

MAINTENANCE TERMS AND CONDITIONS

1 DEFINITIONS

- 1.1 In these terms and conditions, the following definitions apply:
- (a) **Annual Service Charge** means the annual charge for the Services, as specified in the Commercial Terms and subject to variation from time to time in accordance with these terms and conditions.
 - (b) **Business Day** means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
 - (c) **Charges** means the charges payable by the Customer for the Services. The Charges comprise the Annual Service charge plus any other charges specified by these terms and conditions.
 - (d) **Commencement Date** means the estimated date for the commencement of the Services, as specified in the Commercial Terms.
 - (e) **Commercial Terms** means the cover sheet to these terms and conditions titled Maintenance which sets out the commercial terms of the Maintenance Agreement.
 - (f) **Customer** means the customer named in the Commercial Terms.
 - (g) **Extended Term** has the meaning given in clause 2.3.
 - (h) **Maintenance Agreement** is the contract between Mtech and the Customer for the supply of the Services in accordance with these terms and conditions and the Commercial Terms.
 - (i) **Minimum Term** means the minimum term of the Maintenance Agreement, as specified in the Commercial Terms.
 - (j) **Mtech** means Mtech Communications Limited, a company incorporated and registered in England and Wales with company number 11194386 whose registered office is at Hello House, 135 Somerford Road, Christchurch, BH23 3PY.
 - (k) **Previously Paid Termination Charges** means the early termination charges paid by Mtech on behalf of the Customer to the Customer's previous provider of maintenance services, at any time before or after the Commencement Date.
 - (l) **Services** is the maintenance and services more particularly described in clause 3.1 below.
 - (m) **Support Hours** means 9.00am to 5.00pm on Business Days.
 - (n) **Supported Equipment** means the equipment covered by the Services, as listed in the Commercial Terms and as may be amended from time to time under clause 3.1(b). The Supported Equipment includes in each instance all internal cabling as well as the network test termination point or other demarcation point.

2 BASIS OF CONTRACT AND TERM

- 2.1 The Commercial Terms are a quotation by Mtech to provide the Services in accordance with these terms and conditions. Within 20 Business Days of its issue, the Customer can accept the quotation by signing and returning the Commercial Terms to Mtech, at which point the Maintenance Agreement will come into effect. The Customer cannot accept the quotation after 20 Business Days from its date of issue without Mtech's express prior written agreement.
- 2.2 Subject to the remaining sections of these terms and conditions and in consideration for the Customer paying the Charges, Mtech will make reasonable endeavours to provide the Services from the Commencement Date. Both parties acknowledge that:
- (a) the Commencement Date is an estimate only and that time shall not be of the essence; and
 - (b) the Services can only be provided once the other contracts for services between the Customer and Mtech have commenced. Therefore Mtech reserves the right, by giving notice to the Customer, to delay the Commencement Date pending the commencement of those other Services.
- 2.3 The Maintenance Agreement shall continue, unless terminated earlier in accordance with these terms and conditions, until the end of the Minimum Term at which point the Maintenance Agreement shall automatically extend for successive periods of 24 months (each an "**Extended Term**"). If either party gives written notice to the other no later than 90 days before the end of (as applicable) the Minimum Term or current Extended Term then the Maintenance Agreement will terminate at the end of (as applicable) the Minimum Term or the current Extended Term.
- 2.4 When the Maintenance Agreement renews for an Extended Term in accordance with clause 2.2(a), these terms and conditions shall be deemed to have been replaced by Mtech's latest terms and conditions (published at <https://mtechcomms.co.uk/terms-and-conditions> with effect from the start of that Extended Term.
- 2.5 These terms and conditions (which incorporate the Commercial Terms) apply to the Maintenance Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. For the avoidance of doubt, terms referenced on the Customer's purchase orders shall have no legal effect.
- 2.6 If Mtech has agreed to pay the Customer's early termination charges for its previous provider(s) of the

Services, Mtech will only pay such amounts that are notified to it no later than 12 months after the Commencement Date.

3 SERVICES

3.1 The Services comprise the provision of maintenance and support services for the Supported Equipment via a ticketed help desk. In particular:

- (a) the Services are provided during Support Hours only. Enhanced (out of hours) support may be arranged by separate agreement for an additional Charge;
- (b) the Services are only provided for the Supported Equipment. Mtech is not obliged to provide the Services for any other equipment. At its absolute discretion, Mtech may offer to provide the Services in relation to equipment other than the Supported Equipment on such terms, and subject to such additional Charges, as Mtech advises in writing;
- (c) the Customer may request in writing for equipment to be added or removed from the list of Supported Equipment. Mtech has discretion whether to agree to such requests. The Customer accepts that changes to the Supported Equipment may impact upon the Charges;
- (d) Mtech will not provide the Services in any of the circumstances listed in clause 3.2 below;
- (e) Mtech will engage suitably qualified engineers to provide the Services; and
- (f) requests for support must be submitted in accordance with clause 3.4.

3.2 Mtech is not obliged to provide the Services in any of the following circumstances and Mtech accepts no obligations or liability whatsoever in respect of the same:

- (a) the reported defect or error has resulted from:
 - (i) wilful damage to or other misuse of the equipment;
 - (ii) removal of the equipment from the premises it was installed at;
 - (iii) negligent use of the equipment or storage of the equipment in abnormal conditions;
 - (iv) failure to follow Mtech's or the manufacturer's instructions in relation to the use or storage of the equipment;
 - (v) the adjustment, alteration or repair of the equipment by the Customer or by a third party without Mtech's written approval;
 - (vi) flood, fire, lightning strike (or any other act of God), collapse of buildings, explosion or other incident, war, sabotage, terrorism, civil disturbance or governmental action, import regulations or embargoes, interruption or failure of a utility service (including the Customer's internet service); or
 - (vii) the Customer delaying in, or failing to, repair the affected equipment in accordance with Mtech or the manufacturer's instructions;
- (b) the defect or error is a result of the unavailability of, or errors with, the underlying network (e.g. a lack of

internet connectivity for a router resulting from the internet supplier's network being down). Mtech may, at its discretion, contact the Customer's internet or network services provider on the Customer's behalf to assist with finding a resolution but any such assistance shall be performed as a gesture of goodwill and Mtech shall have no liability to the Customer in relation to the same; and

- (c) the equipment does not meet the Customer's specifications or is not fit for the Customer's intended purpose but it is otherwise not faulty.

3.3 At its absolute discretion, upon determining that a fault has been caused by one of the circumstances listed in clause 3.2 Mtech may nevertheless offer to assist the Customer with rectifying the fault subject to the Customer paying Mtech's then-current charges for out-of-scope assistance. This may include the re-programming of equipment following unauthorised changes made by the Customer's staff or any third party.

- (a) Requesting and receiving the Services

3.4 The Customer shall request support by email to support@mtechcomms.co.uk or by telephone call to 0333 323 3888. The request for support must include:

- (a) the name, contact email address, contact telephone number and organisation of the person making the request; and
- (b) the nature of the fault or, if the Customer is making a request to set up Supported Equipment, details of the work to be carried out.

3.5 Upon receipt of a support request which complies with clause 3.4, Mtech shall assign the issue a priority based on its severity and urgency. Based on its priority, Mtech will endeavour to assign an engineer and respond to the issue as set out below. All time periods are within Support Hours unless the parties have agreed to provide enhanced (out-of-hours) support by separate agreement:

- (a) Priority 1 - Urgent priority tickets. Mtech will endeavour to respond within 1 hour.
- (b) Priority 2 - High priority tickets. Mtech will endeavour to respond within 2 hours.
- (c) Priority 3 - Medium priority tickets. Mtech will endeavour to assign an engineer and respond within 8 hours.
- (d) Priority 4 - Low priority ticket and change requests. Mtech will endeavour to respond within 24 hours.
- (e) Priority 5 - Questions, training and setup requests. Mtech will endeavour to respond within 48 hours.

3.6 Mtech does not guarantee resolution times but will make commercially reasonable endeavours to resolve Priority 1 and Priority 2 issues without undue delay and will make commercially reasonable endeavours to resolve Priority 3, 4 and 5 issues promptly.

- 3.7 Mtech does not warrant that it can resolve all defects. If Mtech is unable to repair or resolve a defect having made reasonable endeavours to do so then Mtech shall have satisfied its obligations under this agreement. Mtech shall make reasonable endeavours to contact the manufacturer or supplier of the Supported equipment to arrange further assistance where appropriate.
- 3.8 Where practicable, Mtech shall endeavour to diagnose issues remotely although site visits may be required.
- 3.9 If the Supported Equipment needs to be repaired then:
- (a) the Customer shall return the equipment to be repaired to Mtech (or a third party whose details are confirmed by Mtech) at the Customer's own expense;
 - (b) if the equipment to be repaired is within the manufacturer's or supplier's warranty then Mtech shall make reasonable endeavours to arrange the repair without further charge to the Customer. This may involve returning the equipment to the manufacturer or supplier for repair;
 - (c) if the equipment to be repaired is not within the manufacturer's or supplier's warranty then Mtech shall notify the Customer and the parties shall agree next steps, which may involve the payment by the Customer of third party repair charges.
- 4 CUSTOMER'S OBLIGATIONS**
- 4.1 The Customer agrees and undertakes:
- (a) to co-operate with Mtech in all matters relating to the Services and to provide Mtech with such assistance and information as Mtech reasonably requests from time to time; and
 - (b) to prepare and give access to the Customer's premises according to the reasonable instructions issued by Mtech and to ensure that the premises comprise a safe working environment for Mtech's staff.
- 5 CHARGES**
- 5.1 The Customer agrees to pay the Charges in accordance with these terms and conditions and the Commercial Terms.
- 5.2 The amount of the Annual Service Charge is set out in the Commercial Terms and may be amended by mutual agreement of the parties in writing or by operation of these terms and conditions.
- 5.3 Mtech may increase the Charges on 30 days' notice, subject to the following restrictions:
- (a) Mtech may not increase the Annual Service Charge within the first 12 months of the Maintenance Agreement (calculated from when the contract is entered into); and
 - (b) Mtech may not increase the Annual Service Charge by more than 5% over a 12 month period and may not increase the Annual Service Charge more frequently than once in any 12 month period.
- 5.4 If, more than twice in a calendar month, the Customer erroneously reports a fault (i.e. in circumstances where no fault can be identified) or requests support in any of the circumstances listed in clause 3.2, Mtech may charge the Customer its then-current charges for out-of-scope assistance for the time and resources spent responding to those requests.
- 6 PAYMENT**
- 6.1 Mtech shall invoice the Customer monthly in advance.
- 6.2 Payment of Mtech's invoice is due no later than 14 days from the date of the invoice.
- 6.3 Payment must be made by Direct Debit unless Mtech has expressly agreed in writing to accept payment by another method. Mtech reserves the right to charge its then-current admin fee (available on request) as a condition of accepting payment other than by direct debit.
- 6.4 All Charges must be paid in full in pounds sterling without deduction, set off or withholding. If accepted by Mtech, payments by BACS must be in cleared funds.
- 6.5 Mtech reserves the right to amend the date and frequency of its invoices upon 60 days' written notice to the Customer.
- 6.6 Mtech reserves the right to submit ad hoc invoices, in advance of supply, for products or services not covered by the Annual Service Charge. Such invoices are payable immediately on demand.
- 6.7 All invoices will be submitted via email to the invoicing email address of the Customer set out in the Commercial Terms. The Customer may amend its invoicing address by giving Mtech 60 days' prior written notice.
- 6.8 Value added tax (VAT) is payable in addition to all charges levied by Mtech unless otherwise specified.
- 6.9 Mtech reserves the right to withhold or withdraw discounts on invoices that are not paid in accordance with this clause 6.
- 6.10 If the Customer fails to pay any amount due under these terms and conditions then Mtech reserves the right to charge interest at the rate of 4% above the base rate of National Westminster Bank PLC from time to time. Interest is payable when the overdue sum becomes payable until it is paid.
- 6.11 Mtech reserves the right to vary the Customer's payment terms upon 30 days' notice in writing if:
- (a) the Customer fails to pay any of Mtech's invoices in accordance with these terms and conditions; or
 - (b) Mtech reasonably determines that the Customer is at risk of failing to pay Mtech's invoices on time due to a deterioration or anticipated deterioration of its financial position
- 6.12 Mtech reserves the right to charge its then-current administration fee if the Customer has cancelled its

Direct Debit instruction or has insufficient funds in its bank account on the direct debit due date.

- 6.13 The Customer agrees that any dispute relating to an invoice (including the calculation of any amounts payable) must be notified to Mtech within six months of the date of the invoice and the Customer shall not be entitled to any credit or refund relating to disputes raised after the expiration of that period.

7 LIABILITY

7.1 References to liability in this clause 7 include every kind of liability arising under or in connection with the Maintenance Agreement, including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

7.2 Nothing in these terms and conditions limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

7.3 Subject to clause 7.2, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill;
- (g) indirect or consequential loss; and
- (h) losses arising from breaches of the Customer's security systems which are not attributable to Mtech's negligence or breach of duty.

7.4 Subject to clauses 7.2 and 7.3, Mtech's total liability to the Customer shall not exceed the greater of:

- (a) the Charges which would be payable in the 12 months following the Commencement Date; and
- (b) the Charges paid by the Customer in the 36 months prior to the breach or the first breach of a series of connected breaches.

7.5 Subject to clauses 7.2, Mtech shall not be liable to the Customer for any breach of or delay in performing Mtech's obligations under the Maintenance Agreement which results from the Customer's breach of its obligations under these terms and conditions.

8 FORCE MAJEURE

8.1 Neither party shall be in breach of the Maintenance Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the agreement if such delay or failure result from events,

circumstances or causes beyond its reasonable control. In such circumstances:

- (a) the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed; and
- (b) if the period of delay or non-performance continues for three months, the party not affected may terminate this agreement by giving 28 days' written notice to the affected party.

9 SUSPENSION

9.1 Mtech may without liability to the Customer and without affecting its other rights and remedies: (a) suspend all or any of the Services; and/or (b) suspend any other services provided to the Customer by Mtech (whether under the Maintenance Agreement or otherwise) if:

- (a) the Customer materially breaches any of these terms and conditions (including but not limited to a failure to pay any charges when due);
- (b) the Customer becomes subject to any of the circumstances set out in clause 10.3(c) to clause 10.3(m) (inclusive); or
- (c) the relevant system(s) need to be suspended to facilitate the maintenance, repair or upgrade of any of Mtech's systems and/or services (provided Mtech shall use reasonable endeavours to give as much advance notice to the Customer as is reasonably practicable in the circumstances and to avoid suspending the Services during normal business hours);
- (d) Mtech is dealing with an actual or suspected security breach, virus, or attack whereby Mtech cannot reasonably address that threat without suspending the Services (or parts thereof) and in which case Mtech shall endeavour to minimise the interruption to the Customer; or
- (e) it is necessary because of an emergency or because Mtech has a legal obligation to do so.

9.2 If Mtech suspends the Services under clause 9.1 then the Customer shall nevertheless remain liable to pay the Charges.

9.3 If Mtech suspends the Services under clause 9.1 on the basis that the Customer has not paid an Mtech invoice on time then Mtech shall notify the Customer of that fact in writing.

10 TERMINATION

Termination without cause

10.1 Either party may terminate the Maintenance Agreement without cause in accordance with clause 2.3.

10.2 The Customer may additionally terminate the Maintenance Agreement at any time prior to the expiration of the Minimum Term or current Extended Term by giving Mtech notice in writing. Termination takes effect, and is conditional upon, the Customer having paid Mtech in full on demand:

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- (a) all Previously Paid Termination Charges and the value of all discounts offered by Mtech, plus any rebates paid by Mtech to the Customer, plus the amount of any credit paid by Mtech to the Customer;
- (b) all Charges incurred up to date of termination; and
- (c) an early termination fee equal to the remaining Charges that would fall due from the date of termination until the expiry of (as applicable) the Minimum Term or current Extended Term.

Termination for cause

10.3 Without affecting any other right or remedies available to it, either party may terminate the Maintenance Agreement by giving 14 days' written notice if:

- (a) the other party fails to pay any amount due under the Maintenance Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of the Maintenance Agreement and (if such breach is remediable) fails to remedy that breach within a period of: (in respect of the Customer's breach) 30 days or (in respect of Mtech's breach) 60 days after being notified in writing to do so;
- (c) the other 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; or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986; or (being a partnership) has any partner to whom any of the foregoing apply;
- (d) the other 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 (being a company) 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;
- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
- (f) 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;

- (g) 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);
- (h) 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;
- (i) 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;
- (j) the other party (being an individual) is the subject of a bankruptcy petition, application or order;
- (k) 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;
- (l) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause (c) to clause 10.3(k) (inclusive);
- (m) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

10.4 Mtech may additionally terminate the Maintenance Agreement immediately upon notice if Mtech determines that any information provided by the Customer is false or misleading.

10.5 Mtech may additionally terminate any or all of the contracts between it and the Customer upon written notice in the event that the Customer fails to pay any amount due under the Maintenance Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

11 CONSEQUENCES OF TERMINATION

11.1 On termination of the Maintenance Agreement:

- (a) the Services shall cease;
- (b) Mtech shall invoice the Customer for all outstanding charges up to termination plus any charges imposed by Third Party Providers as a result of termination;
- (c) if the Maintenance Agreement was terminated by Mtech under clause 10.3 or clause 10.4 prior to the expiration of the Minimum Term then Mtech shall invoice the Customer for the following:
 - (i) all Previously Paid Termination Charges; and
 - (ii) the value of all discounts offered by Mtech, plus any rebates paid by Mtech to the Customer, plus the amount of any credit paid by Mtech to the Customer; and

(d) if the Maintenance Agreement was terminated by Mtech under clause 10.3 or clause 10.4 prior to the expiration of the Minimum Term or current Extended Term then Mtech shall invoice the Customer the Monthly Charges which would have been payable for the unexpired part of the Minimum Term or Extended Term,

11.2 and the Customer shall pay all of Mtech's invoices for such amounts immediately upon receipt, without set off or withholding, and in accordance with the payment instructions set out on them.

12 INDEMNITY

12.1 The Customer shall indemnify Mtech against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Mtech arising out of or in connection with:

- (a) the Customer's breach or negligent performance or non-performance of the Customer's obligations under the Maintenance Agreement;
- (b) the death or injury of any of Mtech's staff or contractors caused by the negligence or wilful misconduct of the Customer; or
- (c) the enforcement of the Maintenance Agreement,

12.2 and the Customer shall reimburse Mtech all amounts payable under this clause immediately on demand.

13 DATA PROTECTION

13.1 Mtech processes personal data in accordance with its Privacy Policy which is accessible from <https://mtechcomms.co.uk/privacy-policy>.

14 NOTICES

14.1 Any notice given to a party under or in connection with the Maintenance Agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to:
 - (i) Mtech at info@mtechcomms.co.uk; and
 - (ii) the Customer at the email address specified in the Commercial Terms or, if no such address is specified, the email address specified in the Commercial Terms for receipt of invoices.

14.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause

"business hours" means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

14.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15 GENERAL

15.1 Interpretation.

- (a) A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time. And a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) A reference to **"writing"** or **"written"** includes email unless otherwise stated.
- (c) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- (d) Any words following the terms **"including"**, **"include"**, **"in particular"**, **"for example"** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

15.2 **Complaints.** For information about Mtech's customer complaints procedure please refer to Mtech's Customer Complaints Procedure at www.mtechcomms.co.uk/complaints-procedure.

15.3 **Copies of the contract.** Mtech will only provide copies of the Maintenance Agreement to registered directors of the Customer and the Customer's authorised signatory. Mtech will not share copies with other staff or purported representatives of the Customer.

15.4 Assignment.

- (a) Mtech may at any time assign its rights under the Maintenance Agreement to any third party.
- (b) The Customer may not transfer or otherwise deal with its rights under the Maintenance Agreement without Mtech's prior written consent. Mtech may, at its absolute discretion, agree to the Maintenance Agreement being novated to a third party in place of the Customer subject to such conditions as Mtech sees fit.
- (c) Mtech's acceptance of payment under the Maintenance Agreement from a third party on behalf of the Customer does not constitute its agreement to a variation or novation of the agreement.

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

15.6 **Severance.** If any provision or part-provision of these terms and conditions becomes invalid, illegal or unenforceable, it shall be deemed deleted, but

that shall not affect the validity and enforceability of the rest of these terms and conditions. Additionally, if any provision or part-provision of these terms and conditions is deemed deleted under this clause, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

in connection with the Maintenance Agreement or its subject matter or formation.

- 15.7 **Waiver.** No failure or delay by Mtech to exercise any right or remedy provided under these terms and conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.8 **Entire Agreement.**
- (a) These terms and conditions, along with the Commercial Terms, and all documents referred to therein together constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to their subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms and conditions, the Commercial Terms or any documents referred to therein. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Maintenance Agreement.
- 15.9 **No partnership or agency.** Nothing in these terms and conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party
- 15.10 **Time for payment.** Time is of the essence for the payment of monies by the Customer.
- 15.11 **Third party rights.** The Maintenance Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 15.12 **Governing law.** The Maintenance Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 15.13 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or