

Version: 250919 v.14

MASTER SERVICES AGREEMENT

These are the Maintel linked terms and conditions for the provision of Goods and/or Services

MASTER SERVICES AGREEMENT

This **Maintel Linked Master Services Agreement** and the applicable schedules (which can be found [HERE](#)) are incorporated into the Order placed by the Customer with Maintel and shall collectively form this **“Agreement”**. Maintel reserves the right 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 Master Services Agreement webpage (found [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 certain communications services set out in the Schedules, as may be amended in the PDD (as defined herein), on the terms and conditions set out in this Agreement; and
- (B) Maintel has agreed to supply or procure the supply of certain 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.

“Acceptance Tests”	means the acceptance tests, as set out in this Agreement and the PDD.
“Billing Date”	means the date on which Maintel may commence billing, as set out at clause 4.10.
“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 and or PMNO (where Mobile Services are provided) for Customer Equipment supplied by Maintel and/ or the Services as set out in this Agreement and/or any Order.
“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.
“Contract Year”	means the 12-month period starting on the Effective Date of the Agreement and each successive 12-month period.
“Control”	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company and controls, controlled and the expression change of Control shall be interpreted accordingly.
“Core”	means the IPT Core and/or the Maintel Core.
“Customer”	means the entity identified in the Order.
“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 including any further obligations set out in the PDD.

“Customer Portal”	means access to Maintel’s monitoring suite which monitors the performance of the Core.
“Delivery”	means the delivery of the equipment, including Customer Equipment to the Customer’s premises or a Maintel Site as agreed and/or the date upon which the Services are available for use, irrespective whether such use has occurred.
“Dual Running”	means the simultaneous running (for the duration of the Implementation Period unless otherwise mutually agreed) of the existing Customer data services alongside the Implementation Services and/or Managed Services to be delivered by Maintel under this Agreement.
“Early Termination Fee”	means: (i) the amount of any Charges that would have been payable by the Customer between the effective date of termination and, as applicable (a) the last date of the Initial Service Term or (b) the last date of any Extended Service Term but for the termination; and (ii) any administrative costs or other breakage costs payable by Maintel to its third party suppliers as a result of the termination.
“Effective Date”	means the date of this Agreement or the date of an Order which incorporates the terms of this Agreement, as the context requires..
“End of Life”	collectively means both End of Sale and/ or End of Support where applicable.
“End of Sale”	means where a supplier no longer supplies the specified goods or Services.
“End of Support”	means where supplier support is no longer available for the goods or Services.
“Engineer to Site”	means the targeted maximum time between remote diagnosis of an Incident by Maintel and (a) the arrival at the Customer Site of an engineer (where an onsite presence is required), or (b) the arrival at the Customer Site of a part (where required).
“Excused Delays”	means a delay occurring in respect of any Service due to: (a) a Force Majeure Event occurring; or (c) delays caused by a third party not under the control of the Customer.
“Extended Service Term”	has the meaning given to it at clause 3.3.
“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), or epidemic or pandemic, 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, the PDD and/or Order.
“Full Service Date” or “FSD”	means the date on which 90% of the MPNs comprising the Customer’s mobile communications estate at the Effective Date of the applicable Order(s) have been ported to the PMNO by Maintel.
“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.
“HLD”	means the High Level Design document as produced by Maintel and provided to the Customer.
“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 Response”	means the time from when a Support Request is logged to when Maintel technical personnel response is allocated to the Incident or it is determined that an on-site response is required excluding any Third Party Influences, provided always such hours are within Supported Hours.

“Initial Service Term”	means the initial duration of a Service, as set out in an Order, to commence on the applicable Initial Service Term Commencement Date.
“Initial Service Term Commencement Date”	means the date from which the Initial Service Term of a Service commences, as set out in the Order.
“Implementation Period”	means the period following contract signature but prior to the commencement of any Managed Services and/or the first RFS Date whereby Maintel supply, install, configure and/or program the Customer Equipment and/or the Services.
“Implementation Services”	means the supply, installation, configuration and programming of Customer Equipment and/or Services at the Sites, training and project management as set out in this Agreement, HLD and/or in the PDD (as appropriate).
“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.
“IPT Core”	means the hosted voice hardware and software situated in Maintel’s data centres as further described in the PDD, including the SIP Services where an alternative carrier solution has been procured by the Customer from Maintel.
“LLD”	means the Low Level Design document as produced by Maintel.
“MAC Packs”	means packages of useable professional services (30 minutes or part thereof) purchased by the Customer under which Maintel shall provide professional services for moves, adds and changes to the Maintel Core, IPT Core or the Customer Equipment as specified in the Schedules.
“Maintel Core”	means the Maintel core IP network which is fully supported by Maintel and to the best of Maintel’s knowledge is free from a single point of failure.
“Managed Services” or “Operational Services”	means the Services including operational services as set out in either the Managed Services Description and Network Services document HERE and/or the Schedules to this Agreement. Where such are procured, they will be set out in an Order for the support and management of the Customer Equipment and/or Services.
“Non-Recurring Project Charges”	means one-off charges payable by the Customer, including, without limitation, one-off charges for hardware, software, SD-WAN Deployed Infrastructure and/or professional services.
“Operations Manual”	means the user and system manuals, specific to the Customers implementation of the Core.
“Order(s)”	means an order which details the goods and/or services requested by the Customer to be delivered.
“Overage Charges”	means the occurrence of additional Charges, payable by the Customer, where the minimum contracted limit/allowance for a Service has been exceeded.
“Parties”	means the Customer and Maintel Europe Limited together.
“PDD”	means a project definition document setting out the additional details of the methodology for the Implementation Services.
“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.
“Ramp-Up Period”	means the period stated in the Order to which clause 3.5 applies, or as otherwise defined in the relevant Schedule.
“Ready for Service”	means that the Service is available for use, irrespective of i) whether the Services are decided not to be used by the Customer; or ii) all of the Services are not delivered fully in accordance with any HLD or PDD.

“Ready for Service Date” or “RFS Date”	means the date (subject to Excused Delays) upon which the Service is Ready for Service.
“Resign”	is applicable to Mobile Services and has the meaning given to it in the relevant Schedule.
“Response Times”	means the periods of time set out in the Schedules and commencing on the assignment of a unique reference number to a Support Request within which Maintel, using reasonable endeavours, will respond to the Support Request.
“Return to Service”	means the time, excluding any Third Party Influences, from when an Incident is logged to the time when either (a) full service is restored; or (b) service is restored to the point where the Incident can be categorised as no more severe than a Priority 3 Incident.
“SBC”	means session border controller, which are security devices that prevent unauthorised access to a voice and data network.
“SD-WAN Deployed Infrastructure”	means the infrastructure at a Site is configured with the ability to connect and function over any network with internet access, whether using an existing third-party circuit or a newly installed circuit that has been installed and handed over.
“Service Availability”	means the amount of time the relevant Service is available as specified in the Schedules.
“Service Deliverable”	means the individual elements and deliverables per Service as set out in the Schedules
“Service Desk”	means the point of contact within Maintel, via which all Support Requests will be raised and addressed as more particularly described in this Agreements schedules.
“Service Levels”	means the level of service as set out in the Schedules.
“Services”	means the goods and/or services contracted under this Agreement.
“Service Term”	means the Initial Service Term together with any Extended Service Term.
“SIP”	means session initiation protocol used to establish voice services between two or more telecommunications devices over the internet.
“Site(s)”	means the Customer’s premises or other agreed location, as set out in an Order and such other premises as may be added from time to time, with the written agreement of the Parties.
“Software”	means the Maintel and/or third party software in object code form together with any operating systems, utilities, applications and other programs residing in memories or embedded into or incorporated within the Customer Equipment.
“Software Licence”	means any licence terms that govern the use of Software licensed to the Customer hereunder.
“Support Request”	means a request from the Customer to Maintel for Services made by telephone or e-mail, in relation to an Incident, in accordance with the Service Levels as detailed in the Schedules.
“Support Services”	means the maintenance, break fix support or software assurance Services as set out in this Agreement.
“Supported Hours”	means times during which the Services are provided as set out in the respective Schedule.
“Survey/Site Survey”	means a survey, audit or assessment carried out by Maintel, at Maintel’s sole discretion, to determine the readiness for Service of any relevant Site, cloud and/or infrastructure (including Customer Equipment).
“Third Party Influences”	means third party manufacturer, supplier or carrier related incidents that may impact on the success of the Response Times which are not subject to the Service Levels provided always that such delays are communicated to the Customer.

- 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, as agreed and set out in an Order, shall form part of (and are incorporated into) this Agreement. For the avoidance of doubt, where the Order does not expressly stipulate the Service (and or any elements of the Services), the Services shall not apply.

- 1.5. In the unlikely event that any Services are provided by Maintel, which have not been stipulated in an Order; the corresponding schedule for the Services shall be applied (at the basic foundation level) without service options and/or features), as if set out in the Order.
- 1.6. A full list of the Schedules, which may apply to an Order, is included at the bottom of these terms and conditions.
- 1.7. 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.
- 1.8. 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 Data Processing Addendum with respect to the processing of personal data to which it relates, the Order, the Schedules; the terms and conditions of the Maintel Linked Master Services Agreement; the PDD and the HLD with regard to changes to the Order(s).
- 1.9. 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 provide the Services in accordance with the specification set out in the HLD (where applicable), Order and appropriate schedules. The specification may be supplemented and modified (as relevant) by either the PDD upon its execution and/or the LLD (where applicable).
- 2.2. Maintel shall provide the Services in accordance with Good Industry Practice and in accordance with the terms of this Agreement.
- 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 by the Customer.
- 2.3A If, as a result of a health and safety risk assessment carried out by Maintel regarding work to be undertaken at a Site, Maintel identifies any areas of high risk, the parties shall:
 - (i) agree the actions required to reduce the level of risk to below 'high' risk; and
 - (ii) agree the division of responsibility for performance and costs of such actions as between Maintel and the Customer.

If such actions cannot be completed on the same day that the risk assessment is carried out, or the actions can be implemented on such day, but will take such time to be implemented that the work will no longer be completed in the anticipated timeframes and Maintel will therefore be required to make an additional visit or visits to the Site, Maintel may charge the Customer for such additional visit(s). Maintel shall be under no obligation to carry out work at the Site while it deems there to be a high risk to health and safety, and it shall have no liability to the customer in connection with its refusal to perform such work during such time. The Customer acknowledges and agrees that where a high risk to health and safety is identified, completion of the work may be delayed, the Customer may suffer disruption to its Service due to the delay in the work being carried out, and that any unavailability of Service or other disruption to the Service as a result of such delay shall not be considered for the purpose of calculation of any service level agreements or service credits.

- 2.4. Following execution of this Agreement Maintel may, at Maintel's sole discretion, conduct a Survey of the Site(s). Once completed Maintel shall provide the results of the Survey to the Customer for the Customer's approval (such approval not to be unreasonably withheld or delayed). The Survey will confirm if any changes will be required to the Order including changes to Customer Equipment and Charges. Upon receipt of Customer approval, which shall be deemed as accepted where the Customer does not reject the results within three (3) Business Days of receipt, the changes to the Services including Customer Equipment and Charges set out in the Survey shall apply as though the Customer had placed an amended Order. Where the Customer rejects the results of the Survey, the original Order will be cancelled. For the avoidance of doubt, the Customer shall be charged by Maintel for all Surveys and the Customer shall bear all costs arising from or in connection with the Surveys. The Survey will specify all the technical requirements and the associated Charges that Maintel are or could be reasonably aware of at the time the Survey is carried out specific to the Customer's Site(s), such as working at height and/or wayleave requirements. This clause 2.4 does not apply to risk assessments.

- 2.5. Maintel shall supply, install and configure (as appropriate) the Customer Equipment at the relevant Site(s) where such is specified and agreed in the Order.
- 2.6. Maintel shall carry out the Implementation Services during Business Hours but may give the Customer reasonable notice to require access to the Site(s) (remote or otherwise) at other times to meet its obligations under this Agreement. If the Customer declines Maintel's reasonable request to access the Sites(s) outside of Business Hours, the Customer shall pay any additional Charges incurred by Maintel, in relation to the delay in carrying out the Implementation Services.
- 2.7. Maintel may charge the Customer any costs Maintel incurs as a result of any delay in completion of the Implementation Services which is caused by the Customer or a third party over whom Maintel has no control and the Customer shall pay the additional costs in addition to the Charges.
- 2.8. 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.
- 2.9. 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.
- 2.10. Where End of Sale is applicable, Maintel shall endeavour to provide the Customer with a suitable replacement as determined by Maintel. Where a suitable replacement is not available, as determined by Maintel, the Parties shall discuss and promptly agree a mutually acceptable solution.
- 2.11. Where any Customer Equipment becomes End of Life, the Customer agrees that Maintel shall at its option (a) cease support on such Customer Equipment after serving reasonable notice to the Customer; or (b) continue to provide support on a reasonable endeavours basis. Where such support continues replacement Customer Equipment will only be provided where Maintel has such Customer Equipment in stock and that no enhancements, upgrades or new software shall be provided on such Customer Equipment, unless otherwise agreed. The Customer agrees that the Service Levels shall not apply to such Customer Equipment.

THE CUSTOMER'S OBLIGATIONS

- 2.12. The Customer shall ensure that the terms of the Order(s) are complete and accurate.
- 2.13. 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 documents (as applicable).
- 2.14. 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 Sites, 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.
- 2.15. The Customer shall not allow the Customer Equipment supplied by Maintel and/or the Services to be used in any of the following ways:
 - 2.15.1. in breach of any reasonable instruction given by Maintel, or anybody which has regulatory powers relating to the Services; or
 - 2.15.2. in a manner which causes Maintel to be subject to any criminal prosecution, enforcement action, civil claim or other action or liability.

SERVICE EXCLUSIONS

- 2.16. 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.

SIP SERVICES

- 2.17. If the Customer consumes SIP services as part of the Services received pursuant to this Agreement, the Customer shall ensure that it complies with the Maintel SIP Acceptable Usage Policy and the Maintel Fair Usage Policy SIP Call 2, both available [HERE](#).

3. TERM

- 3.1. **Agreement Term.** This Agreement shall commence on the Effective Date and shall continue thereafter until termination or expiry of the last Order provided under it, unless and until terminated in accordance with clause 15.
- 3.2. **Order Term.** An Order shall commence on its Effective Date and shall continue thereafter until termination or expiry of the last Service provided under it.
- 3.3. **Services Term – general.** The Initial Service Term of the Services shall commence on the Initial Service Term Commencement Date, as applicable, for each Service and shall continue for the Initial Service Term unless terminated earlier in accordance with clause 15. Thereafter, for Services other than:
- 3.3.1. services provided pursuant to Schedule F1 (Mobile Services VM02/Three/Vodafone), in respect of which the parties may agree a Resign in accordance with the applicable Schedule; and
 - 3.3.2. mobile services provided pursuant to Schedule F2 (Mobile Services Wholesale) to which the renewal provisions set out in that schedule shall apply,
- the Initial Service Term shall automatically renew for successive periods of twelve (12) months (“**Extended Service Term**”) unless either Party gives the other not less than ninety (90) days’ prior written notice of its intention for the Services to expire at the end of the Initial Service Term or then current Extended Service Term. For the avoidance of doubt, a Resign of mobile Services shall trigger a new Initial Service Term, as set out in the Order.
- 3.4. **Initial Service Term Commencement Date:**
- 3.4.1. **Order Effective Date.** The Customer agrees that notwithstanding the Initial Service Term Commencement Date for certain Services being stated as the Order Effective Date, such Services may be dependent on the provision of services by third party suppliers. Although the Initial Service Term shall commence on the Order Effective Date, the Services themselves may not be available for use upon such date as they are dependent upon an order being placed with the relevant supplier and the supplier activating such services.
 - 3.4.2. **Implementation services.** The Customer agrees that the Initial Service Term shall commence on the specified Initial Service Term Commencement Date, but acknowledges that the Services may not be available for use on such date where implementation services (including, for example, configuration) are required.
- 3.5. **Ramp-Up Periods.** If the Order Form states that a Ramp-Up Period is applicable to a particular Service, the provisions of this clause 3.5 shall apply.
- 3.5.1. **Initial Service Term.** The Initial Service Term shall commence on the Initial Service Term Commencement Date and shall continue for the Initial Service Term. The Initial Service Term shall be for the duration stated in the Order, plus the stated Ramp-Up Period. As an example: if a Service has a 2 month Ramp-Up Period and the Initial Service Term stated in the Order is 3 years, the Initial Service Term shall be deemed to be 3 years and 2 months.
 - 3.5.2. **Charges.** Subject to clause 4.10.3, no subscription Charges shall be payable by the Customer with respect to the Services subject to the Ramp-Up Period for the duration of the Ramp-Up Period, and such Charges may instead be billed by Maintel from the date immediately following the end of the Ramp-Up Period. The Customer shall, however, be required to pay any usage Charges that it incurs during the Ramp-Up Period. For clarity, Non-Recurring Project Charges may also be payable by the Customer during the Ramp-Up Period in accordance with the Order. The provisions set out at paragraph 10 of Schedule B2 (Maintel Genesys Cloud) shall apply to charging and invoicing of Maintel Genesys Cloud where a Ramp-Up Period applies to that Service, rather than this clause 3.5.2.
 - 3.5.3. **Delays.** If the Service is not, or is anticipated to not be, Ready for Service by the day immediately following the end of the Ramp-Up Period, the Parties shall discuss the effect, if any, that this shall have on the duration of the Ramp-Up Period and the Initial Service Term with respect to the particular Service. Any amendment shall be subject to agreement by the parties pursuant to a written variation agreement to the applicable Order. The Customer acknowledges that the Ramp-Up Period shall only be extended where Maintel has caused the delay in the Service being Ready for Service.

4. PAYMENT

CHARGES AND PAYMENT

- 4.1. The Customer shall pay the Charges in accordance with the terms of this Agreement. The Customer shall pay each invoice in the GBP currency in which they are raised within 30 (thirty) days of the date of the invoice and such payment shall be taken by Maintel via Direct Debit. The Customer hereby agrees to complete the Direct Debit mandate (attached to the Order) and return this document to the following address:
- FAO: Credit Control, Maintel Europe Limited, The Innovation Centre, Evolution Park, Haslington Road, Blackburn, Lancashire, BB1 2FD
- In the event the Direct Debit form is not utilised, as set out in this Agreement, the Customer shall incur administration Charges for the collection and processing of payments.
- 4.2. Charges are exclusive of all taxes including VAT, which shall be added to all invoices at the prevailing rate.
- 4.3. Where the Customer wishes to withhold payment in relation to a genuine dispute regarding an invoice, the Customer shall notify Maintel within 10 (ten) days of the date of the invoice and the Customer may only withhold payment of the specific items agreed with Maintel as being under dispute.
- 4.4. If the Customer fails to pay any properly due and payable amount under this Agreement by the due date for payment, Maintel may charge the Customer:
- 4.4.1. interest on the overdue amount at a rate of 4% (four percent) a year above SONIA (Sterling Overnight Index Average), as defined by the Bank of England from time to time, but at 4% a year for any period when SONIA is 0% or below. Such interest shall accrue each day from the due date until the date of actual payment; and
- 4.4.2. any other costs incurred by Maintel as a consequence of the late payment, including for example, costs of pursuing debt collection.
- 4.4A The Customer shall promptly notify Maintel in writing in the event of a downgrade of its credit rating or financing facilities have been withdrawn from the customer or liquidity of the Customer has significantly deteriorated.
- 4.5. Subject to clause 4.3, 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.

ADJUSTMENTS TO CHARGES

- 4.6. Maintel may vary the Charges:
- 4.6.1. subject to clauses 4.6.2, 4.6.3 and 4.6.4, once per calendar year, for any Services (including, for clarity, rate cards for professional services) by the greater of:
- 4.6.1.1. the annual percentage increase in the Retail Price Index (RPI) rate figure last published by the Office of National Statistics prior to: (a) the notice of the adjustment being given, or (b) where the adjustment is to apply on a renewal, last published prior to either the term of the Services renewing or the first invoice being issued for Services to be provided during the Extended Service Term, in each case, plus 1%, rounded up to the nearest whole pence; and
- 4.6.1.2. the annual percentage increase in the BEAMA Index last published on www.beama.org.uk (or such successor website from time to time) by BEAMA Limited prior to: (a) the notice of the adjustment being given, or (b) where the adjustment is to apply on a renewal, last published prior to the term of the Services renewing or the first invoice being issued for Services to be provided during the Extended Service Term, in each case, plus 1%, rounded up to the nearest whole pence,
- in each case, if the relevant RPI rate figure or BEAMA rate figure is negative, such rate to which the 1% is added, shall be deemed to be 0. Except where such adjustment is to apply upon a renewal, Maintel shall provide not less than 28 days' prior written notice of such an adjustment;

4.6.2. at any time on reasonable written notice, to reflect increases to Maintel's costs and/or the charges payable by Maintel to its suppliers as a result of a change in law or regulation which is enforceable on either Maintel or a supplier to Maintel;

4.6.3. at any time on not less than 28 days' written notice to reflect increases to Maintel's costs and/or charges payable by Maintel to its suppliers and/or manufacturers due to changes in the foreign exchange rate; and

4.6.4. at any time on not less than 28 days' written notice to reflect increases in supplier and/or manufacturer rates or costs, whether reasonably anticipated or not.

4.7. If the Customer has purchased professional services days which it may draw down upon during the Service Term, and the Customer has failed to use any such professional service days in the 12 months following purchase of the same ("**Unutilised PS Days**"), then the professional service day rates for such Unutilised PS Days shall, every 12 months until drawn down, be increased cumulatively by the greater of:

4.7.1. the annual percentage increase in the Retail Price Index (RPI) rate figure last published by the Office of National Statistics prior to expiry of the applicable 12 month period, rounded up to the nearest whole pence; and

4.7.2. the annual percentage increase in the BEAMA Index last published on www.beama.org.uk (or such successor website from time to time) by BEAMA Limited prior to expiry of the applicable 12 month period, rounded up to the nearest whole pence,

in each case, if the relevant RPI rate figure or BEAMA rate figure is negative, such rate shall be deemed to be 0. Following receipt of an invoice from Maintel, the Customer shall pay the difference between the amount paid for such Unutilised PS Days and the increase in the day rate. This provision shall not apply to the extent that the Customer's delay in utilising such professional service days is due to delays to implementation of services or other projects which are directly and solely the fault of Maintel.

STORAGE OF EQUIPMENT

4.8. If Maintel retains equipment ordered by the Customer in storage:

4.8.1. Maintel may charge the Customer reasonable storage charges for the period that such equipment is kept in storage;

4.8.2. the Customer shall immediately pay any outstanding balance associated with the stored equipment and with regard to 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

4.8.3. risk in such equipment shall transfer to the Customer on Delivery.

To the extent that the Customer's delay in accepting such Delivery is due to delays to implementation of services or other projects which are directly and solely the fault of Maintel, Maintel shall be responsible for the costs of any such storage.

INVOICING AND BILLING DATE

4.9. Maintel may invoice the Customer for the Charges from the Billing Date.

4.10. The "**Billing Date**" shall be the Initial Service Term Commencement Date, save as set out below:

4.10.1. subject to clause 4.8.2, Non-Recurring Project Charges shall be invoiced in accordance with the applicable payment profile set out in the Order and therefore 'Billing Date' shall be construed accordingly;

4.10.2. if the Order states that a Ramp-Up Period applies to a Service, clause 3.5.2 shall apply to the billing of the operational charges with respect to that Service and therefore 'Billing Date' shall be construed accordingly; and

4.10.3. Maintel reserves the right to bill the Customer for Charges payable in respect of third party services (including, without limitation, third party Support Services, licences and third party

software assurance) from the date upon which Maintel incurs the related third party cost and therefore 'Billing Date' shall be construed accordingly.

- 4.11. where the Customer has used the Services prior to the Billing Date, Maintel may invoice the Customer for that actual usage in arrears, at the pro-rated annual Operational Charges rates (set forth in the Order), unless otherwise agreed in writing. Where a Ramp-Up Period is applicable, clause 3.5.2 shall apply.
- 4.12. Maintel shall issue invoices to the Customer in an electronic format , where the Customer may review the invoice. If the Customer requests paper copies of invoices, Maintel may add an additional administration Charge to the invoice.
- 4.13. In the event the Customer requests or is the cause of any delay (save for an Excused Delay or Force Majeure event); the Customer shall remain liable for all Charges (including Implementation and Operational Charges), set out in the Order.

ADDITIONAL CHARGES

- 4.14. If the Initial Service Term has renewed pursuant to clause 3.2 and Maintel has not received the Customer's purchase order for third party support services prior to such renewal, Maintel (at its sole discretion) may apply a Charge to the Customer of 2% of the renewal costs and such Charge shall be in addition to the renewal costs. The Charges set out in this clause shall be payable by the Customer as agreed between the Parties.
- 4.15. Where the Customer exceeds any value of a purchase order, for Services which have been delivered in addition to those stated in the Order, 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 or, Maintel has despatched the Customer Equipment or commenced the Services requested in the Order.
- 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 of any Customer Equipment, and/or the Services, provided that the revised Order shall provide Customer Equipment and/or the Services materially equivalent to those originally set out in the Order.
- 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. In the event an Order is accepted by Maintel the Customer may request, and/or Maintel may recommend, changes to the Order. Maintel shall advise the Customer, where possible within ten (10) days of the likely impact of any such change, including the effect on the Charges and the RFS Date, if relevant.
- 5.5. The Parties shall discuss any recommendation or request made under clause 5.4 as soon as practicable, but neither Party will be obliged to agree to any change.
- 5.6. Until such time as any change is agreed in writing by both Parties, Maintel shall, unless otherwise agreed in writing continue to provide the Services as if such change had not been requested.
- 5.7. Any change agreed by the Parties via clause 5.8 shall constitute a variation of the Order and shall be made in writing and signed by both Parties.
- 5.8. The Customer shall provide a purchase order for every Order placed. 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.
- 5.9. The order shall be governed by the terms of this Agreement, irrespective of any purchase order (or other) terms and conditions proposed by the Customer.

6. DUAL RUNNING

- 6.1. The Customer shall bear all costs arising from or in connection with Dual Running including failure to comply with clause 6.2.
- 6.2. The Customer hereby undertakes to notify and instruct Maintel to cease the existing services not provided by Maintel as soon as reasonably practicable. All such notifications and instructions shall be in writing using the Cease Notification Form, found [HERE](#).
- 6.3. For the avoidance of doubt Maintel excludes all liabilities, costs, expenses, damages and losses suffered or incurred by the Customer arising from or in connection with any delay of the cease of the existing Services if:
 - 6.3.1. Any delay is caused directly or indirectly by the Customer or any sub-contractor or agent thereof; or
 - 6.3.2. Any delay that is outside the direct control of Maintel, including but not limited to:
 - 6.3.3. Delays caused by carriers & their third party suppliers;
 - 6.3.4. Delays caused by council, landlords and civil construction permissions and activities;
 - 6.3.5. Delays caused by environmental and physical anomalies discovered as part of delivery;
 - 6.3.6. Delays caused by changes requests or additions to the project scope;
 - 6.3.7. Delays caused by execution of contingency actions and solution re-design, upon discovery of validation and design issues.

7. CONFIDENTIALITY

- 7.1. 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.
- 7.2. 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.
- 7.3. The duties imposed on the Parties by clauses 7.1 and 7.2 above do not extend to information or data which at the time of its disclosure or use by the receiving Party:
 - 7.3.1. is or becomes generally available and known to the public other than by reason of the receiving Party's breach of this clause 7;
 - 7.3.2. 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;
 - 7.3.3. is lawfully disclosed to the receiving Party by a third party without restriction or disclosure; or
 - 7.3.4. the receiving Party can demonstrate that it developed independently without reliance on Confidential Information of the other.
- 7.4. Each Party agrees and acknowledges that damages alone may not be an adequate remedy for breach of this clause 7 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 7.
- 7.5. On termination of this Agreement, each Party shall (save for the extent necessary for the enforcement of any rights under this Agreement):
 - 7.5.1. return to the other Party all documents and materials (and any copies thereof) containing, reflecting, incorporating or based on the other Party's Confidential Information;

7.5.2. erase all of the other Party's Confidential Information from its computer systems (to the extent possible); and

7.5.3. 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.

7.6. Notwithstanding clause 7.1, Maintel may, make reasonable references to the Customer (including the use of the Customer's logo and direct quotes) 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. The Customer hereby acknowledges and agrees that any Charges for any Order are conditional upon the Customer's reasonable compliance with this clause 7.6. In the event the Customer does not agree to this clause 7.6; such exclusion, may impact the Charges offered in any Order.

8. INTELLECTUAL PROPERTY RIGHTS

8.1. As between the Customer and Maintel:

8.1.1. 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

8.1.2. with regard to Customer Equipment provided by the Customer all title and/or ownership shall vest in the Customer unless otherwise specified herein or agreed; and

8.1.3. 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.

8.2. The Customer unconditionally agrees to adhere to and be bound by, the terms and conditions of all Software Licences, as provided by Maintel to the Customer prior the Effective Date, relating to the Customer Equipment supplied by Maintel under this Agreement and the Customer shall have no right to assign, sublicensing or transfer such Software Licences.

8.3. 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.

8.4. 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, subject to clause 10 of this Agreement, against all costs awarded under any final judgment, court order or settlement arising directly out of or in connection with that IPR Claim.

8.5. The indemnity at clause 8.4 above is subject to the following conditions:

8.5.1. 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

8.5.2. 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

8.5.3. 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

8.5.4. 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

8.5.5. 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.

- 8.6. 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 8.4 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 10.2.
- 8.7. Where Maintel is the indemnifying Party and the Customer is the indemnified Party, the indemnity in clause 8.4 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.
- 8.8. Clause 8 states both Parties entire liability for infringement of any third party Intellectual Property Rights.
- 8.9. 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.

9. DATA PROTECTION AND RECORDS

- 9.1. To the extent that Maintel processes personal data as a data processor on behalf of the Customer, the Data Processing Addendum found [HERE](#), as updated from time to time, shall apply and be deemed incorporated into this Agreement.
- 9.2. The Customer agrees that Maintel may retain personal data relating to the Customer (for example, names and email addresses of data subjects on invoices issued by Maintel) for a period of 7 years following provision of the Services for recordkeeping, legal compliance obligations, dispute resolution or because electronic or offsite back-up or archiving systems contain copies of the data. Maintel shall not use the personal data for any other purpose and shall comply at all times with the provisions of its then current privacy policy with respect to any such retained personal data.

10. LIMITATION OF LIABILITY

- 10.1. Both Parties accept unlimited liability for:
- 10.1.1. death or personal injury caused by its negligence; or
 - 10.1.2. fraud or fraudulent misrepresentation; or
 - 10.1.3. any other act or omission for which liability cannot be limited by law.
- 10.2. Subject to clause 10.1 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;
- 10.2.1. in respect of damage to real property shall be limited to £2,000,000 (two million pounds) for each event or series of connected events; and

- 10.2.2. in respect of any and all indemnities, 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, for the Service(s) directly giving rise to such claims, losses or damages.
- 10.3. Subject to clause 10.1 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.
- 10.4. 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.
- 10.5. 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.
- 10.6. 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.

- 10.7. 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 is excluded from any limitation of liability or limitation of damages provision set out in the Agreement.

11. WARRANTY

- 11.1. Maintel warrants that the Services 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 set out in the Schedules. The warranty is valid for a period of 90 (ninety) days from the date of performance of the relevant Services.
- 11.2. Maintel warrants that the hardware supplied by Maintel under this Agreement will be free from defects of workmanship and materials for a period of 90 (ninety) days from the latter of the date of Delivery or the Initial Service Term Commencement Date (if relevant). All handsets supplied by Maintel and forming the Customer's Mobile estate will benefit from a one (1) year comprehensive replacement warranty, covering all aspects of mechanical or electronic failure.
- 11.3. Maintel warrants that software developed and supplied by Maintel under this Agreement will operate substantially in accordance with the functional specification supplied with the software and that it will be free from material defects for a period of 90 (ninety) days from the date of Delivery.
- 11.4. Maintel shall use reasonable endeavours to transfer to the Customer the benefit of any third party warranty given to Maintel in respect of any third party hardware and software supplied by Maintel under this Agreement.
- 11.5. Where the Customer makes a valid claim under a warranty set out in:
- 11.5.1. clauses 11.1 to 11.3 (inclusive), Maintel shall, within a reasonable time, and at its option either: (i) repair or replace any such hardware; (ii) correct any defects in such software; (iii) re-perform any Service to the extent it considers necessary to remedy any defect; or (iv) refund the Customer the amount paid for the affected hardware, software and/or Service.

11.5.2. clause 11.4, Maintel shall (where agreed with the Customer) manage such claim provided the Customer has complied with the conditions of the warranty.

- 11.6. Both Parties agree that the warranties set out in this clause 11 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 11 shall be the Customer's sole remedy in respect of all warranties under this Agreement.
- 11.7. Maintel does not warrant that the hardware and software supplied by Maintel and/or the Services will prevent the fraudulent intrusion or hacking and the Customer shall be fully 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.
- 11.8. Maintel shall not assume any liability whatsoever arising from or in connection with any fraudulent use of Customer Equipment and/or any other equipment and/or the Services provided under this Agreement save to the extent that such fraudulent use results directly from wilful misconduct on the part of Maintel.
- 11.9. Maintel specifically denies any implied or express representation that the Customer Equipment supplied by Maintel will be fit to operate in conjunction with any other hardware item or software products other than with those hardware items and software products that are identified in an Order; to operate uninterrupted or error-free; or to have all program defects corrected.
- 11.10. Maintel's obligations under this clause 11 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.

12. ESCALATION AND DISPUTE RESOLUTION

- 12.1. Any dispute which arises between the Parties as to this Agreement or the performance of the Parties' respective obligations under this Agreement, shall first be discussed, and if possible, resolved by appointed representatives of each Party.
- 12.2. If such representatives fail to resolve the dispute then either Party, by giving notice in writing to the other, may enter into an alternative dispute resolution procedure with the assistance of a mediator agreed by the Parties, or in default of such agreement within seven (7) days of receipt of such request, appointed at the request of either Party by the UK Centre for Dispute Resolution (CEDR) or such other similar body as is agreed.

13. FORCE MAJEURE

- 13.1. Unless otherwise specified in this clause, neither Party will be liable for any failure to perform, delay in performing or imperfect performance of any obligation under this Agreement to the extent that such failure is due to a Force Majeure Event. Subject to clause 13.2, this clause 13.1 shall not relieve the Customer of its obligations to pay the Charges.
- 13.2. Charges shall not be payable where a legislative requirement (including quarantine requirements) and/or directive and /or restriction arising as a direct result of a pandemic outbreak. This provision shall be commensurate with and limited to the extent of time such pandemic event impacts the Customers ability to pay.
- 13.3. If either Party is affected by the restrictions imposed by government controls, as a direct result of a pandemic, it shall promptly notify in writing, the other Party of the nature of the effect, 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. For the avoidance of doubt, where a Party places the other on notice pursuant to this clause, the other party shall not unreasonably withhold or delay the acceptance of the notice.

14. SUSPENSION OF SERVICES

- 14.1. Maintel may suspend any or all of the Services without liability to the Customer with immediate effect upon notice to the Customer if:
- 14.1.1. Maintel reasonably believes or has cause to believe that the Services are being used in an unauthorised or illegal manner;

- 14.1.2. the Customer has been subject to a security attack to its network (for example, a DoS or malware attack) and Maintel reasonably believes that such suspension is necessary to mitigate the risk to its own network and/or services that it provides to other customers;
- 14.1.3. the Customer is in material breach of any of its obligations under this Agreement;
- 14.1.4. any regulatory authority requires Maintel to suspend the Services;
- 14.1.5. 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
- 14.1.6. it is for the purpose of carrying out maintenance.

15. TERMINATION

TERMINATION OF THE AGREEMENT

- 15.1. Either party may terminate the Agreement immediately upon written notice if:
 - 15.1.1. the other party is in material breach of any of its obligations under this Agreement and the breach is incapable of remedy, or that other party has failed to remedy the breach within 30 days of written notice requiring it to do so; or
 - 15.1.2. the other party has committed an act of bribery directly linked to the Agreement.

TERMINATION OF THE SERVICES

- 15.2. Either party may terminate:
 - 15.2.1. Services affected by a material breach of the Agreement by the other party immediately upon written notice where either the breach is incapable of remedy, or which, if remediable, is not remedied within 30 days of written notice (or such other period agreed between the parties);
 - 15.2.2. the Services in whole or in part immediately upon written notice if the other party has committed an act of bribery directly linked to the Agreement or an Order; or
 - 15.2.3. the Services in whole or in part, to the extent permitted by applicable law and with immediate effect by giving written notice to the other if the other party experiences one of the following insolvency-related events:
 - (i) the party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
 - (ii) the party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (iii) the party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
 - (iv) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (v) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
 - (vi) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
 - (vii) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
 - (viii) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued

- against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days; or
- (ix) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2.3(i) to clause 15.2.3 (viii) (inclusive).

15.3. In addition to its rights under clause 15.2, Maintel may terminate:

15.3.1. the Services provided under an Order in whole or part, providing as much notice as reasonably possible, if Maintel is or will become unable to continue to provide any part of the Services due to termination or expiry of its agreement or order placed with a third party provider;

15.3.2. the Services in whole or in part, if the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

15.4. In the event that section 233A or 233B of the Insolvency Act 1986 applies, the Parties hereby agree to promptly enter into reasonable discussions to mitigate and resolve any potential losses (financial or otherwise) for either Party. The Parties recognise that the application of such sections of the Insolvency Act 1986 may place unreasonable hardship on Maintel in certain circumstances and that the Parties will act in good faith to mitigate same (within the meaning of section 233B (5)(a-c).

TERMINATION NOTICES

15.5. A termination notice shall only be validly served if:

15.5.1. the notice is served in accordance with clause 16; and

15.5.2. in the event of termination by the Customer, on the same day the notice is served pursuant to clause 15.5.1, the Customer returns a completed Cease Notification Form, available [HERE](mailto:cease@maintel.co.uk) to cease@maintel.co.uk.

CONSEQUENCES OF TERMINATION

15.6. Termination of the Agreement shall not affect the term of any then-current Services which shall continue for the remaining period of their Service Term. Termination of the Agreement shall not affect the ability of the Services to automatically renew pursuant to clause 3.3.

15.7. In the event of termination of the Services in whole or in part:

15.7.1. the Customer shall pay Early Termination Fees in the event of termination:

- (i) by Maintel by reason of material breach by the Customer in accordance with clause 15.2.1;
- (ii) by Maintel due to an act of bribery by the Customer in accordance with clause 15.2.2;
- (iii) by Maintel pursuant to clause 15.2.3;
- (iv) by Maintel pursuant to clause 15.3.1 if: (a) termination by the supplier is due to the fault of Maintel which is due to the acts or omissions of the Customer; or (b) termination by the supplier is for any reason other than the breach by Maintel, Early Termination Fees shall only be payable by the Customer to Maintel if Maintel is required to pay charges (including early termination fees) to the supplier in respect of the period following the effective date of termination; or
- (v) by Maintel pursuant to clause 15.3.2;

15.7.2. Maintel may submit invoices for any Charges not yet invoiced and Early Termination Fees and the Customer shall pay these invoices and any outstanding unpaid invoices together with interest due to Maintel;

15.7.3. by the Customer or Maintel for a reason other than those listed at clause 15.7.1, any Charges to be invoiced by Maintel for the terminated Services shall be reduced pro-rata to the effective date of termination. If the Charges have been paid by the customer in advance, no credit will be issued by Maintel in respect of such amounts already paid;

15.7.4. the Customer shall cease all use of the terminated Services and all rights granted to the Customer under a licence in respect of the termination Services shall cease;

15.7.5. if any Customer Equipment supplied by Maintel with respect to the terminated Services has not been paid for in full, Maintel can reclaim such Customer Equipment; and

15.7.6. Maintel may recover any items of Maintel's property relating to such terminated Services on the Customer Site(s) without delay.

- 15.8. Termination of this Agreement shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at the date of termination.
- 15.9. Notwithstanding any provision to the contrary, where applicable, on termination of the Services for any reason the Customer shall be bound by any minimum Service commitment/term, and the respective payments for same, purchased by Maintel specifically to provide the Services to the Customer.
- 15.10. Other than as set out in this clause, neither Party shall have any further obligation to the other with respect to the terminated Services after their termination.
- 15.11. For the avoidance of doubt, the change of Control of either the Customer or Maintel shall not affect the term of the Services or this Agreement.
- 15.12. The provisions of the Agreement which are expressly or impliedly intended to survive the termination of the Agreement or Services shall survive termination or expiry, including clauses 1, 4, 7, 8.1, 8.2, 9, 10, 11, 12, 15, 16, 19, 21 and 22.

16. NOTICES

- 16.1. 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 or to any other address notified in writing to the Customer. The attachment shall be either:
- 16.1.1. a Customer letterhead; or
 - 16.1.2. an otherwise authorised/recognised form (to protect the Customer from unauthorised notifications).
- 16.2. Any notice to be served on the Customer by Maintel under this Agreement shall be in writing and delivered either 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 Master Services landing webpage [HERE](#).
- 16.3. Notices delivered by hand during Business Hours will be served on the day they are delivered. Notices sent by first class post will be deemed served on the second Business Day after the date they are posted.

17. INSURANCE

- 17.1. Maintel shall during the term of this Agreement maintain in force an insurance policy or policies which cover(s) the following:
- 17.1.1. Employers' Liability £5,000,000 (five million pounds) in any one occurrence;
 - 17.1.2. Public/Products Liability the lower of i) up to five (5) times the total Order form value or ii) £2,000,000 (two million pounds) in the aggregate;
 - 17.1.3. Professional Indemnity the lower of i) up to five (5) times the total Order form value or ii) £2,000,000 (two million pounds) in the aggregate.
- 17.2. The Customer shall have adequate cover for any equipment or software equitably owned or leased by them (which may or may not form part of the Customer Equipment as defined herein, for example equipment installed in data racks) but may fall under the control of either Party or form part of the provision of Services herein. For the avoidance of doubt the cover required under this clause 17.2 shall be sufficient to meet any liability and/or loss that may flow from such Services.
- 17.3. Each Party shall supply evidence of such policy or policies to the other Party within 10 (ten) Business Days of a written request by the other Party.

18. ASSIGNMENT

- 18.1. Without prejudice to clause 18.2, each Party may assign the whole or any part of this Agreement or any of its rights or obligations hereunder subject to the prior written consent of the other Party (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.

- 18.2. Maintel may assign the whole or any part of this Agreement or any of its rights or obligations hereunder to Maintel Holdings plc or any subsidiary or affiliate of Maintel Holdings plc (as defined in the Companies Act 2006) or another company within the Group (as defined by the Companies Act 2006) without the prior written consent of the Customer provided the new supplier enters into a deed of novation.

19. NON-SOLICITATION

- 19.1. During the term of this Agreement, and for a period of 12 (twelve) months after its expiry or termination, neither Party will directly, or by use of an agent, induce or try to induce any respective employees of the other Party to leave their current employer except with the consent of the CEO of the current employer.

20. ANTI-BRIBERY

- 20.1. For the purpose of this Clause 20, 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.
- 20.2. Both Parties:
- 20.2.1. 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;
 - 20.2.2. 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;
 - 20.2.3. 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;
 - 20.2.4. 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; and
 - 20.2.5. 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.
- 20.3. Either Party shall, upon the reasonable written request of the other Party provide such supporting evidence of compliance with this clause 20 as may be reasonably required.
- 20.4. In the event that the Customer sub-contracts the provision of any element of this Agreement to any person, or receives any services in connection with its performance of the Agreement from any person, (each such person being an “**Associated Person**”), it shall impose upon such Associated Person anti-bribery obligations that are no less onerous than those imposed upon the Customer in this Agreement.
- 20.5. The Customer shall be liable to Maintel for the acts and omissions of each Associated Person in relation to compliance with such anti-bribery obligations (or, where the Customer has failed to impose such obligations, the obligations that the Associated Person would be under if the Customer had complied with the obligation under this clause) as if such acts or omissions were those of the Customer itself.
- 20.6. The Customer shall indemnify Maintel against any losses, liabilities, damages, costs and expenses incurred by, or awarded against, Maintel as a result of any breach of this clause 20 (Anti Bribery) including any liability that the Customer has to Maintel by virtue of the acts or omissions of any Associated Person.

21. AUDIT

- 21.1. The Customer may, not more than once in any Contract Year, perform an audit of Maintel, pursuant to this clause 21:
- 21.1.1. the scope and procedure of the audit shall be agreed by the Parties in advance of the audit;
 - 21.1.2. such audit shall require no more than four (4) hours of Maintel personnel time; and
 - 21.1.3. such audit shall reasonably rely on i) the provision of Maintel (business practice) standard certifications (including Maintel security certificates); ii) readily available information from public sources; and iii) the Maintel website.

- 21.2. An audit which, at Maintel's sole determination, is expected to exceed the provision of the information referred to at clause 21.1.3, will be chargeable on a Maintel professional services hourly rate. Costs for such shall be borne by Customer, unless agreed otherwise in writing.

22. ENTIRE AGREEMENT

- 22.1. This Maintel Linked Master Services Agreement together with the Data Processing Addendum, the Order and the Schedules to it (in each case together with any variations and/or amendments) 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. The Parties have had equal opportunity to take legal advice and the contra proferentem rule shall not apply to the interpretation of this Agreement. 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.
- 22.2. 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.
- 22.3. If any document other than those listed at clause 22.1 or the PDD or HLD, 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.
- 22.4. Both Parties hereby agree to contract the Services specified herein, for the duration specified in herein, unless otherwise agreed.

23. MISCELLANEOUS SECURITY

- 23.1. Maintel shall ensure its practice of information security standards is in accordance with its policy and the application of procedures set out within its ISO27001 certified information security system manual.
- 23.2. Maintel shall assist the Customer in responding to a security attack to their network (such as a DDoS or malware attack), provided that the Customer has purchased the Maintel Secure Connect Services with the appropriate service options. Where the Customer has not purchased Maintel Secure Connect Services with the appropriate service options, Maintel shall provide such assist to the Customer in responding to such an attack on a reasonable endeavours basis only.
- 23.3. Maintel shall undertake any applicable penetration tests on the network infrastructure from time to time during the term of this Agreement. The Customer shall not perform any type of penetration testing.
- 23.4. In order to recognise, contain, manage and/or resolve (at the sole determination of Maintel) IT security risks, Maintel may:
- 23.4.1. perform the following at any time:
 - 23.4.1.1. vulnerability scans;
 - 23.4.1.2. emergency patch management;
 - 23.4.1.3. quarantining of devices
 - 23.4.1.4. quarantining of elements of a network; and/or
 - 23.4.2. give reasonable instructions to the Customer to mutually protect both Parties and the Customer shall comply with any such instructions issued.

When exercising its rights under this clause 23.4, Maintel shall endeavour to undertake such measures with as little disruption to the Customer as reasonably possible.

- 23.5. The Customer also hereby acknowledges and agrees that any remedial action suggested by Maintel, shall be actioned or implemented within thirty (30) days or as otherwise agreed) of such communication. Where any remediation action shall exceed the thirty (30) days for any reason, the Customer shall supply Maintel with their alternative remediation plan within forty-eight (48) hours of the communication from Maintel, pursuant to clause 23.4.

23.6. In no event shall Maintel be responsible or liable whatsoever, for the Customer failing to apply the instructions, guidance or remedial actions set out in any communication to the Customer under this clause 23.

23.7. For the avoidance of any doubt, Maintel takes no responsibility for any PCI/Cardholder data within the environment.

GOVERNING LAW

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

THIRD PARTY RIGHTS

23.9. 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

23.10. 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

23.11. 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

23.12. 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

23.13. 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.

TUPE

23.14. Each party agrees that neither the start nor the termination of the Services (or any part of them) is expected to constitute a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) ("**Employment Regulations**").

23.15. If, despite 23.14., the employment or engagement of any person is found or alleged to have transferred to Maintel by virtue of this Agreement or Employment Regulations on the start of the Services (or any part of them), the parties shall comply with the provisions set out in Annex - TUPE.

23.16. The indemnities set out in Annex – TUPE shall apply in addition to, and are without prejudice to, any indemnities contained in other clauses of this Agreement.

COUNTERPARTS

23.17. This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each of the Parties has executed at least one counterpart.

POLICIES

23.18. 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; [Policies & Statements – Maintel \(www.maintel.co.uk/policies-statements/\)](http://www.maintel.co.uk/policies-statements/).

SCHEDULES

The following Schedules are incorporated into this Agreement by reference and as set out in an Order:

Schedule Description	
CLOUD	
Private Cloud	Schedule A1: Maintel UC Private +
	Schedule A2: Maintel UC Private
Public Cloud	Schedule B1: Maintel Gamma Horizon
	Schedule B2: Maintel Genesys Cloud
	Schedule B3: Maintel RingCentral
	Schedule B4: Maintel Teams Connector & Maintel SIP Trunking
	Schedule B5: SIP Services
	Schedule B6: Maintel Audiosafe
	Schedule B7: Maintel Zoom
UC&C	Schedule C1: ICT Supply and Support
CONNECTIVITY & SECURITY	
WAN & LAN	Schedule D1: Maintel Secure Connect
	Schedule D2: Maintel SD-WAN
Cybersecurity	Schedule E1: Managed Detection Response Services (Reliance)
MOBILE	
Airtime	Schedule F1: Mobile Services (VMO2/Three/Vodafone)
	Schedule F2: Mobile Services (Wholesale)
OTHER	
Other	Schedule G1: Calls and Lines (Inbound and Outbound)