

**Version: 200707 v.05**

## **ICON NOW AGREEMENT**

These are the Maintel linked terms and conditions for the provision of ICON NOW

## ICON NOW AGREEMENT

This **Maintel Linked ICON NOW Agreement** is comprised of its schedules and the ICON Now Order Form, which shall collectively form (the **"Agreement"**). These documents can be found [HERE](#). Maintel reserve the right (as reasonably required) to update these terms and conditions from time to time (such amendments to fully supersede any previous provisions agreed). In the event of any substantive or material changes (as determined by Maintel) these shall be notified to the Customer via updates to the Maintel ICON Now webpage (found here [HERE](#)). The Customer hereby acknowledges and accepts it is responsible for reviewing and ensuring compliance with any changes made. For the avoidance of doubt all definitions and clauses herein shall apply to the Agreement.

### WHEREAS

- (A) The Customer wishes to procure communications services set out in the Agreement on the terms and conditions set out herein; and
- (B) Maintel has agreed to supply of communication services to the Customer and the Customer has agreed to purchase such communication services on the terms of this Agreement.

The Parties agree as follows:

### 1 DEFINITIONS

1.1 In this Agreement the following words and expressions shall have the meanings set out below. Additional terms may be defined in the context of particular provisions of this Agreement.

**"Agreement"** means this agreement, its Schedules and Order/s.

**"Business Day"** means a day (other than a Saturday or Sunday) when the banks are generally open for normal business in London.

**"Business Hours"** means 0900 to 1700 on a Business Day.

**"Charges"** means the amounts due to Maintel as set out in Schedule 1 (Charges).

**"Confidential Information"** means any and all information and know-how that one Party and/or its agents may from time to time disclose to the other Party in connection with this Agreement or which otherwise becomes known to the other Party during the term of this Agreement, whether orally, in writing, digitally, in the form of machine readable code or embodied in hardware or any other physical medium which relates to the business, including but not limited to the business plans, data, know-how, designs, illustrations, drawings, photographs, illustrations, notes, memoranda, terms of business, financial information, financial projections, financial records, customers and suppliers, sales and marketing information, spreadsheets, specifications, technical information and computer software together with all information derived from any such information and any other information clearly designated by one Party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential.

**"Core"** means either the IPT Core and/or the ICON Core:

**"ICON Core"** means the Maintel core IP network which is fully supported by Maintel

**"IPT Core"** means the hosted voice hardware and software situated in Maintel's data centres

**"Customer"** means the party referred to in the Order form.

**"Customer Equipment"** means the hardware, Software and peripherals to be provided by the Customer or Maintel which Maintel is permitted to use in connection with the Services.

**"Customer Obligations"** means those obligations to be undertaken by the Customer as set out on this Agreement.

**"Effective Date"** means the date of the Order pursuant to this Agreement and signed by both Parties. For the avoidance of doubt, the Effective Date is not the date for commencement of Service (**"Service Activation Date"**)

**"Excused Delays"** means a delay occurring in respect of any Service due to: (a) failure by the Customer to perform the Customer Obligations; or (b) a Force Majeure Event occurring; or (c) delays caused by a third party.

**"Force Majeure Event"** means an act of God or any other event beyond a Party's reasonable control, including lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial dispute (including an industrial dispute involving that Party's own employees where that industrial dispute is beyond the reasonable control of that Party), terrorist act, act of Government, a refusal or delay by a third party in supplying telecommunication services to Maintel in circumstances where there is no alternative service available at reasonable cost or restrictions of a legislative or regulatory

nature (other than any anticipated on the date of signature of this Agreement), the consequences of which such Party can neither prevent nor avoid. For the avoidance of doubt, any subcontractor delay or failure is not a Force Majeure Event unless such failure or delay is itself due to a Force Majeure Event.

**"Funder"** means the party appointed by the Customer to make payment to Maintel for any Charges due under this Agreement.

**"Good Industry Practice"** means the standards which would reasonably and ordinarily be expected from a skilled and experienced provider of the same or similar Services under the same or similar circumstances.

**"Incident"** means an event that is not part of the standard operation of a service and which causes or may cause disruption to or reduction in quality of that Service.

**"Initial Term"** means the initial duration of a Service (to commence on the Service Activation Date for each individual Service) as set out in an Order.

**"Implementation Services"** means the supply, configuration and programming of Customer Equipment and/or Services and training where set out in an Order.

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, moral rights, trade secrets, business names and domain names, trademarks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights, rights in any software and all rights in the nature of unfair competition rights or rights to sue for passing off.

**"Minimum Commitment"** means the agreed ICON Now seats which shall range between 100 – 1000 as set out in the relevant Schedules and detailed within the Order.

**"Order(s)"** means an order under the terms of this Agreement.

**"Portal"** means any of the below:

**"Billing Portal"** means the portal provided by Maintel to the Customer to view the relevant billing documentation

**"Self-Service Portal"** means the portal provided by Maintel to the Customer for self-service administration.

**"Support Portal"** means the portal provided by Maintel to the Customer to log and track Support Requests.

**"PS Packs"** means the optional professional services packs (as detailed in the Service Description (Schedule 2)); which a Customer may select to assist with the initial set up of the Service, where set out in an Order.

**"Service Activation Date"** means the date identified on the Order subject to Excused Delays; when ICON Now shall be available for use by the Customer (irrespective of whether the Customer actually uses the Services).

**"Service Availability"** means the amount of time the relevant Service is available as specified in Service Description (Schedule 2).

**"Service Desk"** means the point of contact within Maintel, via either telephone or the Support Portal through which all Support Requests will be raised as set out in Service Description (Schedule 2).

**"Services"** means the services contracted under this Agreement

**"Software"** means the software (Maintel and/or third party), utilised to deliver the Services via the Customer Equipment.

**"Support Request"** means a request from the Customer made by telephone or via the Support Portal, in relation to an Incident.

**"Support Services"** means any support services (save for the Implementation Service) that are set out in the Service Description (Schedule 2). For the avoidance of doubt, Maintel shall not be held liable in any way, where the quality of service ("**QOS**") for ICON Now is negatively impacted due to any element (such as internet services) that are outside the direct control of Maintel; save where the Customer has purchased ICON Connect or ICON Gateway services from Maintel.

**"Supported Hours"** means times during which the Services are provided as set out in the Service Description (Schedule 2).

**"Trial Period"** means a default period of 30 calendar days (in no event to extend further than 60 calendar days) from the Effective Date of an Order. The trial period enables the Customer to trial the Services indicated on an Order.

- 1.2 The headings in this Agreement are inserted for convenience only and shall not affect its construction.
- 1.3 References to statutory provisions include those statutory provisions as amended or re-enacted.
- 1.4 The Schedules to this Agreement form part of (and are incorporated into) this Agreement.
- 1.5 Any phrase introduced by the words **including, includes, in particular** or **for example** or similar shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.6 If there is any conflict or ambiguity between the components of this Agreement, the conflict shall be resolved in accordance with the following order of precedence: the Order, Charges (Schedule 1); the terms and conditions of the Maintel Linked ICON NOW Agreement and Service Description (Schedule 2).
- 1.7 No rule of construction with regards to drafting will apply in the interpretation of any provision of this Agreement, to the advantage of either Party.

## 2 SERVICES

### MAINTEL'S OBLIGATIONS

- 2.1 Maintel shall carry out the Services with reasonable diligence, skill and expertise, to provide the solution as set out in the Order.
- 2.2 Maintel shall provide the Services in accordance with Good Industry Practice and in accordance with the terms of this Agreement from its data centre in the United Kingdom.
- 2.3 Maintel shall use reasonable endeavours to observe all health and safety rules and regulations, and any other reasonable security requirements that apply at any of the Sites and that have been communicated to it in writing.
- 2.4 Maintel shall supply the Customer Equipment as specified in the Order.
- 2.5 Maintel shall carry out the Implementation Services during Business Hours but may give the Customer reasonable notice to require access (remote or otherwise) at other times in order to meet its obligations under this Agreement.
- 2.6 If the Customer causes delay in the Implementation Services for any reason, Maintel reserve the right to levy an additional Charge to the Customer to cover such costs.
- 2.7 If Maintel becomes aware of a potential delay in the Implementation Services for any reason, Maintel shall inform the Customer as soon as reasonably possible.
- 2.8 If the Customer requests a delay in the provision of Implementation Services, Maintel will endeavour to accommodate this. However, if this necessitates extra cost, Maintel will provide the Customer with details of these costs and the Customer shall pay the additional costs in addition to the Charges, where such delay is implemented.

### THE CUSTOMER'S OBLIGATIONS

- 2.9 The Customer shall co-operate with Maintel in all matters relating to the Services and shall perform the Customer Obligations and its other obligations set out in this Agreement and the Customer Prerequisite document, available [HERE](#) and the End User Licence Agreement, available [HERE](#).
- 2.10 The Customer shall provide Maintel, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Customer's information, data remote access and other facilities as reasonably required by Maintel to provide the Customer Equipment and/or the Services, or exercise its rights under this Agreement in order to provide the Customer Equipment or Services set out herein.
- 2.11 The Customer shall not knowingly allow the Customer Equipment supplied by Maintel (wholly owned by the Customer) and/or the Services to be used in any of the following ways:
  - 2.11.1 in breach of any reasonable written instruction given by Maintel, or anybody which has regulatory powers relating to the Services; or
  - 2.11.2 that causes Maintel to be subject to any criminal prosecution, enforcement action, civil claim or other action or liability.

## **SERVICE EXCLUSIONS**

- 2.12 Maintel shall not be liable for any third party costs, expenses or charges incurred or imposed on the Customer that have not emanated directly from any instructions given by Maintel, as a result of this Agreement.

## **3 TERM**

- 3.1 The Parties may agree a Trial Period before the commencement of the Initial Term, where such is indicated on an Order.
- 3.2 This Agreement shall commence on the Effective Date and shall continue thereafter in accordance with clause 3.3 unless and until terminated in accordance with clause 14, regardless of whether the Services were originally procured via a Trial Period. For the avoidance of doubt where neither Party terminates the Trial Period, in accordance with clause 14 herein; the Services shall proceed to be delivered in accordance with the Order, subject to the agreed Initial Term and Charges contained within that Order.
- 3.3 The Initial Term of the Services shall commence on the Service Activation Date (identified in the Order) and shall continue for the period specified within the Order. Thereafter, the Initial Term shall renew for further periods of twelve (12) months unless otherwise terminated in accordance with clause 14.
- 3.4 Each Order shall be in effect from the Effective Date, but the Initial Term shall not commence until the Service Activation Date.

## **4 PAYMENT**

- 4.1 All invoices must be paid in the currency in which they are raised within 30 (thirty) days of the date of the invoice and such payment shall be taken via Direct Debit. The Customer hereby agrees to complete the Direct Debit mandate (attached to the Order) and return this document with Order.
- 4.2 Charges are exclusive of all taxes including VAT, which shall be added to all invoices at the prevailing rate.
- 4.3 If the Customer fails to pay any properly due and payable amount under this Agreement by the due date for payment it shall forthwith on demand by Maintel pay interest, at a rate of 4% (four per cent) above the base lending rate of Royal Bank of Scotland plc., on the overdue amount from the due date for payment up to the date of actual payment.
- 4.4 The Customer may not exercise any right of set off, abatement, counterclaim, retention, deduction or any other withholding against amounts invoiced to it (including where invoices have been issued late or have been subsequently amended to correct errors) by Maintel.
- 4.5 Maintel reserves the right to:
- 4.5.1 adjust the Charges where such changes are enforced on Maintel by regulatory authorities after providing the Customer with reasonable written notice imposed on Maintel by such regulatory authorities; and
  - 4.5.2 vary the Charges during the Initial Term or at any other time where such changes are enforced on Maintel by any of its suppliers. In the event that Maintel increases the Charges during the Initial Term above RPI more than once within a 12 month period, the Customer shall have the right to terminate on 30 days' notice. In the event and opinion of Maintel this Agreement becomes commercially unviable; Maintel may terminate this Agreement by providing 90 days' notice to the Customer.
- 4.6 The invoice shall be issued in an electronic format and accessible via the Billing Portal, where the Customer may review the invoice.

## **MINIMUM COMMITMENT**

- 4.7 The Minimum Commitment applies to all Orders. No Order shall act to reduce the Minimum Commitment set out in any other Order. For the avoidance of doubt, the Customer must meet and satisfy any Minimum Commitment set out in an Order pursuant to the Agreement.
- 4.8 If the Customer has failed to meet any Minimum Commitment for an Order during the agreed Initial Term; then upon termination of that Order (howsoever arising); the Customer shall pay immediately to Maintel any shortfall in such Minimum Commitment as an early termination fee.
- 4.9 If this Agreement is terminated by the Customer under clause 14.3, during the Initial Term for any Service, the Minimum Commitment shall be reduced pro-rata to the point of termination.

- 4.10 For the avoidance of doubt, where the Initial Term has been extended pursuant to clause 3.2 the Minimum Commitment applicable during the Initial Term, shall apply to the extended term without exception.
- 4.11 Where the Customer exceeds any value of a purchase order, for Services which have been delivered above the Minimum Commitment, the Customer shall pay in full for the Services not included on the purchase order.

## 5 ORDERING AND CHANGE CONTROL

- 5.1 An Order constitutes an offer by the Customer under the terms of this Agreement and no Order shall be binding on Maintel until an authorised officer of Maintel has accepted the Order in writing.
- 5.2 Maintel may make changes to an Order that are necessary due to changes in the manufacturer's specification to comply with safety or other requirements.
- 5.3 Certain telecommunication systems and services are subject to regulation by regulatory authorities. Any regulatory authority may from time to time change the regulatory framework within which the Services are provided, and the Customer accepts that Maintel may need to change the Services to comply with such regulatory framework.
- 5.4 The Customer shall provide a purchase order for every Order placed. The purchase order shall include the full cost of the Minimum Commitment Charge. The Customer hereby agrees that where no purchase order is provided, any goods and/or Services provided under this Agreement may be delayed or withheld.
- 5.5 Where an Order includes a Trial Period and the Customer does not issue a formal termination notice before the indicated Trial Period identified on an Order expires; the Customer shall be subject to the same terms and conditions as those listed within this Agreement.

## 6 CONFIDENTIALITY

- 6.1 Each Party will keep strictly confidential all Confidential Information of the other received or obtained during the negotiation or performance of this Agreement and, except with the prior written consent of the other or to the extent that disclosure is required by law, will not disclose such Confidential Information to any third party or copy or use it for any purpose other than for the proper performance of its obligations or the proper exercise of its rights under this Agreement.
- 6.2 Neither Party will acquire any right in nor title to Confidential Information of the other nor any licence in respect of it except as expressly stated in this Agreement. Each Party will protect Confidential Information of the other as if it were its own Confidential Information and will not copy, summarise, modify or disclose it except to the minimum extent necessary to perform its obligations or exercise its rights under this Agreement. Each Party will ensure that all persons to whom it discloses Confidential Information of the other are bound by obligations of confidentiality and non-disclosure at least equivalent to those in this Agreement.
- 6.3 The duties imposed on the Parties by clauses 6.1 and 6.2 above do not extend to information or data which at the time of its disclosure or use by the receiving Party:
- 6.3.1 is generally available and known to the public other than by reason of the receiving Party's breach of this clause 6;
  - 6.3.2 the receiving Party can demonstrate had previously come lawfully into the receiving Party's possession from a third party under no restriction as to its use or disclosure; or
  - 6.3.3 the receiving Party can demonstrate that it developed independently without reliance on Confidential Information of the other.
- 6.4 Each Party agrees and acknowledges that damages alone may not be an adequate remedy for breach of this clause 6 and that each Party may be entitled to seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this clause 6.
- 6.5 On termination of this Agreement, each Party shall where relevant (save for the extent necessary for the enforcement of any rights under this Agreement):
- 6.5.2 erase all of the other Party's Confidential Information from its computer systems (to the extent possible); and
  - 6.5.3 certify in writing to the other Party that it has complied with the requirements of this clause, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.
- 6.6 Notwithstanding Clause 6.1, Maintel may, subject to agreement with the Customer, make reasonable references to the Customer (including the use of the Customer's logo) as a



consumer of the Services in its advertising and/or promotional literature and other materials including a press release on contract signature and video and written case studies.

## 7 INTELLECTUAL PROPERTY RIGHTS

### 7.1 As between the Customer and Maintel:

7.1.1 with regard to Customer Equipment provided by Maintel all title and/or ownership shall vest in Maintel and its licensors until such time as Customer has made full and final payment as solely determined by Maintel unless an alternative bi-lateral arrangement is in place between the Customer and a Funder with the consent of Maintel or as otherwise specified herein; and

7.1.2 all Intellectual Property Rights and all other rights arising out of this Agreement shall be owned by Maintel and its licensors unless otherwise agreed in writing by Maintel. Maintel hereby licences all necessary and relevant rights to the Customer free of charge and on a non-exclusive, non-transferable, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Customer Equipment supplied by Maintel and/or the Services. This licence shall terminate if and when this Agreement expires or terminates for any reason.

7.2 Maintel warrants that its provision of any Customer Equipment supplied by Maintel and/or the Services (including such Customer Equipment supplied by Maintel that is altered, reinstalled, adjusted, repaired or otherwise modified by Maintel in the course of its provision of the Services) will not infringe any third party patent, copyright, and/or trade secret rights existing under the laws of England and Wales.

7.3 Both Parties agree to defend the other from and against any claim or action by any third party in relation to a breach of any third party intellectual property rights ("**IPR Claim**") and shall indemnify each other against all costs awarded under any final judgment, court order or settlement arising directly out of or in connection with that IPR Claim.

7.4 The indemnity at clause 7.3 above is subject to the following conditions:

7.4.1 both Parties hereby agree to give prompt notice to the other in writing as soon as the notifying party becomes reasonable aware of any IPR Claim or alleged IPR Claim; and

7.4.2 both Parties hereby agree to make no admissions (written or oral) in respect of any IPR Claim without the other Party's prior written consent; and

7.4.3 the indemnified Party must grant the indemnifying Party sole control of the defence including conducting any negotiations or litigation including defence of proceedings and/or settlement of any IPR Claim and the costs incurred or recovered in such negotiations or settled claim shall be for the indemnifying Party's account; and

7.4.4 the indemnified Party shall give the indemnifying Party all reasonable assistance requested at the indemnified Party's expense save where the infringement was directly caused by the acts or omissions of the indemnifying Party where the indemnifying Party shall pay the indemnified Party's reasonable expenses actually incurred; and

7.4.5 the Customer shall allow Maintel to modify the Customer Equipment supplied by Maintel and/or the Services, or any part thereof, so as to avoid any IPR Claim, provided that the modification does not materially affect the functionality or Charges payable for the Customer Equipment supplied by Maintel and/or the Services.

7.5 If the Customer Equipment supplied by Maintel and/or Services become, or in Maintel's opinion are likely to become, the subject of an IPR Claim covered by the indemnity at clause 7.4 Maintel may at its sole option either: (a) repair, replace or modify the affected Customer Equipment supplied by Maintel and/or Services so that they are no longer infringing or (b) procure the right for the Customer to continue to use the Customer Equipment supplied by Maintel and/or the Services or the relevant part thereof or if neither (a) nor (b) above are commercially reasonable, then Maintel may (c) terminate the applicable elements of the Customer Equipment supplied by Maintel and/or Services and refund to the Customer the portion of the Charges paid for that terminated element less the depreciation (calculated on a straight line basis over 3 years from the Effective Date) provided that where such termination materially impacts on the provision of the Services by Maintel to the Customer, Maintel shall compensate the Customer in respect of any losses it incurs as a result of such termination subject at all times to the limitation of liability set out in clause 9.2.

7.6 Where Maintel is the indemnifying Party and the Customer is the indemnified Party, the indemnity in clause 7.4 will not apply to any infringement arising from: (a) any modification,

alteration, repair, adjustment or configuration made by anyone other than Maintel or under Maintel's direction or instruction; or (b) the Customer's use of the Customer Equipment supplied by Maintel and/or the Services in conjunction with software, hardware or data, where use of such software, hardware or data in combination with the Customer Equipment supplied by Maintel and/or Services gave rise to the infringement; or (c) use of any software other than the most current, unaltered update, if such claim would have been avoided by the use of such update; or (d) compliance by Maintel with designs, plans or specifications furnished by the Customer, or on the Customer's behalf.

- 7.7 Clause 7 states both Parties entire liability for infringement of any third party Intellectual Property Rights.
- 7.8 The Customer hereby warrants that it has the right to grant, and hereby grants to Maintel a revocable, non-transferable, non-exclusive unpaid right and license to use the Software for interoperability purposes, and access to all relevant computer systems in each case to the extent strictly necessary for the performance by Maintel of the Services. Furthermore, the Customer hereby licences all necessary and relevant rights to Maintel free of charge and on a non-exclusive, non-transferable, worldwide basis to such extent as to enable Maintel to perform its obligations under this Agreement. Such licence shall terminate when this Agreement expires or terminates.

## 8 DATA PROTECTION AND SECURITY

- 8.1 For the purposes of this clause 8, the meaning of personal data, data processor and data controller shall be determined in accordance with the Data Protection Act 2018.
- 8.2 Each Party undertakes to the other Party that it will process personal data in compliance with the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) and any codes of conduct or guidelines issued by the relevant regulatory authorities.
- 8.3 The Customer and Maintel acknowledge that for the purposes of the Data Protection Act 2018, the Customer is the data controller and Maintel is the data processor in respect of any personal data.
- 8.4 Maintel shall process the personal data within the United Kingdom and only for the purpose of fulfilling its obligations under this Agreement and/or in accordance with the Customers reasonable instructions from time to time.
- 8.5 Maintel shall ensure its practice of information security standards is in accordance to policy and the application of procedures set out within its ISO27001 certified information security system manual.

### GDPR

- 8.6 Definitions:

**"Applicable Laws"** means (a) EU Data Protection Laws and European Union or Member State laws with respect to any Customer Personal Data in respect of which any Customer is subject; and (b) any other codes of conduct or guidelines promulgated under such laws; and (c) any other applicable law with respect to any Customer Personal Data in respect of which any Customer Group Member is subject;

**"Customer Personal Data"** means any Personal Data Processed or used or intended to be used as part of a filing system by a Contracted Processor on behalf of a Customer pursuant to this Agreement;

**"Contracted Processor"** means supplier or a subprocessor;

**"Data Protection Laws"** means, to the extent applicable, the data protection or privacy laws of any other country;

**"EU Data Protection Laws"** means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR;

**"GDPR"** means EU General Data Protection Regulation 2016/679 and any amendments thereto and replacements thereof;



"**Affiliate**" means an entity that owns or controls, is owned or controlled by or is under common control or ownership with Supplier or Customer (as applicable), where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

For the avoidance of doubt, any definitions used in the Applicable Laws shall have the same meaning and construction within this clause.

8.7 Each party hereby undertakes to comply with (or cause its Affiliates to comply with) any and all provisions of the Applicable Laws when discharging its obligations under this Agreement.

8.8 Each party recognises that compliance with Applicable Laws includes responsibilities in relation to any relevant third party suppliers and/or subcontractors.

### **Processing of Customer Personal Data**

#### **CONSENT**

8.9 Each Party, on its own behalf and on behalf of its Affiliates, hereby unequivocally and with full knowledge of its obligations under the Applicable Laws will;

8.9.1 provide consent to the processing of data by the other Party which is required for such Party to exercise its rights and meet its obligations, pursuant to this Agreement and/or the Applicable Laws; and

8.9.2 obtain appropriate written consent from relevant data subjects; and

8.9.3 promptly notify the other Party of any withdrawal of Consent by any relevant Data Subject; and

8.9.4 confirm that it will only process data as necessary to comply with the legal obligations of such party pursuant to Article 13 of GDPR; and

8.9.5 in circumstances where consent is not appropriate or reasonable to obtain shall rely on and fully abide by one or more of the grounds for lawful processing set out in Article 6 of the GDPR such as legitimate interests and/or performance of a contractual obligation etc. In such circumstances the processing Party shall inform the other of same promptly and in writing and do all that is otherwise required to fully comply with the Applicable Laws.

8.10 Where required Maintel will advise the Customer that personal data may be transferred to a country or organisation outside of the EEA and confirm that appropriate security safeguards are in place.

8.11 For the avoidance of doubt the Customer hereby acknowledges and agrees that failure to provide the required personal data may result in an interruption to the contracted deliverables

8.12 Each Party confirms that:

8.12.1 It shall provide details of its Data Protection Officer as applicable; and

8.12.2 It will retain the personal data for no longer than is necessary; and

8.12.3 It will comply with fair and transparent processing requirements included in the Applicable Laws;

8.12.4 To the extent that it intends to transfer the personal data to a third country, it will ensure adequacy conditions in compliance with the Applicable Laws.

8.13 As required by clause 8.12 the following information is provided:

8.13.1 The Data Protection Officer details are:

For Maintel:

Name: Kevin Stevens

Job Title: Chief Operating Officer

Contact Number: 0207 401 4611

Email Address: [kevin.stevens@maintel.co.uk](mailto:kevin.stevens@maintel.co.uk)

8.13.2 The period of time the personal data shall be stored, which unless otherwise agreed in writing, shall be the full term of this Agreement, as amended, plus an additional 7 years.

- 8.13.3 The information required by the data subject to enable each Party to meet the data subjects' rights, under the Applicable Laws are:
- 8.13.3.1 Right of access by the data subject
  - 8.13.3.2 Right to rectification
  - 8.13.3.3 Right to restriction of processing
  - 8.13.3.4 Right to data portability
  - 8.13.3.5 Right to object
  - 8.13.3.6 Right to erasure
- 8.13.4 For the purposes of clarity, the relevant supervisory authority is the Information Commissioner's Office to which the Customer has a right to raise a complaint if required.

## 9 LIMITATION OF LIABILITY

- 9.1. Both Parties accept unlimited liability for:
- 9.1.1 death or personal injury caused by its negligence; or
  - 9.1.2 fraud or fraudulent misrepresentation; or
  - 9.1.3 any other act or omission for which liability cannot be limited by law.
- 9.2 Subject to clause 9.1 Maintel's entire liability to the Customer in respect of all losses arising out of or in connection with Maintel's performance or non-performance of its obligations under this Agreement;
- 9.2.1 in respect of the indemnity given by Maintel in clause 7.3 is unlimited; and
  - 9.2.2 in respect of damage to property (both real and personal) shall be limited to £2,000,000 (two million pounds) in the aggregate; and
  - 9.2.3 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement shall in no event in any year exceed the Charges paid by the Customer in such year.
- 9.3 Subject to clause 9.1 and in respect of payment of the Charges by the Customer, neither Party shall be liable to the other Party, whether in contract, tort (including negligence) or otherwise for loss of revenue, loss of profit, loss of goodwill, loss of reputation, loss of anticipated savings, loss of business, loss, corruption or destruction of data, loss of contracts or any indirect, special or consequential loss or damage.
- 9.4 In no event will Maintel have any liability for non-provision or delay in the provision of the Customer Equipment supplied by Maintel and/or Services which can be attributed to the acts or omissions of the Customer, its employees, sub-contractors, agents or customers; and/or occurs during any period of scheduled maintenance.
- 9.5 Both Parties shall use their reasonable endeavours to mitigate any loss, damage, liability, expenses and costs suffered by them under or arising out of this Agreement.
- 9.6 Maintel excludes all liabilities, costs, expenses, damages and losses suffered or incurred by the Customer arising out of or in connection with any fraudulent use of the Customer Equipment supplied by Maintel and/or Services by the Customer's officers, agents or employees or any third party including any officers, agents or employees of a third party.

### End User Content Indemnity.

- 9.7 The Customer acknowledges and agrees that Maintel does not own or have any control over the content, security or any other aspect of any data, information or material that the Customer enters, uploads or otherwise supplies to Maintel in the course of using the Services ("**End User Content**"). The Customer shall indemnify, defend, and hold Maintel harmless from any damages incurred by or asserted against Maintel related to, arising out of or in connection with End User Content, including without limitation, any claims: (a) that such End User Content violates or misappropriates the intellectual property or other rights of any third party; (b) in respect of the integrity, deletion, destruction, damage, loss or failure to store End User Content; and (c) any claims in respect of the Customer's use or misuse of End User Content or disclosure of End User Content to third parties; or (d) the Customer's collection or receipt of such End User Content. This clause 9.7 is excluded from any limitation of liability or limitation of damages provision set out in the Agreement.

## **10 WARRANTY**

- 10.1 Maintel warrants that the actions performed or non-performed by its professional services team under this Agreement will be performed with reasonable skill and care; in accordance with all applicable regulations; using suitably qualified personnel; and in accordance with the Service Description (Schedule 2). The warranty is valid for a period of 90 (ninety) days from the date of performance or non-performance (as appropriate) of the relevant action.
- 10.2 Where the Customer makes a valid claim under a warranty set out in: clause 10.1, Maintel shall, within a reasonable time, and at its option either: correct any defects in such software; re-perform any Service to the extent it considers necessary to remedy any defect; or refund the Customer the amount paid for the affected Service.
- 10.3 Both Parties agree that the warranties set out in this clause 10 are in lieu of and exclude all other terms, conditions or warranties implied by statute, law or otherwise as to the merchantability, satisfactory quality or fitness for any particular purpose to the fullest extent permitted by law. The actions set out in this clause 10 shall be the Customer's sole remedy in respect of all warranties under this Agreement.
- 10.4 Maintel does not warrant that any Services provided by Maintel will prevent fraudulent intrusion or hacking and the Customer shall be responsible for putting in place adequate security measures to prevent the fraudulent use of the Customer Equipment and/or the Services including without limitation hacking, toll fraud, rogue dialling or any other form of fraud that causes the Customer to incur charges of which the Customer is not aware.
- 10.5 Maintel shall not assume any liability whatsoever arising from or in connection with any fraudulent use of the Services provided under this Agreement save to the extent that such fraudulent use results directly from wilful misconduct on the part of Maintel.
- 10.6 Maintel specifically denies any implied or express representation that the Services supplied by Maintel will be fit to operate in conjunction with any other hardware item or software products other than with those Services identified in an Order; to operate uninterrupted or error-free; or to have all program defects corrected.
- 10.7 Maintel's obligations under this clause 10 do not extend to any defect caused by fair wear and tear; deliberate, negligent or accidental damage by the Customer or a third party; use or modification unless approved by Maintel in writing; or hacking, virus or malicious computer program.

## **11 ESCALATION AND DISPUTE RESOLUTION**

- 11.1 Any dispute which arises between the Parties as to this Agreement or the performance of the Parties' respective obligations under this Agreement, shall be discussed, and if possible resolved by appointed representatives of each Party, inclusive of mediation where mutually agreed by both Parties.

## **12 FORCE MAJEURE**

- 12.1 Neither Party will be liable, except as specified in this clause, for any failure to perform, delay in performing or imperfect performance of any obligation under this Agreement, except for failure to pay the Charges, to the extent that such failure, delay or imperfect performance is caused by a Force Majeure Event.
- 12.2 If either Party is affected by a Force Majeure Event it shall promptly notify the other Party of the nature of the Force Majeure Event, the nature of any actual or anticipated failure, delay or imperfect performance and the anticipated consequence and length of such failure, delay or imperfect performance.

## **13 SUSPENSION OF SERVICES**

- 13.1 Maintel reserves the right to suspend the Services without liability to the Customer with immediate effect upon notice to the Customer in the event that:
- 13.1.1 Maintel reasonably believes or has cause to believe that the Services are being used in an unauthorised or illegal manner;
  - 13.1.2 the Customer is in material breach of any of its obligations under this Agreement;
  - 13.1.3 any regulatory authority requires Maintel to suspend the Services;
  - 13.1.4 the Customer fails to make payment within 30 (thirty) days of the due date for such payment, provided always that Maintel has notified the Customer that such payment is overdue; or
  - 13.1.5 to carry out emergency maintenance.

## 14 TERMINATION

- 14.1 The Agreement may be terminated for convenience by either Party following expiry of that Order's Trial Period or Initial Term and, giving not less than:
  - 14.1.1 5 (five) days prior notice to cease a Trial Period; or
  - 14.1.2 90 (ninety) days prior written notice to the other Party, to expire on the anniversary of the Service Activation Date of that Order; or
  - 14.1.3 In the event and reasonable opinion of Maintel, this Agreement becomes commercially unviable; Maintel may terminate this Agreement by providing 120 days' notice to the Customer or as otherwise agreed between the Parties.
- 14.2 Either Party may terminate this Agreement, without prejudice to its other rights or remedies, immediately following written notice if the other Party:
  - 14.2.1 is in material breach of any of its obligations under this Agreement and either that breach is incapable of remedy, or that other Party has failed to remedy that breach within 30 (thirty) days after receiving written notice requiring it to do so; or
  - 14.2.2 if the other Party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), becomes insolvent, has a receiver, liquidator, administrator or similar officer appointed, is the subject of bankruptcy proceedings, ceases to trade, passes a resolution for or is the subject of a winding up or dissolution order (except where any of the above are for the purpose of a solvent amalgamation or reconstruction), or makes any composition or arrangement with creditors; or
  - 14.2.3 has committed an act of bribery directly linked to this Agreement.
- 14.3 In the event of termination of this Agreement by Maintel, as a result of either a breach by the Customer (under clause 14.3 above) or any other such termination as invoked by the Customer (save for termination as a result of Maintel's breach):
  - 14.3.1 the Customer shall immediately pay to Maintel the Minimum Commitment; and
  - 14.3.2 all rights granted to the Customer under any licence granted in this Agreement shall cease and the Customer shall cease all activities authorised by the applicable licence; and
  - 14.3.3 to the extent that any Customer Equipment supplied by Maintel has not been paid for in full Maintel may exercise its right to reclaim the Customer Equipment supplied by Maintel as set out in the Order.
- 14.4 Termination of this Agreement shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at the date of termination.
- 14.5 On termination of this Agreement for any reason, Maintel may submit invoices for any Charges not yet invoiced and the Customer shall immediately pay these invoices and any outstanding unpaid invoices together with interest due to Maintel.
- 14.6 Other than as set out in this clause 14, neither Party shall have any further obligation to the other under this Agreement after its termination.
- 14.7 The following clauses shall continue to apply after the termination of this Agreement: clauses 1, 4, 6, 7.3, 8, 9, 10, 11, 14, 15, 18 and 20.

## 15 NOTICES

- 15.1 Any notice to be served on Maintel by the Customer under this Agreement shall be in writing and delivered as an attachment to an email to [legalenquiries@maintel.co.uk](mailto:legalenquiries@maintel.co.uk) or to any other address notified in writing to the Customer. The attachment shall be either:
  - i) a Customer letterhead; or
  - ii) an otherwise authorised/recognised form (to protect the Customer from unauthorised notifications).
- 15.2 Any notice to be served on the Customer by Maintel under this Agreement shall be in writing and delivered either by email to a nominated email address (or in the absence of a nominated email address) to a recognised email address of the Customer, via the Portal or the ICON Now landing webpage [HERE](#).
- 15.3 Notices delivered by email are deemed to be served on the date and time of them entering the Parties inbox, where such time is outside of Business Hours, the notice shall be deemed to be served on the next Business Day.

## 16 INSURANCE

- 16.1 Each Party shall during the term of this Agreement maintain in force an insurance policy or policies which cover(s) the following:

- 16.1.1 Employers' Liability £5,000,000 (five million pounds) in any one occurrence;
- 16.1.2 Public/Products Liability £1,000,000 (one million pounds) in any one occurrence and in the aggregate; and
- 16.1.3 Professional Indemnity £1,000,000 (one million pounds) in any one occurrence and in the aggregate.

## 17 ASSIGNMENT

- 17.1 The Customer may not assign the whole or any part of this Agreement or any of its rights or obligations hereunder without the prior written consent of Maintel (such consent not to be unreasonably withheld or delayed and provided that in respect of assignment by the Customer the Customer has paid all Charges owed to Maintel and is not otherwise in breach of this Agreement).

## 18 NON-SOLICITATION

- 18.1 The Customer agrees that during the term of this Agreement, and for a period of 12 (twelve) months after this Agreement has expired or has been terminated for any reason whatsoever, the Customer will not directly, or by use of an agent, induce or try to induce any respective employee of Maintel to leave their current employment.

## 19 ANTI-BRIBERY

- 19.1 For the purpose of this clause 19, the meaning of adequate procedures and foreign public official shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.
- 19.2 Both Parties:
  - 19.2.1 shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
  - 19.2.2 shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - 19.2.3 shall have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010;
  - 19.2.4 shall promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received in connection with the performance of this Agreement;
  - 19.2.5 warrant that they have no foreign public officials as officers, employees or direct or indirect owners at the Effective Date of this Agreement and agree to immediately notify the other Party if during the validity of this Agreement a foreign public official becomes an officer or employee or acquires a direct or indirect interest.
- 19.3 Either Party shall, upon the reasonable written request of the other Party provide such supporting evidence of compliance with this clause 19 as may be reasonably required.

## 20 ENTIRE AGREEMENT

- 20.1 This Agreement constitutes the entire understanding between the Parties concerning the subject matter hereof and supersedes all prior or contemporaneous discussions, agreements and representations, whether oral or written and whether or not made by the Customer and Maintel. Neither Party places any reliance on any representation, warranty or other statement relating to the subject matter of this Agreement save as expressly set out in this Agreement.
- 20.2 Neither Party shall have any liability or remedy in tort in respect of any representation, warranty or other statement (including any contained in this Agreement) being false, untrue, inaccurate or incomplete unless it was made fraudulently except to the extent that either Party has any outstanding liability to the other under a previous arrangement or contract.
- 20.3 If any other document, such as a purchase order, invoice or confirmation contains terms that are in addition to, inconsistent or in conflict with the terms of this Agreement, the Parties hereby agree that such terms shall be null, and void and the terms of this Agreement shall prevail in their entirety.
- 20.4 To be binding, any variation of this Agreement must be in writing and signed by or on behalf of each Party.



**21 MISCELLANEOUS****GOVERNING LAW**

- 21.1 This Agreement shall be governed by the laws of England and the Parties hereby submit to the jurisdiction of the English courts.

**THIRD PARTY RIGHTS**

- 21.2 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

**WAIVER**

- 21.3 Failure or delay of either Party to enforce its rights hereunder shall not be deemed a waiver of such or any other right, including the right to enforce a subsequent breach of the same obligation. This Agreement, or any rights or obligations hereunder, may be amended, waived or modified only in writing and signed by the Parties.

**SEVERENCE**

- 21.4 If any provision of this Agreement is to be held by any court of competent jurisdiction to be contrary to applicable law and/or unenforceable, such provision shall be considered severed from this Agreement but all remaining provisions shall continue and remain in full force and effect.

**CUMULATIVE NATURE OF REMEDIES**

- 21.5 Unless there is express provision to the contrary in this Agreement, no remedy conferred by any terms of this Agreement is intended to be exclusive of any other remedy available under this Agreement or at law. Each and every remedy is cumulative and is in addition to each and every other remedy available under this Agreement or existing at law (whether in equity, by statute, at common law or otherwise).

**INDEPENDENT CONTRACTOR**

- 21.6 Maintel and the Customer shall remain independent contractors and nothing in this Agreement, and no action taken by the Parties pursuant to this Agreement, will make any Party the agent or employee of the other nor will it create a partnership, joint venture or employment relationship between the Parties.

**POLICIES**

- 21.7 To the extent reasonably necessary Maintel will use all reasonable endeavours to comply with the Maintel policies (as amended from time to time) set out here; <https://www.maintel.co.uk/legal/policies>.

**SCHEDULES**

The following Schedules are incorporated into this Agreement by reference.

**Schedule 1** – Charges (available [HERE](#))

**Schedule 2** – ICON NOW Service Description (available [HERE](#))