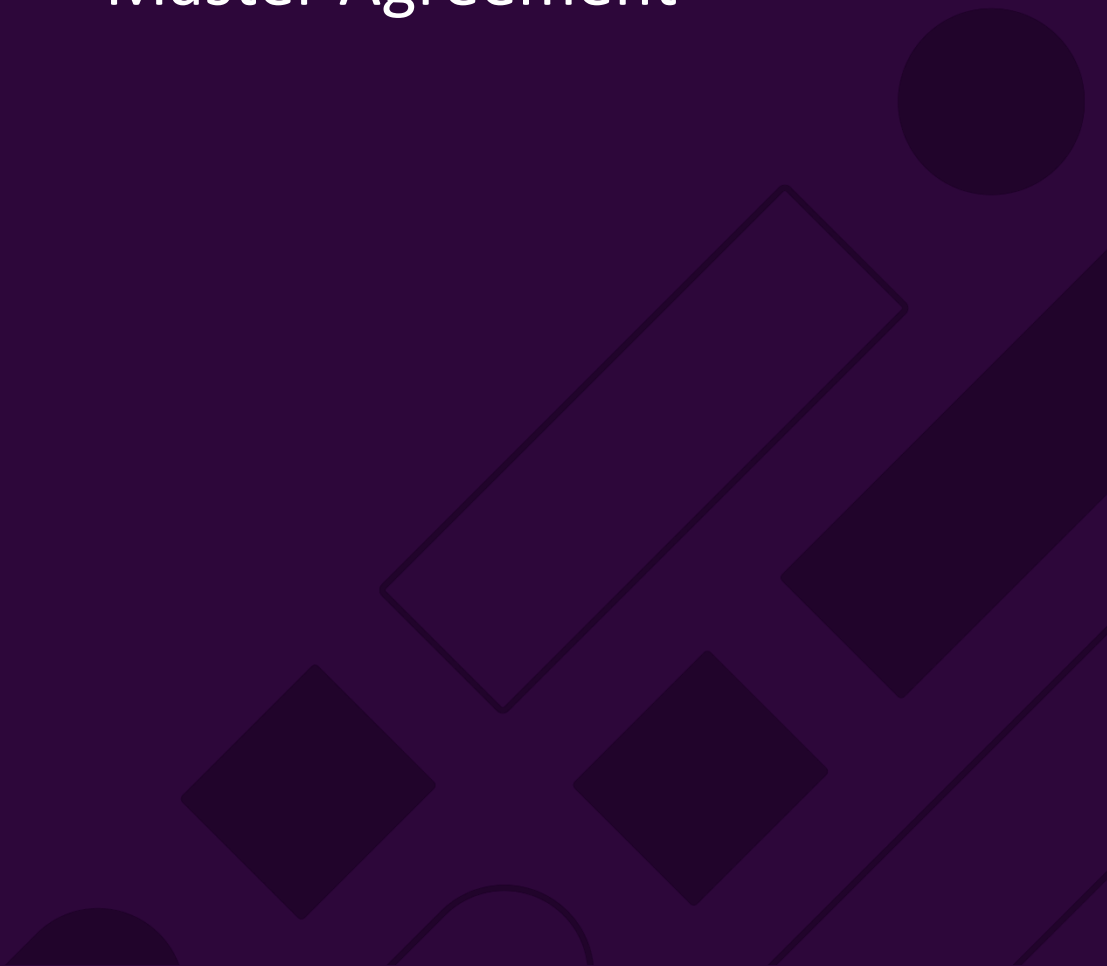




4net Technologies Limited And

Master Agreement



Definitions Schedule

The following definitions apply to the Master Service Agreement, Order Form, and applicable Schedules.

Acceptable Use Policy: means any acceptable use policy set out in the Order Form or as otherwise notified by FourNet to the Customer and as amended from time to time.

Additional Usage: means any additional use of the Services in excess of the Minimum Billable Volume.

Agreement: means the terms and conditions in this agreement, including all Schedules and the Order Form(s), any quotes, Statement of Work or other documents agreed by the Parties in writing.

Applicable Law: means the laws of England and Wales including regulations of a Regulatory Body, as may be amended from time to time, that apply to the provision or receipt of the Services. Additionally, anti-corruption laws set out in the Bribery Act 2010 (as further detailed in clause 19) and the Foreign Corrupt Practices Act of 1977 of the United States of America; and any applicable export laws and regulations, including those of the United States of America.

Applications: means Contact Centre (CC) Applications, Work Force Optimisation (WFO), Avaya Aura Experience Portal Application (AAEP), Interactive Voice Response services and applications (IVR) or Unified Communications (UC) Applications.

Assumptions: are reasonable conclusions drawn based on information provided by the Customer during quotation and design activities.

Availability: means the period when the Service is not Out of Service.

Authorised Representative: means the nominated person from each Party in accordance with this Agreement.

Background Materials: all Intellectual Property Rights, know-how, information, methodologies, techniques, tools, schemata, diagrams, ways of doing business, trade secrets, instructions manuals and procedures (including, but not limited, to software, documentation, and data of whatever nature and in whatever media) owned, developed or controlled by FourNet which may have been created outside the scope, or independently of, the Services and/or this Agreement, and including all updates, modifications, derivatives or future developments thereof.

Billing Period: means a calendar month.

Business Day: means the hours between 9 am and 5.30 pm on a day other than a Saturday, Sunday, or public holiday in England when banks in London are open for business.

Call: means a signal, message or communication which can be silent, visual or spoken, excluding text messages.

Carrier Price List: means the price list of that name which can be found at www.btwholesale.com which contains charges for a BT service or facility as amended by the Carrier from time to time.

Change Advisory Board: means the group of individuals convening to assess the impact of a Change Request and plan its application. Often known by its abbreviation, CAB.

Change Request: any request to alter the live production Services pursuant to this Agreement. Changes will be categorised in accordance with Schedule 4, paragraph 6.2.

Circuit: means any line, conductor, or other conduit between two terminals by which information is transmitted, and that is provided as part of the Service.

Claim: means any legal claims, actions, or proceedings against a Party, whether threatened or actual.

CLI: means the telephone number of the calling party or the default number of the Customer.

CLI Code of Practice: means the code by the same name as set out at <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-industry-guidance/calling-line-identification>

Cloud Services: Services hosted in a FourNet data centre or a Third Party supplier's data centre and provided to the Customer and managed by FourNet as set out in the Order.

Communications Provider or CP: means a 'Communications Provider' as defined in paragraph 1.4(a) of Condition 1 of the General Conditions of Entitlement set by Ofcom pursuant to section 45 of the Communications Act 2003.

Compliance Obligations: refers to the adherence to all applicable laws, regulations and policies that govern the use and provision of services. This includes but is not limited to regulations set by Ofcom.

Contact Centre or CC: means the suite of Software for providing contact centre services as set out in the Order.

Content: means applications, data, information (including emails), video, graphics, sound, music, photographs, software or any other material.

Confidential Information: all confidential information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services (together, its "Representatives") to the other Party and that Party's Representatives in connection with this Agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

Contract Year: means the annual period from the Services Start Date, or its anniversary.

Commissioner: the Information Commissioner (see section 114, DPA 2018).

CPE: the customer premises equipment (such as routers, Network Terminating Equipment) which is provided by FourNet, or one of FourNet's suppliers (as the case may be), as set out in the Order.

CPS: means Carrier Pre-Selection.

CRF: is a Customer Requirement Form used by the Customer to either order the Cloud Service, or to modify certain aspects of the Cloud Service.

Customer Data: any information that is provided by the Customer to FourNet as part of the Customer's use of the Services, including any information derived from such information.

Customer Default: has the meaning any failure or delay by the Customer to perform any of the Customer's obligations under the Agreement or the Order.

Customer Equipment: means any equipment (including software) other than FourNet Equipment, used by the Customer in connection with the Services.

Customer Operating Environment: the Customer's computing environment (consisting of hardware and software) that is to be used by the Customer in connection with its use of the Services and which interfaces with FourNet's System in order for the Customer to receive the Services but excluding the Customer Equipment.

Customer Service Plan or CSP: means the document of that name which sets out the procedures agreed between the Parties for managing disputes under this Agreement including any escalation process.

CX Consulting Services: means the consulting services specifically for Customer Experience enhancement.

De-installation Charges: means the one-off Charges payable by the Customer on de-installation of the Services as set out in the Order.

Delivery Location: the delivery location set out in the Order Form.

Deliverable: all Documents, products and materials developed by FourNet or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

Dispute Resolution Procedure: the procedure described in Clause 25.

Domain Name: means a readable name on an Internet page that is linked to a numeric IP Address.

Downtime: means the period of time that the Service is Unavailable to the Customer. This does not include Planned Downtime. It is calculated monthly and expressed as a percentage.

Due Date: has the meaning set out in clause 8.3.

Electronic Communications Network: has the meaning set out in the General Conditions of Entitlement found on the OFCOM Website.

Electronic Communications Service: has the meaning set out in the General Conditions of Entitlement found on the OFCOM Website.

Emergency: means a serious situation or occurrence that:

- (a) threatens life and limb; or
- (b) may cause or threatens to cause damage to physical property or systems; or
- (c) happens unexpectedly; and
- (d) demands immediate action.

Emergency Call: means a Call to 999 or 112.

Emergency Calls Access: means that component of the Services conveying Emergency Calls.

Emergency Services Organisation: means the relevant local public police, fire, ambulance and coastguard services and other similar organisation.

Equipment: the Goods to which the Services apply as set out in the Order Form.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

First Response: FourNet have received and logged the Incident and passed to a Resolver Group.

Force Majeure Event : means any event or circumstance which is beyond the reasonable control of the Party affected, which could not reasonably have been foreseen, prevented, avoided or overcome by the exercise of due diligence and reasonable care, and which directly prevents or delays that Party's performance of its obligations under the Contract. "Force Majeure Event" means any event or circumstance beyond the reasonable control of the affected Party which prevents or delays that Party's performance of its obligations under this Agreement, and shall include, without limitation: acts of God, including earthquake, flood, drought, lightning, landslide, severe storm or other natural disasters; war (whether declared or not), armed conflict, terrorism, civil disturbance, riot, rebellion or insurrection; epidemic, pandemic, quarantine restrictions or other public health emergencies; acts of government or public authority, including requisitioning, embargo, change in law or regulation, governmental or parliamentary restriction, prohibition or enactment of any kind; import or export controls, exchange control regulations or freight embargoes; fire, explosion, accident, shipwreck or loss at sea; breakdown of plant or machinery, or failure or interruption of utilities, networks or infrastructure not caused by the negligence or breach of the affected Party; non-availability or failure of vessels, transport or carriers; undersea or underground cable cuts, trawler or anchor damage, or damage caused by other marine activities including fishing, marine research or marine development; interruptions caused by third-party construction or civil works; and acts or omissions of transporters or carriers outside the reasonable control of the affected Party.

A Force Majeure Event shall not include: financial distress, lack of funds or inability to pay; failure of subcontractors or suppliers, except where such failure itself results directly from a Force Majeure Event; or any event to the extent caused by the negligence, wilful misconduct or breach of contract of the affected Party.

Goods: the goods (or any part of them) set out in the Order Form.

Good Industry Practice: the standards of a skilled and experienced provider of services similar or identical to the applicable Services, having regard to factors such as the nature and size of the Parties, the type of service, Service Level Arrangements, the term, the pricing structure and any other relevant factors.

Go Live Date: means the date upon which the Service or Solution is ready for use as a by the Customer and is no longer considered to be in an implementation phase.

Hardware: all physical telecommunications, networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories) used by FourNet to deliver the Managed Services to the Customer

Implementation Services: means the supply, installation, configuration and programming of the Equipment and or the Services and training where set out in the Order Form.

Incident: an unplanned interruption to a Service or reduction in the quality of a Service.

Incoming Call: means a Call from destinations with E.164 numbers made to a User.

Initial Term: means the length of the contract term for the Service procured as set out in the Order Form.

Intellectual Property Rights: means any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world now or in the future, in each case for their full term, together with any future rights and renewals or extensions.

IPR Claim: a claim by a third party arising from the infringement of its IPR.

Internal Calls or On-Net: means Calls made between Users configured within the Customer where both Users are using IP phones (hard or soft).

International Destination Network: means a network operated in an overseas country.

Internet: means a global system of interconnected networks that use a standard Internet Protocol to link devices worldwide.

Internet Protocol or IP: means a communications protocol for devices connected to the Internet that specifies the format for addresses and units of transmitted data.

IP Address: means a unique number on the Internet of a network card or controller that identifies a device and is visible by all other devices on the Internet.

IP Network: means a telecommunications network operated on IP.

IVR Port: means an Interactive Voice Response port on the Avaya Experience Portal.

Local Area Network or LAN: means the infrastructure that enables the ability to transfer IP services within Sites (including data, voice, and video conferencing services).

MACD: means moves, adds, changes, and deletes carried out on the Applications by the Administrator.

Managed Services: the managed services to be provided by FourNet as set out in the Order Form.

Manufacturer Support Charges: the charges for the maintenance services or software assurance provided by the manufacturer of the Goods as set out in the Order Form.

Manufacturer Software: software developed, supported and tested by a Third Party supplier.

Measurement Period: means a calendar month (24 hours per day).

Minimum Billable Value: means the lowest charges reflected within the commercial offer of the Order based upon the Minimum Billable Volume of Monthly License Usage.

Minimum Billable Volume: refers to the lowest volume of licenses reflected within the commercial offer of the Order. Where Monthly License Usage drops below the agreed volume, the Minimum Billable Value shall be charged.

Monthly License Usage: means in relation to:

- (a) Contact Centre Applications – the concurrent peak number of Users logged in to the applicable Contact Centre Applications, measured across the Customer's entire base of Users, over the Measurement Period.
- (b) WFO and WFM Applications – this the highest number of named Agents, for whom the applicable WFO Application is Provisioned, that are configured into the Contact Centre (as measured by the Service Portal), during the Measurement Period; and
- (c) UC Applications – the concurrent peak number of Users Provisioned on the applicable UC Application, measured across the Customer's entire base of Users, over the Measurement Period (measured by the Service Portal).
- (d) Any other license – the peak utilisation of the license during the Measurement Period.

Network Services: means the provision of the existing telephone lines and telephony services and the new telephone lines and telephony services, wide area network (WAN) services, the SIP Services, CPS and other ancillary services which are all as set out in the Order.

Number Portability: means an arrangement whereby a Customer's telephone number ceases to be provided by the losing CP, and such Customer telephone number is subject to number import onto the Cloud Service. If the Customer telephone number ceases to be used by FourNet then it may be subject to number export to the gaining CP pursuant to the Number Portability rules as set out in the Product Handbook.

Ofcom: means the Office of Communications or its successor body or authority that is the regulatory body for communications in the UK.

One-off Charges: means the one-off charges for the Services, Goods or Equipment set out in the Order Form.

On-Net or Internal Calls: means Calls made between Users configured within the Customer where both Users are using IP phones (hard or soft).

Operating Services Manual: means a detailed document that is produced in collaboration with the Customer during Service Transition, that covers all aspects of the delivery of the Managed Services.

Order Form: means the schedule to this Master Service Agreement which identifies the Goods and or Services purchased by the Customer, all applicable schedules, and any additional details specifically necessary to fulfil the requirement. Any terms that are not applicable shall be detailed here.

Out of Service: means an outage affecting more than 20% (but not less than 20) of the Customer's Users for the applicable Application, excluding outages for Planned Maintenance or Emergency maintenance.

Planned Maintenance: means any work planned in advance to be carried out by, or on behalf of, FourNet, including:

- (a) to maintain, repair or improve the performance of FourNet's network (or that of FourNet's subcontractors) or any Services; or
- (b) to make any change to the Services that does not have a material adverse effect on the performance or provision of the Cloud Service including: the introduction or withdrawal of any Service features; or the replacement of any Service with an equivalent Service.

Post Implementation Review: is the review process following a failed Change Request, the purpose being to understand the root cause of the failure.

Presentation Number: means the telephone number made available to a called party.

Price or Charges: means the price for the Goods and/or Services as set out in the Order Form.

Professional Services: means one off implementation and training services delivered to the Customer by FourNet or a Third Party on behalf of FourNet, these services are further defined in the Services Schedule.

Provisioned: means enabled by the Customer using a Service Portal to log on and use the applicable Application.

PRS or Premium Rate Service: means a communications service where Call Charges include a premium to cover the cost of content and/or an element of the service above the costs and Charges attributable to conveyance.

PSTN: means Public Switched Telephone Network, which is the concentration of the world's public circuit switched telephone networks.

Recurring Charges: means Charges for the Services or applicable part of the Services that are invoiced repeatedly for the duration of the term, in every payment period (e.g. every month), as set in the Order Form.

Recurring Services: means deliverables under the Order Form which comprise of an ongoing, consumable, termed service. For example, Cloud or Network Services.

Regulatory Body: means any national or supranational regulatory or competition body, government department, court, or other body authorised and empowered under local law in the relevant country to regulate or adjudicate on the provision of the Services.

Renewal Period: means a period equivalent to the shorter of (i) the Initial Period and (ii) 3 years.

Resolver Group: means Tier 2 and 3 FourNet engineers, supporting Third Parties or any other relevant person to investigate and solve a customer query or incident.

Root Cause Analysis: means the activity undertaken to assess why a failure has occurred within a live Service. This may be related to a Change Request or be undertaken following an Incident.

Second Response: Resolver Group are actively engaged in fault investigation, logged on to relevant systems and engaged with the Customer.

Services: means the Managed Services, Cloud Services, Security Services, Implementation and Professional Services, and Network Services as appropriate.

Service Delivery Date: the service delivery date as set out in the Order Form. This is when the Recurring Services will commence and become chargeable. Further defined in clause 7.6.

Service Level Agreement: means any agreed minimum level of Service to be achieved by FourNet with respect to the Service, such as delivery, availability or restoration as set out in the Services Schedule, also referred to as the SLA. Bespoke SLAs will be described in the Order Form.

Service Management Boundary: is the parameter that FourNet Managed Services will be responsible for the Service. This is up to and including access Circuits and associated termination hardware. This may be defined further, if required, in the Order Form or Operating Services Manual.

Service Period: means the duration of time that FourNet's adherence to the Service Level Agreement is measured. Unless otherwise stated, this is one calendar month.

Service Portal: means the portal used by FourNet to administer the Services and configure Applications and to create and receive reports on the utilisation of the Services.

Service Transition: means the process adopted when a project nears completion and the ongoing support services begin. This also covers the process when a Customer orders services that are not attached to a project, where the procured Goods or Services require ongoing maintenance and support.

SIP Services: means a Voice over Internet Protocol (**VoIP**) service based on the Session Initiation Protocol (**SIP**) by which FourNet delivers telephone connectivity to the public switched telephone network (**PSTN**) to the Customer with a compatible phone system (**IP-PBX**) as set out in the Order Form.

Sites: means the locations set out in the Order Form.

Software: means any Third Party software installed on or supplied with the Goods or as set out on the Order Form.

Specification: means any specification for the Goods issued by the manufacturer.

Statement of Work: means the detailed plan describing the [Professional or Implementation] Services required to deliver the Services set out in the Order Form. (if any).

Supervisor: means an individual whose role at the Customer's organisation includes the management of Agents and requires access to the supervisor management and reporting tools.

Support Hours: the hours of support set out in the Order Form.

Target Restoration: the FourNet target to have Service(s) restored to a usable working state by means of full fault fix or the implementation of a workaround.

Third Party: any third party that supplies Third Party Services to FourNet and/or the Customer (as the case may be) during the provision of the Services.

Third Party Services: any services, goods, code or software programs written or provided by a Third Party which are used during the provision of the Services.

Third Party Terms: any terms and conditions including any licence agreements entered into by FourNet or Customer relating to Third Party Services.

Transfer Charge Call: means a Call for which the called party is requested and agrees to pay the cost of a Call from a person who initiates a Call.

UC Applications: means the Software for the provision of unified communications services as set out in the Order.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

Uniform Resource Locator or URL: means a character string that points to a resource on an intranet or the Internet.

Usage Charges: means the Charges for the Outgoing Calls services as specified in the Order Form.

User: means any person who is permitted by the Customer to use or access the Services.

User Subscriptions: the user subscriptions purchased by the Customer pursuant to an Order Form which entitle Authorised Users to access and use the Subscription Services and/or Third Party Services (as the case may be) in accordance with this Agreement.

VAT: Value Added Tax chargeable under English law for the time being and any similar additional tax.

Voice Channel: means the capacity needed to carry a single Call.

VOIP: means voice over internet protocol.

WFO Applications: means applications supporting work force optimisation including call recording, quality monitoring and workforce management.

Working Day: means 8.30 am to 17.30 pm Monday to Friday, excluding public or bank holidays in the applicable part of the United Kingdom.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.

1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.8 A reference to writing or written includes e-mail.

1.9 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

Master Service Agreement

1. THE PARTIES

- 1.1 4NET TECHNOLOGIES LIMITED incorporated and registered in England and Wales with company number 05448638 whose registered office is at 3 Scholar Green Road, Stretford, Manchester, Lancashire M32 0TR (**FourNet**); and
- 1.2 [CUSTOMER NAME] incorporated and registered in England and Wales with company number [Number] whose registered office is at [Address] (**Customer**).

2. BACKGROUND

- 2.1 FourNet will provide the Services as defined in the Order Form.
- 2.2 The Customer (as defined above) wishes to use FourNet's Services in its business operations.
- 2.3 FourNet has agreed to provide, and the Customer has agreed to take and pay for, the Services, subject to the terms and conditions of this Master Service Agreement (as defined below).
- 2.4 This Master Service Agreement, hereafter referred to as 'the Agreement', is intended to be a framework agreement, such that once entered into on the Commencement Date as defined in clause 4.1, these terms and conditions will apply to each subsequent Order Form entered into between the parties.
- 2.5 The Order Form shall specify which Schedules under this Agreement apply.

3. ENTIRE AGREEMENT AND AMENDMENT

- 3.1 This Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, proposal, promise or representation made or given by or on behalf of FourNet which is not set out in this Agreement. Any proposal, samples, drawings, descriptive matter or advertising issued by FourNet, and any descriptions or illustrations contained in FourNet's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of this Agreement or any other contract between FourNet and the Customer for the supply of the Goods and/or Services.
- 3.2 A person who is not a party to this Agreement shall not have any rights under or in connection with it.
- 3.3 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules.
- 3.4 References to clauses and schedules are to the clauses and schedules of this Agreement; references to Appendices and paragraphs are to appendices and paragraphs of the relevant Schedule.
- 3.5 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.
- 3.6 Save as set out in clause 3.10, no amendment of the Agreement or Schedules will be effective unless agreed in writing by the Parties.
- 3.7 FourNet may amend the Order Form at any time by giving the Customer 21 days' notice in order to:
 - 3.7.1 comply with any legal or regulatory obligation; or
 - 3.7.2 protect the use of its brand or that of its subcontractors; or

- 3.7.3 introduce new or improved service features; or
- 3.7.4 withdraw service features or components; or
- 3.7.5 introduce new or improved service levels; or
- 3.7.6 change the technical specification of the Services; or
- 3.7.7 improve clarity, or make corrections to typographical errors; or
- 3.7.8 introduce process changes; or
- 3.7.9 change the codes or the numbers allocated to the Services in order to meet the national numbering requirements of Ofcom;
- 3.8 FourNet will provide 21 days' notice if it proposes any amendments to the Order Form that are not otherwise specifically referred to in this Agreement.
- 3.9 Upon expiry of the notice the changes to the Order Form proposed by FourNet will automatically apply unless the Customer responds to FourNet within 21 days of the notice disagreeing with the changes.
- 3.10 Any variation, including the introduction of any additional terms and conditions, to this Agreement, shall only be binding when agreed in writing and signed by both parties.

4. COMMENCEMENT AND TERM

- 4.1 This Master Service Agreement commences on the [INSERT DATE] ("Commencement Date") and, subject to clause 14, shall continue until terminated by either party in accordance with clause 14 or this Agreement.
- 4.2 FourNet will provide each Service from its Service Delivery Date for the duration of the Initial Term and thereafter for each Renewal Period.
- 4.3 Orders for Recurring Services under this Master Service Agreement will automatically renew for the duration of the Renewal Period unless either party gives notice to end the Agreement in accordance with clause 4.4 of this Agreement.
- 4.4 Either party may give written notice to the other party no less than 90 days before the end of the Initial Term or the relevant Renewal Period of the Order Form to terminate the Service at the end of the Initial Term, or the relevant Renewal Period, as the case may be.
- 4.5 Either party may give written notice to the other party with no less than 90 days before the intended termination date of the Master Agreement. Orders signed under this Agreement shall complete the Initial Term or relevant Renewal Period before the termination comes into effect.

5. CONFLICT AND SEVERENCE

- 5.1 The provisions of the main body of this Agreement shall be supplemented by any applicable additional provisions set out in the Schedules.
- 5.2 In the event of any conflict or inconsistency between the Clauses of this Agreement, the Schedules, the Order Form, and the Third Party Terms (including any changes or variations to each), the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:
 - 5.2.1 the Order Form ;
 - 5.2.2 the Customer Agreement / Third Party Terms, to the extent applicable to the Services;
 - 5.2.3 the Schedules; and
 - 5.2.4 the Clauses.

- 5.3 If a court or any other competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 5.4 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable, and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

6. PROVISION OF SERVICES

- 6.1 As long as there is no material adverse effect on the quality or performance of the Services, FourNet can make any changes (without prior notice unless prohibited by applicable law) to the Agreement or Statements of Work which are required to conform with any applicable safety, regulatory or other statutory requirement, or any Third Party request that Supplier is required to flow down to the Customer.
- 6.2 This Agreement shall (i) be in substitution for any prior oral or other prior arrangements between FourNet and the Customer in connection with the purchase of the relevant Services; and (ii) prevail over any of the Customer's inconsistent terms or conditions contained in, or referenced in, any order confirmation or other acknowledgement, quotation, purchase order(s), delivery note, invoice or similar document or implied by law, trade custom or practice.
- 6.3 Any quote given by FourNet is for budgetary purposes until financial and technical validation and shall not constitute an offer.
- 6.4 Pricing is only valid for a period of thirty (30) days from its date of issue unless otherwise agreed by FourNet in writing and shall only become binding upon the signing of an Order Form.
- 6.5 FourNet shall not be under any obligation to perform, and the Customer shall not be under any obligation to accept any Services unless and until an Order Form has been executed.

7. ORDERS AND PAYMENT

- 7.1 When the Customer wishes FourNet to provide it with Goods and/or Services, it shall send an Order to FourNet. Each Order shall be deemed to be a separate offer by the Customer to purchase Goods and/ or Services on the terms of this Agreement, which FourNet shall be free to accept or decline at its absolute discretion.
- 7.2 Each Order shall refer to this Agreement and be deemed to incorporate all provisions of this Agreement, save as expressly varied in the Order Form.
- 7.3 Unless otherwise specified, payment shall be due by the Customer to FourNet within thirty (30) days of receipt of the invoice, per specified payment milestones detailed in the Order Form ("**Due Date**").
- 7.4 The full balance of the Order value of any Goods is due on the earlier of (i) the date of delivery of the Goods to the Customer premises, (ii) the date that FourNet notifies the Customer that the Goods are available for delivery to the Customers premises or (iii) the date of delivery to FourNet in circumstances where FourNet is to carry out configuration or other services to such Goods at FourNet premises.
- 7.5 FourNet shall invoice the Recurring Charges annually or monthly (as agreed in the Order Form) in advance from the Service Delivery Date. FourNet shall invoice the first Recurring Charges on the earlier of (i) ninety (90) days from the date of the Order Form for the relevant Goods and (ii) forty five (45) days prior to the Service Delivery Date or the anniversary thereafter, at the agreed billing frequency.

- 7.6 The Service Delivery Date following Implementation Services shall be the date at which the solution is made available to the Customer for UAT following a new implementation, or a date otherwise agreed within the Order Form. On the Service Delivery Date, the Service provided by FourNet shall commence and the Recurring Charges for this Service will be due.
- 7.7 Where the Customer commits to a Minimum Billable Value as set out in the Order Form (which minimum monthly spend excludes one-off Charges, Calls and set-up fees), the Customer shall, unless otherwise agreed in writing by FourNet, be invoiced such Minimum Billable Value each month during the term of the Order Form.
- 7.8 In the event that the Customer exceeds the Minimum Billable Volume, this shall be invoiced at the current unit rate unless otherwise specified within the Order Form.
- 7.9 The Charges are exclusive of VAT, which FourNet shall add to its invoices at the appropriate rate.
- 7.9.1 Should the Customer be required by any law or regulation to make any deduction on account of tax including but not limited to withholding tax or otherwise on any sum payable under the Agreement the Charges payable shall be increased by the amount of such tax to ensure that FourNet receives a sum equal to the amount to be paid under the applicable Order Form.
- 7.10 Unless otherwise agreed in the Order Form, all payments by the Customer shall be in United Kingdom pound sterling and shall be paid into FourNet's bank account details of which will be set out in the Order Form or otherwise as advised by FourNet in writing.
- 7.11 Where stated in the Order Form, the Customer shall pay the Recurring Charges by direct debit upon FourNet submitting an invoice in accordance with the Order.
- 7.12 Where invoices are to be issued online, FourNet will notify the Customer by email when a new invoice is issued.
- 7.13 Without limiting any other right or remedy of FourNet, if the Customer fails to make any payment due to FourNet under this Agreement by the Due Date :
- 7.13.1 FourNet shall have the right to charge interest on the overdue amount at the rate of 3 per cent per annum above the then current Barclays Bank plc's base lending rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly; and
- 7.13.2 FourNet may suspend the Services or Professional Services until payment has been made in full.
- 7.14 The Customer shall pay all amounts due under this Agreement in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set off or counterclaim against FourNet in order to justify withholding payment of any such amount in whole or in part. FourNet may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by FourNet to the Customer.
- 7.15 Where the Customer makes an aggregated payment in respect of more than one invoice, the Customer will, upon request, provide a breakdown to show amounts paid in relation to each individual invoice, clearly identifying the amount applicable to each.
- 7.16 Subject to the customers written approval FourNet may increase any of its charges for the Services on not less than ninety (90) days' notice to reflect any changes in the price of such services that FourNet is charged by its suppliers.
- 7.17 In the event, that the price to FourNet of any Goods or Services increases by more than 2% due to inflation or exchange rate fluctuations from that of the date of the relevant Order Form, FourNet may on notice to the Customer increase the Price by the increase to FourNet of the same.

- 7.18 Where FourNet has issued an incorrect invoice, FourNet may issue an amending invoice or credit note together with details of the error to the Customer within 3 months of the issuing of the incorrect invoice.

8. GENERAL FOURNET RESPONSIBILITIES

8.1 FourNet shall:

- 8.1.1 provide the Services in accordance with the terms of this Agreement and the Order Form;
 - 8.1.2 use its commercially reasonable endeavours to complete any Deliverables and/or meet any Service Level Agreements within any timescales set out under any Order Form but any such dates shall be estimates only;
 - 8.1.3 commit sufficient resources to the provision of the Services to enable their delivery in accordance with the Agreement and Order Form;
 - 8.1.4 provide the Services with due care, skill and ability in accordance with Good Industry Practice;
 - 8.1.5 take such reasonable steps as may be necessary to fulfil its obligations under this Agreement and any Order Form;
 - 8.1.6 utilise suitably skilled, qualified, experienced, supervised and vetted employees, agents, representatives and authorised sub-contractors who will exercise all reasonable skill and care;
 - 8.1.7 notify the Customer promptly if FourNet is unable to comply with any of the terms of this Agreement, any Order Form, and, to the extent each is applicable to the Services and/or Third Party Terms; and
 - 8.1.8 observe and ensure that its personnel, agents, and subcontractors observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer premises, and which have been communicated to it a week prior to the Services commencing, where FourNet is required to be on such Customer premises for the provision of the Services.
- 8.2 FourNet shall co-operate with the Customer in all matters relating to the Services and shall appoint an Authorised Representative ("Supplier Representative"), as the contact throughout the Services.
- 8.3 The Customer confirms that FourNet may employ sub-contractors without seeking the prior consent of the Customer. Notwithstanding the foregoing, FourNet shall at all times be responsible for and liable in respect of the performance of all obligations under this Agreement, whether such obligations are performed by FourNet itself, or any sub-contractor engaged by FourNet and under the supervision of FourNet. For the avoidance of doubt, FourNet shall not be held liable for the actions and/or omissions of any third parties that are not its subcontractors.
- 8.4 The Supplier may in the provision of the Services make recommendations in relation to the Customer's system including (but not limited to) the Customer's security configuration, hardware, software and/or general IT system configuration. In the event that the Customer does not wish to follow FourNet's recommendations and, in FourNet's reasonable opinion, such refusal will have an adverse effect on FourNet's ability to provide the Services in accordance with this Agreement and the applicable Order Form, and agreement is not reached in respect of (i) any necessary action; (ii) the Services; and/or (iii) applicable Fees, then FourNet reserves the right to cease provision the affected Services in whole or in part and/or to terminate the Agreement and/or the applicable Order Form.
- 8.5 FourNet will comply with all Applicable Law in the provision of the Goods and Services.

9. GENERAL CUSTOMER RESPONSIBILITIES

9.1 The Customer shall:

- 9.1.1 ensure that any information it provides is complete and accurate;
- 9.1.2 co-operate with FourNet in all matters relating to the Goods and Services;
- 9.1.3 provide FourNet, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by FourNet;
- 9.1.4 provide FourNet with such information and materials as FourNet may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects, including obligations for security or health and safety requirements;
- 9.1.5 obtain and maintain all necessary consents, licenses, permissions and authorisations that are required for the Services including; consent for any to buildings on entrance to property required from local authorities, landlords or owners; for the installation of FourNet or 3rd party equipment; or for the use of the Services over the Customers Network or at a site;
- 9.1.6 comply with, and ensure that its Users comply with, all Applicable Law in the receipt and use of the Services;
- 9.1.7 Adhere and comply with the Compliance Obligations;
- 9.1.8 Adhere to any Acceptable Use Policy;
- 9.1.9 fully virus-check all data supplied to FourNet pursuant to this Agreement;
- 9.1.10 keep and make available to FourNet any operating manuals and CDs containing programs or other data supplied with any of the Customer Equipment; and
- 9.1.11 be responsible for any damage to or loss of the FourNet Equipment other than due to fair wear and tear.

9.2 The Customer shall not use, and shall prevent its agents, representatives, subcontractors, consultants, and employees from using, the Services:

- 9.2.1 in breach of any reasonable instruction given by FourNet to the Customer from time to time;
- 9.2.2 in contravention of any licence, code of practice, instruction or guideline issued by any regulatory body, any Third Party Terms or any third party's rights;
- 9.2.3 to receive, store or transmit material or data that is obscene, threatening, offensive, discriminatory, defamatory or in breach of confidence, infringes Intellectual Property Rights or other rights, gives rise to any cause of action against FourNet in any jurisdiction or is otherwise unlawful, and FourNet reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this sub-clause;
- 9.2.4 in a manner which may result in FourNet, or its suppliers, incurring any liability to a third party;
- 9.2.5 in a manner which may damage FourNet's reputation, or its suppliers' reputation, or the reputation of the Services, or otherwise bring FourNet, its suppliers, or the Services into disrepute;
- 9.2.6 fraudulently, improperly, immorally or in connection with a criminal offence or in any way that is unlawful; or
- 9.2.7 in any way FourNet considers to be, or likely to be, detrimental to the provision of the Services to the Customer or to the provision of any service to any other customer of FourNet.

- 9.3 The Customer must monitor and maintain any Customer Equipment connected to the Service or used in connection with the Service;
- 9.4 The Customer must ensure that any Customer Equipment used directly or indirectly by the Customer or User with the Service is:
- 9.4.1 used in accordance with any instructions, standards and safety and security procedures applicable to the use of that Customer Equipment;
 - 9.4.2 approved and used in accordance with relevant instructions and Applicable Law;
 - 9.4.3 immediately disconnect any Customer Equipment, or advise FourNet to do so at the Customer's expense, if Customer Equipment does not meet any relevant instructions, standards or Applicable Law;
 - 9.4.4 at a reasonable time agreed by FourNet and to enable FourNet to carry out its obligations under this Agreement, use its reasonable endeavours to provide, FourNet employees and anyone acting on FourNet's behalf who produces a valid identity card, access to any Site. FourNet will normally only require access during the Working Day but may, on reasonable notice, require the Customer to provide access at other times. FourNet may agree to work outside the Working Day, but the Customer will pay FourNet's Additional Charges, as advised to the Customer prior to the Additional Charges being incurred.
- 9.5 The Customer will be responsible for providing approved Customer Equipment.

10. LIMITATION OF LIABILITY, EXCLUSIONS AND WARRANTIES

- 10.1 The following provisions set out the entire financial liability of FourNet (including without limitation any liability for the acts or omissions of its employees, agents, and sub-contractors) to the Customer in respect of:
- 10.1.1 any breach of this Agreement howsoever arising;
 - 10.1.2 any use made by the Customer of the Services or any part of them; and
 - 10.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with this Agreement.
- 10.2 Nothing in this Agreement shall limit or exclude FourNet's liability for:
- 10.2.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 10.2.2 fraud or fraudulent misrepresentation; or
 - 10.2.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - 10.2.4 any matter in respect of which it would be unlawful for FourNet to exclude or restrict liability.
- 10.3 Subject to clause 10.1 and clause 10.2:
- 10.3.1 FourNet shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:
 - 10.3.1.1 loss of profit; or
 - 10.3.1.2 loss of business; or
 - 10.3.1.3 depletion of goodwill or similar losses; or
 - 10.3.1.4 loss of anticipated savings; or
 - 10.3.1.5 loss of contract; or

- 10.3.1.6 loss of use; or
 - 10.3.1.7 loss or corruption of data or information; or
 - 10.3.1.8 any special, indirect, or consequential loss arising under or in connection with this Agreement including any losses that may result from a deliberate breach of this Agreement by FourNet, its employees, agents, or subcontractors; and
- 10.4 FourNet's aggregate liability to the Customer arising under or in connection with this Agreement in each consecutive 12 month period commencing on the date hereof, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of this Agreement by FourNet, its employees, agents or subcontractors shall not exceed the Charges paid or payable by the Customer during that period.
- 10.5 The Customer acknowledges and agrees that FourNet shall have no liability in respect of any unauthorised use of the Customer's networks and systems (including the Equipment) arising from FourNet's provision of the Services or otherwise under this Agreement and that the Customer shall be responsible for all sums due to third parties for the use of the same (including any monies due to communications providers for use of their systems, whether authorised by the Customer or not).
- 10.6 Except as set out in this Agreement, all warranties, conditions, and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 10.7 The Customer agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) FourNet shall have no liability in any circumstances otherwise than in accordance with the express terms of this Agreement.
- 10.8 Any amounts paid by FourNet to the Customer as a penalty, as may be more fully described in the applicable Order, will be the Customer's sole and exclusive remedy for any failure by FourNet to meet an applicable Service Level and, in any case, will reduce any damages payable up to the applicable limits of liability.
- 10.9 Any indemnity set out in this Agreement shall not apply unless the Party claiming indemnification notifies (in writing) the other promptly of any matters in respect of which the indemnity may apply and of which the notifying Party has knowledge and gives the other Party full opportunity to control the response to and the defence of such claim; including without limitation, the right to accept or reject settlement offers and to participate in any litigation provided that in no event shall the indemnitor be liable for any settlement or compromise made without its consent, such consent not to be unreasonably withheld or delayed.
- 10.10 FourNet will not be in breach of the Order Form, nor legally liable, for any failure or delay to perform any of its obligations under the Order Form or this Agreement (including any of its obligations to meet the Service Levels, if any) if and to the extent that FourNet's failure or delay in performing arises as a result of:
- 10.10.1 Any failure or delay by the Customer to perform any of the Customer's obligations under the Order Form (Customer Default)
 - 10.10.2 Any act or omission other than on the part of FourNet or a subcontractor appointed by it; or
 - 10.10.3 A Regulatory Body restricting or preventing FourNet (or a subcontractor) from supplying the Service.
- 10.11 The Customer shall reimburse FourNet on written demand for any costs, charges, or losses sustained or incurred by FourNet arising directly or indirectly from the Customer Default.
- 10.12 This clause 10 shall survive termination of this Agreement.

11. DATA PROTECTION

11.1 In this Clause 11:

11.1.1 **"Data Protection Law"** means:

11.1.1.1 To the extent the UK data protection legislation applies, all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR as defined under section 3(10) (as supplemented by section 205(4)) of the DPA 2018 ("**UK GDPR**"); the Data Protection Act 2018 ("**DPA 2018**") (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

11.1.1.2 To the extent the EU GDPR (the General Data Protection Regulation ((EU) 2016/679)) applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data;

11.1.2 "process", "data controller", "data processor", "data subject(s)", "personal data", and "subject access request" shall have the meaning given in the Data Protection Law.

11.2 The Customer will comply with its obligations as a data controller under Data Protection Law. The Customer warrants and represents that the carrying out by FourNet of processing of the personal data under this Agreement shall not infringe Data Protection Laws.

11.3 The Customer hereby appoints FourNet as data processor in relation to personal data which FourNet receives under or in connection with the performance of this Agreement.

11.4 The details and purpose of the personal data processed under this Agreement are set out in the Annex 1.

11.5 In processing personal data pursuant to this Agreement, FourNet shall:

11.5.1 act only on documented instructions from the Customer unless required to do so by Data Protection Law, in which case FourNet shall inform the Customer of such legal requirement before carrying out such processing, unless that law prohibits the provision of such information on grounds of public interest;

11.5.2 ensure that all FourNet personnel involved in the processing of personal data (including its staff, agents and subcontractors) are under appropriate obligation of confidentiality and are aware of requirements under Data Protection Law;

11.5.3 take all measures required by Article 32 of the GDPR in respect of the personal data;

11.5.4 taking into account the nature of the processing, assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the data subject's rights set out in Chapter III of the GDPR;

11.5.5 assist the Customer in ensuring compliance with the obligations set out in Articles 32 to 36 of the GDPR taking into account the nature of the processing and the information available to FourNet;

11.5.6 at the Customer's choice, delete or return to Customer all personal data in its possession or control after the end of such processing, save that this requirement shall not apply to the extent FourNet is required by Data Protection Law to retain some or all of the personal data.

11.5.7 make available to the Customer all information necessary to demonstrate compliance with this Agreement and allow the Customer (or its authorised

- representatives) to inspect and audit FourNet's compliance with the terms of this Agreement;
- 11.5.8 notify the Customer immediately if, in FourNet's opinion an instruction from the Customer infringes Data Protection Law
 - 11.5.9 not cause or permit personal data to be transferred outside the EU without the Customer's prior written consent, unless required to do so by Data Protection Law.
 - 11.5.10 Ensure that if FourNet transfers personal data to sub-contractors located in countries outside the EEA, that transfer shall be subject to the terms of the Standard Contractual Clauses (as per European Commission's Decision 2010/87/EU) as set out in Annex 2 which FourNet enters into on behalf of the sub-contractor with the Customer.
- 11.6 The Customer hereby provides its prior, general authorisation for FourNet to:
- 11.6.1 appoint processors to process the Customer's personal data, provided that FourNet:
 - 11.6.1.1 shall ensure that the terms on which it appoints such processors comply with Data Protection Laws, and are consistent with the obligations imposed on FourNet in this Clause 11;
 - 11.6.1.2 shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of FourNet; and
 - 11.6.1.3 shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to FourNet's reasonable satisfaction, that the objection is due to an actual or likely breach of Data Protection Law, the Customer shall indemnify FourNet for any losses, damages, costs (including legal fees) and expenses suffered by FourNet in accommodating the objection;
 - 11.6.2 only transfer Customer personal data outside of the UK as required for the purpose under this Agreement, provided that FourNet shall ensure that all such transfers are affected in accordance with Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of FourNet, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK data protection legislation applies to the transfer).

12. CONFIDENTIALITY

- 12.1 The Customer shall keep in strict confidence all confidential information concerning the business, affairs, customers, Customers or suppliers of FourNet disclosed to the Customer by FourNet, its agents or employees. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to FourNet, and shall ensure that such employees, agents, or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 12.2 All materials, equipment and tools, drawings, specifications, and data supplied by FourNet to the Customer shall at all times be and remain the exclusive property of FourNet but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to FourNet and shall not be disposed of or used other than in accordance with FourNet's written instructions or authorisation.
- 12.3 This clause 12 shall survive termination of this Agreement, howsoever arising.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Goods are and shall remain the sole property of FourNet or (as the case may be) third party rights owner.
- 13.2 In relation to the Software:
- 13.3 the Customer acknowledges that it is buying only the media on which the software is recorded and the accompanying user manuals;
- 13.4 nothing contained in this Agreement shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals; and
- 13.5 the Customer shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals, and shall comply with all licences, terms of use and registration requirements relating to them. Any end user licence Third Party Terms are included in the Annex to the relevant Schedule.
- 13.6 Each Party's Intellectual Property Rights, whether pre-existing or created by a Party during or arising out of or in connection with the performance of this Agreement, will remain the absolute property of that Party or its licensors.
- 13.7 In reference to Cloud Services, FourNet will give the Customer a non-transferable and non-exclusive licence to use, solely as necessary for receipt or use of the Cloud Service(s), all Software (in object code form only) and associated documentation that may be supplied by FourNet, subject to the Customer's compliance with this Agreement and any Third Party Terms and conditions, as more fully set out in this Agreement or set out in an Order Form, that apply to the use of the Software. Such licenses will terminate at the end of the term.
- 13.8 The Customer will not copy, decompile, modify, or reverse engineer any Software or knowingly allow or permit anyone else to do so, except as expressly permitted by FourNet in writing or otherwise provided at law.
- 13.9 FourNet will indemnify, hold harmless and defend the Customer from and against any Claims brought against it by a third party for alleged infringement of that third party's Intellectual Property Rights by the Customer's receipt of any Service(s) provided that, for each Claim, the Customer promptly notifies FourNet of the Claim, FourNet is given immediate and complete control of the Claim, the Customer does not make any public statements related to the Claim or in any way prejudice FourNet's defence of the Claim, and the Customer gives FourNet (or its subcontractors) all reasonable assistance with the Claim. All costs incurred or recovered in negotiations, litigation, and settlements relating to any indemnity given under this clause 13.9 will be for FourNet's account.
- 13.10 The indemnity set out in clause 13.9 will not apply to Claims arising out of or in connection with:
 - 13.10.1 the use of any Service in conjunction or combination with other equipment or software or any other service(s) not supplied by FourNet;
 - 13.10.2 any unauthorised alteration or modification of any Service;
 - 13.10.3 content, designs, or specifications supplied by, or on behalf of, the Customer; or
 - 13.10.4 use of the Services other than in accordance with this Agreement.
- 13.11 The Customer will indemnify FourNet against all Claims, losses, costs and liabilities arising out of or in connection with the matters set out in clause 13.10 that are attributable to the Customer or its agents or Users and will cease any such activity immediately upon notice from FourNet or at such time as the Customer became aware, or should have reasonably have been aware, that the activity had given rise to the Claim.
- 13.12 If any Service becomes, or FourNet reasonably believes it is likely to become, the subject of a Claim of infringement of any third party's Intellectual Property Rights as referred to in clause 13.9, FourNet may, at its own expense:

- 13.12.1 secure for the Customer a right of continued use; or
 - 13.12.2 modify or replace the relevant part(s) of the Services so that it is no longer infringing, provided that that modification or replacement will not materially affect the performance of the relevant part(s) of the Services.
- 13.13 The indemnity in clause 13.9 and the actions in clause 13.12 will be the Customer's sole and exclusive remedy for any Claims arising out of or in connection with an infringement of Intellectual Property Rights.

14. TERMINATION AND SEVERENCE

- 14.1 Without limiting its other rights or remedies, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 14.1.1 the other party commits a material breach of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
 - 14.1.2 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) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 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 Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 14.2 the other party 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 that other party (being a company) 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;
- 14.2.1 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 its assets and such attachment or process is not discharged within 14 days;
 - 14.2.2 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
 - 14.2.3 a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - 14.2.4 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 14.2.5 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 14.1.2 to clause 14.2.4 (inclusive);
 - 14.2.6 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 14.3 Without limiting its other rights or remedies, FourNet may terminate this Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement by the Due Date and remains in default not less than 28 days after being notified in writing to make such payment.
- 14.4 Without limiting its other rights or remedies, FourNet shall have the right to suspend provision of the Services under this Agreement or any other contract between the Customer and FourNet if the Customer becomes subject to any of the events listed in clause 14.1.1 to clause 14.2.6, or if the Customer fails to pay any amount due under this Agreement on the due date for payment.

- 14.5 If for any reason a contract between a Third Party and FourNet relating to FourNet's right to use, install, support or provide Third Party Services which is the subject of the Agreement is terminated, then the Agreement or applicable Statement of Work (as the case may be) shall automatically terminate, save that where the contract relates to other Services other than that Third Party Service, termination of the Agreement or applicable Statement of Work shall operate only in so far as it relates to such Third Party Services.

15. CONSEQUENCES OF TERMINATION

- 15.1 On termination of this Agreement for any reason:

- 15.1.1 FourNet shall immediately cease provision of the Services;
- 15.1.2 the Customer shall immediately pay to FourNet all of FourNet's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, FourNet shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 15.1.3 in addition to 15.1.2 above, the Customer shall pay:
 - 15.1.3.1 all remaining amounts owing up to the end of the Initial Term or the Renewal Period (as applicable) including any fees for Third Party Services; and
 - 15.1.3.2 any termination fees that FourNet incurs from any of the Third Parties as a consequence of such early termination. The Supplier shall use reasonable endeavours to mitigate any loss, but the Customer acknowledges and agrees that any Third Party fees may not be mitigated by FourNet, and the Customer shall not hold FourNet responsible if it incurs full termination fees;
- 15.1.4 all rights and licences granted to the Customer pursuant to the Agreement shall cease except for fully paid, fixed term and perpetual licences. Notwithstanding the termination of any Third Party Terms, the Client remains responsible for all applicable licence fees;
- 15.1.5 the Customer shall return or allow FourNet to enter the Customer's premises to collect, all FourNet Equipment.
- 15.1.6 the accrued rights, remedies, obligations, and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry;
- 15.1.7 each Party shall use reasonable endeavours to return and make no further use of any equipment, property, materials and other items (and all copies of them) ("Materials") belonging to the other Party. If the Customer fails to do so, then FourNet may enter the Customer's premises and take possession of FourNet's Materials. Until FourNet's Materials have been returned or repossessed, the Client shall be solely responsible for its safe keeping; and
- 15.1.8 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

- 15.2 Termination of a Statement of Work shall:

- 15.2.1 not by default, terminate other Statements of Work nor this Agreement; and
- 15.2.2 be without prejudice to any other rights which any Party may have under any other Statement of Work.

- 15.3 On termination of the Agreement pursuant to this Clause 14 and 4, all existing Statements of Work shall terminate automatically.

16. STAFF TRANSFER AND NON-SOLICITATION

- 16.1 It is not intended that any staff be transferred from FourNet to the Customer or from the Customer to FourNet pursuant to this Agreement or that any 'relevant transfer' occur for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- 16.2 Neither Party shall solicit the other Party's staff or contractors who have been employed or engaged in the Services or the performance of this Agreement during the lifetime of this Agreement and for a period of nine (9) months thereafter. For the purposes of this Clause 'solicit' means the soliciting of such person with a view to engaging such person as an employee, director, sub contractor or independent contractor.
- 16.3 In the event that either Party is in breach of Clause 16.2 above then the Party in breach shall pay to the other by way of liquidated damages an amount equal to fifty percent (50%) of the gross annual salary or budgeted fee income (as at the time of the breach or when such person was last in the service of the relevant Party) of the person so employed or engaged. This provision shall be without prejudice to either Party's ability to seek injunctive relief.
- 16.4 The Parties hereby acknowledge and agree that the formula specified in Clause 16.3 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.

17. RELIEF EVENT

- 17.1 Under this Agreement, "Relief Events" include the following events:
- 17.1.1 any failure by the Customer to comply with its obligations under this Agreement;
 - 17.1.2 any error or malfunction in the any of the Customer's software, hardware or systems for which FourNet is not responsible or any failure by the Customer, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which FourNet is not responsible;
 - 17.1.3 any failure by the Customer or its agents or contractors (including any existing service provider) to provide any information, co-operation or instructions to FourNet which is reasonably required by FourNet for the proper performance of its obligations under this Agreement;
 - 17.1.4 any telecommunications network defect, delay or failure or failure of the Customer's hardware or other systems; and/or
 - 17.1.5 any of the causes or events set out in Clause 13.10.
- 17.2 Subject to Clause 10.2, and notwithstanding any other provision of this Agreement, the Supplier shall have no liability for failure or delay to perform the Services or its other obligations under this Agreement if it is prevented, hindered or delayed in doing so as a result of any Relief Event.

18. FORCE MAJEURE EVENT

- 18.1 Neither party shall be liable for any failure or delay in performing its obligations under this Agreement to the extent that such failure or delay is y to the extent that such delay or failure is attributable to a Force Majeure Event event if it could have been **foreseen, was unavoidable**.
- 18.2 Further to the above, if the period of delay or non-performance continues for four (4) weeks or more, the Party not affected may terminate this Agreement by giving fourteen (14) days' written notice to the other Party.
- 18.3 For the avoidance of doubt, the occurrence of a Force Majeure Event shall not relieve the Customer of its obligation to pay all Charges due and payable under this Agreement, including Charges for Services made available or reserved for the Customer during the period of the Force Majeure Event.

- 18.4 Where the Services, or any part of the Services, are provided by FourNet Technologies Limited ("FourNet") through a third-party supplier, any Force Majeure Event affecting such third-party supplier shall, to the extent it prevents or delays performance of the relevant Services, be deemed to constitute a Force Majeure Event affecting FourNet under this Agreement.
- 18.5 Notwithstanding the occurrence of a Force Majeure Event, the Customer acknowledges and agrees that where the relevant third-party supplier agreement does not provide FourNet with any service credits, refunds, rebates, suspension of charges or relief from payment obligations in respect of the affected Services, the Customer shall remain fully liable to pay all Charges in accordance with this Agreement and no suspension, reduction or waiver of Charges shall apply.
- 18.6 Where, and to the extent that, FourNet receives any service credits, refunds, rebates or other financial relief from the relevant third-party supplier arising directly from the Force Majeure Event and relating to the affected Services, FourNet shall pass such credits or financial relief through to the Customer on a like-for-like basis.
- 18.7 Any service credits, refunds, rebates or other financial relief passed through to the Customer pursuant to clause 2 shall constitute the Customer's sole and exclusive financial remedy in connection with the relevant Force Majeure Event.
- 18.8 For the avoidance of doubt, FourNet shall have no obligation to provide any service credits, refunds, suspension of Charges or other compensation to the Customer beyond those actually received by FourNet from the relevant third-party supplier, and the Customer shall not be entitled to any double recovery in respect of the same Force Majeure Event.
- 18.9 The affected Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event and to resume performance as soon as reasonably practicable
- 18.10

19. ANTI BRIBERY AND MODERN SLAVERY

- 19.1 FourNet shall:
- 19.1.1 comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption, including the Bribery Act 2010;
 - 19.1.2 promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by FourNet in connection with the performance of this Agreement.
- 19.2 FourNet shall procure that any person associated with FourNet, who is performing Services, adheres to terms equivalent to those imposed on FourNet in this Clause 19 ("Relevant Terms"). FourNet shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.
- 19.3 For the purpose of this Clause 19, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6(5) and (6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 19 a person associated with FourNet includes any subcontractor of the Supplier.
- 19.4 In performing its obligations under this Agreement, FourNet shall:
- 19.4.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force the Modern Slavery Act 2015; and

- 19.4.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

20. WAIVER

20.1 A waiver of any right under this Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- 20.1.1 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

21. ASSIGNMENT

21.1 **The** Customer shall not, without the prior written consent of FourNet, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.

22. NOTICES

22.1 **Notices:** Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery, by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or by email at the email address notified by the receiving party in a notice to the other party from time to time, including as updated on an Order.

22.1.1 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email, where receipt of the email is confirmed or acknowledged, including by transmission of an automatic electronic read receipt or a manual acknowledgement from the recipient.

22.1.2 This clause 22 shall not apply to the service of any proceedings or other documents in any legal action.

23. NO PARTNERSHIP OR AGENCY

23.1 Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in anyway.

24. ESCALATION AND DISPUTE RESOLUTION

24.1 If a dispute arises out of or in connection with this Agreement or the performance, validity, or enforceability of it ("Dispute"), then, except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:

24.1.1 either party may give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documents.

On service of the Dispute Notice, the [EMPLOYEE TITLE] of FourNet and [EMPLOYEE TITLE] of the Customer shall attempt in good faith to resolve the Dispute.

24.1.2 if the parties are for any reason unable to resolve the Dispute through the process set out in clause 24.1, within 30 days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of FourNet and [SENIOR OFFICER TITLE] of the Customer who shall attempt in good faith to resolve it; and

24.2 if the parties are for any reason unable to resolve the Dispute within 30 days of it being referred pursuant to clause 24.1, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 60 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, referring the dispute to mediation. Unless otherwise agreed between the parties, the mediation will start not later than 14 days after the date of the ADR notice.

24.3 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 27 (Governing law and jurisdiction).

24.4 If the Dispute is not resolved within 14 days after service of the ADR notice, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 27 (Governing law and jurisdiction).

25. INVOICE DISPUTE RESOLUTION PROCEDURE

25.1 The Customer will pay by the Due Date, all undisputed amounts and any disputed amounts that are less than five percent of the total invoice amount.

If the Customer disputes an invoice, it will provide Notice to FourNet of the dispute within 14 days of the date of the invoice and will provide all information relevant to the dispute, stating the reasons for and the amount in dispute.

25.2 If the Customer pays by direct debit, FourNet will amend the direct debit by the disputed amount while it investigates the dispute.

25.3 The Customer will pay any resolved amount within five Business Days after the resolution of the dispute.

25.4 Clause 26 will apply to any unresolved amounts payable to FourNet from the original Due Date.

26. MARKETING

26.1 Neither Party shall have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.

27. GOVERNING LAW AND JURISDICTION

27.1 This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

SIGNED by [NAME OF DIRECTOR]

for and on behalf of

4NET TECHNOLOGIES LIMITED

SIGNED by [NAME OF DIRECTOR]

for and on behalf of

[CUSTOMER]

Annex 1: FourNet Data Processing

Description of the Data Processing

Data Categories

Data Subjects

Purpose of the Processing

Details

Customer Staff

Customer Staff Names, Business Email Addresses, Business Telephone Numbers, Business Addresses.

Customer content may be processed in the event that it is requested by the Customer during a Service Incident. Consent will be obtained on a case by case basis in this instance.

- Providing and managing the Customer account
- Supplying products and services to the Customer
- Personalising products and services
- Ensuring that FourNet meet commitments and obligations
- Communication

- Supply of information (which can be opted out of at any time)
- Marketing

FourNet Data Storage

FourNet use Salesforce to store Customer personal data. Privacy Policies, details of Binding Corporate Rules and Standard Contractual Clauses can be found here:

<https://www.salesforce.com/company/legal/privacy/>

This solution is used for Marketing, Sales, Project Management, Contract Management, and Service accessed by FourNet staff in the UK.

Duration of Processing

For the term of the contract, plus 24 months. After which time data is anonymised and retained for financial records for 7 years.

Contact Data Protection Lead

dpo@fournet.co.uk

0845 055 6366

Stuart Williams – Chief Technology Officer

Sub-Contractor Processing – Trust Centres

Nice CXOne –

<https://www.nice.com/products/security-and-compliance>

Avaya - <https://www.avaya.com/en/trust-center/>

RingCentral -

<https://www.ringcentral.com/gb/en/trust-centre.html>