

Terms And Conditions of this Maintenance Agreement

1) Definitions

1.1 In this agreement unless the context otherwise requires:

"Additional Charges" means the charges to be calculated by the Company on a time and materials basis at its then prevailing rates in respect of the Excepted Services.

"Additional Equipment" means additional equipment supplied to the Customer subsequent to the supply and installation of the Equipment

"Anniversary Date" means each anniversary of the Commencement Date

"Commencement Date" means the date set out on the front page of this Agreement and being the date upon which this Agreement is stated to commence.

"Equipment" means the items of equipment set out on the front page of this Agreement and shall in relation to the obligations of the Customer include where applicable the Additional Equipment.

"Excepted Services" means those services, which do not fall within Maintenance Services. "Initial Period" means the period of 12 months commencing on the Commencement Date.

"Maintenance Charges" means the aggregate annual charge for the Maintenance Services set out on the front page of this Agreement including Subsequent Maintenance Charges.

"Maintenance Services" means the provision of maintenance as defined in Clause 4 below. "Place of Use" means the Site where the equipment is installed and operated.

"Site" means the Customer's address (or installation location if different) specified on the front page of this agreement.

"Subsequent Maintenance Charges" means charges in respect of Additional Equipment charged in accordance with clause 3.8 hereof.

"Supplier" means the company or firm that supplied the Equipment to the Customer.

2) The Company's obligations

In consideration of the payment by the Customer from time to time of the Maintenance Charges in accordance with the provision of Clause 3 below the Company undertakes to provide Maintenance Services in respect of the Equipment upon the terms and conditions of this Agreement.

3) Maintenance Charges

3.1 The annual Maintenance Charges at the date hereof in respect of each item of equipment shall be as set out on the front page of this agreement subject to the following terms and the Customer shall not be entitled to a refund of any part of the Maintenance Charges once this Agreement is in force.

3.2 The Company shall not be entitled to vary the Maintenance Charges during the Initial Period with the exception of system upgrades as referred to in clause 6. Thereafter the Company shall be entitled to vary the Maintenance Charges not more than once in every successive period of 12 months upon giving not less than 90 days prior written notice to be given at any time to the Customer.

3.3 Upon receipt of a notice of increase in Maintenance Charges in accordance with clause 3.2 above the Customer shall be entitled to terminate this agreement in accordance with 14.1.1 below.

3.4 The Maintenance Charges shall include the travel accommodation and subsistence expenses of the Company's employees (including the cost of time spent travelling) incurred in the provision of the Maintenance Services.

3.5 The Maintenance Charges does not include the cost of any Excepted Services.

3.6 The Company shall levy and the Customer shall pay the Maintenance Charges annually in advance. The Maintenance Charges shall be payable by the Customer within 30 days of receipt of an invoice therefor.

3.7 The Company reserves the rights to charge the Customer interest in respect of the late payment of any Maintenance Charges or additional charges due under this agreement (as well after as before judgment) at the rate of 4 per cent per annum above the base lending rate of Barclays Bank plc from time to time from the due date therefor until Payment.

3.8 Subsequent Maintenance Charges in respect of Additional Equipment supplied to the Customer shall be charged at the Company's charging rate prevailing at the time of such supply and shall be otherwise upon the terms of this Agreement unless expressly varied in the document supplied by the Company to the Customer at the time of supply

4) Maintenance Services

4.1 Maintenance Services shall comprise:

4.1.1 maintenance provided by the Company in respect of the Equipment at the Place of Use.

4.1.2 upon receipt of a request from a Customer the inspection testing and diagnosing (by attendance on site or remotely) by the Company of any fault reported in the item of Equipment; and

4.1.3 the carrying out by the Company of such repairs replacement of parts cleaning lubrication or adjustment as the Company shall judge necessary to remedy the said fault.

5) Time for Maintenance Services

5.1 The Company shall provide maintenance between the following hours: Monday to Friday 8.30 a.m - 5 p.m (except bank holidays)

5.2. The Company shall provide Maintenance within the following time limits dependent on the severity of the failure.

The Company will respond within 4 hours of being notified in the case of Priority A - Failure of more than 20% of the Equipment.

The Company will respond within two working days of being notified in the case of Priority B - Failure of 20% or less of the Equipment.

6) Excepted Services

6.1 The Maintenance Services shall not include:

6.1.1 any services necessary to upgrade the Equipment or any maintenance of the upgrades of the Equipment or the correction of any fault in the Equipment due to:

6.1.1.1 the Customer's neglect or misuse of the Equipment or its failure to operate the equipment in accordance with the Supplier's instruction manuals or its failure to use the Equipment for the purposes for which it was designed;

6.1.1.2 the alteration, modification, repair, maintenance or attempted alteration, modification, repair or maintenance of the Equipment or any attempt to move the same by any party other than the Company without the Company's prior written consent first had and obtained;

6.1.1.3 the transportation or relocation of the Equipment save where the same been performed by or under the direction of the Company;

6.1.1.4 any defect or error in any software used upon or in association with the Equipment;

6.1.1.5 any accident or disaster affecting the Equipment including without limitation fire, flood, water, wind, lightning, transportation, vandalism or burglary;

6.1.1.6 the Customer's failure, inability or refusal to afford the Company's personnel proper access to the Equipment;

6.1.1.7 electrical work or electrical installation or supply external to the Equipment;

6.1.1.8 any modification or alteration of or attachment to the Equipment or removal of the same

6.1.2 the maintenance or repair of any extension wiring, any Equipment not at the Site or of anything other than the Equipment

6.1.3 the replacement of batteries or maintenance of any two-wire devices

6.2 The Company shall upon request by the Customer provide all or any of the Excepted

Services but shall be entitled to charge for the same by levying Additional Charges in the manner described in clause 6.4 below.

6.3 Without prejudice to clause 6.2 above the Company shall be entitled to levy Additional Charges in the manner described in clause 6.4 below if Maintenance Services are provided in circumstances where any reasonably skilled and competent maintenance engineer would have judged the Customer's request to have been unnecessary.

6.4 Additional Charges shall be levied by the Company monthly in arrears and shall be payable by the Customer within 30 days of receipt of an invoice therefor.

7) The Customer's Obligations

7.1 The Customer undertakes with the Company throughout the term of this agreement:

7.1.1 to grant the Company such access to the Place of Use as the Company shall from time to time reasonably require in order to discharge its obligations hereunder;

7.1.2 to make available at the Place of Use such facilities as the Company shall reasonably require in order to discharge its obligations hereunder including without limitation adequate workspace, storage, office furniture and equipment;

7.1.3 to take all reasonable precautions to protect the health and safety of the Company's employees agents and sub-contractors while on the Customer's Site;

7.1.4 to make available the Equipment and supply all documentation and other information necessary for the Company to diagnose any fault in the Equipment; and

7.1.5 not to alter, modify, repair, maintain, move or attempt to alter, modify, repair, maintain or move the Equipment or any Additional Equipment in any way without the prior consent of the Company.

8) Company's Warranties

8.1 The Company Warrants and undertakes with the Customer;

8.1.1 to perform the Maintenance Services and any Excepted Services with reasonable care and skill;

8.1.2 to perform any Excepted Service within a reasonable time of being so requested by the Customer;

8.1.3 that it shall have a free and unencumbered title to any replacement parts for the Equipment;

8.1.4 that the Customer will enjoy quiet possession of any such replacement parts and that the same will be of satisfactory quality and reasonably fit for their purpose.

8.2 The Company does not warrant that the Maintenance Services (or the Additional Services) will cause the Equipment to operate without interruption or error.

8.3 The Company does not warrant to maintain or repair Equipment where the Supplier or manufacturer has ceased to supply the Equipment.

8.4 Subject to the foregoing all conditions warranties terms and undertakings express or implied statutory or otherwise in respect of the performance by the Company of the Maintenance Services or Excepted Services hereunder are hereby excluded.

9) Limitation of Liability

9.1 The following provisions set out the Company's entire liability (including any liability for the acts and omissions of its employees agents or sub-contractors) to the Customer arising out of:

9.1.1 any breach of its contractual obligations arising under this Agreement;

9.1.2 any misrepresentation, mis-statement, tortious, act or omission arising out of this Agreement

9.2 An Event of Default is any act of omission on the part of the Company or its employees, agents or sub-contractors falling within clause 9.1

9.3 The Company's liability to the Customer for:

9.3.1 death or injury resulting from its own or that of its employees agents or sub-contractors negligence and all damage suffered by the Customer as a result of any breach by the Company of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Service Act 1982 shall not be limited.

9.3.2 damage to the tangible property of the Customer resulting from the negligence of the Company or its employees, agents or sub-contractors shall be limited to £2,000,000

9.4 In the case of any other Event of Default the Company's liability shall be limited to the aggregate of the Maintenance Charges and the Additional Charges for the 12 months immediately preceding the date of the Event of Default.

9.5 The Company shall not be liable to the Customer in respect of any Event of Default or loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Customer incurring the same save where the same shall have been caused by an Event of Default falling within 9.3.1. or 9.3.2 hereof.

9.6 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this agreement.

9.7 The Customer hereby agrees to afford the Company not less than 28 days in which to remedy any Event of Default hereunder.

9.8 Except in the case of an Event of Default arising under clause 9.3 above the Company shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon the Company within two months of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.

9.10 Nothing in this clause 9 shall confer any right or remedy upon the Customer to which it would not otherwise be entitled.

10) Customer's Warranty

10.1 The Customer warrants and undertakes to the Company that it is the owner of the Equipment and that it has full power and authority to enter into this agreement and permit the Company to perform the Maintenance Services and any Additional Services.

10.2 The Customer undertakes to indemnify and hold harmless the Company against any loss or damage that the Company may suffer as a result of a breach by the Customer of clause 10.1 above.

11) Replacement of parts

11.1 Subject always as set out in clause 8.1.4 above the Company reserves the right to supply new second-hand or reconditioned replacement parts in the performance of its duties hereunder

11.2 Any parts of the Equipment replaced by the Company pursuant to clause 9.1 above ("Replaced Parts") shall upon replacement become the property of the Company and the Customer warrants that either it shall have a free and unencumbered title to such Replaced Parts or (where the Equipment is leased or charged) that it shall have obtained all necessary consent and authorities to part with possession and give good title to the Replaced Parts.

12) Duration of Agreement

This agreement shall commence on the Commencement Date and shall continue until terminated by either party in accordance with the provision of clause 14 below.

13) Customer's Representatives

The Customer shall communicate to the Company upon the date hereof the identity of the person(s) or the department within its undertaking at the Site who shall act as the sole contact point and channel of communication for the provision by the Company of the Maintenance Services during the currency of this agreement. The Customer shall forthwith

inform the Company of any change in the identity of any such person(s) or department.

14) Termination

14.1 This agreement may be terminated:

14.1.1 by the Customer upon giving not less than 42 days notice in writing to the Company upon receipt of a notice of increase in the Maintenance Charges under clause 3.3 above;

14.1.2 by the Customer upon giving not less than 42 days notice in writing to the Company expiring on an Anniversary Date;

14.1.3 forthwith by the Company if the Customer fails to pay the Maintenance Charges or any Additional Charges or Subsequent Maintenance Charges due hereunder on the due date therefore;

14.1.4 forthwith by either party if the other commits any material breach of any term of this agreement (other than one falling within 14.1.3 above) and which (in case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request by the other party to remedy the same;

14.1.5 forthwith by either party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary agreement with Part 1 of the Insolvency Act 1986 or a proposal for any composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver administration receiver or similar officer is appointed in respect of all or any part of the business or assets of the party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

14.2 Any termination of this agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

14.3 No refund or any part of the Maintenance Charges will be given if this Agreement is terminated.

15) Confidentiality

15.1 Each of the parties hereto undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into of this agreement save that which is;

15.1.1 trivial or obvious;

15.1.2 already in its possession other than as a result of a breach of this clause;

15.2 Each of the parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of clause 15.1 above by its employees agents and sub-contractors.

16) Force Majeure

16.1 Neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fires, strikes (of its own or other employees) insurrection or riots embargoes container shortages wrecks or delays in transportation inability to obtain supplies and raw materials requirements or regulations of any civil or military authority (an "Event of Force Majeure")

16.2 Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of any Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

16.3 If a default due to an Event of Force Majeure shall continue for more than 12 weeks then either party shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this agreement as a result of an Event of Force Majeure.

17) Waiver

The waiver by either party of a breach or default of any of the provisions of this agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that is has or may have hereunder operate as a waiver of any breach or default by the other party.

18) Notices

Any notice request instruction or other document to be given hereunder shall be delivered or sent by first class post or facsimile transmission (such facsimile transmission notice to be confirmed by letter posted within 12 hours) to the address or to the facsimile number of the other party set out in this agreement (or such other address or numbers as many have been notified) and any such notice or other document shall be deemed to have served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours after posting and (if sent by facsimile transmission) upon the expiration of 12 hours after dispatch.

19) Invalidity and Severability

19.1 If any provision of this agreement shall be found by any court or administration body of competent jurisdiction to be invalid or un-enforceable the invalidity or un-enforceability of such provision shall not affect the other provisions of this agreement and all provisions not affected by such invalidity or un-enforceability shall remain in full force and effect.

19.2 The parties hereby agree to attempt to substitute for any invalid or un-enforceable provision a valid or enforceable provision that achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or un-enforceable provision.

20) Entire agreement

The Company shall not be liable to the Purchaser for loss arising from or in connection with any representations agreements statements or undertaking made prior to the date of execution of this agreement other than those representations agreements statements and undertakings confirmed by a duly authorized representative of the Company in writing or expressly incorporated or referred to this agreement.

21) Successors

This agreement shall be binding upon and ensure for the benefit of the successors in title of the parties hereto.

22) Assignment

Neither party shall be entitled to assign this agreement nor all or any of their rights and obligations hereunder without the prior written of the other.

23) VAT

Save insofar as otherwise expressly provided all amounts stated in this agreement are expressed exclusive of value added tax and any value added tax arising in respect of any supply made hereunder shall on the issue of a valid tax invoice in respect of the same be paid to the party making such supply by the party to whom it is made in addition to any other consideration payable therefore.

24) Headings

Headings to clauses in this agreement are for purpose of information and identification only and shall not be construed as forming part agreement.