



## Maintenance Agreement



### Terms & Conditions

#### Parties:

- 1 `Frontier-Pitts': Frontier-Pitts Limited a company incorporated in England under number 2582463, whose registered office is at Crompton House, Crompton Way, Crawley, West Sussex, RH10 9QZ.
- 2 `The Customer': whose details are set out in Schedule 1.

#### Recitals:

- (A) The Customer is the owner and operator of the Equipment.
- (B) The Customer wishes Frontier-Pitts to provide a repair and maintenance and advisory service in relation to the Equipment and Frontier-Pitts is willing to supply the same on the terms and conditions of this Agreement.  
`LOCATION' means the location of the Equipment shown in Schedule 1

#### Operative provisions:

##### 1 Interpretation

- 1.1 In this Agreement, unless the context otherwise requires:

`BASIC SERVICE' means the service to be provided pursuant to clause 2.

`EQUIPMENT' means the equipment the description and location of which are shown in Schedule 1

`EXCLUDED SERVICES' the services set out in clause 4 which do not form part of the services to be provided by Frontier-Pitts to the Customer.

`FORCE MAJEURE' means, in relation to either party, any circumstances beyond the reasonable control of that party (including, without limitation, any strike, lock-out or other industrial action)

`LOSS' means, in relation to the Customer, any loss (whether loss of profit or otherwise), damages, costs or other compensation and any legal or other expenses which is or are awarded against or incurred by or paid or agreed to be paid in settlement of any claim by the Customer, however the same may arise and whether occasioned by the negligence of Frontier-Pitts, its employees or agents or otherwise

`NORMAL WORKING HOURS' means the hours of 8.30 am to 5.30 pm (inclusive) on any Working Day

`WORKING DAY' means any day other than Saturday or Sunday or a Bank or Public Holiday.

- 1.2 The headings in this Agreement are for convenience only and shall not affect its interpretation.

## **2 Services to be provided**

- 2.1 During the continuance of this Agreement Frontier-Pitts shall provide to the Customer in respect of the Equipment the Basic Service and such additional service as set out in Schedule 2.
- 2.2 The Basic Service shall consist of Frontier-Pitts providing the number of site visits as is set out in Schedule 1.
- 2.3 Site visits shall be carried out by one of Frontier-Pitts' suitably qualified engineers attending at the Location at such times during Normal Working Hours as may be agreed in advance between Frontier-Pitts and the Customer.
- 2.4 If Frontier-Pitts' engineer discovers a defect in or malfunction of the Equipment in the course of the site visit, Frontier-Pitts' engineer will advise the Customer of the same and advise as to any proposed repair work. If the engineer has the necessary spare or replacement parts and has sufficient time to carry out the repairs during the course of a site visit then such repairs may be carried out there and then, subject to the Customer's consent.
- 2.5 Frontier-Pitts will effect any necessary adjustments to the Equipment, provided the same are not part of the Excluded Service.
- 2.6 All reports of defects in or malfunctions of the Equipment must be made by facsimile transmission or in writing, as appropriate, by one of the Customers Authorised Employees (as detailed in Schedule 1) or in such manner as Frontier-Pitts may reasonably require from time to time.
- 2.7 Frontier-Pitts shall ensure that its employees comply with all safety and security regulations in force at the Customer's premises which are brought to the attention of such representatives.

## **3 Spare parts and replacements**

- 3.1 Frontier-Pitts shall use all reasonable endeavours to supply minor spare parts and replacement components required to maintain the Equipment in good working order. Where the Equipment, or any part thereof, was originally supplied and/or installed by a third party then Frontier-Pitts cannot guarantee to be able to supply the necessary spare parts or replacement components. The Customer is recommended to hold adequate stocks of recommended parts to facilitate necessary repairs.
- 3.2 All spare parts and replacement components supplied by Frontier-Pitts shall become part of the Equipment and any parts and components removed from it shall become Frontier-Pitts' property, unless otherwise agreed in writing between the parties.
- 3.3 If Frontier-Pitts determines that it is necessary to move the Equipment or any part of the Equipment from the Location in order to carry out any repairs, and as a consequence a significant part of the Customer's operations are affected, Frontier-Pitts shall use all reasonable endeavours to supply on loan to the Customer equivalent equipment while the Equipment or the part in question is being repaired.

#### **4 Excluded Services**

The services detailed in clauses 4.1 - 4.8 inclusive do not form part of either the Standard, Fully Comprehensive, Extended Warranty or Warranty Upgrade Contracts. Such Excluded Services may however be undertaken by Frontier-Pitts subject to renegotiation of suitable terms and conditions with the Service Department.

- 4.1 Repair of any design defect or malfunction which is due to faulty materials or workmanship in manufacture, that is not covered under warranty or statutory obligations, or which in Frontier-Pitts' opinion has arisen as a result of:
  - 4.1.1 electrical work external to the Equipment;
  - 4.1.2 transportation or relocation of the Equipment not performed by or on behalf of Frontier-Pitts;
  - 4.1.3 any error or omission relating to the operation of the Equipment, i.e. incorrect usage of the Equipment and failure to follow either the manufacturer's or Frontier-Pitts' operation instructions;
  - 4.1.4 any modification, adjustment or repair to the Equipment made by a third party without the written consent of Frontier-Pitts;
  - 4.1.5 the subjection of the Equipment by the Customer to unusual physical or electrical stress, the neglect or misuse of the Equipment or any failure or fluctuation of electrical power; or
  - 4.1.6 any other cause (except fair wear and tear) which is not due to the neglect or default of Frontier-Pitts.
  - 4.1.7 Failure to comply with the provisions of clause 5.1.
- 4.2 Removal of the Equipment, or part thereof, from the Location to another location.
- 4.3 Adjustment made necessary due to failure.
- 4.4 Adjustment of time keeping equipment, at the commencement and termination of British Summer Time each year.
- 4.5 Adjustment of the Equipment, made necessary by use of spare parts or expendable requisites, other than those recommended by or supplied by Frontier-Pitts.
- 4.6 Rectification of any faults found in the wiring of the Equipment due to damage caused by others.
- 4.7 Loop replacement.
- 4.8 If on investigation Frontier-Pitts reasonably determines that any defect in or malfunction of the Equipment is the result of any of the matters referred to in clauses 4.1 - 4.8, the Customer shall be liable for all costs incurred by Frontier-Pitts in investigating the same and determining its cause.
- 4.9 If any part of the Equipment can no longer be maintained in good working order by the provision of replacement spare parts or the whole of the Equipment is damaged beyond economic repair otherwise than through Frontier-Pitts' fault (as to whether either of which events has occurred Frontier-Pitts' decision shall be final and binding on the Customer) Frontier-Pitts reserves the right to terminate this Agreement forthwith, by giving written notice to the Customer, in respect of the whole or any part of the Equipment which can no longer be maintained, in which case Frontier-Pitts shall repay to the Customer a fair proportion of any charges for Frontier-Pitts' services which have been paid in advance by the Customer.

## **5 Customer's obligations**

- 5.1 The Customer shall:
- 5.1.1 at all times keep the Equipment in the environmental conditions recommended by the manufacturer of the Equipment;
  - 5.1.2 not move the Equipment from the Location without obtaining the prior written consent of Frontier Pitts;
  - 5.1.3 use the Equipment only in accordance with such instructions and recommendations relating to the care and operation of the Equipment as may be issued by the manufacturer of the Equipment or as may from time to time be advised in writing by Frontier-Pitts; and
  - 5.1.4 advise Frontier-Pitts of all intermittent malfunctions of the Equipment in a prompt manner and in the event of any malfunction which may affect the safe operation of the Equipment, such malfunction should be reported to Frontier-Pitts immediately.
  - 5.1.5 not allow any person other than Frontier-Pitts' representatives to adjust, maintain, repair, replace or remove any part of the Equipment.
- 5.2 The Customer shall ensure that Frontier-Pitts' representatives have full and free access to the Equipment and to any records of its use kept by the Customer to enable Frontier-Pitts to perform its duties.
- 5.3 The Customer shall provide Frontier-Pitts with such information concerning the Equipment, its application, use, location and environment as Frontier-Pitts may reasonably request to enable it to carry out its duties.
- 5.4 The Customer shall take all such steps as may be necessary to ensure the safety of any of Frontier-Pitts' representatives who visit any premises of the Customer.

## **6 Charges**

- 6.1 In consideration of the provision of the Standard, Fully Comprehensive, Extended Warranty or Warranty Upgrade Contracts as appropriate, the Customer shall, subject to receipt of an invoice from Frontier-Pitts, pay to Frontier-Pitts the charges set out in Schedule 2 within 30 days of receipt of Frontier-Pitts invoice for the same.
- 6.2 If Frontier Pitts' services are requested without any reasonable justification, or by reason of any defect in or malfunction of the Equipment due to causes not covered under this Agreement, the Customer shall be liable to pay Frontier-Pitts' standard charges from time to time in force for such services.
- 6.3 The charges referred to in clause 6.1 shall be increased on each anniversary of this Agreement by a one percentum less than the percentage equivalent to the increase (if any) for the 12 months preceding that anniversary shown by the UK index of retail prices. For example if such index states that the increase has been 5 percent then the charges shall increase by 4 percent.
- 6.4 All charges and other sums payable by the Customer under this Agreement are exclusive of any applicable value added tax, which shall be additionally payable by the Customer together with the charge or the sum in question.
- 6.5 If the Customer fails to pay on the due date any amount which is payable to Frontier-Pitts pursuant to this Agreement then, without prejudice to clauses 9.2 and 9.3, that amount shall bear interest from the due date until payment is made to Frontier-Pitts (both before and after any judgment) at 4 per cent per annum over Barclays Bank plc base rate from time to time.

## **7 Liability**

Frontier-Pitts shall have no Liability to the Customer for any indirect, special or consequential Loss of the Customer arising out of or in connection with the provision of any goods or services pursuant to this Agreement (except in respect of death or personal injury resulting from negligence) and the total Liability of Frontier-Pitts for any other Loss of the Customer so arising in any year of this Agreement in respect of any one event or series of connected events shall not exceed the charges payable by the Customer to Frontier-Pitts in the preceding 12 months.

## **8 Force Majeure**

- 8.1 If either party is affected by Force Majeure it shall promptly notify the other party of the nature and extent of the circumstances in question.
- 8.2 Notwithstanding any other provision of this Agreement, neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, for any delay in performance or the non-performance of any of its obligations under this Agreement, to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly.
- 8.3 If at any time the Supplier claims Force Majeure in respect of its obligations under this Agreement with regard to the supply of the Products, the Customer shall be entitled to obtain from any other person such quantity of the Products as the Supplier is unable to supply, and that quantity shall be deemed for the purposes only of clause 2.2 to have been purchased from the Supplier.

## **9 Duration and termination**

- 9.1 This Agreement shall come into force on the Commencement Date set out in Schedule 1 and, subject to clauses 9.2 and 9.3, shall continue in force for an initial period of 12 months from that date and thereafter unless or until terminated by either party giving to the other not less than 3 months' prior written notice of termination such notice to expire at the end of the initial 12 month period or on the anniversary of the Commencement Date
- 9.2 Frontier-Pitts shall be entitled to terminate this Agreement:
  - 9.2.1 in the circumstances and to the extent referred to in clause 4.9; and
  - 9.2.2 forthwith by giving written notice to the Customer if any sum payable under this Agreement is not paid on the due date.
- 9.3 Either party shall be entitled forthwith to terminate this Agreement by written notice to the other if:
  - 9.3.1 that other party commits any continuing or material breach of any of the provisions of this Agreement and, in the case of such a breach which is capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
  - 9.3.2 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of that other party;
  - 9.3.3 that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;

- 9.3.4 that other party goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and in such manner that the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on that other party under this Agreement); or
- 9.3.5 that other party ceases, or threatens to cease, to carry on business.
- 9.4 For the purpose of clause 9.3.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).
- 9.5 Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision.
- 9.6 The rights to terminate this Agreement given by this clause shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.
- 9.7 Upon the termination of this Agreement for any reason, subject as otherwise provided in this Agreement and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.

## **10 Nature of agreement**

- 10.1 Frontier-Pitts shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under this Agreement through any other company which at the relevant time is its holding company or subsidiary (as defined by section 736 of the Companies Act 1985, as amended) or the subsidiary of any such holding company, and any act or omission of any such company shall for the purposes of this Agreement be deemed to be the act or omission of Frontier-Pitts.
- 10.2 Subject to the Customer's consent (which shall not be unreasonably withheld) Frontier-Pitts shall be entitled to carry out its obligations under this Agreement through any agents or sub-contractors appointed by it in its absolute discretion for that purpose.
- 10.3 Except as provided in clauses 10.1 and 10.2, this Agreement is personal to the parties, and neither of them may, without the written consent of the other, assign, mortgage, charge (otherwise than by floating charge) or dispose of any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations under this Agreement.
- 10.4 Nothing in this Agreement shall create, or be deemed to create, a partnership between the parties.
- 10.5 This Agreement contains the entire agreement between the parties with respect to its subject matter, supersedes all previous agreements and understandings between the parties, and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.
- 10.6 Each party acknowledges that, in entering into this Agreement, it does not do so on the basis of or rely on any representation, warranty or other provision except as expressly provided in this Agreement, and accordingly all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.
- 10.7 If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of this Agreement and the remainder of the affected provisions shall continue to be valid.
- 10.8 This Agreement shall be governed by and construed in all respects in accordance with the laws of England, and the Customer agrees to submit to the non-exclusive jurisdiction of the English courts.

## **11 Notices and service**

- 11.1 Any notice may be given by hand or sent (by first class pre-paid post or facsimile transmission) in the case of Frontier-Pitts to its registered office and in the case of the Customer to the address set out in Schedule 1
- 11.2 Any notice or other information given by post under clause 11.1 shall be deemed to have been given on the 2nd day after the envelope containing the same was so posted; and proof that the envelope containing any such notice or information was properly addressed, and sent by first class, pre-paid post shall be sufficient evidence that such notice or information has been duly given.
- 11.3 Any notice or other information sent by facsimile transmission shall be deemed to have been duly sent 12 hours after the time of transmission.

`LIABILITY' means any liability arising by reason of any representation (unless fraudulent), or any breach of any implied term or any duty at common law, or under any statute, or under any express term of this Agreement