

DATED _____

(1) << >>

(2) << >>

HARDWARE MAINTENANCE AGREEMENT

THIS AGREEMENT is made the day of

BETWEEN:

- (1) <<Name of Client>> a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered Office>> ("the Client") and
- (2) <<Name of Service Provider>> a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered Office>> ("the Service Provider")

WHEREAS:

- (1) The Service Provider is engaged in the business of maintaining and servicing computer hardware.
- (2) The Client wishes to procure hardware maintenance services from the Service Provider and the Service Provider agrees to provide hardware maintenance services under the terms and conditions set out in this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"Confidential Information"	means all business, technical, financial or other information created by a Party to this Agreement, or exchanged between the Parties, in either case throughout the Term of this Agreement;
"Hardware"	means any and all computer equipment listed in Schedule 1 of this Agreement in addition to new or replacement computer equipment supplied by the Service Provider in their provision of the Services;
"Services"	means the hardware maintenance services to be provided to the Client by the Service Provider as defined at Clause 4 of this Agreement;
"Service Fee"	means a fixed sum to be paid monthly by the Client to the Service Provider as set out in Clause 3 of this Agreement;
"Sites"	means the locations at which the Service Provider shall provide the Services as set out in Schedule 2.

- 1.2 Unless the context otherwise requires, each reference in this Agreement to:

- 1.2.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

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- 1.2.2 a statute or provision as is a reference to that statute or provision as at the relevant time;
- 1.2.3 "this Agreement" means this Agreement and each of the Schedules as amended at the relevant time;
- 1.2.4 a Schedule means a Schedule to this Agreement; and
- 1.2.5 a Clause or Paragraph means a Clause or Paragraph of this Agreement or a Clause or Paragraph of the relevant Schedule.
- 1.3 The headings used herein are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 Words imparting the singular shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.

2. Term

- 2.1 The Service Provider shall provide the Services to the Client at the Sites from <<Insert Date>> until the end of the "Term", unless and until earlier terminated in accordance with Clause 3 of this Agreement.
- 2.2 The Term may be expressed in months >> [months] OR [years] if both are specified. The Term shall be in accordance with the terms and conditions as set out in Clause 2 of this Agreement.

3. Fees and Payment

- 3.1 The Service Provider shall invoice the Client in advance for the Service Fee of £<< >> for each month. The Service Fee shall be payable on the <<e.g. 23rd>> day of the previous month.
- 3.2 The Client will pay to the Service Provider monthly in advance on the <<e.g. 1st>> day of the month throughout the Term in consideration of the Services provided pursuant to Clause 2 of this Agreement to provide the Services.
- 3.3 The Service Provider shall, upon supplying any new Hardware to the Client, invoice the Client for the value added tax ("VAT") on the exclusive price payable for such Hardware. The value added tax ("VAT") shall be payable by the Client to the Service Provider for any such Hardware. The Client will pay such invoices within 30 days of the date of the invoice.
- 3.4 The Service Provider shall deliver the Services by first class post to the Client at the Client's address specified in the first page of this Agreement unless otherwise agreed.
- 3.5 All sums specified herein shall be exclusive of any VAT unless expressly stated otherwise.

4. Services

- 4.1 The Services shall be as follows:
 - 4.1.1 Initial commissioning of the Hardware including installation and configuration of the Hardware.
 - 4.1.2 Installation of the Hardware where required;
 - 4.1.3 Repair of faults.

- 4.1.4 Supply of maintenance Hardware;
- 4.1.5 Preventative maintenance Hardware to take place <<Insert number>> times per year. Preventative maintenance to include (but not be limited to) testing, cleaning, inspection, adjustment and lubrication. The provision of such maintenance shall be at times planned and agreed between the Client and the Service Provider.
- 4.1.6 Corrective maintenance (but not be limited to) replacement of worn or defective parts as may be required, such maintenance to include replacement of worn or defective parts by the Service Provider.
- 4.2 The Service Provider shall provide the Services in a timely manner and in accordance with practice in the industry.
- 4.3 Where any Hardware fails or is at risk of its failure which gives rise to the need for the Services (including the carrying out of those Services), the Service Provider shall use reasonable endeavours to rectify the failure required within <<e.g. 8>> hours, but if it does not do so, the provisions of sub-Clause 4.4 shall then apply..
- 4.4 Where, as provided in this sub-Clause 4.4 applies, the Service Provider shall substitute hardware until it has completed the relevant work. The substituted hardware and it will ensure that such hardware performs the functions required by the Client, such as required by the Client's own Hardware.
- 4.5 Where the nature of the work is on-demand basis (i.e. not on a scheduled basis), the Service Provider shall provide the Services within < > [hours] OR [days] of receipt of notice from the Client. The Services are required.
- 4.6 In the event that components are required, the Service Provider shall supply any necessary components on an exchange basis without any additional charge. Any replaced parts under this sub-Clause shall be new parts. [Any replaced parts shall become the property of the Service Provider.]
- 4.7 This Agreement shall automatically cover any additional Hardware that the Client requires (from the Service Provider or a third party) during the Term of the Agreement. The Services to cover such new Hardware shall occur only by agreement between the Parties and may result in an increase in the cost of the Services at the discretion of the Service Provider.
- 4.8 The following are excluded from the Services and the Service Provider will only undertake them at the discretion and at extra cost to the Client:
- 4.8.1 Repairs to Hardware that is misused, abused or damaged, deliberately, by the Client or any third party;
- 4.8.2 Repairs to Hardware that is damaged as a result of use of non-genuine parts;
- 4.8.3 Repairs to Hardware that is damaged as a result of war, terrorism, fire, explosion or other external causes;
- 4.8.4 Repairs to Hardware that is damaged by infrastructure that is external to the Client's premises.

- 4.8.5 Repairs to equipment shall be carried out to the Hardware unless expressly included in Schedule 1.
- 4.8.6 Repairs to Hardware shall be carried out, modified, moved, reinstalled or repaired by the Service Provider or a third party without the prior written approval of the Client.
- 4.9 [If, in its reasonable opinion, the Service Provider considers that any Hardware cannot be repaired or replaced, the Service Provider shall notify the Client. If it notifies the Client that it is unable to repair or replace the Hardware, the Service Provider will thereupon not be required to carry out any further work on that Hardware and it will be deemed to be no longer available.]
5. **Client's Obligations**
- 5.1 The Client will ensure that the Service Provider has access to the Sites at all times during which the Service Provider is required to provide the Services. The Client shall provide the Service Provider with access to HVAC systems, lighting, electrical systems, and outlets, computer networks, and other equipment used by the Service Provider reasonably requires.
- 5.2 The Client will provide the Service Provider with detailed reports of any and all problems that require repair or replacement. Such reports shall be in the form provided by the Service Provider. If there is no such form specified, in such a form that clearly sets out the details relating to the problem, such details to include an identification of the problem, the location of the problem, and the date and time of the problem, by the Service Provider.
- 5.3 The Client will take all necessary steps to protect the health and safety of the Service Provider and its sub-contractors while on any of the Sites.
6. **Service Provider's Obligations**
- 6.1 The Service Provider shall ensure that it does not:
- 6.1.1 Create any unsafe conditions at the Sites;
- 6.1.2 Materially interfere with the operation of HVAC systems, plumbing, fire protection systems, or other equipment at the Sites; or
- 6.1.3 Impose any unreasonable restriction in connection with its use or operation of the Sites.
- 6.2 The Service Provider shall be responsible to the Client of:
- 6.2.1 Any damage to the Sites, real or personal; and
- 6.2.2 Any injury to the Client or its personnel resulting from the Services provided by the Service Provider, its sub-contractors or third parties.
7. **Warranty**
- 7.1 The Service Provider warrants that the Services supplied under this Agreement will be performed with reasonable care and skill by personnel whose qualifications are appropriate for the tasks to which they are allocated.
- 7.2 Except as expressly stated in this Agreement, no warranty, condition,

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- 8.4.6 loss of profit or business opportunity or goodwill;
- 8.4.7 loss of anticipated profit;
- 8.4.8 any indirect, consequential or other claims or damages, whether or not they were reasonably foreseeable or actually foreseen, arising from any act or omission of the Service Provider in connection with the performance of its obligations under this Agreement.
- 8.5 Except as provided in this Clause 8, the Service Provider shall be liable for personal injury, death and damage to tangible property, and for fraudulent misrepresentation, the Service Provider's liability to the Client under this Agreement or otherwise for any claim or damages in the form of the additional cost of remedial services, shall be limited to the greater of:
- 8.5.1 [the sum of the Service Provider carries comprehensive liability insurance covering the above; or]
- 8.5.2 a sum equivalent to the value of the hardware or other products that are the subject of the claim, up until the point of claim to the extent that the Service Provider's damages limited to 25% of the costs directly, reasonably and necessarily incurred in obtaining alternative products and/or services.
- 8.6 The Parties acknowledge that the limitations contained in this Clause 8 are reasonable in the circumstances.
- 8.7 These limitations shall apply regardless of the form of action, whether in contract or tort, including negligence, and shall apply regardless of the contract or tort, including negligence,
- 8.8 Nothing in this Agreement shall exclude or limit the Service Provider's liability for negligence, or for fraudulent misrepresentation by the Service Provider.
- 8.9 For the purposes of this Agreement, the 'Service Provider' includes its employees, sub-contractors and agents.
- 8.10 The employees, sub-contractors and agents of the Service Provider shall all have the benefit of the limitations of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999.
- 9. Termination**
- 9.1 The Service Provider shall have the right to terminate this Agreement in the event that:
- 9.1.1 The Client fails to pay the Fee to the Service Provider for a period exceeding 30 days and fails or refuses to do so following written notice from the Service Provider within 10 days; or
- 9.1.2 The Client does not form part of the Services Agreement and which are not part of the Services Agreement.
- 9.2 The Client shall be entitled to terminate this Agreement in the event that:
- 9.2.1 The Service Provider fails to perform the Services for more than << >> consecutive occasions within a period of 12 months to render the required

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- Hardware or parts, damaging the rent.

agreement immediately if the other:

agreement, unless such breach is
right to terminate immediately will
failed to remedy the breach within
; or

whether voluntary or compulsory (save in the case of corporate reconstruction or otherwise pointed in respect of the whole or

mitted by the Client, all payments due and immediately payable.

neither expressly or by their nature
on or expiration of this Agreement
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10. Confidentiality

provided by sub-Clause 10.2 or as it will, at all times during the >> years] after its termination, in er Party:

Information;

Information to any other person;

information for any purpose other than the terms of this Agreement;

any way or part with possession of
and

officers, employees, agents or by that Party, would be a breach .1 to 10.1.4 above.

1. *Journal of the American Medical Association*, 2000; 284: 2689-2695.

of the other Party to:

liar of the First Party;

authority or regulatory body; or

f the First Party or of any of the

for the purposes contemplated by
w, and in each case subject to the
in question that the Confidential
pt where the disclosure is to any
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y) obtaining and submitting to the
n the person in question, as nearly

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as practicable
Information
the disclosure

Clause, to keep the Confidential
only for the purposes for which

10.2.2 use any Confidential
disclose it to
this Agreement
knowledge to
the First Party
Information

the other Party for any purpose, or
extent only that it is at the date of
after that date becomes, public
Party, provided that in doing so
any part of that Confidential
edge.

10.3 The provisions of this Agreement
their terms, notwithstanding

continue in force in accordance with
of this Agreement for any reason.

11. Notices

11.1 All notices under this Agreement

writing.

11.2 Notices shall be deemed to be

given:

11.2.1 when delivered by hand,
recorded delivery,
or

or other messenger (including
business hours of the recipient;

11.2.2 when sent by email,
report or return receipt

and a successful transmission
or

11.2.3 on the fifth business day
ordinary mail

g mailing, if mailed by national

11.2.4 on the tenth business day
postage prepaid

g mailing, if mailed by airmail,

in each case addressed to the
to the other Party.

address or e-mail address notified

12. Relationship of Parties

Nothing in this Agreement shall be
relationship of principal and agent
Provider and the Client.

med to create, a partnership, the
and employee between the Service

13. Assignment

Neither Party shall assign, in whole
to any third party the benefit of this
consent of the other, such consent

or in any other manner make over
Agreement without the prior written
onably withheld.

14. Force Majeure

Neither Party to this Agreement shall
their obligations where such failure
reasonable control of that Party, including
failure, Internet Service Provider
storms, earthquakes, acts of God,
event, whether or not similar to
control of the Party in question

any failure or delay in performing
from any cause that is beyond the
ude, but are not limited to: power
al action, civil unrest, fire, flood,
governmental action or any other
ng, that is beyond the reasonable

15. Severance

The Parties agree that, if any provision
Agreement is found to be unenforceable

or more of the provisions of this
ise unenforceable by any court or

other authority, that / those of this Agreement, and that enforceable.

shall be severed from the remainder of this Agreement shall be valid and enforceable.

16. **Entire Agreement**

16.1 This Agreement constitutes the entire Agreement between the Parties and supersedes all oral or written agreements, understandings or representations made prior to the subject matter of this Agreement.

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16.2 Neither Party shall enter into any agreement, understanding or arrangement not in accordance with this Agreement, save for any representation made prior to the subject matter of this Agreement.

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16.3 Unless otherwise stated, this Agreement may be signed by the duly authorised representatives of the Parties.

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17. **No Waiver**

No failure or delay by the Parties in exercising any of its rights under this Agreement means that it has no waiver by the Service Provider of a breach of any provision of this Agreement and does not mean that it will waive any subsequent breach of the same.

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18. **Non-Exclusivity**

The relationship between the Parties is and shall remain non-exclusive. Both parties are free to enter into similar relationships with other parties.

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19. **[Dispute Resolution (ADR)]**

19.1 The parties shall attempt to resolve any dispute arising out of or relating to this Agreement through their appointed representatives who have the authority to bind the Parties.

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19.2 If negotiations under paragraph 19.1 fail, the parties will attempt to resolve the dispute in good faith through the use of the Alternative Dispute Resolution ("ADR") procedure.

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19.3 If the ADR procedure does not resolve the matter within 28 days of the date of receipt of a written request to participate in the ADR procedure, or if either party will not participate in the ADR procedure, the matter may be referred to arbitration by either party.

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19.4 The seat of the arbitration shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed by the parties. In the event that the parties are unable to agree on the Rules for Arbitration, either party may, upon giving written notice to the other party, apply to the President or Deputy President of the Chartered Institute of Arbitrators for the appointment of an arbitrator and for any decision on rules that may be required.

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19.5 Nothing in this Clause shall prevent either party or its affiliates from applying to a court for an injunction or other relief.

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19.6 The parties hereby agree that the outcome of the final method of dispute resolution shall be binding on them.

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[not] be final and binding on both

20. **Law and Jurisdiction**

20.1 This Agreement shall be governed by the laws of England and Wales.

20.2 Any dispute between the parties to this Agreement shall fall within the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS WHEREOF this Agreement has been executed and
before written

executed the day and year first

SIGNED by

<<Name and Title of person signing
for and on behalf of <<Client's Name

In the presence of
<<Name & Address of Witness>>

SIGNED by

<<Name and Title of person signing
for and on behalf of <<Service Provider

In the presence of
<<Name & Address of Witness>>

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Hardware

<<Insert Details of Hardware>>

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Sites

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