



MAXNETT LIMITED
MASTER SERVICES AGREEMENT

FILENAME/REVISION: MSA 2016

THIS MASTER SERVICES AGREEMENT (“MSA”) is by and between Customer and Maxnett Ltd (“Maxnett”), with its principal office at Witton House, Lower Road, Chorleywood WD3 5LD, UK.

1. Services

All services provided by Maxnett under this MSA (the “Service(s)”) will be described in one or more Service Agreements. “Service Agreements” are order forms, service contracts or support contracts that incorporate the terms of this MSA. The MSA and each Service Agreement will be interpreted as a single agreement so that all of the provisions are given as full effect as possible. In no event will the description of Services under any Service Agreement be deemed by implication or otherwise to exclude any Services described in this MSA or another Service Agreement.

In the event of a conflict between the terms of the MSA and a Service Agreement, the terms of these documents will be interpreted according to the following order of precedence: (1) Service Agreements and (2) the MSA.

2. Terms of Purchase

2.1. Requests for Services, Products and Quotes. All quotes requested by the Customer will be sent via an eQuote. This eQuote will not include Value Added Tax (“VAT”), delivery or installation unless indicated or otherwise requested by the Customer. All quoted engineering labour is estimated unless stated as “fixed price engineering”. By accepting the eQuote either by email or fax the Customer acknowledges the validity of the eQuote and agrees to be responsible for full payment of any Services, products or quotes. A quote cannot be accepted over the phone or verbally. Payment terms are 14 days for eQuotes unless stated otherwise in the Customer’s SA or specifically altered by Maxnett within the eQuote.

2.2. Prices. The prices charged for Services and products purchased under this MSA will be Maxnett’s “then-current” charges for such Services as quoted by Maxnett. Maxnett reserves the right to revise pricing if prices for Services or products are expressly contingent upon assumptions, which are determined inaccurate. If the Services are being performed on a time and materials basis, any estimates provided by Maxnett are for planning purposes only.

2.3. Additional Fees; VAT. All sums due to Maxnett under any order or quote are exclusive of VAT, and any other use or sales taxes, duties, or levies imposed by any authority, government, or government agency which may apply or be introduced from time to time which shall be charged thereon in accordance with the relevant regulations in force at the time of providing the Service and shall be paid by the Customer.

2.4. Invoicing and Payment. Customer’s payment terms will be net fourteen (14) days from the date of invoice, subject to continuing credit approval by Maxnett. Customer will pay Maxnett in Sterling. Additional charges may apply if Customer requests Services that are performed outside contracted hours or are beyond the normal coverage for the particular Service.

2.5. Non-payment. For invoices not paid within fourteen (14) days of the invoice date, Maxnett reserves the right to charge Customer a late penalty charge of 4% per month applied against undisputed overdue amounts, or the maximum rate permitted by law. In addition, Maxnett, without waiving any other rights or remedies to which it may be entitled, shall have the right to suspend or terminate the Services until such payment is received and may decide not to accept additional orders from Customer and/or seek collection of all amounts due, including reasonable legal fees and costs of collections. Maxnett shall have no liability to Customer for any such suspension or termination of Services, or non-acceptance of orders.

2.6. Purchases from a Third-Party Reseller. This Section 2.6 shall not apply to Customers who purchase Services or products directly from Maxnett. If Customer purchases from a party other than Maxnett, then the Customer acknowledges that Maxnett shall not be liable to the Customer for any representations, warranties, indemnities or damages made by the Third-Party that arise due to that purchase. Customer acknowledges that wherever possible, they should be purchasing Services and products from Maxnett themselves and not Third-

Parties. Customer acknowledges that Maxnett may refuse to deal with product returns for items not purchased through Maxnett. The Customer will endeavour to notify Maxnett within a reasonable period of any purchases made from Third-Parties.

3. Term & Renewal

This Agreement is effective on [DATE] (“**Effective Date**”) for a period of one year (“**Initial Term**”). At the end of the Initial Term, the Agreement will automatically be extended on the same terms for an additional period of 12 months unless the Customer notifies Maxnett in writing at least 30 days before they intend to terminate. Each Agreement will continue for the term stated therein, unless otherwise terminated pursuant to this MSA. In addition, Maxnett may, at its option, propose to renew the Service by continuing to make the Service available to the Customer. Customer may (where permitted by law) agree to such renewal of the Service by continuing to use the Service.

4. Termination

Either party may terminate this MSA for convenience by providing at least thirty (30) days prior written notice to the other. Termination of this MSA for convenience will not terminate any outstanding SA that provides for a specific term over which the Services are to be provided. In such case, this MSA, as incorporated into the Service Agreement and the Service Agreement that provides for a specific term will remain in effect for the remainder of such term. Upon termination of this MSA, all rights and obligations of the parties under this MSA will automatically terminate except for rights of action accruing prior to termination, payment obligations and any obligations that expressly or by implication are intended to survive termination.

Either party may terminate an individual SA if the other party commits a material breach of such agreement and the breach is not cured within thirty (30) days of receipt of written notice from the injured party. Termination of one or more SA’s will not terminate this MSA.

5. Third-Party Products & Warranties

"Third Party Products" means any third-party hardware, services or software. Some manufacturers’ warranties or service contract terms and conditions for Third Party Products may become void if Maxnett or anyone else, other than the manufacturer or its authorized representative, provides services for or works on the hardware or software (such as providing maintenance and repair services). Maxnett does not take responsibility for third party warranties or for any effect that the Maxnett Services may have on those warranties. Except as agreed to in writing between Customer and Maxnett, Third Party Products shall be exclusively subject to terms and conditions between the third party and Customer. Maxnett shall have no liability for Third Party Products and Customer shall look solely and exclusively to the third party provider for any damages or liability with respect to the provision of such Third Party Products.

Except as otherwise specifically agreed to in a Service Agreement, Customer authorizes Maxnett (or otherwise obtains the rights for Maxnett) to copy, install and modify, when necessary and as required by the Service Agreement, all Third Party Products, including software, to be used in the Services or to be copied or stored for subsequent re-installation of a backup system or data. Customer warrants to Maxnett that it has obtained any licenses, consents, regulatory certifications or approvals required to give Maxnett and its subcontractors or employees such rights or licenses to access, copy, distribute, use and/or modify (including creating derivative works) or install any Third Party Products to be used in the Services, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products.

6. Customer Use of Software and Data Centre Hosted or Online Services, Platforms, Tools, and Applications

Customer use of software and data centre hosted or online services, platforms, tools, and applications (“Software-Enabled Services”) in connection with the Services is pursuant to the terms of the Maxnett Services License Agreement & Acceptable Use Policy (“AUP”). By accessing, downloading, installing, activating or otherwise using Software-Enabled Services, in any manner whatsoever, Customer agrees to be bound by the terms of the AUP.

7. Confidentiality & Data Protection

7.1. Confidentiality. In the performance of the Services, Customer and Maxnett may have access to or be exposed to information of the other party not generally known to the public, including, but not limited to software, product plans, marketing and sales information, customer lists, “know-how,” or trade secrets which may be designated as being confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential (collectively, “Confidential Information”). Each party shall only use such Confidential Information disclosed hereunder in connection with its performance of this MSA.

Each party agrees to take the necessary precautions to maintain the confidentiality of Confidential Information by using at least the same degree of care as such party employs with respect to its own Confidential Information of a like-kind nature, but in no case less than a commercially reasonable standard of care to maintain confidentiality, and shall only make such information available to its employees on a “need-to-know” basis.

The foregoing shall not include information, which, (A) was known by one party prior to its receipt from the other or is or becomes public knowledge without the fault of the recipient, (B) is received by the recipient from a source other than a party to this MSA, or (C) a party is required to disclose in response to an order by a court or governmental agency, provided that advance notice of the disclosure is provided to other party. The obligations with respect to Confidential Information shall continue for three (3) years from the date of termination of this MSA.

7.2. Data Protection. Maxnett will comply with all relevant provisions of the Data Protection Act 1998, and the General Data Protection Regulation (EU) 2016/679 relating to the processing of any personal data that the Customer provides. Maxnett shall take all reasonable precautions to preserve the integrity and prevent any corruption or loss, damage or destruction of the Customer’s data and information.

For our Data Protection Policy, please see <http://www.maxnett.co.uk/dataprotection/>

In the event of termination of this Agreement, Maxnett shall when directed to do so by the Customer, and instruct all its agents and sub-contractors to, erase all information and data provided by the Customer and all copies of any part of the information and data provided by the Customer from Maxnett’s data storage systems. All personal data acquired by Maxnett from the Customer shall only be used for the purposes of this Agreement and shall not be further processed or disclosed without the consent of the Customer.

8. Support Services

Unless otherwise expressly provided in a SA, Services do not include repair of any system or system component which has been damaged as a result of: (A) accident, misuse, or abuse of the system or component (such as, but not limited to, use of incorrect line voltages, use of incorrect fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions) by anyone other than Maxnett (or its representatives), (B) an act of God such as, but not limited to, lightning, flooding, tornado, earthquakes, and hurricanes, or (C) the moving of the system from one geographic location or entity to another.

9. Limited Warranty & Limitation of Liability; High-Risk Disclaimer

9.1. Limited Warranty. Maxnett warrants that Services will be performed in a good and workmanlike manner. Except as expressly stated in the preceding sentence, Maxnett (including its affiliates, subsidiaries, suppliers, licensors, subcontractors, distributors, service partners, agents and marketing partners) and each of their respective employees, director and officers (collectively, the “Maxnett Party(ies)”) makes no express or implied warranties with respect to any of the Services or deliverables, including but not limited to, any warranty of merchantability, fitness for a particular purpose, performance, suitability or non-infringement; any warranty relating to third party products or third party services; any warranty with respect to the performance of any hardware or software used in conducting services; or any warranty concerning the results to be obtained from the services or the results of any recommendation the Maxnett Parties may make.

9.2. Limitation of Liability. Neither the Maxnett Parties nor the customer will be liable for any incidental, indirect, punitive, special or consequential damages, arising out of or in connection with the Services provided by Maxnett. Neither party shall have liability for (a) loss of revenue, income, profit, or savings, whether direct or indirect, (b) lost or corrupted data or software, loss of use of system(s) or network, or the recovery of such, (c) loss of business opportunity, (d) business interruption or downtime, or (e) services, Maxnett products or third party products not being available for use by customer. Except for claims that the Services (excluding third party services) caused bodily injury (including death) due to the Maxnett Parties’ negligence or wilful misconduct, the Maxnett Parties’ total liability, whether the claim for such damages is based in contract, warranty, strict liability, negligence or tort, arising out of, or in connection with the services or this MSA shall not exceed the amounts paid by the Customer for the specific service(s) giving rise to such claim during the prior twelve month period. Each party acknowledges that these limitations apply even if a party has been advised of the possibility of such damages or the remedies fail of their essential purpose and that, without these limitations, the fee for the Services provided hereunder would be higher.

9.3. High-Risk Application Disclaimer. The Services are not always fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Services could lead directly to death, personal injury, or severe physical or property damage (collectively, "High-Risk Activities"). Maxnett expressly disclaims any express or implied warranty of fitness for High-Risk Activities.

10. Indemnification

Customer shall defend, indemnify and hold Maxnett harmless from, any third-party claim or action arising out of (A) the failure of Customer to obtain the appropriate license, intellectual property rights, or any other permissions, regulatory certifications or approvals associated with Customer provided technology, software or other components related to the Service, as well as software directed or requested by Customer to be installed or integrated as part of Services, or (B) any inaccurate representations regarding the existence of an export license or any allegation made against Maxnett due to Customer’s violation or alleged violation of applicable export laws, regulations, and orders.

Maxnett shall defend, indemnify and hold harmless Customer from any third-party claim or action that the Services or any Deliverables prepared or produced by Maxnett and delivered pursuant to this SA infringe or misappropriate that third party’s patent, copyright, trade secret, or other intellectual property rights enforceable in the country(ies) in which the Services or Deliverables are sold to Customer by Maxnett.

“**Deliverables**” means the tangible and intangible materials, including reports, proposals, quotes, drawings, findings, manuals, procedures and recommendations that are prepared by Maxnett or its subcontractors in the course of performing the Services.

11. Regulatory Requirements

11.1. Regulatory Requirements. Maxnett is not responsible for determining if Third Party Products to be used in performance of the Services satisfy the local regulatory requirements of the country to which the products are to be shipped or used, nor shall Maxnett be obligated to perform any Services where the resulting products or software do not satisfy the local regulatory requirements.

12. Important Additional Terms

12.1. Entire Agreement; Severability. This MSA and Service Agreements is the entire agreement between Maxnett and Customer with respect to its subject matter and supersedes all prior oral and written understandings, communications or agreements. No amendment to or modification of this MSA, in whole or in part, will be valid or binding unless it is in writing and executed by authorized representatives of both parties. If any provision of this MSA is void or unenforceable, the remainder of this MSA will remain in full force and will not be terminated.

12.2. Force Majeure. Neither party shall be liable to the other party for any failure to perform any of its obligations (except payment obligations) under this MSA during any period in which such performance is delayed by circumstances beyond its reasonable control including, but not limited to, fire, flood, war, embargo, strike, riot or the intervention of any governmental authority (a "Force Majeure"). In such event, however, the delayed party must promptly provide the other party with written notice of the Force Majeure. The delayed party's time for performance will be excused for the duration of the Force Majeure, but if the Force Majeure events lasts longer than thirty (30) days, the other party may immediately terminate the applicable Service Agreement by giving written notice to the delayed party.

12.3. Notices. Notice to Maxnett under this MSA must be in writing and sent by postage prepaid first-class mail or receipted courier service to the address below or to such other address (incl. facsimile or electronic) as specified in writing and will be effective upon receipt.

Maxnett Ltd
Witton House
Lower Road
Chorleywood
WD3 5LD, UK

12.4 Law & Jurisdiction. The interpretation, validity and performance of this MSA is governed in all respects by the law of England and Wales and the Parties submit to the exclusive jurisdiction of the English Courts.

12.5. Dispute Resolution. Customer and the Maxnett Parties will attempt to resolve any claim, or dispute or controversy (whether in contract, tort or otherwise) arising out of or relating to this MSA, Maxnett's advertising, or any related purchase (a "Dispute") through face-to-face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, rather than through litigation. The existence or results of any negotiation or mediation will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors, although the merits of the underlying Dispute will be resolved in accordance with this paragraph. In the event the parties are unable to resolve the Dispute within 30 days of notice of the Dispute to the other party, the parties shall be free to pursue all remedies available at law or equity.

12.6. Limitation Period. Neither party may institute any action in any form arising out of this MSA more than two (2) years after the cause of action has arisen, or in the case of non-payment, more than two (2) years from the date of last payment.

12.7. Updates. Maxnett reserves the right to update this MSA at any time, effective upon emailing an updated version to the Customer or uploading to the following website: <http://www.maxnett.co.uk/msa> however, Customer's rights and obligations shall be as provided in the version of the MSA available to Customer at the time of Customer's purchase or, when applicable, renewal of Services.

12.8. Counterparts. If a signature block is appended hereto, this MSA may be executed in counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Maxnett and Customer, through duly authorised representatives, have executed this agreement for effectiveness on the date written below.

Signed for and on behalf of Maxnett Ltd:	Signed for and on behalf of the Customer:
	Company Name:
Company No: <u>04347710</u>	Company No:
Signed: 	Signed:
Name: <u>Matthew Day</u>	Name:
Position: <u>Director</u>	Position:
Date:	Date: