

Annual Maintenance & Re-certification Service Agreement Terms & Conditions

1. Definitions & Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these Conditions.

Annual Maintenance: the annual programme of Preventative Maintenance & Testing of the Maintained Equipment to be provided under the Maintenance Agreement.

Annual Recertification: annual re-certification of the Maintained Equipment as being in Good Working Order by us following completion of Annual Maintenance (and any necessary Corrective Maintenance) to be provided under the Maintenance Agreement.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Certification Expiry Date: means, in relation to any item of Maintained Equipment, the date of expiry of the then current Annual Maintenance and Annual Recertification certificate.

Charges: the Standard Annual Charge and Corrective Maintenance Charges together.

Commencement Date: the date specified in the Maintenance Agreement.

Conditions: these Terms & Conditions.

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 under the Maintenance Agreement, who need to know the confidential information in question (**Representatives**) to the other party and that party's Representatives in connection with the Maintenance Agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.

Corrective Maintenance: means:

- making any adjustments to the Maintained Equipment; and
- repairing or replacing any parts or components of the Maintained Equipment, required to restore any malfunctioning or failed Maintained Equipment to Good Working Order.

Corrective Maintenance Fees: the fees payable for the provision of any Corrective Maintenance, which are calculated at the Corrective Maintenance Rates.

Corrective Maintenance Rates: the rates set out in the Maintenance Agreement, as those rates are amended from time to time in accordance with these Conditions.

Good Industry Practice: in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgement and the making of any expenditure that would reasonably be expected from a skilled person engaged in the same type of undertaking under the same or similar circumstances.

Good Working Order: the Maintained Equipment operates in accordance with the Operating Manuals.

Initial Period: the period of months (commencing on the Commencement Date) specified in the Maintenance Agreement.

Maintained Equipment: the equipment specified in the Maintenance Agreement (by reference to the serial number(s) of that equipment).

Maintenance Agreement: the Annual Maintenance & Re-certification Service Agreement signed by you and us, which is subject to these Conditions (and any reference to the Maintenance Agreement shall include these Conditions).

Normal Business Hours: 8.30 am to 6.00 pm GMT on a Business Day.

Operating Manuals: all operating manuals, specifications and other manufacturer documentation relating to the Maintained Equipment, including procedures, requirements and protocols for routine maintenance, repairs and support of the Maintained Equipment.

Preventative Maintenance & Testing: means:

- physical review of the Maintained Equipment;
- physical testing that the Maintained Equipment (including battery) is functional; and
- pressure testing of the Maintained Equipment;
- software updates and maintenance; and
- other diagnostic tests we decide are appropriate for the Maintained Equipment.

Renewal Period: each successive 12-month period after the Initial Period for which the Maintenance Agreement is renewed.

Service Location: our designated service centre where the Annual Maintenance & Annual Recertification (and any Corrective Maintenance) will take place.

Standard Annual Charge: the fees payable by you for the provision of the Annual Maintenance & Annual Recertification, as set out in the Maintenance Agreement, as these fees are varied from time to time in accordance with these Conditions.

Term: the Initial Period together with all Renewal Periods.

1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.3 Unless the context otherwise requires, words in the singular shall include the plural and vice versa, and a reference to one gender shall include a reference to the other genders.

1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any subordinate legislation for the time being in force made under it.

1.5 A reference to **writing** or **written** includes faxes and e-mail.

1.6 References to clauses are to the clauses of these Conditions. Headings in these Conditions or the front pages of the Maintenance Agreement shall not affect the interpretation of the paragraphs or clauses to which they relate.

1.7 Any words following the terms including, include, in particular or any similar expression will be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Annual Maintenance & Recertification

2.1 Each year during the Term, we will (subject to these Conditions) provide you with the Annual Maintenance and Annual Recertification in respect of the Maintained Equipment at our Service Location. The next Annual Maintenance and Annual Recertification must be undertaken on or prior to the relevant Certification Expiry Date in respect of the last Annual Maintenance and Annual Recertification certificate for the item of Maintained Equipment concerned. For these services we will charge you the Standard Annual Charge in accordance with clause 6 below.

2.2 **If Annual Maintenance and Annual Recertification is not undertaken on any item of Maintained Equipment in accordance with clause 2.1 on or prior to the relevant Certification Expiry Date, this will severely affect the operability and safety of that equipment, and accordingly such item is not safe for any further use. In these circumstances, any warranty in respect of the item of Maintained Equipment (under the contract between the parties for supply of the item concerned) will be void, and we exclude all liability for any defects in the Equipment and the results of any further use of that item of Equipment, including any personal injury or death caused to users.**

3. Corrective Maintenance

3.1 Where we perform (or have performed) Annual Maintenance & Annual Recertification in circumstances where the Maintained Equipment was not in Good Working Order, we may

charge you, and you must pay Corrective Maintenance Charges in respect of that work, together with the costs of all spare parts and/or replacements, in accordance with clause 6 below.

4. Replacements and Spare Parts

4.1 In performing the Corrective Maintenance, we will source all spare parts required to restore the Maintained Equipment to Good Working Order.

4.2 All spare parts and/or replacements we provide to you will become part of the Maintained Equipment. All parts and components removed from the Maintained Equipment by us in the course of performing the Corrective Maintenance shall no longer constitute part of the Maintained Equipment and will be our property.

5. Your Obligations

You must:

- arrange with us for the provision of the Annual Maintenance and Annual Recertification (and any necessary Corrective Maintenance) in respect of the Maintained Equipment, prior to the then current Certification Expiry Date for the Maintained Equipment;
- arrange (at your own cost) for transportation of the Maintained Equipment to our Service Location for the provision of the Annual Maintenance and Annual Recertification (and any necessary Corrective Maintenance);
- ensure that the Maintained Equipment is installed and kept in suitable premises and under suitable conditions, as specified in the agreement under which the Maintained Equipment was supplied (or the Operating Manuals), permit only trained and competent personnel to use it and follow any operating instructions as we may provide from time to time;
- notify us promptly if any Maintained Equipment is discovered to be operating incorrectly and not use these items until Corrective Maintenance has been undertaken;
- at all reasonable times permit full and free access to the Maintained Equipment to us, our employees, contractors and agents;
- provide us with any information that is reasonably requested in the performance of the Annual Maintenance & Annual Recertification and the Corrective Maintenance;
- not allow any person other than us to maintain, alter, modify or adjust the Maintained Equipment without our prior written approval (excluding any routine adjustment for use permitted by the Operating Manuals);
- keep the Maintained Equipment in your possession and under your control at all times (save for any periods during which it is in our possession under the Maintenance Agreement) and (if we request) notify us immediately of its location and not remove it from that location;
- store any reserve equipment only in conditions approved by us, and make this equipment available for periodic maintenance, as with all other Maintained Equipment; and
- only use supplies or materials supplied or approved by us (approval not to be unreasonably withheld or delayed).

6. Charges

6.1 For the performance of Annual Maintenance and Annual Recertification, you must pay us the Standard Annual Charge.

6.2 For the performance of any Corrective Maintenance, you must pay us Corrective Maintenance Charges.

6.3 The Standard Annual Charge is due and payable by you in full annually in advance, within 30 days of receipt of a valid invoice from us. Any Corrective Maintenance Fees are due and payable monthly, within 30 days of receipt of a valid invoice from us. Any charges for spare parts are due within 30 days of receipt of a valid invoice from us.

6.4 We reserve the right to charge interest at an annual rate of 5% above the base rate of NatWest Bank plc, calculated on a daily basis in respect of any sum which is due and unpaid, that interest to run from the date on which that sum is due and payable until receipt by us of the full amount, whether before or after judgment.

6.5 All Charges are exclusive of VAT or any other applicable sales tax, which you must pay at the rate and in the manner for the time being prescribed by law.

6.6 We may, at any time after the first anniversary of the Commencement Date, increase the Standard Annual Charge and the Corrective Maintenance Rates by giving you not less than three months written notice, provided that:

- the amount of any such increase (by reference to the level of the Standard Annual Charge and/or the Corrective Maintenance Rates immediately prior to such increase taking effect) shall not exceed 20%; and
- the increases will be no more frequent than once in any 12-month period.

7. Our Warranties

7.1 We warrant to you that:

- the Annual Maintenance & Annual Recertification and the Corrective Maintenance will be performed:
 - by an appropriate number of suitably qualified and experienced personnel;
 - using all reasonable skill and care; and
 - in accordance with all applicable laws and regulations in force from time to time.
- all components and equipment supplied or used in the course of the provision of the Corrective Maintenance shall operate in accordance with their technical specifications;
- we have full capacity and authority and all necessary permissions, licences and consents necessary to enter into, and perform our obligations under, the Maintenance Agreement and that those signing the Maintenance Agreement are duly authorised to bind the party for whom they sign.

7.2 Except as expressly stated in these Conditions, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including fitness for purpose and suitability) are hereby excluded to the extent permitted by law.

8. Liability

8.1 Neither party excludes or limits liability to the other party for:

- fraud or fraudulent misrepresentation;
- death or personal injury caused by negligence; or
- a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

8.2 Subject always to clause 8.1, neither party will be liable whether in contract, tort (including for negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- any loss (whether direct or indirect) of profits, business, revenue, or goodwill;
- loss or corruption (whether direct or indirect) of data or information; or
- any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Maintenance Agreement.

8.3 Subject always to clause 8.1, each party's total aggregate liability in contract, tort (including negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Maintenance Agreement in any 12-month period (being the 12 month period

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- immediately preceding the date on which the cause of action first arose) will be limited to 200% of the total Charges paid by you to us during that 12-month period.
- 8.4 Subject to clause 8.1, we exclude all liability for any defects in any item of Maintained Equipment after the relevant Certification Expiry Date if Annual Maintenance and Annual Recertification is not undertaken in accordance with these Conditions, including any resulting personal injury or death to users of that item of Maintained Equipment.
- 9. Confidentiality**
- 9.1 The term Confidential Information does not include any information that:
- is or becomes generally available to the public (other than as a result of disclosure by the receiving party or its Representatives in breach of this clause);
 - was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - was, is, or becomes, available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
 - was known to the receiving party before the information was disclosed to it by the disclosing party;
 - the parties agree in writing is not confidential or may be disclosed; or
 - is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 9.2 Each party shall keep the other party's Confidential Information confidential and shall not:
- use any Confidential Information except for the purpose of exercising or performing its rights and obligations under the Maintenance Agreement (**Permitted Purpose**); or
 - disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.
- 9.3 A party may disclose the other party's Confidential Information to those of its Representatives who need to know that Confidential Information for the Permitted Purpose, provided that:
- it informs those Representatives of the confidential nature of the Confidential Information before disclosure; and
 - at all times, it is responsible for the Representatives' compliance with the confidentiality obligations set out in this clause 9.
- 9.4 A party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible.
- 9.5 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information, other than those expressly stated in these Conditions, are granted to the other party, or are to be implied from the Maintenance Agreement.
- 9.6 The provisions of this clause 9 shall continue to apply after termination of the Maintenance Agreement.
- 10. Term and Termination**
- 10.1 The Maintenance Agreement shall commence on the Commencement Date and shall remain in force, unless terminated earlier in accordance with clause 10.2, for the Initial Period. The Term of the Maintenance Agreement shall automatically be extended for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period, unless a party gives written notice to the other party, not later than 60 days before the end of the Initial Period or the relevant Renewal Period, to terminate the Maintenance Agreement.
- 10.2 Without prejudice to any rights that have accrued under the Maintenance Agreement or any of its rights or remedies, either party may terminate the Maintenance Agreement with immediate effect by giving written notice to the other party if:
- the other party fails to pay any amount due under the Maintenance Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make that payment;
 - the other party commits a material breach of any material term of the Maintenance Agreement (other than failure to pay any amounts due under the Maintenance Agreement) and (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - the other party:
 - suspends, or threatens to suspend, payment of its debts;
 - is unable to pay its debts as they fall due or admits inability to pay its debts;
 - (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (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 clause 10.2(c)(i) to clause 10.2(c)(iv) apply.
 - the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 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;
 - 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 (being a company);
 - the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 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;
 - a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other similar process is levied or enforced on or sued against, the whole or any part of the other party's assets and that attachment or process is not discharged within 14 days;
 - 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 10.2(c) to clause 10.2(f) (inclusive);
 - the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
 - Any provision of the Maintenance Agreement that expressly or by implication is intended to come into or continue in force on or after termination of the Maintenance Agreement shall remain in full force and effect.
 - Termination of the Maintenance Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
 - On termination of the Maintenance Agreement for any reason, each party shall as soon as reasonably practicable:
 - return or destroy (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information provided to it by the other party or data for the purposes of the Maintenance Agreement, including all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
 - delete (to the extent possible) any proprietary software belonging to the other party and all the other party's Confidential Information from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party;
 - return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party remaining in possession is solely responsible for their safe-keeping; and
 - you must immediately pay any outstanding amounts owed to us pursuant to the Maintenance Agreement.
 - Regardless of its obligations in this clause 10, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy under clause 10.5, it shall notify the other party in writing of that retention, giving details of the documents or materials that it must retain. Clause 9 shall continue to apply to any retained documents and materials, subject to this clause 10.
 - Force Majeure**
Neither party will be in breach of the Maintenance Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Maintenance Agreement if that delay or failure results from events, circumstances or causes beyond its reasonable control. In these circumstances the affected party is entitled to a reasonable extension of the time for performing its obligations, provided that, if the period of delay or non-performance continues for 6 months, the party not affected may terminate the Maintenance Agreement by giving 14 days' written notice to the other party.
 - Joint and individual liability**
If you are a partnership all partners will be liable jointly and individually for all your duties under the Maintenance Agreement (and when "you" and similar words are used in the Maintenance Agreement, they refer to any of the partners as well as all of them and notice to one partner is good notice to them all).
 - Notices**
Any notice which has been served under the Maintenance Agreement must be a written notice and may be personally delivered or sent by post, or fax, or email. A notice will be taken to have been delivered on the same date it is sent by fax or delivered by hand, or one Business Day after it has been sent by email, or two days after the date of posting it.
 - Our rights**
If you do not enforce all of our rights under the Maintenance Agreement, or if we delay in doing so, we do not give up any of these rights or the rights which we have if you break the Maintenance Agreement again.
 - Confidential Information**
Neither you nor we will, during and after termination of the Maintenance Agreement, without the prior written consent of the other, use or disclose to any other person any information of the other which is identified as confidential or which is confidential by its nature. It is agreed that you and we will upon demand (and on termination of the Maintenance Agreement) surrender to the other all materials relating to such confidential information in its or its personnel's, agents' or representatives' possession.
 - Miscellaneous**
 - The Maintenance Agreement and any dispute or claim arising out of or in connection with it or its subject matter (including non-contractual disputes) will be governed by and construed in accordance with English law. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Maintenance Agreement or its subject matter (including non-contractual disputes).
 - The benefits of the Maintenance Agreement will be freely assignable by us in whole or in part and we may delegate to any person all or any of the rights, remedies, powers or privileges conferred on us under it or provided by law. The Maintenance Agreement is personal to you and accordingly you may not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any of your rights and obligations under the Maintenance Agreement without our prior written consent (which is not to be unreasonably withheld or delayed).
 - If any part of the Maintenance Agreement (including these Conditions) is found to be unenforced that will not affect the rest of the agreement in any way.
 - By signing the Maintenance Agreement you agree that the Contracts (Rights of Third Parties) Act 1999 will not apply.
 - You and we each acknowledge that, in entering into the Maintenance Agreement, no reliance has been placed on, and neither you nor we will have any right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Maintenance Agreement. You and we agree that the only liability in respect of those representations and warranties that are set out in the Maintenance Agreement (whether made innocently or negligently) will be for breach of contract. Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.
 - No variation of the Maintenance Agreement will be effective unless it is in writing and signed by both you and us (or our authorised representatives).
 - No failure or delay by a party to exercise any right or remedy provided under the Maintenance Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
 - The Maintenance Agreement constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.