



# ADDITIONAL TERMS AND CONDITIONS

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## Maintenance Services



## Thrive Operations Limited

### ADDITIONAL TERMS 2: MAINTENANCE SERVICES

#### Version 220322

These Additional Terms will apply where You are buying Maintenance Services from Thrive. It will apply in addition to the terms set out in the General Terms and Conditions.

#### 1 INTERPRETATION

**“Additional Services”** means any Emergency Maintenance and/or any Excluded Maintenance performed by Thrive under this Contract

**“Additional Services Fees”** means the fees payable in consideration of the provision of any Additional Services, which shall be calculated on a time and materials basis using our then current applicable hourly or daily rates

**“Contracted Hours”** means the hours of the day and days of the week that Thrive and You have agreed that Maintenance Services will be provided under this contract as specified in the Maintenance Schedule

**“Contract Year”** means a period of 12 months equal to the period of time in which the Annualised Charges are calculated or, if the Contract has been in force for less than 12 months, a period starting on the Effective Date and ending on the date on which the claim or claims arose

**“Excluded Causes”** means:

- (a) a defect in the manufacturer's design of the Maintained Equipment;
- (b) faulty materials or workmanship in the manufacture of the Maintained Equipment;
- (c) any maintenance, alteration, modification or adjustment performed by persons other than Thrive or its employees or agents unless approved by Thrive in accordance with these Additional Terms;
- (d) the Customer or a third party moving the Maintained Equipment without Thrive's prior written approval;

- (e) the use of the Maintained Equipment in breach of any of the provisions of the agreement under which the Maintained Equipment was supplied;
- (f) a failure, interruption or surge in the electrical power or its related infrastructure connected to the Maintained Equipment;
- (g) a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Maintained Equipment, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer; or
- (h) the neglect or misuse of the Maintained Equipment.

**“Excluded Maintenance”** means any maintenance services required to restore any malfunctioning or failed Maintained Equipment to Good Working Order where the malfunction or failure results from or is caused by any of the Excluded Causes

**“Emergency Maintenance”** means

- (a) making any adjustments to the Maintained Equipment; and
- (b) replacing any parts or components of the Maintained Equipment, required to restore the Maintained Equipment to Good Working Order,

in accordance with clause 2.6 and clause 2.7

**“Fix Time”** means the applicable fix times as set out in the Service Description, if any

**“Good Industry Practice”** means 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”** means the Maintained Equipment operates in accordance with the Operating Manuals

**“Location”** means the location of the Maintained Equipment at the Customer's premises as specified in the Maintenance Schedule, or any other location as may be agreed by the parties in writing from time to time

**“Maintained Equipment”** means the equipment specified in the Maintenance Schedule

**“Maintenance Schedule”** means the document which identifies which items of Your Equipment will be covered by Our Maintenance Services, the level of cover that applies to each item of Equipment and the time period of cover

**“Maintenance Services”** means those services described in the Service Description

**“Normal Business Hours”** means the hours specified in the Service Description

**“Operating Manuals”** means all operating manuals, specifications and other manufacturer documentation relating to the Maintained Equipment

**“Response Time”** means the applicable response times as set out in the Service Description

**“Service Description”** means the document which sets out a description of the Maintenance Services together with the Response Times and any associated service credit regime

**“Standard Maintenance Fees”** means the fees payable by the Customer for the provision of Maintenance Services as set out in the Quotation or Order Confirmation

**“TAC”** means Thrive’s technical assistance centre

## **2 MAINTENANCE SERVICES**

2.1 During the Term, We shall provide to You the Maintenance Services for the Maintained Equipment at the Location.

2.2 If this Contract is entered into any time subsequent to the sale or delivery of Products by Us to You which are to become Maintained Equipment under the terms of this Contract then We may insist on an inspection and satisfactory report by an engineer of those Products before Maintenance Services will commence for those Products. Where equipment which is not Product supplied by Us is to become Maintained Equipment under the terms of this Contract, We may insist on an inspection and satisfactory report by an engineer of such equipment before Maintenance Services will commence for that equipment.

2.3 If the inspections described in 2.2 reveal, in Our opinion, that the Maintained Equipment is in need of repair, We shall notify You in writing following the inspection and We shall not have any duty to deliver the Maintenance Services until those repairs are carried out to a satisfactory standards (and We reserve the right to visit the Location to inspect the quality of the repairs.) Once You have confirmed that the repairs have taken place and We have agreed that the Maintained Equipment is in a satisfactory condition, We shall become obliged to comply with all of Our obligations in this Contract. If You require, Thrive shall carry out such repair work at Thrive’s rates then in force.

- 2.4 You must notify Us if the Maintained Equipment is malfunctioning or has failed or is otherwise not in Good Working Order by contacting the TAC. Following notification to the TAC, if the issue cannot be resolved remotely then Thrive:
- 2.4.1 shall use all reasonable endeavours to attend at the Location during Contracted Hours within the relevant Response Time; and
  - 2.4.2 shall use all reasonable endeavours to perform Maintenance Services within the relevant Fix Time at the Location, where We have agreed a Fix Time; and
  - 2.4.3 if We are unable to complete Maintenance Services in accordance with clause 2.4.2, We may arrange alternative times to attend at the Location during Normal Business Hours or, if We deem it necessary, uninstall defective Maintained Equipment and remove it from the Location and install replacement equipment and verify that such replacement equipment is operating in accordance with manufacturer published operating conditions so as to return the Maintained Equipment to Good Working Order;
- 2.5 If We recover defective Maintained Equipment from the Location We may perform corrective maintenance and repairs which We deem necessary and will supply and fit replacement parts where necessary to restore the Maintained Equipment to Good Working Order. Replacement parts may be refurbished or reconditioned parts. We may retain repaired Equipment as spares to service future replacement shipments of Equipment at the Location.
- 2.6 If You notify Us outside of Your contracted Hours that the Maintained Equipment is malfunctioning, has failed or is not in Good Working Order, We may (but We are not obliged to):
- 2.6.1 use reasonable endeavours to attend at the Location within the relevant Response Time; and
  - 2.6.2 use reasonable endeavours to perform Emergency Maintenance of the Maintained Equipment within the relevant Fix Time.
- 2.7 Emergency Maintenance shall be charged at the Additional Services Rates for each of Our personnel reasonably required to attend the Location. Any additional charges shall be calculated from when the personnel arrive at the Location until they leave the Location.
- 2.8 We shall procure that Our personnel shall, while on site at the Location, comply with Your reasonable health and safety and security policies provided that these policies have been brought to the prior attention of Our personnel.

- 2.9 If You wish to make a change to the scope of the Maintenance Services (e.g. an increase or reduction in the Maintained Equipment or a change in the Location) then You must observe the procedure set out in clause 3 of Part 3 of the General Terms and Conditions.

### **3 REPLACEMENTS AND SPARE PARTS**

- 3.1 In performing the Maintenance Services, Thrive shall use all reasonable endeavours to source spare parts required to restore the Maintained Equipment to Good Working Order. Where Thrive is required to source individual spare parts not forming part of the Maintained Equipment, Thrive shall have the right to charge the Customer for the spare parts.
- 3.2 All spare parts and/or replacements provided by Thrive to the Customer shall become part of the Maintained Equipment and the property of the Customer. Thrive will assign to the Customer, with full title guarantee and free from all third-party rights, all spare parts and/or replacements provided by Thrive. All parts and components removed from the Maintained Equipment by Thrive in the course of performing the Maintenance Services and/or the Additional Services shall no longer constitute part of the Maintained Equipment and will be the property of Thrive. The Customer will assign to Thrive, with full title guarantee and free from all third-party rights, all parts and components removed from the Maintained Equipment by Thrive in accordance with this clause 3.2. For the purposes of this sub-clause, 'assign' includes 'transfer ownership of'.

### **4 CUSTOMER'S OBLIGATIONS**

- 4.1 You shall:
- 4.1.1 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 and the Operating Manuals, and permit only trained and competent personnel to use it and follow any operating instructions as We may give from time to time;
  - 4.1.2 operate the Maintained Equipment only in accordance with the Operating Manuals as updated from time to time and free from power surges and fluctuations;
  - 4.1.3 notify Us promptly if the Maintained Equipment is discovered to be operating incorrectly and cease to use the Maintained Equipment until such time as We have notified You that it is safe to continue using it;
  - 4.1.4 at all reasonable times permit full and free access to the Location and to the Maintained Equipment to Thrive, Our employees, contractors and agents, and provide Us and them with adequate and safe working space, and any telecommunications facilities as are reasonably

required to enable Us and them to perform the Maintenance Services and the Additional Services while at the Location;

- 4.1.5 provide Us with any information that is reasonably requested in the performance of the Maintenance Services and the Additional Services;
- 4.1.6 take any steps reasonably necessary to ensure the safety of Our personnel when attending the Location;
- 4.1.7 not allow any company or person other than Thrive to maintain, alter, modify or adjust the Maintained Equipment without Our prior written approval;
- 4.1.8 not move the Maintained Equipment from the Location without Our prior written approval (not to be unreasonably withheld or delayed);
- 4.1.9 acknowledge the completion of Maintenance Services when completed in accordance with the Contract by signing Our site visit report form;
- 4.1.10 store any reserve equipment only in conditions approved by Thrive, and make this equipment available for periodic maintenance, as with all other Maintained Equipment; and
- 4.1.11 only use supplies or materials supplied or approved by Thrive (approval not to be unreasonably withheld or delayed).

## **5 EXCLUDED MAINTENANCE**

- 5.1 We are not obliged to perform any Excluded Maintenance.
- 5.2 Where We have performed Maintenance Services in circumstances where We believe (in Our reasonable opinion) that the Maintained Equipment was not in Good Working Order due to any of the Excluded Causes, We may provide to You evidence to substantiate Our finding and We may charge and You shall pay the Additional Services Fees in respect of that work.

## **6 WARRANTIES**

- 6.1 We warrant to You that:
  - 6.1.1 the Maintenance Services and the Additional Services shall be performed using all reasonable skill and care and in accordance with Good Industry Practice; and
  - 6.1.2 in accordance with all applicable laws and regulations in force from time to time.

6.2 The processes, conditions and exclusions set out in clause 10 of the General Terms and Conditions shall apply at all times to the warranty set out in clause 6.1 above.

## **7 TERM**

7.1 The provisions of clause 7 of Part 3 of the General Terms and Conditions set out the terms regarding the duration of the Maintenance Services.

7.2 You may terminate the contract for good cause after giving 90 days notice and in such circumstances you will be entitled to a pro-rata rebate in respect of any unexpired term that You have already paid for but excluding the cost of any underlying manufacturer support contract already purchased by us. The benefit of any unexpired manufacturer support contract can be novated to another service provider so you can benefit from such support contract.

## **8 CHARGES**

8.1 For the performance of Maintenance Services, You shall pay to Us the Standard Maintenance Fees. For the performance of any Additional Services, You shall pay to Us the Additional Services Fees.

8.2 The Standard Maintenance Fees and the Additional Services Fees shall be exclusive of all expenses which shall be charged to You at Our most recently published rate for such expenses.

8.3 The Standard Maintenance Fees (and any Additional Services Fees) shall be due and payable annually in advance. Valid invoices are payable within 30 days of receipt from Us. Any charges for spare parts recoverable in accordance with clause 3.1 shall be due within [30] days of receipt of a valid invoice from Thrive.

8.4 If in Our reasonable opinion the Maintenance Services arise as the result of any misuse or neglect of the Maintained Equipment by You, or as a result of accidental damage to the Maintained Equipment or due to You not adhering to clause 4, or other third party product related problems, We may charge any additional amount for the necessary work resulting therefrom.

8.5 If the Maintenance Service is requested by You for Maintained Equipment which has been moved pursuant to clause 2.9 and if such request occurs within 5 Business Days of completion of the move, and if We reasonably determine that the cause of the Maintained Equipment no longer being in Good Working Order was directly attributable to the relocation (including the de-installation and re-installation) then We may raise an additional charge for any work carried out by Us connected to this issue.

8.6 The provisions regarding charges set out in the General Terms and Conditions shall apply to these Additional Terms.



## **9 LIABILITY**

- 9.1 Subject to clause 5.3 and 5.4 of Part 1 in the General Terms and Conditions, for each Contract Year Our total liability for all claims arising in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, in connection with the performance or contemplated performance of the Contract shall be limited to 200% of the Annualised Charges for the Maintenance Services.
- 9.2 You acknowledge and agree that We provide the Maintenance Services in reliance on the information provided by You and subject to Your compliance with the terms of the Contract. We cannot and do not accept liability arising from breakdown, stoppage or loss of the Maintained Equipment or from malware or other Viruses or malicious activity which inflicts or damages the Maintained Equipment. We do not accept liability for the cost excessive or incorrect phone calls, the cost of recovering software, damage to consumables or media. You are responsible for the cost, length, destination, extent, nature and metering of all communication connections, be it dialup or otherwise, made by the Maintained Equipment howsoever arising. Thrive shall not be liable for manufacturer's defects, nor for any consequential loss resulting there from.
- 9.3 The liability exclusions in clause 9.2 shall not apply where the liability arises as a result of Our breach of this Contract, negligence or breach of statutory duty. However, Our liability shall remain capped at the amount set out in clause 9.1.
- 9.4 All of clause 5 of the General Terms and Conditions shall apply to the provision of the Maintenance Services except for clause 5.5 of the General Terms and Conditions.

## **10 INDEMNITIES**

- 10.1 You shall indemnify Us against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) that We suffer or incur arising out of or in connection with Your use of the Maintenance Services in breach of this Contract.