in the Sales Order has expired or is otherwise terminated in accordance with the Agreement (the "**Agreement Term**"). If a start date or period is not specified in the Sales Order, the Subscription Term shall start from the date of execution of such Sales Order.

6.2 <u>Termination for Breach</u>. In the event of a material breach of the Agreement by either party, the non-breaching party may elect to terminate the Agreement, any Sales Order (or portion thereof) affected by the breach by giving the breaching party written notice of the breach and the non-breaching party's intention to terminate. If the breach has not been cured within the period ending thirty (30) days after such notice, and if the non-breaching party provides written notice of termination to the breaching party ("**Termination Notice**"), then the Agreement, or any such Sales Order, shall terminate within the time period specified in the Termination Notice. If Customer terminates the Agreement or any Sales Order for breach in accordance with this Clause 6.2, then Unaro shall refund to Customer a pro-rata amount of any affected Subscription Services fees prepaid to Unaro and applicable to the unutilised portion of the Agreement Term for the terminated Agreement. For the avoidance of doubt, Customer's failure to pay any overdue, undisputed fees within thirty (30) days of Unaro notifying Customer of the overdue payment shall constitute a material breach of the Agreement.

6.3 <u>Termination for Convenience</u>. The parties acknowledge and agree that Subscription Services are priced based on upon minimum commitments throughout the applicable Subscription Term and, notwithstanding anything to the contrary in the Agreement, may not be terminated for the convenience of either party.

6.4 <u>Suspension for Critical Threats</u>. If Unaro, acting reasonably in the circumstances then known to Unaro, determines that Customer's or any of its Users' use of the Services poses an imminent threat to: (i) the security or integrity of any Customer Data or the data of any other Unaro customer; or (ii) the availability of the Application to Customer or any other Unaro customer (each, a "**Critical Threat**"), then Unaro shall immediately notify Customer in writing, which may be by email. Unaro may suspend Customer's and its Users' use of the Application until the Critical Threat is resolved. Unaro shall cooperate with Customer to promptly restore access to the Services once it verifies that Customer has resolved the condition giving rise to the suspension.

6.5 <u>Retrieval of Customer Data on termination</u>. Following the termination or expiration of the Agreement, Unaro shall make the Customer Data available for retrieval or export from the Applications. The Customer shall be responsible for exporting all Customer Data from the Application(s) that it wishes to retain. Unaro shall continue to host such Customer Data for a period of up to 14 days after the date of termination of the Agreement. It does not guarantee to retain such Customer Data for more than 14 days past termination date and shall not be responsible for data loss resulting from the Customer's failure to remove data prior to this date.

6.6 <u>Survival</u>. Clauses 2 (Ownership), 5.1 (Fees). 5.3 (Invoices and Payment Terms), 5.5 (Late Payments), 5.6 (VAT), 4.5 (Retrieval of Customer Data), 6.6 (Survival), 7 (Confidentiality), 9.5 (Bugs and Abatement; Scope), 9.6 (Disclaimer of Implied Warranties), (Unaro Disclaimers), 10 (Indemnification), 9 (Limitations and Exclusions of Liability, 12 (Publicity), 13 (General) and 14 (Dispute Resolution) shall survive the termination of expiration of the Agreement. Clause 4 shall survive the termination or expiration of the Agreement for so long as Customer and/or its Users retain access rights and/or use of the Application (e.g., as may be reasonably required in connection with either party's performance of its post-termination or transition assistance obligations).

7   CONFIDENTIAL INFORMATION

7.1   Restrictions on Use and Disclosure. Neither Unaro nor Customer shall disclose to any third party any information provided by the other party pursuant to or in connection with the Agreement that the disclosing party identifies as being proprietary or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential (such information, "**Confidential Information**"), and shall make no use of such Confidential Information, except under and in accordance with the Agreement. The receiving party shall take reasonable precautions (using no less than a reasonable standard of care) to protect the disclosing party's Confidential Information from unauthorised access or use. Each party may disclose Confidential Information to its Affiliates and service providers, and its Affiliates and service providers may use such information, in each case solely for purposes of the Agreement. Each party shall be liable for any breach of its obligations under this Clause 5 that is caused by an act, error or omission of any such Affiliate or service provider. Confidential Information includes information disclosed by the disclosing party with permission from a third party, and combinations of or with publicly known information where the nature of the combination is not publicly known.

7.2   Exclusions. Confidential Information does not include information that the receiving party can establish: (i) has entered the public domain without the receiving party's breach of any obligation owed to the disclosing party; (ii) has been rightfully received by the receiving party from a third party without confidentiality restrictions; (iii) is known to the receiving party without any restriction as to use or disclosure prior to first receipt by the receiving party from the disclosing party; or (iv) has been independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.

7.3   Disclosure Required by Law. If any applicable law, regulation or judicial or administrative order requires the receiving party to disclose any of the disclosing party's Confidential Information (a "**Disclosure Order**") then, unless otherwise required by the Disclosure Order, the receiving party shall promptly notify the disclosing party in writing prior to making any such disclosure, in order to facilitate the disclosing party's efforts to protect its Confidential Information. Following such notification, the receiving party shall cooperate with the disclosing party, at the disclosing party's reasonable expense, in seeking and obtaining protection for the disclosing party's Confidential Information.

7.4   Independent Development. The terms of confidentiality under the Agreement shall not limit either party's right to independently develop or acquire products, software or services without use of or reference to the other party's Confidential Information.

7.5   Return or Destruction. Following any termination or expiration of the Agreement or any Sales Order, each party shall: (i) immediately cease use of any Confidential Information of the other communicated for the purposes of the Agreement or such Sales Order, and (ii) within thirty (30) days of such termination or expiration, return or destroy (and, upon request, certify destruction of) all copies of any Confidential Information of the other party disclosed under the Agreement, subject to each party's customary backup and archival processes.

8   DATA PROTECTION

8.1   Compliance with law. Unaro and the Customer shall each comply, and shall ensure that its personnel comply, with the requirements of applicable data protection legislation (including, without limitation, the EU General Data Protection Regulation ("**EU GDPR**"), the EU retained law version of the General Data Protection Regulation applicable in the UK ("**UK GDPR**") and the Data Protection Act 2018) (all as updated from time to time) governing Personal Data processed in connection with this Agreement.

8.2   Processing In respect of Personal Data processed in the Application or otherwise provided to Unaro by Customer in connection with the Agreement, Unaro shall be the data processor and the Customer shall be the data controller for the purposes of the UK GDPR and, if applicable, the EU GDPR.

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8.3 <u>Scope, nature and duration of processing.</u> The subject-matter of the processing shall comprise Personal Data about individuals uploaded by the Customer to the Application to perform the functions on that Personal Data provided by the Application. The type of Personal Data shall consist of names and email addresses and, depending on the type of Application, such other Personal Data as the Customer chooses to enter into the Application. The categories of data subjects shall depend on the Application and shall be selected by the Customer. The processing by Unaro shall last for the duration of the Agreement.

8.4 <u>Restrictions on processing</u>. Unaro shall process the personal data only on the written instructions the Customer, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by a law to which Unaro is subject; in such a case, Unaro shall inform the Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest. The Customer authorises Unaro to process the Personal Data in the ways envisaged by the Sales Order and for the purposes of providing the Services. This Agreement, and Customer's use of the Application's features and functionality, are Customer's instructions to Unaro in relation to the Processing of Customer Personal Data.

8.5 <u>International Transfers.</u> Unaro shall not transfer personal data to a third country outside of the UK or European Economic Area or to an international organisation, without the Customer's prior specific written consent. The Customer hereby consents to such transfers to the extent necessary for Unaro to host the Application(s) on servers outside the UK or European Economic Area.

8.6 <u>Unaro personnel</u>. Unaro shall ensure that persons authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

8.7 <u>Data Security</u>. Unaro shall implement and maintain commercially reasonable technical and organisational security measures designed to meet the following objectives: (i) ensure the security and confidentiality of Customer Data in the custody of and processed by Unaro; (ii) protect against any anticipated threats or hazards to the security or integrity of such Customer Data; (iii) protect against unauthorised access to or use of such Customer Data; and (iv) ensure that Unaro's return or disposal of such Customer Data is performed in a manner consistent with Unaro's obligations under items (i)-(iii).

8.8 <u>Sub-Processors</u>. Customer consents to Unaro's use of sub-Processors to provide aspects of the Services, and to Unaro's disclosure and provision of Customer Personal Data to those sub-Processors. Unaro shall be responsible for the performance of its sub-Processors. Unaro shall ensure sub-Processors are subject to contractual obligations which are the same as or equivalent to those imposed on Unaro with regard to Processing of Customer Personal Data. Unaro shall maintain a list of its sub-Processors on its company website. Unaro shall inform the Customer of any intended changes concerning the addition or replacement of any sub-Processor within a reasonable time prior to implementation of such change. In the event of the Customer objecting to such change, Unaro shall make reasonable efforts to address the Customer's concerns (including making reasonable efforts to find an alternative sub-Processor).

8.9 <u>Subject Access Requests and Data Impact Assessments</u>. Unaro shall, at the Customer's cost, assist Customer with any data subject access requests or data protection impact assessments relevant to Personal Data processed by Unaro.

8.10 <u>Audits and Security Assessments.</u> Unaro shall allow for and contribute to audits conducted by Customer, or third-party auditor mandated by Customer, under the following parameters: (i) the Customer may elect to conduct an audit not more than once within any 12-month period at no cost to Customer. Any additional audits within the same 12-month period shall be subject to a reasonable fee; (ii) third-party auditors mandated by Customer shall enter into confidentiality agreements with Unaro that are no less restrictive than those set out in this Agreement; (iii) Customer provides reasonable prior notice of such request for an audit; (iv) Customer ensures such audit shall not be unreasonably disruptive to Unaro's business; and (v) neither Customers nor its auditors shall be permitted to make unaccompanied site visits or to logically access Unaro's IT systems.

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8.11   Breach Notification. Unaro shall notify Customer, without undue delay, of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Customer Data in Unaro's possession or under its control (a "**Data Breach**"). Each party shall reasonably cooperate with the other with respect to the investigation and resolution of any Data Breach including, in the case of Unaro, prompt provision of the following, to the extent then known to Unaro: (i) the possible cause and consequences of the Data Breach; (ii) the categories of Customer Data involved; (iii) a summary of the possible consequences for the relevant Users; (iv) a summary of the unauthorised recipients of the Customer Data; and (v) the measures taken by Unaro to mitigate any damage. Upon confirmation of any vulnerability or breach of Unaro's security affecting Customer Data in Unaro's custody and control, Unaro shall modify its processes and security program, as necessary, to mitigate the effects of the vulnerability or breach upon such Customer Data.

8.12   Customer responsibilities. Customer is solely responsible for obtaining, and represents and warrants that it has obtained or will obtain, prior to Processing by Unaro, all necessary consents, licenses and approvals for the Processing, or otherwise has a valid legal basis for the Processing of, any Personal Data provided by Customer or its Users in connection with the Services. Customer may select the Personal Data it elects to input into and Process using the Application in its sole discretion; Unaro has no control over the nature, scope, or origin of, or the means by which Customer acquires Personal Data Processed by the Application. If any User requests Unaro to provide them with information relating to Processing of their Personal Data, or to make changes to their Personal Data, Unaro shall promptly notify Customer of the request, unless otherwise required by applicable law

8.13   User Data Customer may make changes to User data using the features and functionality of the Application. Unaro shall not make changes to User data except as agreed in writing with Customer.

8.14   .Data Retention, Export and Deletion. Customer is solely responsible for its data retention obligations with respect to Customer Data. Customer may export Customer Data from the Application at any time during the Agreement Term, using the Application's then existing features and functionality, at no additional charge. Customer may also delete Customer Data at any time. Unaro's obligations to delete or return Customer Data upon termination of the Agreement may be fulfilled by permitting Customer to export or delete Customer Data as specified above. Unaro shall delete any Customer Data remaining in the Application(s) within 14 days of termination or expiration of the Agreement.

9   WARRANTIES

9.1   Mutual Warranties. Each party represents and warrants to the other that:

   9.1.1   the Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; and

   9.1.2   it shall comply with all applicable laws in connection with the performance of its obligations arising hereunder.

9.2   Unaro Additional Warranties Unaro represents and warrants to Customer that:

   9.2.1   *Non-Infringement.* The Services, in the form and manner provided by Unaro to Customer, shall not infringe, violate, or misappropriate the Intellectual Property Rights of any third party. Unaro warrants that it has and shall maintain all necessary licences, consents and permissions necessary for the performance of its obligations under the Agreement;

   9.2.2   *Performance Warranty.* During any active Subscription Term (or such other period to which the parties may agree as detailed in a Sales Order), the Application, in the form provided by Unaro, shall conform in all material respects to its applicable specifications set forth in the Documentation;

9.2.3 *Viruses*. Unaro shall use commercially reasonable efforts, using applicable current industry practices, to ensure that the Application, in the form provided by Unaro to Customer under the Agreement, contains no Virus, or other similar malicious code;

9.2.4 *Other Services.* Unaro shall provide any other services comprised in the Services by qualified individuals in a good, professional and workmanlike manner, consistent with applicable industry standards; and

9.2.5 *Compliance with Law*. The Services, in the form provided or made available to Customer by Unaro, shall comply with all laws applicable to Unaro and its provision of Services.

9.3 <u>Performance Remedy</u>. If the Services fail to conform to the warranties set out in Clause 9.2 and Customer provides written notice of the non-conformance to Unaro, then, as Customer's exclusive remedy and Unaro's sole obligation: Unaro shall either repair or, at its option, replace the non-conforming Application or re-perform the non-confirming Services or, if Unaro is unable to correct the non-conformance within thirty (30) days of receipt of such written notice from Customer, Customer may terminate the applicable Services, and Unaro shall refund to Customer a pro-rata amount of any Services fees prepaid to Unaro and applicable to the unused portion of the Subscription Term for the terminated Services.

9.4 <u>Bugs and Abatement; Scope</u>. Without limiting the express warranties in this Clause 9 or any express warranties specified elsewhere in the Agreement, Unaro does not warrant: (i) that the Application or Services are completely free from all bugs, errors, or omissions, or will ensure complete security; (ii) that the Customer's use of the Services will be uninterrupted or error-free; or (iii) that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements. Unaro shall not be responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over the Customer's or public communications networks and facilities, including the internet, and the Customer acknowledges that the Services and may be subject to limitations, delays and other problems inherent in the use of such communications facilities. The warranties in the Agreement are for the sole benefit of Customer and may not be extended to any other person or entity.

9.5 <u>Disclaimer of Implied Warranties</u>. Neither party makes any representation or warranty in connection with the Services, except as expressly warranted in the Agreement. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS SPECIFICALLY WARRANTED IN THIS CLAUSE 9, EACH PARTY DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS AND OTHER TERMS INCLUDING ANY IMPLIED CONDITION THAT THE SERVICES ARE OF SATISFACTORY QUALITY OR FIT FOR A PARTICULAR PURPOSE, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT OR IMPLIED OBLIGATION TO INDEMNIFY FOR INFRINGEMENT, ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE, AND ANY STATUTORY REMEDY.

10 INDEMNIFICATION

10.1 <u>Infringement Indemnification</u>. Unaro shall defend, indemnify, save and hold harmless Customer and its officers, agents and employees, against any costs, expenses, damages finally awarded incurred in connection with any claim, demand, suit, or proceeding made or brought by a third party (a "Third-Party Claim") against Customer alleging that the use of any Application or Service as permitted in the Agreement infringes or misappropriates the Intellectual Property Rights of a third party.

10.2 <u>Exclusions from Obligations</u>. Unaro shall have no obligation under Clause 10.1 (*Indemnification by Unaro*) for any infringement or misappropriation to the extent that it arises out of or is based upon: (a) use of an Application or Service in combination with other products or services not provided by, or authorised in writing by, Unaro if such infringement or misappropriation would not have arisen but for such combination; (b) use of an Application or Service by Customer in breach of the terms of the Agreement; (c) Customer's failure to use an Application or Service in accordance with the Documentation (or other written instructions) provided by Unaro, if the infringement or

misappropriation would not have occurred but for such failure; or (d) any modification of an Application or Service not made by or authorised in writing by, Unaro where such infringement or misappropriation would not have occurred without such modification.

10.3   Mitigation of Infringement Action. If Customer's use of any Application or Service is, or in Unaro's reasonable opinion is likely to become, enjoined or materially diminished as a result of a proceeding arising under Clause 10.1 (*Infringement Indemnification*) then Unaro shall either: (a) procure the continuing right of Customer to use the Application or Service; (b) replace or modify the Application or Service in a functionally equivalent manner so that it no longer infringes; or if, despite its commercially reasonable efforts, Unaro is unable to do either (a) or (b), Unaro shall (c) terminate the Agreement and refund to Customer the pro-rata amount of any fees prepaid to Unaro which are applicable to the unused or undelivered portions of the Services.

10.4   Limited Remedy. This Clause 10 states Unaro's sole and exclusive liability, and Customer's sole and exclusive remedy, for Unaro's actual or alleged breach of Clause 9.2.1 (Non-Infringement), and any other actual or alleged infringement or misappropriation of third-party Intellectual Property Rights by any Application or Service.

10.5   Indemnification by Customer. Customer shall defend save and hold harmless Unaro against any Third-Party Claim made or brought against Unaro by a third party alleging that Customer Data or Customer's use of the Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify Unaro for any damages finally awarded against, and for reasonable legal fees incurred by, Unaro in connection with any such Third-Party Claim.

10.6   Relief from Obligations. An indemnifying party's obligations arising under this Clause 10 are expressly conditioned upon the indemnified party: (a) promptly giving the indemnifying party written notice of the Third-Party Claim; (b) providing the indemnifying party the option to assume sole control of the defense and settlement of the Third-Party Claim; and (c) provides to the indemnifying party all reasonable assistance, at the indemnifying party's expense. Further, an indemnifying party shall be relieved of its responsibilities under this Clause 10 for any Third-Party Claims arising solely from the actions or omissions of indemnified party, its officers, employees or agents.

10.7   Classification of Amounts. Any amounts payable by an indemnified party to a third party pursuant to a judgment, liability for which falls within the indemnifying party's indemnification obligations under the Agreement, shall be deemed direct damages.

10.8   Contributory Negligence. If the joint, concurring, comparative or contributory fault, negligence or willful misconduct of the parties gives rise to damages for which either party is entitled to indemnification under this Agreement, then such damages shall be allocated between the parties in proportion to their respective degrees of fault, negligence or willful misconduct contributing to such damages and such indemnification shall be adjusted accordingly.

11   LIMITATIONS AND EXCLUSIONS OF LIABILITY

11.1   Exclusion of Certain Claims. SUBJECT TO CLAUSE 11.3, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF (i) THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT OR ANY RELATED AGREEMENT, OR ANY SOFTWARE, PRODUCTS OR SERVICES PROVIDED HEREUNDER, OR (ii) ANY CLAIM, CAUSE OF ACTION, BREACH OF CONTRACT OR ANY EXPRESS OR IMPLIED WARRANTY, UNDER THIS AGREEMENT, ANY RELATED AGREEMENT OR OTHERWISE, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT.

11.2   Limitation of Liability. Subject to Clause 11.3, neither party's maximum aggregate liability arising out of the Agreement or any related agreement shall in any event exceed the fees paid to Unaro under the Sales Order giving rise to the claim during the twelve-month (12-month) period immediately

preceding the aggrieved party's first assertion of any claim against the other, regardless of whether any action or claim is based in contract, misrepresentation, warranty, indemnity, negligence, strict liability or other tort or otherwise.

11.3 <u>Exceptions</u>.

    11.3.1 Clauses 11.1 and 11.2 do not apply to either party's (i) willful misconduct or gross negligence, (ii) infringement or misappropriation of any of the other party's Intellectual Property Rights, (iii) personal injury (including death) caused by either party's negligent act or omission, (iv) liability or loss which may not be limited by applicable law.

    11.3.2 Clause 11.2 does not apply to (i) each party's defense and indemnification obligations, (ii) Customer's obligations to pay fees and expenses when due and payable under the Agreement, nor (iii) either party's obligations under Clause 7 (Confidential Information) and/or Clause 8 (Data Protection), provided, however, that except to the extent of willful misconduct or gross negligence of Unaro, Unaro's maximum aggregate liability under Clause 8 shall not exceed three times (3X) the fees paid or payable by Customer to Unaro under the affected Sales Order in the twenty four (24) month period immediately preceding Customer's first assertion of the claim.

11.4 <u>General</u>. Each party agrees that these exclusions and limitations apply even if the remedies are insufficient to cover all of the losses or damages of such party or fail of their essential purpose and that without these limitations the fees for the Services would be significantly higher. Neither party may commence any action or proceeding under the Agreement more than two years after becoming aware of the applicable cause of action.

12 PUBLICITY

Neither party shall use the other party's name, trademark, or logo without the other party's prior written permission in each case. Notwithstanding the foregoing, either party shall be permitted to disclose any details regarding this relationship to the extent required by law.

13 GENERAL

13.1 <u>Relationship</u>. Unaro shall be and act as an independent contractor (and not as the agent or representative of Customer) in the performance of its obligations under the Agreement.

13.2 <u>Compliance with Laws</u>. Each party shall comply with all laws and regulations applicable to it, including export control laws and embargoes. Neither party shall have any liability to the other for any non-performance of their obligations under the Agreement to the extent that the non-performance is mandated by applicable law. Each party represents and warrants to the other that neither it nor its Affiliates, nor any of its or their users, officers or directors, are persons, entities or organisations with whom the other party is prohibited from dealing (including provision of software, products or services) by virtue of any applicable law, regulation, or executive order.

13.3 <u>Equitable Relief</u>. Each of Customer and Unaro acknowledges that damages may be an inadequate remedy if the other violates the terms of the Agreement pertaining to protection of a party's Intellectual Property Rights, Confidential Information or Personal Data. Accordingly, each of them shall have the right, in addition to any other rights each of them may have, to seek in any court of competent jurisdiction, temporary, preliminary and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any of the obligations in the Agreement.

13.4 <u>Assignability</u>. Neither party may assign performance of the Agreement or any of its rights or delegate any of its duties under the Agreement without the prior written consent of the other party; provided, however that either party may assign its rights and obligations under the Agreement to any of its Affiliates, or to any entity into or with which it is merged, or that acquires all or substantially all of its assets, upon notice to the other party. Subject to the foregoing restriction on assignment, the Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

13.5   Notices. Any notice or report required or permitted to be given or made under the Agreement by either party shall be in English, in writing and be deemed to have been fully given and received (i) when delivered personally; (ii) one business day after having been successfully sent by email; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid. Notices shall be sent to Unaro at the addresses set out below or such other address as Unaro may specify in writing to the Customer. All notices to Customer must be made to the mailing or email address of Customer's primary contact with Unaro.

Unaro notice address:

Attn: Nathan Adlard

Email: nathan.adlard@yotelecom.co.uk

Address: Unaro Limited, Unit 1-2 Melbourne Street, Southampton SO14 5FB

To inform Customer of changes to the Services, or for other matters of importance (*e.g.*, notifications regarding upcoming scheduled maintenance), Unaro may broadcast messages through the Application or post messages on Unaro's web site. In each such event, Unaro shall inform Customer of the broadcast by e-mail.

13.6   Business Continuity and Disaster Recovery. During any Subscription Term, Unaro shall comply with its then current applicable Business Continuity and Disaster Recovery Plans. Unaro shall test such plans at least once a year. Unaro shall provide Customer with summaries of such plans and test results upon written request. Unaro may not modify such plans to provide materially less protection to Customer without Customer's prior written consent, which may not be unreasonably conditioned or withheld.

13.7   Force Majeure. If the performance of the Agreement is adversely restricted or if either party is unable to conform to any warranty or obligation by reason of any Force Majeure Event then, except with respect to obligations to pay any fees or expenses and to obligations under Clause 13.6 above (*Business Continuity and Disaster Recovery*), the party affected, upon giving prompt written notice to the other party, shall be excused from such performance on a day-to-day basis to the extent of such restriction (and the other party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such party's obligations relate to the performance so restricted); provided, however, that the party so affected shall use all commercially reasonable efforts to avoid or remove such causes of non-performance and both parties shall proceed whenever such causes are removed or cease. "**Force Majeure Event**" means any failure or delay caused by or the result of causes beyond the reasonable control of a party or its service providers that could not have been avoided or corrected through the exercise of reasonable diligence, including natural catastrophe, internet access or related problems beyond the demarcation point of the party's or its applicable infrastructure provider's facilities, state-sponsored malware or state-sponsored cyber-attacks, terrorist actions, laws, orders, regulations, directions or actions of governmental authorities having jurisdiction over the subject matter hereof, or any civil or military authority, national emergency, insurrection, riot or war, or other similar occurrence. If a party fails to perform its obligations as a result of such restriction for a period of more than thirty (30) days, then the other party may terminate the affected Services without liability.

13.8   Waiver. The waiver by either party of any breach of any provision of the Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with the Agreement shall not be a waiver of such party's right to demand strict compliance in the future, nor shall the same be construed as a novation of the Agreement.

13.9   Severability. Should any term and condition of the Agreement be declared illegal or otherwise unenforceable, it shall be severed from the remainder of this Agreement, or the relevant portion of the Agreement, without affecting the legality or enforceability of the remaining portions of the Agreement.

13.10   Entire Agreement. This Agreement, together with the Sales Order, constitutes the entire agreement between the parties hereto regarding Customer's use of each Application and receipt of all Services and supersedes and replaces all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the provision and use of the Services. In the event of a conflict between the terms and conditions of this Agreement and any Sales Order, the terms and conditions of this Agreement shall prevail except to the extent the conflict pertains to product or service description (*e.g.*, type, quantity, usage volume) or pricing information, in which case the terms of the Sales Order shall prevail. No usage of trade or other regular practice or method of dealing between the parties shall be used to modify, interpret, supplement, or alter the terms of the Agreement. The Agreement may be changed only by a written agreement signed by an authorised signatory of the party against whom enforcement is sought; any additional, supplementary or conflicting terms supplied by either party (whether in hard copy or electronic form), including those contained on or within any invoice, purchase order, or standard terms of purchase, or any click-through license agreement or terms of use, are specifically and expressly rejected by each party.

13.11   Anti-Bribery. Each party agrees and acknowledges that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of the other party's employees, contractors or agents in connection with the Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If either party learns of any violation of the above restriction, such party shall use reasonable efforts to promptly notify the other party.

13.12   Third Parties. Except as expressly set forth in the Agreement, no provisions of the Agreement are intended nor shall be interpreted to provide or create any third-party beneficiary rights or any other rights of any kind in any other party. If the law governing the Agreement is English law, then a person who is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

14   DISPUTE RESOLUTION

14.1   Governing Law and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of England and Wales. Any dispute arising under or in connection with this Agreement shall be subject to the exclusive jurisdiction of the English Courts.