

Master Services Agreement

Presented by

Ergoservices Ltd.

1st Floor, Block T, East Point Business Park, Dublin 3, Ireland.

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Ergo	[Customer Name Answer]
1st Floor, Block T East Point Business Park Dublin 3	[Customer Address Answer]

THIS MASTER SERVICE AGREEMENT made on [Commencement Date Answer] (the “**Commencement Date**”)

BETWEEN:

Ergoservices Limited
a company incorporated in Ireland
under company number 197876
having its registered office at
1st floor, Block T,
Eastpoint Business Park, Dublin 3
(“**Ergo**”)

and

[Customer Name Answer]
a company incorporated in [Where are they incorporated Answer]
under company number [Company Registration Number Answer]
having its registered office at
[Customer Address Answer]
(the “**Customer**”)

(each a “**party**”, together the “**parties**”).

RECITALS

- A. Ergo is engaged in the business of providing managed IT products and services.
- B. The Customer wishes to engage Ergo to provide certain products and services and Ergo has agreed to provide such products and services to the Customer on the terms and conditions of this MSA.

IT IS AGREED as follows:

Section 1 Basis of Agreement

- 1.1 The Agreement consists of: (1) the terms and conditions of this Master Service Agreement (this “**MSA**”); (2) any Service Schedules; and (3) any applicable Appendices to this MSA (together, the “**Agreement**”).
- 1.2 This MSA governs the overall relationship of the parties in relation to the Deliverables provided by Ergo to the Customer and sets out:
 - 1.2.1 in this Section 1 and in Section 6, the procedure for the Customer to request the provision of Deliverables from Ergo under separate Service Schedules;
 - 1.2.2 in Schedule 1, the template form of Service Schedule to be entered into by Ergo and the Customer; and
 - 1.2.3 in this MSA, the applicable terms that govern each Service Schedule.
 - 1.2.4 If there is any conflict, apparent conflict or ambiguity in or between any sections of a Service Schedule, this MSA (including the Appendices but excluding Schedule 1) and any other documents referred to in or linked from this MSA, the sections shall

be applied in the following order of precedence with the sections first in the order of precedence prevailing over the others: (1) the relevant Service Schedule; then (2) Schedule 1 (if applicable); then (3) this MSA; and then (4) any other documents referred to in or linked from this MSA.

- 1.3 This MSA shall apply each time the Customer engages Ergo to provide the Deliverables. Each Service Schedule is an order form or service contract that is governed by the terms of this MSA that sets out:
 - 1.3.1 the Deliverables;
 - 1.3.2 the Business Requirements and Functional Specification;
 - 1.3.3 the Charges,and other mutually agreed upon details. This MSA, any Service Schedules and any applicable Appendices agreed by the parties will be interpreted as a single agreement.
- 1.4 On receipt of a written request from the Customer, Ergo shall:
 - 1.4.1 either notify the Customer that it is not able to provide the requested Deliverables; or
 - 1.4.2 prepare a draft Business Requirements and Functional Specification and shall submit a draft Service Schedule, appending the Business Requirements and Functional Specification, to the Customer for its written approval.
- 1.5 A Service Schedule shall not enter into force, be legally binding or have any other effect unless:
 - 1.5.1 the Service Schedule contains the information required by the relevant template Service Schedule at Schedule 1;
 - 1.5.2 the Service Schedule has been signed by the authorised representatives of both parties to it; and
 - 1.5.3 as at the date the Service Schedule is signed, the Agreement has not terminated.
- 1.6 The Agreement and the Deliverables provided by Ergo are for the benefit of the Customer and, where applicable, any Customer Affiliate identified in the relevant Service Schedule, if any (each a “**Service Recipient**” as applicable). By entering into a Service Schedule, an Affiliate agrees to be bound by the terms of this Agreement, and in each such case, all references in this Agreement to Customer shall be deemed to refer to such Customer Affiliate for purposes of such Service Schedule.
- 1.7 Ergo acknowledges and agrees that, subject to the terms of this MSA, a Service Recipient is entitled to enter into a Service Schedule with Ergo and receive the benefit of the Deliverables subject to the terms of this MSA and the relevant Service Schedule. To the extent that Ergo provides any part or all of the Deliverables to one or more of the Service Recipients, all obligations under the Agreement (including, for the avoidance of doubt, the obligation to pay the relevant Charges) shall remain with the Customer, except where the parties agree otherwise in a Service Schedule.
- 1.8 The Customer will be liable for all acts and omissions of a Customer Affiliate with respect to its obligations under this Agreement, and the Customer shall ensure that no Customer Affiliate brings any claim against Ergo in respect of any liability relating to the Deliverables or any Service Schedule. Any claims from any Service Recipient against Ergo shall be brought, to the extent permitted by applicable law, by the Customer itself on behalf of the relevant Service Recipient.
- 1.9 Unless the context requires otherwise:
 - 1.9.1 references to the Customer receiving the Deliverables will include the other Service Recipient(s) (if any); and

- 1.9.2 references to the Customer's (i) assets, systems, business, operations or the like; or (ii) customers, contractors, advisors or other similar third parties; will include, to the extent that they are receiving the Deliverables, those of the other Service Recipients (if any).
- 1.10 Each Service Schedule:
 - 1.10.1 shall be entered into by Ergo and the relevant Service Recipient(s);
 - 1.10.2 forms a separate contract between its signatories; and
 - 1.10.3 shall incorporate and be governed by the terms of this MSA.
- 1.11 Any amendment to the Agreement agreed by the Customer and Ergo in accordance with Section 14.11 shall be deemed to apply to all future Service Schedules entered into after the date of such amendment.
- 1.12 The Deliverables do not include Third Party Products and Services including extended warranties on Third Party Products and Services offered by the manufacturer thereof.
- 1.13 Ergo shall provide any Ergo-Bundled Third Party Products to the Customer under the relevant Third Party Licences, copies of which shall be provided to the Customer, and the Customer agrees to be bound to the relevant third parties by such licence terms and procure that its agents, sub-contractors and employees are bound by and comply with such licence terms. If the Customer or any of its agents, sub-contractors or employees breach the terms of any Third Party Licence, the Customer shall procure that the breach is remedied. The Customer shall be responsible for sourcing, procuring and entering into commercial contracts with, and to obtain all relevant consents from, any third parties as may be required to enable Ergo to provide the Deliverables.
- 1.14 The Customer shall comply with any Third Party Licences and shall indemnify and hold Ergo harmless against any loss or damage which Ergo may suffer or incur as a result of the Customer's breach of such terms howsoever arising.

Section 2 Provision of Deliverables

- 2.1 Ergo shall use reasonable endeavours to provide the Deliverables and to deliver the Deliverables to the Customer in accordance with any Timescales set out in the relevant Service Schedule in all material respects.
- 2.2 Ergo shall use reasonable endeavours to meet any Milestones specified in the relevant Service Schedule but any such dates shall be estimates only and time for performance by Ergo shall not be of the essence of the Agreement. Any Milestones may be extended by Ergo by a reasonable period of time upon notice to the Customer.
- 2.3 The Customer shall at its own expense:
 - 2.3.1 obtain and maintain any approvals, licenses, filings or registrations necessary to avail of the Deliverables and/or to allow Ergo to provide the Deliverables to the Customer; and
 - 2.3.2 comply with all applicable laws (including export laws and regulations). The Customer acknowledges that the Deliverables may be subject to export and import control laws (including United States export and import laws) and agrees to fully comply with any such laws in connection with the Deliverables.
- 2.4 The Customer shall be responsible for obtaining any necessary import licences or permits necessary for the importation of the Deliverables, or their delivery to the Customer, and the Customer shall be responsible for any and all customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the Deliverables.

Section 3 Term and Termination

Term

- 3.1 This MSA shall commence on the Commencement Date and shall continue until terminated in accordance with this Section 3 (the “**Term**”).
- 3.2 Each Service Schedule will be effective as of the Start Date set out in such Service Schedule and will remain in effect for the Engagement Duration unless terminated earlier in accordance with this Section 3.

Termination for Convenience

- 3.3 The Customer may terminate this MSA or any Service Schedule at any time by giving not less than 90 days' prior written notice. Should the Customer choose to terminate a Service Schedule prior to the end of Engagement Duration, the Customer may be liable to pay the relevant Termination Charges (if any) as set out in a Service Schedule.
- 3.4 Ergo may terminate this MSA and/or any Service Schedule at any time without penalty upon 90 days' notice to the Customer.
- 3.5 On termination of this MSA, howsoever arising:
 - 3.5.1 each Service Schedule then in force at the date of such termination shall nevertheless continue in full force and effect for the remainder of the relevant Engagement Duration and this MSA shall continue until the expiry of the Engagement Duration of any such Service Schedule for the sole purpose of the terms of this MSA governing each such Service Schedule, unless any such Service Schedules are terminated earlier in accordance with this Section 3; and
 - 3.5.2 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination of this MSA, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected.

Termination for Cause

- 3.6 Without affecting any other right or remedy available to it:
 - 3.6.1 and provided that the parties have first complied with clauses 14.3.1 and 14.3.2 of this Agreement, either party may terminate the Agreement with immediate effect by giving written notice to the other party if the other party commits a material breach of any term of this MSA which such breach is irremediable or (if such breach is remediable) fails to use reasonable efforts to remedy that breach within a period of 60 days after being notified in writing to do so;
 - 3.6.2 either party may terminate the Agreement with immediate effect by giving written notice to the other party if the other party becomes insolvent or has a liquidator, examiner, receiver or administrator (or other similar officer) appointed of it or over any part of its undertaking or assets or passes a resolution for winding up (otherwise than for the purpose of a good faith scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if the other party enters into any voluntary arrangement with its creditors or becomes subject to an administration order or suffers or undergoes any analogous or similar process to any of the above anywhere in the world; or
 - 3.6.3 either party may terminate the Agreement with immediate effect by giving written notice to the other party if the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 3.7 Without affecting any other right or remedy available to it, and provided that the parties have first complied with clauses 14.3.1 and 14.3.2 of this Agreement, either party may terminate a Service Schedule with immediate effect by giving written notice to the other party if the other

party commits a material breach of any term of that Service Schedule which such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 60 days after being notified in writing to do so.

3.8 Without prejudice to any other rights or remedies to which Ergo may be entitled, Ergo may terminate this MSA and/or any Service Schedules in force at the time effective immediately and without liability to Ergo if:

- 3.8.1 there is a change of Control of the Customer which Ergo (acting reasonably) deems to conflict with Ergo's interests;
- 3.8.2 the Customer challenges or disputes the validity of any of Ergo's Intellectual Property Rights;
- 3.8.3 the Customer fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
- 3.8.4 the Customer purports to assign any of its rights or obligations under the Agreement; or
- 3.8.5 if the Customer is found to be non-compliant in its use of the Deliverables provided under any Service Schedule.

Effects of Termination

3.9 Upon termination or expiry of the Agreement and/or one or more Service Schedules for any reason:

- 3.9.1 the Customer shall at its sole cost return (or at Ergo's option, destroy) all media (subject to Section 3.9.2) on which the Deliverables to which that Service Schedule relates are held;
- 3.9.2 the Customer shall, within 10 days of the effective date of expiry or termination of that Service Schedule unless otherwise instructed, promptly return to Ergo, or otherwise dispose of as Ergo may instruct, all samples, technical pamphlets, catalogues, advertising materials, specifications and other materials, documents or papers whatsoever sent to the Customer and relating to Ergo's business (other than correspondence which has passed between the parties) which the Customer may have in its possession or under its control in respect of the Deliverables to which that Service Schedule relates are held;
- 3.9.3 subject to the provisions of Section 3.9.1, all rights and licences of the Customer granted pursuant to this MSA relating to that Service Schedule shall terminate;
- 3.9.4 if Ergo receives, no later than 10 days after the effective date of the termination or expiry of the Service Schedule, a written request for the delivery to the Customer or its appointed representative of the most recent backup of the Customer Data to which that Service Schedule relates, Ergo shall use reasonable commercial endeavours to deliver the backup to the Customer within 30 days of its receipt of such a written request in the format stored by Ergo or in a format otherwise reasonably acceptable to Ergo, PROVIDED THAT the Customer has, at that time, paid all Charges due under the Agreement (whether or not due at the relevant date of expiry or termination). Once such 10-day period has expired or Ergo has, at the Customer's request, delivered to the Customer the most recent backup of that Customer Data (as applicable), Ergo shall promptly permanently delete from its system and otherwise destroy or dispose of all of such Customer Data in its possession or control. The Customer shall pay all reasonable costs and expenses incurred by Ergo in returning and disposing of the Customer Data and deleting it from Ergo's system; and
- 3.9.5 Ergo shall use reasonable efforts to ensure the accurate migration of any Customer Data to which that Service Schedule relates, but gives no warranties as to the

completeness or accuracy of such migration. The Customer shall be responsible for checking the accuracy and completeness of the relevant Customer Data and shall promptly give sufficient details to Ergo of any inaccuracies or omissions in order to permit Ergo to correct them. If such Customer Data includes personal data (as defined in Section 5.5), Ergo shall return all copies of such personal data to the Customer on completion of the data migration process.

3.10 Upon termination or expiry of this MSA for any reason:

3.10.1 all rights and licences of the Customer under this MSA shall terminate, except to the extent that such rights and licences relate to a Service Schedule still in force pursuant to Section 3.5.1.

3.10.2 Ergo will assist the Customer with a post-termination transition at the Customer's request. The Customer will pay Ergo for its assistance at rates consistent with those set forth in any Service Schedule for comparable Deliverables.

Section 4 Charges and Payment

4.1 Section 4.2 shall apply if the Deliverables are to be provided on a time-and-materials basis. Section 4.3 shall apply if the Deliverables are to be provided for a fixed price. The remainder of this Section 4 shall apply in either case.

4.2 Where the Deliverables are provided on a time-and-materials basis:

4.2.1 the Charges shall be calculated in accordance with Ergo's standard daily fee rates as amended from time to time;

4.2.2 Ergo's standard daily fee rates are calculated on the basis of an eight-hour day worked between 9.00 am and 5.30 pm (Irish time) on Business Days;

4.2.3 Ergo shall be entitled to charge, on a pro-rata basis, at an overtime rate of:

(a) 150% of the normal rate for part days and for time worked by Ergo Personnel on Business Days between 5.30 pm and 12.00 am (Irish time) and at any time on Saturdays; and

(b) 200% of the normal rate for part days and for time worked by Ergo Personnel on Sundays, bank holidays and between 12.00 am and 9.00 am on any day other than Saturdays and Sundays (Irish time); and

4.2.4 Ergo shall ensure that the Ergo Personnel complete time sheets recording time spent on the provision of the Deliverables and Ergo shall use such time sheets to calculate the Charges.

4.3 Where the Deliverables are provided for a fixed price, the Charges for the Deliverables shall be the amount set out in the relevant Service Schedule.

4.4 The Customer shall pay to Ergo the Charges specified in the relevant Service Schedule and in accordance with the Timescales specified therein.

4.5 Ergo will invoice the Customer for the Charges in accordance with the Timescales specified in the Service Schedule. The Customer shall pay the full amount invoiced to it by Ergo in euro (or such other currency as may be specified in the Service Schedule) within 30 days of the date of invoice.

4.6 All Charges referred to in the Agreement or any relevant Service Schedule shall be paid by the Customer to Ergo in full without any set-off, counterclaim, deduction or withholding and are exclusive and net of any statutory tax, duties or other such additional levies including, but not limited to VAT, excise tax, tax on sales, property or use, import or other duties, whether levied in respect of the Agreement, the Deliverables provided hereunder or otherwise and whether arising in the Ireland or other territories. Any such statutory tax, duty or such other additional levies shall be added to the invoices rendered by Ergo to the Customer. If Customer

is required to withhold or deduct any portion of the payments due to Ergo, Customer will increase the sum payable to Ergo by the amount necessary so that Ergo receives an amount equal to the sum it would have received had Customer made no withholdings or deductions. If the Customer is exempt from paying any or all taxes, Customer shall provide Ergo with written evidence of such tax exemptions issued by the applicable taxing authority. The Customer shall, on at least an annual basis and upon reasonable request from Ergo, update or re-confirm such status. Ergo reserves the right to invoice for applicable taxes if the Customer fails to maintain or update written evidence of such tax exempt status with Ergo.

- 4.7 If the Customer fails to make any payment due to Ergo under the Agreement by the due date for payment, then, without limiting Ergo's other remedies under the Agreement or otherwise, Ergo may charge the Customer interest on the overdue amount at the rate of 5% per annum above EURIBOR from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 4.8 If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately notify Ergo in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. Ergo shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. Where only part of an invoice is disputed, the undisputed Charges shall be paid by the Customer on the due date as set out in Section 4.5. Any outstanding Charges will be settled immediately by the Customer upon dispute resolution.
- 4.9 Unless otherwise agreed by the parties and specified in the relevant Service Schedule, the Charges exclude:
 - 4.9.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by Ergo in connection with the Deliverables, and the cost of any materials or services reasonably and properly provided by third parties required by Ergo for the supply of the Deliverables. Such expenses, materials and third party services shall be invoiced by Ergo at cost; and
 - 4.9.2 VAT, which Ergo shall add to its invoices at the appropriate rate.
- 4.10 Ergo reserves the right to suspend or terminate the provision of the Deliverables in the event of non-payment of the Charges or any sums due or owing to Ergo.
- 4.11 Time for payment shall be of the essence of the Agreement.
- 4.12 All payments payable to Ergo under the Agreement shall become due immediately on termination of the Agreement, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Agreement.
- 4.13 Ergo may, without prejudice to any other rights it may have, set off any liability of the Customer to Ergo against any liability of Ergo to the Customer.

Section 5 Confidentiality, Data Protection and Publicity

Confidentiality

- 5.1 Each party may have access to Confidential Information of the other party under the Agreement. A party's Confidential Information shall not include information that:
 - 5.1.1 is or becomes publicly known through no act or omission of the receiving party; or
 - 5.1.2 was in the other party's lawful possession prior to the disclosure; or
 - 5.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 5.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or

- 5.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 5.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of the Agreement.
- 5.3 Each party agrees to take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement.
- 5.4 Sections 5.1 to 5.3 shall survive expiry or termination of the Agreement for a period of 5 years.

Data Protection

- 5.5 Each party shall comply with its respective obligations under the provisions of applicable Data Protection Laws and references in this Section 5 to "**processor**", "**controller**" and "**personal data**" shall have the meanings defined in the GDPR.
- 5.6 Where either party or any of its sub-contractors, as part of the fulfilment of its obligations under the Agreement, processes personal data as a processor on behalf of the other party acting as a controller:
- 5.6.1 the processor shall, and shall procure that its sub-contractors shall:
- (a) act only on instructions from the controller when processing personal data provided to it under the Agreement, and keep records of all such processing;
 - (b) comply with the controller's instructions in relation to the processing of personal data as such instructions are given and varied from time to time by the controller;
 - (c) at all times take all appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data and not transfer any personal data outside the European Economic Area without the controller's prior written consent.
 - (d) immediately inform the controller if it believes that the customer's instructions conflict with the requirements of Data Protection Laws.
 - (e) implement measures to assist the controller in complying with the rights of data subjects.
 - (f) assist the controller in obtaining approval from DPAs where required and will cooperate, on request, with DPAs in the performance of their tasks including conducting DPIAs where required.
 - (g) provide the controller with all information necessary to demonstrate compliance with Data Protection Laws and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller..
 - (h) notify any data breach to the controller without undue delay.
 - (i) at the choice of the controller, delete or return all the personal data to the controller after the end of the provision of services relating to processing, and delete existing copies unless Legislation requires storage of the personal data;

- 5.7 Where either party or any of its sub-contractors, as part of the fulfilment of its obligations under the Agreement, acts as a controller, that party:
- 5.7.1 warrants and confirms that it will obtain all necessary authorisations and consents required for the processor to collect, process and use personal data for the purposes of the performance of its obligations under the Agreement in compliance with Data Protection Laws; and
 - 5.7.2 agrees to indemnify the processor against any liabilities, costs and expenses that are incurred by the processor or arise out of the controller's failure, or the failure of its employees, agents and/or sub-contractors, to comply with Data Protection Laws
 - 5.7.3 The processor will not appoint a sub-processor without the prior written consent of the controller. Where the controller agrees to the appointment of sub-processors, those sub-processors will be appointed on the same terms as are set out in this agreement between the controller and Ergo.
- 5.8 Where that other processor fails to fulfil its data protection obligations, the initial processor shall remain fully liable to the controller for the performance of that other processor's obligations.
- 5.9 Each of the Parties acknowledges and agrees that Schedule 3 to this Agreement is an accurate description of the Data Protection Particulars.

Publicity

- 5.10 Unless otherwise agreed, Ergo may advertise or publicly announce that the Customer is receiving Deliverables from Ergo.

Section 6 Obligations and Warranties

Customer Obligations

- 6.1 In respect of each Service Schedule, the Customer shall appoint a suitably qualified resource ("**Customer Resource**") that will be responsible for informing any analysis and definitions of the Customer's needs and existing information systems or requirements thereof and thereafter communicating same to Ergo in an appropriate form, whereby Ergo can then prepare the Business Requirements and Functional Specification. The Business Requirements and Functional Specification shall then be subject to authorisation and approval by the Customer's authorised representative. The Customer Resource shall have the authority to contractually bind the Customer on matters relating to the relevant Service Schedule.
- 6.2 The Customer shall:
- 6.2.1 commit the Customer's resources towards development of the relevant Service Schedule towards Acceptance by the Customer;
 - 6.2.2 in respect of Customer-Procured Third Party Products, liaise with the providers of such Customer-Procured Third Party Products, including but not limited to third party software providers or suppliers of existing hardware or software of the Customer (with which the Deliverables to be provided under the relevant Service Schedule shall be integrated) for the purpose of ensuring adequate replies to any queries or configuration issues that may require attention as specified or raised by Ergo from time to time or whenever required, in the supply of the Deliverables;
 - 6.2.3 carry out the Acceptance Tests in accordance with the Agreement and the relevant Service Schedule at each Milestone;
 - 6.2.4 liaise with Ergo to ensure there is an efficient exchange of information;

- 6.2.5 warrant that it shall operate the Deliverables in accordance with the Operating Manuals;
 - 6.2.6 grant in a timely manner necessary access to Ergo to the Customer's equipment, regulations, standards, documentation, systems, staff and materials applicable to or necessary for the provision of the Deliverables by Ergo;
 - 6.2.7 be responsible for the accuracy and completeness of all information it provides to Ergo and in particular the inputs to the Business Requirements and Functional Specification;
 - 6.2.8 give Ergo such assistance as is reasonably required in order for Ergo to provide the Deliverables under the Agreement;
 - 6.2.9 be responsible (at its own cost) for preparing the Customer's Premises for the supply of the Deliverables and ensure reasonable and safe working conditions and facilities are provided for Ergo Personnel when working at the Customer's Premises; and
 - 6.2.10 not provide or make available the Deliverables to any third party or provide or make available any products or services using the Deliverables to any third party.
- 6.3 The Customer shall be responsible for, and shall indemnify, and keep indemnified, Ergo against all claims, costs and other liabilities whatsoever which Ergo may incur arising out of any personal injury or damage to property occurring in the course of Ergo's performance of the Agreement, including any personal injury or damage suffered by any Ergo Personnel while on the Customer's Premises or any property owned or occupied by the Customer.
- 6.4 If Ergo's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer, the Customer Resource or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to Ergo on demand all reasonable costs, charges or losses sustained or incurred by it, subject to Ergo confirming such costs, charges and losses to the Customer in writing.
- 6.5 If any information provided by the Customer is incomplete or incorrect, any work required to correct issues created by the use of such incomplete or inaccurate information shall be treated as a Change Request and shall be subject to the Change Control Procedure.

Ergo Obligations

- 6.6 Ergo shall ensure that, whilst present at the Customer's Premises, Ergo Personnel shall:
- 6.6.1 comply with the reasonable rules and regulations of the Customer as notified in writing to Ergo from time to time relating to health and safety, security and confidentiality applicable at the Customer's Premises or such other location at which Ergo Personnel may be required to attend to provide the Deliverables insofar as they are applicable to an external supplier, contractor, or visitor;
 - 6.6.2 exercise reasonable and professional skill, care and diligence in providing the Services;
 - 6.6.3 observe all reasonable and lawful instructions of the Customer and the laws of the country in which the work is taking place; and
 - 6.6.4 take reasonable security precautions with materials and information under its control.
- 6.7 The warranties set out in the Agreement are exclusive and in lieu of all other warranties, conditions, terms, undertakings and obligations, express or implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

- 6.8 The warranties contained in the Agreement shall not apply where problems with the Deliverables arise that result from:
- 6.8.1 the use of the Deliverables in a manner materially inconsistent with the Operating Manuals;
 - 6.8.2 alterations or modifications made to the Deliverables without the prior written approval of Ergo;
 - 6.8.3 defects, malfunctions or configuration issues with or caused by any hardware or system not provided by Ergo;
 - 6.8.4 storage, operation, use or maintenance of the Deliverables in a manner or an environment inconsistent with the Specifications;
 - 6.8.5 the effects of a computer virus, Trojan horses, worms, time bombs or other computer programming devices which are intended to damage a user's system or data or prevent the user from using the Deliverables;
 - 6.8.6 the inaccuracy or otherwise of the Business Requirements and Functional Specification as prepared by the Customer Resource; and/or
 - 6.8.7 defects or functional restrictions in all or any Third Party Products and Services.
- 6.9 While Ergo's method of working shall be its own, Ergo shall comply with all reasonable requests to abide by the Customer nominated process and quality standards applicable to the Deliverables provided to Ergo.

Mutual Obligations

- 6.10 Each party represents, warrants and undertakes that:
- 6.10.1 it has full capacity and authority and all necessary consents to enter into and to perform this MSA and to grant the rights and licences referred to in this MSA and that this MSA is executed by its duly authorised representative and represents a binding commitment on it; and
 - 6.10.2 it shall comply with all applicable Legislation in the performance of its obligations under the Agreement.
- 6.11 Except as provided above in this Section 6, to the maximum extent permitted by applicable laws, the Deliverables are provided "as-is" without any warranties of any kind, whether express or implied by statute, common law or otherwise including as to the validity, enforceability or non-infringement of Intellectual Property Rights.

Section 7 Indemnification and Liability

Indemnification by the Customer

- 7.1 The Customer will defend, indemnify and hold Ergo, its affiliates and their respective successors, directors, officers, employees and agents harmless from and against:
- 7.1.1 all claims to the extent that the claims arise out of or relate to:
 - (a) the negligent or wilful acts or omissions of the Customer resulting in any bodily injury or death to any person or loss, disappearance or damage to tangible or intangible property; or
 - (b) the acts or omissions of any Customer Affiliate; or
 - (c) the Customer's failure to comply with applicable Legislation; and

- 7.1.2 any claims howsoever caused, brought or threatened against Ergo by any Customer Affiliate, both whilst it is a Customer Affiliate and thereafter, in relation to a Service Schedule or Ergo's provision of the Deliverables.

Acknowledgement of fault and settling claims

- 7.2 Neither party will stipulate, admit, or acknowledge any fault or liability on the part of the other without prior written consent. The indemnifying party will not settle any claim or publicise any settlement without the other party's prior written consent.
- 7.3 The following provisions in this Section 7 set out the entire financial liability of each party (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the other party in respect of any claim arising pursuant to this Agreement.
- 7.4 Nothing in the Agreement limits or excludes the liability of either party for (i) any liability to the extent that it cannot be lawfully excluded; (ii) the payment of Charges due and payable; or (iii) any breach by the Customer of Section 9 (Proprietary Rights).
- 7.5 Subject to Section 7.4, neither party shall in any circumstances be liable whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
- 7.5.1 loss of profits;
 - 7.5.2 loss of business;
 - 7.5.3 depletion of goodwill or similar losses;
 - 7.5.4 loss of anticipated savings;
 - 7.5.5 loss or corruption of data or information; or
 - 7.5.6 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses,

in any case, whether or not such losses were within the contemplation of the parties at the date of the Agreement, or were suffered or incurred by either party in connection with any matter arising under this Agreement.

- 7.6 Subject to Section 7.4, each Party's total aggregate and cumulative liability under a Service Schedule in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement, shall be limited to the amount of the Charges paid by the Customer to Ergo under the relevant Service Schedule in respect of which liability arises during the 12-month period immediately before the date on which the cause of action first arose (or, in the event that no Charges have been paid by the Customer to Ergo under the relevant Service Schedule before the date on which the cause of action first arose, the annualised amount of Charges payable under that Service Schedule for the 12-month period commencing on the Start Date).
- 7.7 Sections 7.3 to 7.6 shall survive expiry or termination of the Agreement for any reason.

Section 8 Insurance

- 8.1 Each Party has in place policies of insurance with a reputable insurance company or companies, a policy or policies of insurance providing an adequate level of cover in respect of all the matters which are the subject of the indemnities and undertakings on the part of such Party in this MSA including:
- 8.1.1 Public Liability Insurance;
 - 8.1.2 Employers Liability Insurance; and

8.1.3 Professional Indemnity Insurance.

Details of such policies are available from each Party on request from the other Party.

Terms and liabilities

- 8.2 The terms of any insurance or the amount of cover shall not relieve either party of any liabilities under the Agreement or any statute.

Section 9 Proprietary Rights

- 9.1 The following provisions shall apply in respect of Intellectual Property Rights:
- 9.1.1 all Intellectual Property Rights in and to the Deliverables belong, and shall belong, to Ergo and/or its licensors;
 - 9.1.2 the Customer shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of Ergo and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character; and
 - 9.1.3 Ergo grants, in respect of each Service Schedule and subject to the terms of this MSA, the relevant Service Recipient(s) the non-exclusive, non-transferable right to use the Deliverables as set out in the relevant Service Schedule for the purposes of the relevant Business Requirements and Functional Specification. The Service Recipient(s) have no right to sublicense the right to use the Deliverables except as necessary to any subcontractor approved by Ergo. Ergo may revoke a licence to the Deliverables at any time for a reasonable business reason. Each licence granted will terminate automatically on the earlier of the expiration or termination of this MSA or the applicable Service Schedule.
- 9.2 The preceding Section 9.1 shall apply unless otherwise agreed between the parties in writing pursuant to a Service Schedule.
- 9.3 The Customer shall not:
- 9.3.1 copy the Deliverables or any part of any of them except to the extent and for the purposes expressly permitted by the Agreement;
 - 9.3.2 modify, adapt, develop, create any derivative work, reverse engineer, decompile, disassemble or carry out any act otherwise restricted by copyright or other Legislation in the Deliverables except and only to the extent that it is expressly permitted by the Agreement or applicable law;
 - 9.3.3 sub-license, rent, lend, assign or transfer in any other way the Intellectual Property Rights in and to the Deliverables licenced to it pursuant to Section 9.1.3 without the prior written consent of Ergo; or
 - 9.3.4 give access to the Deliverables through any network of computers to users who are not employees or agents of the Customer.
- 9.4 Other than the licences expressly granted under the Agreement, neither party grants any licence of, right in or makes any assignment of any of its Intellectual Property Rights. In particular, except as expressly provided in the Agreement, the Customer shall have no rights in respect of any trade names or trade marks used by Ergo in relation to the Deliverables or their associated goodwill, and the Customer hereby acknowledges that all such rights and goodwill shall inure for the benefit of and are (and shall remain) vested in, Ergo or its licensors.
- 9.5 At the request of Ergo, the Customer shall do or procure to be done (at Ergo's reasonable cost) all such further acts and things (including the execution of documents) as Ergo shall require to give Ergo the full benefit of the Agreement.

- 9.6 The Customer shall promptly give notice in writing to Company in the event that it becomes aware of any claim that any of the Deliverables or the manufacture, use, sale or other disposal of the Deliverables infringes the rights of any third party.
- 9.7 In the case of any matter falling within Section 9.6:
- 9.7.1 Ergo shall defend the Customer against any claims that the use of the Deliverables
- 9.7.2 in accordance with the Agreement infringes any third party Intellectual Property Right and shall indemnify the Customer for and against any amounts awarded against the Customer in judgment of such claims, provided that:
- (a) Ergo is given prompt notice of such claim;
 - (b) the Customer provides reasonable co-operation to Ergo in the defence and settlement of such claim, at Ergo's expense; and
 - (c) Ergo is given sole authority to defend or settle the claim.
- 9.7.3 In the defence or settlement of the claim, Ergo may obtain for the Customer the right to continue using the Deliverables in the manner contemplated by the Agreement, replace or modify the Deliverables so that they become non-infringing or, if such remedies are not reasonably available, terminate this MSA or the relevant Service Schedule forthwith by notice in writing and without liability to the Customer. Ergo shall not in any circumstances have any liability if the alleged infringement is based on:
- (a) a modification of the Deliverables by anyone other than Ergo;
 - (b) the Customer's use of the Deliverables in a manner contrary to the instructions given to the Customer by Ergo;
 - (c) the Customer's use of the Deliverables after notice of the alleged or actual infringement from Ergo or any appropriate authority;
 - (d) use or combination of the Deliverables with products or software not supplied or approved by Ergo in circumstances where, but for such combination, no infringement would have occurred; or
 - (e) the use of any Third Party Products and Services
- 9.7.4 The foregoing states the Customer's sole and exclusive rights and remedies, and Ergo's entire obligations and liability, in the case of any matter falling under Section 9.6.
- 9.8 Each party shall, at the request and expense of the other, provide all reasonable assistance to the other (including, but not limited to, the use of its name in, or being joined as a party to, proceedings) in connection with any action to be taken by the other party, provided that that party is given such indemnity as it may reasonably require against any damage to its name.
- 9.9 Ergo shall procure that the benefit of third party suppliers' warranties associated with Ergo-Bundled Third Party Products are passed on to the Customer.

Section 10 Change Management

- 10.1 In the event that the Customer requires a change to the Deliverables required under a Service Schedule, a Change Request must be made in writing following the Change Control Procedure, using the Change Request Form. All Change Requests will be subject to additional charges.
- 10.2 The Customer acknowledges that a Change Request will have an impact on the Charges specified in the relevant Service Schedule and the Timescale as specified in that Service

Schedule. This includes both the impact of performing the Change Request evaluation and the impact of Change Request implementation.

- 10.3 Mutually acceptable changes to the Service Schedule may be incorporated as a modification to the relevant Service Schedule or may be addressed in a separate Service Schedule.
- 10.4 Until such time as a Change Request is made in accordance with the Change Control Procedure, Ergo shall, unless otherwise agreed in writing, continue to provide the Deliverables specified in the Service Schedule as if the request or recommendation had not been made.
- 10.5 Ergo may at any time and without giving the Customer prior notification make any changes to the Deliverables which are necessary to comply with any applicable safety or other statutory requirements, or make any changes to the Deliverables which do not materially affect the nature or quality of the Deliverables. Without prejudice to the generality of the foregoing, Ergo will at all times, endeavour to update, inform and generally maintain clear updates regarding such changes.

Section 11 Testing and Acceptance

- 11.1 Where specifically required by a Service Schedule, the following testing and acceptance provisions in this Section 11 will apply.
- 11.2 Following the configuration and installation of the Deliverables by Ergo, in accordance with the Service Schedule, Ergo shall conduct its standard tests in order to ensure that the Deliverables are suitable for the performance of Acceptance Tests by the Customer. Any defects, faults or failures identified by Ergo in the performance of such tests and which are attributable to Ergo shall be, either, notified to the Customer and or remedied by Ergo. In the event of Ergo notifying the Customer of any such defects, faults or failures, the Customer may, at its discretion, either, request Ergo to remedy or procure to be remedied the defects, faults or failures, or alternatively, may proceed to carry out Acceptance Tests in relation to such Deliverables in whole or in part.
- 11.3 The Customer shall conduct the Acceptance Tests in respect of all Deliverables in the manner set out in the Service Schedule and in accordance with the Acceptance Periods provided therein. The Acceptance Tests shall be sufficiently suitable to test whether all Deliverables comply with the Business Requirements and Functional Specification as set out in the Service Schedule. Upon passing the relevant Acceptance Tests, the Deliverables or that part of it (if not the whole) shall be deemed accepted ("**Acceptance**").
- 11.4 If the Customer does not complete the Acceptance Tests within the Timescales set out in the relevant Service Schedule, the Deliverables will be deemed to have been accepted by the Customer and the provisions of Section 11.5 apply accordingly.
- 11.5 The Deliverables shall be recorded as accepted in accordance with Acceptance Test Bug Criteria set out in the relevant Service Schedule.
- 11.6 Upon Acceptance, Ergo will become entitled to the payment of the Charges associated with the Milestone in question, as set out in the relevant Service Schedule.
- 11.7 In default of Final Acceptance Tests being carried out by the Customer after a period of 7 days from the date upon which upon such tests are due, the Deliverables shall be deemed to have been accepted by the Customer and the Customer shall be deemed to have completed and executed the Acceptance Certificate. In the event of such Acceptance Certificate issuing by default, Ergo will be deemed to have discharged its obligations to the Customer under the Agreement in respect of those Deliverables.
- 11.8 Ergo shall not be liable for the inadequacy or otherwise of the Acceptance Tests or the Final Acceptance Tests carried out by the Customer on the Deliverables.
- 11.9 Ergo shall, in accordance with the Timescales set out in the relevant Service Schedule, furnish to the Customer a status report outlining progress by reference to the Service Schedule and the Milestones and any Change Requests or delays affecting the provision of the Deliverables.

- 11.10 The parties shall make their respective representatives available to meet each other at all times during the Engagement Duration of the relevant Service Schedule subject to reasonable notice of such meetings being provided by the requesting party. Such meetings shall occur regularly as agreed between the parties.

Section 12 Transfer Of Undertakings

- 12.1 The parties agree that neither the entry into the Agreement nor any one or more of the transactions contemplated by the Agreement are intended to constitute a “transfer” within the meaning of the Transfer Regulations.
- 12.2 The Customer warrants that no person employed by it or by any third party is at the Commencement Date wholly or mainly assigned to the provision of the Deliverables or of similar products or services to the Customer.
- 12.3 Customer shall indemnify and keep Ergo indemnified against all Losses incurred by Ergo in connection with the transfer or alleged transfer under the Transfer Regulations to Ergo, by reason of the entry into the Agreement or the transactions contemplated by it, of any person employed or engaged by the Customer or any third party engaged by the Customer in the provision of the Deliverables or of similar products or services prior to the commencement by Ergo of its provision of the Deliverables.

Section 13 Equipment

- 13.1 In respect of any Equipment provided by Ergo to the Customer under a Service Schedule, the Customer shall:
- 13.1.1 ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
 - 13.1.2 take such steps (including compliance with all safety and usage instructions provided by Ergo) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
 - 13.1.3 keep the Equipment at all times at the Customer's Premises and shall not move or attempt to move any part of the Equipment to any other location without Ergo's prior written consent;
 - 13.1.4 not part with control of (excluding for the purposes of Ergo-authorized repair, maintenance or replacement), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
 - 13.1.5 not, without the prior written consent of Ergo, attach the Equipment to any land or building (to the extent that the Equipment was not already attached to the Customer's Premises at the time of Delivery) so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify Ergo against all losses, costs or expenses incurred as a result of such affixation or removal;
 - 13.1.6 not destroy, deface or obscure any identifying mark, notice or packaging on or relating to the Equipment; and
 - 13.1.7 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of Ergo and/or any third party in the Equipment.

Section 14 Miscellaneous

Relationship

- 14.1 The parties are independent contractors. The Agreement does not create an exclusive relationship between the parties. The Ergo Personnel are not the Customer's employees. Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party except as expressly provided herein. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

Governing law

- 14.2 The Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of Ireland.

Dispute Resolution & Jurisdiction

- 14.3 The parties shall negotiate in good faith with a view to resolving any question or difference which may arise concerning the construction, meaning or effect of the Agreement and any dispute arising out of, or in connection with the Agreement.
- 14.3.1 If any such matter cannot be resolved amicably through negotiations between the Customer Resource and an Ergo representative within 5 days from the commencement of negotiations, then the parties shall nominate senior representatives who shall meet to try to resolve the matter.
- 14.3.2 If the matter is not resolved at that level within 20 days of the matter having first been considered in negotiations between the parties, or such longer period as may be agreed by the parties, then the matter may be referred by either party to a meeting to be convened between a director of Ergo and an officer of the Customer such meeting to be held within 30 days of the matter having first been considered in negotiations.
- 14.3.3 If such latter meeting fails to result in a settlement within 5 days of such referral to it (or it is not possible to complete such a meeting within this period), either party may propose to the other by service of written notice that the matter be referred to mediation and, if such proposal is accepted, the mediator or mediators (if not appointed by agreement between the parties within 14 days of service of the written notice) shall be nominated by the Centre for Dispute Resolution (CEDR).
- 14.3.4 If the dispute is not resolved by mediation within 60 days of a mediator being appointed (or if the parties do not agree to refer the dispute to mediation under this Section 14.3), then either party can refer the dispute to the Courts of Ireland under Section 14.4. Subject to the terms of the Agreement, while the dispute resolution procedure provided in this Section 14.3 is being followed, both parties shall be obliged to fulfil in full their respective obligations under the Agreement.
- 14.4 The parties irrevocably agree that the courts of Ireland have exclusive jurisdiction to settle any disputes or claims arising out of or in connection with the Agreement, its subject matter or its formation (including non-contractual disputes or claims).

No Waiver

- 14.5 No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

Force Majeure

- 14.6 Neither party shall in any circumstances be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Ergo or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for six months, the party not affected may terminate this MSA and any Service Schedule then in force by giving 30 days' written notice to the other party.

Severability

- 14.7 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Section 14.7 shall not affect the validity and enforceability of the rest of the Agreement. If any provision or part-provision of the Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

Notices

- 14.8 All notices to or by the respective parties shall be in writing in the English language and shall be deemed to have been duly given when (i) delivered by hand, (ii) posted by recorded delivery post (postage prepaid), (iii) sent by reputable overnight courier, (iv) sent by fax, or (v) sent by email to the party to which such notice is required to be given under the Agreement addressed to the parties as provided for in this MSA; or to such other address, fax number or email address as either party may subsequently notify to the other in writing. Notices delivered by hand, sent by fax or by overnight courier shall be deemed received the first Business Day following such delivery or sending. Notices, which have been posted as above, shall be deemed received on the third Business Day following posting. Notices sent by email shall only be deemed delivered upon receipt by the sender of an acknowledgement of receipt from the recipient.

Counterparts

- 14.9 The parties may execute this MSA in any number of counterparts. Each counterpart will be deemed an original and all counterparts will constitute one agreement binding on both parties. Electronic signatures will be considered binding for all purposes.

Entire Agreement

- 14.10 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement. Nothing in this Section 14.10 shall limit or exclude any liability for fraud.

Variation

- 14.11 No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

Assignment

- 14.12 The Customer shall not, without the prior written consent of Ergo, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement. Ergo may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

Third Party Rights

- 14.13 No one other than a party to the Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

Rights and Remedies

- 14.14 The rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

Soliciting

- 14.15 For the Term and a period of twelve months after termination or expiry of the Agreement, the Customer shall not, unless agreed otherwise in writing with Ergo, solicit the employment, products or services of any director, officer, employee, associate, agent, representative, sub-contractor of Ergo. In the event of the Customer breaching this provision, the Customer will pay to Ergo an amount equal to 30% of the first year's remuneration of the person concerned (and the parties agree that such sum is a genuine pre-estimate of loss and is not a penalty).

Survival

- 14.16 The provisions of the Agreement which by their terms require performance after the termination or expiration of the Agreement or have application to events that may occur after the termination or expiration of the Agreement will survive the termination or expiration of the Agreement. All indemnity obligations and any applicable indemnification procedures will be deemed to survive the termination or expiration of the Agreement.

Section 15 Interpretation and Definitions

- 15.1 The definitions and rules of interpretation in this Section 15 apply in the Agreement.

Interpretation

- 15.2 Section, Schedule and any paragraph headings shall not affect the interpretation of Agreement.
- 15.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 15.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 15.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 15.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 15.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 15.8 A reference to writing or written includes faxes and e-mail.
- 15.9 The words "includes" and "including" are to be construed without limitation.

- 15.10 References to Sections and Appendices are to the Sections and Appendices of this MSA and references to paragraphs are to paragraphs of the relevant Schedule.

Definitions

- 15.11 The following terms shall, unless the context requires otherwise, have the following meanings in the Agreement (including the recitals, this MSA, any Appendices to this MSA and any Service Schedules):

- 15.11.1 **"Acceptance"** "has the meaning given in Section 11.2;
- 15.11.2 **"Acceptance Certificate"** means a certificate in the form set out in Schedule 4;
- 15.11.3 **"Acceptance Date"** means in relation to a particular phase of the relevant Service Schedule, the date on which the Deliverables forming the subject matter of said phase have been accepted (or deemed to have been accepted) by the Customer in accordance with the Business Requirements and Functional Specification set out in the relevant Service Schedule and the terms of this MSA;
- 15.11.4 **"Acceptance Period"** means the acceptance test period referred to in the Service Schedule within which the Customer must test all Deliverables;
- 15.11.5 **"Acceptance Test Bug Criteria"** means the test bug criteria set out in the relevant Service Schedule;
- 15.11.6 **"Acceptance Tests"** means the acceptance tests which will be agreed between the parties and set out in a Service Schedule, conducted by the Customer pursuant to this MSA and where the context so admits or requires any one or more of them;
- 15.11.7 **"Affiliate"** means in relation to a party, a person who is, from time to time, a subsidiary or holding company of that party, or is a subsidiary of that party's holding company, "holding company" and "subsidiary" having the meanings given to them in section 8 Companies Act 2014;
- 15.11.8 **"Bespoke Software"** means software programs developed by Ergo specifically for the Customer as part of the Deliverables and listed as such in the relevant Service Schedule;
- 15.11.9 **"Business Day"** means a day (other than a Saturday, Sunday or public/bank holiday) when banks in Dublin are open for business;
- 15.11.10 **"Business Requirements and Functional Specification"** means the document embodying the business needs of the Customer and the consequential functional specifications and technical and other statutory requirements required of the Deliverables to be supplied under the Agreement, set out in the relevant Service Schedule;
- 15.11.11 **"Change Control Procedure"** means the change control procedure set out at Schedule 2 of this Agreement which may be amended or updated from time to time;
- 15.11.12 **"Change Request"** means any request by the Customer to change the Deliverables required under a Service Schedule;
- 15.11.13 **"Charges"** means the consideration to be paid by the Customer to Ergo as specified in the Service Schedule;
- 15.11.14 **"Completion Date"** means the date specified in Service Schedule by which Ergo ceases to provide the Deliverables;
- 15.11.15 **"Confidential Information"** means information that is proprietary or confidential and is either clearly labelled as such or otherwise identified as Confidential Information;

- 15.11.16 **"Control"** means a business entity shall be deemed to "control" another business entity if it owns, directly or indirectly, in excess of 50% of the outstanding voting securities or capital stock of such business entity or any other comparable equity or ownership interest with respect to a business entity other than a corporation;
- 15.11.17 **"Customer Affiliate"** an Affiliate of the Customer;
- 15.11.18 **"Customer Data"** means any information that is provided by the Customer to Ergo as part of the Customer's use of the Deliverables, including any information derived from such information;
- 15.11.19 **"Customer's Premises"** means the location(s) at which the Deliverables are installed as set out in each Service Schedule;
- 15.11.20 **"Customer-Owned Equipment"** means any equipment owned by the Customer and identified as such in the relevant Service Schedule;
- 15.11.21 **"Customer-Procured Third Party Products"** includes but is not limited to all or any third party software and applications and third party branded products and services that may be purchased by the Customer from a third party as set out in the relevant Service Schedule;
- 15.11.22 **"Customer Resource"** has the meaning given in Section 6.1 and is as set out in the relevant Service Schedule;
- 15.11.23 **"Customer's Staff"** means all employees, servants, agents, contractors and sub-contractors of the Customer engaged by the Customer on matters relating to this Agreement;
- 15.11.24 **"Data Protection Legislation"** means to the extent relevant to this MSA and/or the provision or receipt of the Deliverables (i) the Irish Data Protection Acts 1988 to 2018; (ii) the European Communities (Electronic Communications Networks & Services) (Privacy & Electronic Communications) Regulations 2011; (iii) the EU ePrivacy Directive 2002/58/EC (as amended) (the "ePrivacy Directive"); (iv) the General Data Protection Regulation (Regulation (EU) 2016/679) (the "GDPR"); and (v) any relevant transposition of, or successor or replacement to the legislation set out above; and (vi) all other equivalent legislation in Ireland or any other applicable jurisdiction.
- 15.11.25 **"Data Protection Particulars"** means in relation to any Processing of Personal Data under this Agreement, (a) the subject matter and duration of the Processing; (b) the nature and purpose of the Processing; (c) the type of Personal Data being Processed; and (d) the categories of Data Subjects - as required pursuant to Article 28(3) of the GDPR
- 15.11.26 **"Deliverables"** means together the Equipment, the Products and Services and any documents, products and materials developed by Ergo as part of or in relation to the Products and Services in any form, including computer programs, data, reports and specifications (including drafts) as specified in a Service Schedule;
- 15.11.27 **"Engagement Duration"** means the term of the Service Schedule as set out in each Service Schedule;
- 15.11.28 **"Equipment"** means the Ergo Equipment (excluding any Customer-Owned Equipment);
- 15.11.29 **"Ergo-Bundled Third Party Products"** includes but is not limited to all or any third party software and applications and third party branded products and services procured for the Customer by Ergo as set out in the relevant Service Schedule;
- 15.11.30 **"Ergo Equipment"** means any equipment owned by Ergo and identified as such in the relevant Service Schedule;

- 15.11.31 **"Ergo Personnel"** means any director, officer, employee, associate, agent, representative, sub-contractor of Ergo or of its parent, subsidiary or associate, or an assignee of Ergo;
- 15.11.32 **"Final Acceptance Tests"** means the final tests carried out by the Customer on all Deliverables in accordance with the relevant Service Schedule;
- 15.11.33 **"Intellectual Property Rights"** means all intellectual property rights including patents, (including utility models and inventions), trade marks (including service marks, trade names and business names), design rights, copyright and related rights (including to rights in respect of software), internet designations (including domain names), moral rights and database rights, (whether or not any of these is registered and including any application for registration of any such rights), know-how, Confidential Information and trade secrets for the full term of such rights and including any extension to or renewal of the terms of such rights and all rights or forms of protection of a similar nature or having similar effect to any of these which may exist anywhere in the world;
- 15.11.34 **"Legislation"** means any statute, statutory provision or subordinate legislation or any mandatory rules or guidance issued by any regulatory body having jurisdiction over the applicable party;
- 15.11.35 **"Losses"** means all employment costs, liabilities, losses, costs (including legal costs, other professional fees and disbursements and associated VAT), damages, expenses, interest, charges, actions, proceedings, claims and demands associated with or arising out of the relevant subject matter;
- 15.11.36 **"Milestones"** means the periods, dates and deadlines by which particular work or the provisions of the Deliverables (as hereafter defined) or particular obligations of Ergo are required to be performed and as set out in the Service Schedule and in accordance with this MSA. These Milestones shall only be altered by MSA between the Customer and Ergo in writing. Without prejudice to the foregoing, when a Change Request has been made, all previously agreed Milestones will be deemed to have been altered accordingly, unless otherwise stated;
- 15.11.37 **"Operating Manuals"** means the operating manuals, user instruction manuals, technical literature, end user manuals and all other related materials supplied by Ergo as specified in the relevant Service Schedule;
- 15.11.38 **"Products and Services"** means where appropriate resultant Intellectual Property Rights as manifest in any Bespoke Software, custom software application or software product and any or all associated designs, details, drawings, specifications, images, sounds, data schemas and databases whether hosted or supplied via licence in tangible medium, embodied and supplied to the Customer including advice, support and/or any other services to be provided by Ergo to the Customer as specified in the Service Schedule;
- 15.11.39 **"Service Schedule"** means a statement of work in the form set out in Schedule 1 in which details of the Deliverables are set out. Service Schedule may also be referred to as a Statement of Work where appropriate, and in such circumstances the term "Statement of Work" shall be deemed to mean Service Schedule for the purposes of this MSA;
- 15.11.40 **"Start Date"** means the effective date of a Service Schedule as set out in the relevant Service Schedule;
- 15.11.41 **"Third Party Licences"** means any open-source software licences relating to the Deliverables, and/or any proprietary third-party software licences relating to any Ergo-Bundled Third Party Products, the terms of which are available at

<http://www.ergogroup.ie/our-solutions/contract-info> and which may be amended or updated from time to time;

15.11.42 "**Third Party Products and Services**" means Customer-Procured Third Party Products and Ergo-Bundled Third Party Products;

15.11.43 "**Timescales**" means the Start Date, Engagement Duration and Completion Date and any periodic progress reporting requirements as specified in the Service Schedule;

15.11.44 "**Transfer Regulations**" means the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003; and

IN WITNESS whereof the parties have entered into this MSA on the Commencement Date.

Schedule 1

Template Service Schedule (or Statement of Work)

Schedule 2
Change Control Procedure

Schedule 3
Data Protection Particulars

TYPE OF RELATIONSHIP	Controller to Processor
Subject matter - SCOPE	To process only the data required to provide the Deliverable as outlined in the individual Service Schedule.
Processing NATURE	To provide the Deliverable as outlined in the individual Service Schedule.
Processing PURPOSE	Processing operations which are necessary to provide the Services which are referred to in the Service Schedule.
Processing DURATION	The Processing of the Personal Data shall occur throughout the Agreement or the individual Service Schedule
Type of Personal Data	As outlined in the individual Service Schedule.
Categories of Data Subject	As outlined in the individual Service Schedule.
Special Category Personal Data Processed (if any)	As outlined in the individual Service Schedule.
Obligations and rights of the Controller	The rights and obligations of the Data Controller are as set out in this Agreement

SIGNED
on behalf of **ERGOSERVICES LIMITED**

by its authorised signatory
in the presence of:

Authorised Signatory (Signature)

Print name

Witness (Signature)

Print name

Print address

SIGNED
on behalf of **[Customer Name Answer]**
by its authorised signatory
in the presence of:

Authorised Signatory (Signature)

Print name

Witness (Signature)

Print name

Print address