

terms of maintenance

1. definitions

"The Company" or "we" means Mayflower Ltd or any of its subsidiaries, subsidiary undertakings, successors in title or assigns.

- 1.1. "The Customer" or "he" means the individual, firm or company named overleaf.
- 1.2. "The Equipment" means the equipment specified overleaf and any replacement which may be made and which shall be governed by these terms and conditions.
- 1.3. "Installation Address" means the address specified overleaf.
- 1.4. "Maintenance Agreement" means this agreement as amended in writing from time to time.
- 1.5. "Maintenance Engineer" means an engineer employed by or acting as agent of the Company.
- 1.6. "Maintenance Fee" means the fee for the maintenance services specified overleaf.
- 1.7. "Term" means a minimum period of 60 months from the date of this Maintenance Agreement ("Initial Term") and thereafter until terminated in accordance with paragraph 8 below.

2. maintenance of equipment

- 2.1. The Customer, having signed this Maintenance Agreement overleaf, confirms entering into this Maintenance Agreement for the provision of maintenance services in respect of the Equipment during the Term. The Customer further confirms that by his signature that he accepts in full the terms and conditions detailed in this Maintenance Agreement to the exclusion of all other terms and conditions.

3. company responsibilities

- 3.1. During the Term the Company agrees to maintain or procure, as soon as is reasonably practicable within the service level described below, the maintenance and/or repair of the Equipment at the Installation Address in efficient working order.
- 3.2. The Company will use all reasonable endeavours to respond, when necessary, within 4 working hours of the time a fault resulting in more than 20% of the equipment not functioning is reported by the Customer. In the case of a fault resulting in less than 20% of the equipment not functioning the Company will use all reasonable endeavours to arrive, when necessary, within 16 working hours but shall only be obliged to provide the maintenance services during the hours 0900 to 1730 Monday to Friday (inclusive) except bank holidays.
- 3.3. Where the Company provides maintenance services outside the hours specified in 3.2 above the Company reserves the right to charge the Customer for such services in addition to the Maintenance Fee.
- 3.4. Where the Company deems it practicable or appropriate the Company shall maintain the Equipment remotely.

4. the customer responsibilities

- 4.1. The Customer shall notify the Company immediately by telephone of any fault in the Equipment and/or any repair necessary confirming the same in writing as soon as possible and shall promptly provide the Company with any information which the Company reasonably requires to enable the Company to provide maintenance services in accordance with this Maintenance Agreement.
- 4.2. The Customer shall afford the Company and its Maintenance Engineer full and safe access to the Installation Address and the Equipment to enable the Company to carry out its maintenance obligations hereunder.
- 4.3. Unless otherwise authorised in writing by a director of the Company, the customer shall ensure that the Equipment shall not be moved, altered, adjusted or repaired except by a Maintenance Engineer.
- 4.4. The Customer will use and maintain the Equipment in compliance with the conditions recommended by the manufacturer(s) of the Equipment.
- 4.5. The Customer shall comply with all its obligations contained in this Maintenance Agreement and, in particular, the payment provisions set out below.

5. payments

- 5.1. The Maintenance Fee shall be paid annually in advance as follows:
 - 5.1.1. in respect of the first year of the Term 7 days after the date of this Maintenance Agreement or 7 days after the Equipment has been installed
 - 5.1.2. in respect of the second and subsequent years of this Maintenance Agreement, payable by each subsequent anniversary of the date of this Maintenance Agreement
- 5.2. All payments arising under this Maintenance Agreement shall be made by direct debit, instructions for which shall be signed by the Customer at the same time that this Maintenance Agreement is signed. Such direct debit instruction shall not be cancelled without the Company's written consent. In the event that payment of the Maintenance Fee is not made by direct debit for any reason the Company shall be entitled to charge a collection fee of an amount equal to 5% of the Maintenance Fee from the Customer which shall be paid by the Customer on demand.
- 5.3. In the event that
 - 5.3.1. maintenance, repair or replacements to the Equipment are made necessary by the improper use of the Equipment or repairs being undertaken by persons other than the Maintenance Engineer, or
 - 5.3.2. the Company is asked by the Customer to provide any other service not specified overleaf (including but not limited to reprogramming the Equipment), at customer's request or
 - 5.3.3. maintenance services are provided outside the hours specified in clause 4.2 above the Company shall be entitled to charge the Customer in accordance with its then current price list from time to time in addition to the Maintenance Fee and the Customer shall pay such charges within 7 days of receipt of invoice covering same.
- 5.4. In the event that any of the above payments are not made on the due date, the Company may, at its absolute discretion and without prejudice to any other rights and remedies:
 - 5.4.1. immediately suspend performance of any or all of its obligations under this Maintenance Agreement and
 - 5.4.2. charge the Customer interest in respect of the late payment of any sum due under this Maintenance Agreement on a day to day basis compounded on the usual quarter days (both before and after any judgment) at the rate of 4% per annum above the base rate from time to time of Barclays Bank Plc from the due date for payment to the date of actual payment.
- 5.5. Theft, loss or destruction of or damage to the Equipment shall not affect the Customer's obligations hereunder.
- 5.6. After the first 12 months the Company may, increase the Maintenance Fee by a maximum of 10% per annum. Any increase above 10% will entitle the Customer to cancel the remainder of the term of the Maintenance Agreement.
- 5.7. Time is of the essence with regard to payment of the Maintenance Fee and all other payments due to the Company under this Maintenance Agreement.
- 5.8. The Maintenance Fee and other payments to be made by the Customer under this Maintenance Agreement are exclusive of value added tax, which shall be paid in addition.

6. liability

- 6.1. The Company shall not be liable to the Customer for any failure of the Equipment due to:
 - 6.1.1. use not in accordance with the manufacturers' instructions, repair otherwise than by a Maintenance Engineer, or use of parts or accessories not authorised by the Company;
 - 6.1.2. negligent use, wilful abuse or misuse;
 - 6.1.3. any delay in the execution of any work or installation, replacement, alteration, removal or otherwise of, or to, the Equipment, howsoever caused and any such delay shall not be sufficient cause for cancellation of this Maintenance Agreement
 - 6.1.4. any failure or defective working of the Equipment due to any fault, failure or change in the electricity supply service and/or BT, or any other service providers' equipment and/or host PBX systems;
 - 6.1.5. any damage caused by the failure of electrical supply to the Equipment;
 - 6.1.6. accidental damage to the Equipment or to any property at the Installation Address.
- 6.2. The Company shall not be liable to the Customer to maintain or repair the Equipment in respect of any fault which was not notified to the Company within 3- days of the date on which the Customer knew or should have known, of the fault's existence.
- 6.3. The Company shall not be liable for any loss or damage suffered by the Customer, except in the case of wilful default of the Company or, in respect of death or personal injury, caused by negligence. The Company shall not be liable whether such loss or damage is direct, indirect or consequential, however it arises, including (but not limited to) the matters set out in clause 7.1 above. For the purposes of this clause, loss or damage shall include (without prejudice to the generality of the foregoing) economic loss including (but not limited to) loss of profits, revenues or goodwill.
- 6.4. If, notwithstanding the above, the Company is held liable in respect of loss or damage, the liability of the Company shall in no event (except in the case of death or personal injury) exceed the sum of £1,000,000 (One Million pounds) in respect of any one claim (or series of claims arising from the same breach). The foregoing is not an assumption of liability by the Company in circumstances where it would not otherwise be legally liable pursuant to this Maintenance Agreement or otherwise.

- 6.5. The Company shall have no liability to the Customer or be deemed to be in breach of this Maintenance Agreement, as consequence of any of the following events:
 - 6.5.1. flood, storm, severe weather conditions or other natural event;
 - 6.5.2. war, terrorist action, hostilities, revolution, riots or civil disorder;
 - 6.5.3. any destruction, break down (whether permanent or temporary) or malfunction of, or damage to any premises, plant equipment or materials (including any computer hardware or software or any records);
 - 6.5.4. the introduction of, or any amendment to, a law or regulation, or any charge in the interpretation or application of any such law or regulation by a competent authority.
 - 6.5.5. any strike, lock-out or other industrial action;
 - 6.5.6. any obstruction of any public or private highway or road or any event which prevents or obstructs access to the Installation Address;
 - 6.5.7. any breach of contract or defaults by, or insolvency of, a third party, including an agent or subcontractor, or
 - 6.5.8. any other event outside the Company's reasonable control, whether similar or not to any of the foregoing.
- 6.6. If after reasonable efforts by the Company the Company is unable to rectify or identify the source of any fault in the Equipment then such fault shall be deemed not to be covered by this Maintenance Agreement and the Company shall be deemed to have fully discharged its obligations under this Maintenance Agreement in respect of such fault.
- 6.7. The Customer acknowledges and agrees that the level of the Maintenance Fee reflects the limitations of liability contained in this clause 6.

7. termination

- 7.1. This Maintenance Agreement may be terminated by either party giving to the other 90 days notice in writing by recorded delivery, such notice to be served so as to expire at the end of the Initial Term or any subsequent anniversary of the date of this Maintenance Agreement.
- 7.2. Alternatively, this Maintenance Agreement may be terminated immediately by the Company on giving notice in writing to the Customer in the event that the Customer:
 - 7.2.1. has a receiver or administrative receiver or trustee in bankruptcy appointed; or
 - 7.2.2. passes a resolution for winding up, or has a winding order made against it (other than amalgamation or reconstruction) or commits or is adjudicated bankrupt; or
 - 7.2.3. has an Administration Order made against it or enters into any voluntary arrangement; or
 - 7.2.4. ceases or threatens to cease to carry on business; or
 - 7.2.5. is unable to pay its debts as and when they fall due or fails to pay on its due date any sum under this Maintenance Agreement; or
 - 7.2.6. commits any material breach of any terms of this Maintenance Agreement which in the case of breach capable of being remedied is not so remedied within 14 days of a written request to do so; or
 - 7.2.7. if the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer.

8. consequence of termination

- 8.1. Early termination will leave the Maintenance Fees due for the remainder of the Term outstanding and payable on demand by the Customer.
- 8.2. A termination under clause 7 shall discharge the Company from liability for further performance of this Maintenance Agreement and shall entitle the Company to enter the Installation Address or any other premises and recover any Equipment and materials which are the Company's property and the Customer hereby irrevocably licences the Company, its employees and agents to enter the Installation Address or premises for that purpose.
- 8.3. Termination of this Maintenance Agreement shall not affect any accrued rights or liabilities of either party.

9. invalidity and severability

- 9.1. If any provision of this Maintenance Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Maintenance Agreement and all provisions not affected by the invalidity or unenforceability shall remain in full force and effect.

10. waiver

- 10.1. No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

12. warranty

- 12.1. The Customer warrants to the Company that the Customer has not been induced to enter into this Maintenance Agreement by any prior representations whether oral or in writing, except as specifically contained in this Maintenance Agreement, and the Customer waives any claim for breach of prior representations.
- 12.2. No representation or warranty regarding the Equipment shall be deemed to be made by or on behalf of the Company, nor shall a representation bind the Company unless it is made in writing signed by a Director of the Company.

13. assignment

- 13.1. The Customer shall not transfer this Maintenance Agreement or any of the Customer's rights and obligations under it, whether in whole or in part, without first obtaining the Company's prior written consent.
- 13.2. The Company shall be entitled to assign the benefit and burden of this Maintenance Agreement or to sub-contract the provisions of the Maintenance Services under this Maintenance Agreement without the consent of the Customer.

14. notices

- 14.1. All notices which are required to be given under this Maintenance Agreement shall be in writing and shall be sent to the address of the recipient set out in this Maintenance Agreement or such other address as the recipient may designate by notice given in accordance with the provisions of this clause. Notice may be delivered personally or by first class pre-paid Recorded Delivery letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when despatched.

15. variation

- 15.1. The terms and conditions of this Maintenance Agreement are the sole terms and conditions for the provision of maintenance services in respect of the Equipment between the Company and the Customer. No variation or modification of the terms or conditions and no agreement made, or purported to be made, between the Company and the Customer inconsistent with these terms and conditions shall be valid, or have any effect unless made in writing signed by a Director of the Company.

16. set off

- 16.1. The Customer shall not be entitled to withhold payment of the Maintenance Fee or of any other payment due to the Company by reason of any right of set-off or counterclaim which the Customer may have or allege to have against the Company or for any reason whatever.

17. certificate

- 17.1. For all purposes, including legal proceedings, a certificate signed by any director of the Company in respect of sums due and owing by the Customer under this Maintenance Agreement shall be conclusive evidence against the Customer.

18. headings

- 18.1. Headings to clauses are for ease of reference only and shall not affect the interpretation or construction of this Maintenance Agreement.

19. law

- 19.1. This Maintenance Agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.