

DRIVE DEVILBISS HEALTHCARE LIMITED
MAINTENANCE TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in the maintenance Agreement.

Additional Services: any Emergency Maintenance and/or any Excluded Maintenance performed by the Supplier under the Agreement.

Additional Services Fees: the fees payable in consideration of the provision of any Additional Services, which shall be calculated at the rates set out in the SLA.

Additional Services Rates: the rates set out in the SLA.

Agreement: the agreement between the Supplier and the Customer (as set out in the SLA) for the Supplier to provide maintenance services to the Customer in relation to the Maintained Equipment.

Business Day: a day other than a Saturday, Sunday or public holiday in England.

Call-out Charge: the amount stated in the SLA which the Supplier shall be entitled to charge to the Customer in the circumstances set out in clause 5.3.

Charges: the Maintenance Fees and the Additional Services Fees together.

Commencement Date: the date specified in the SLA.

Conditions: these terms and conditions which shall apply to the Agreement.

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 Maintenance Services, who need to know the confidential information in question (Representatives) to the other party and that party's Representatives in connection with this 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:

- (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 2.3.

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) use of the Maintained Equipment with computer equipment or materials not supplied or approved in writing by the Supplier;
- (d) any maintenance, alteration, modification or adjustment performed by persons other than the Supplier or its employees or agents unless approved by the Supplier in accordance with clause 4(f);
- (e) the Customer or a third party moving the Maintained Equipment;
- (f) the use of the Maintained Equipment in breach of any of the provisions of the agreement under which the Maintained Equipment was supplied;
- (g) a failure, interruption or surge in the electrical power or its related infrastructure connected to the Maintained Equipment;
- (h) the neglect or misuse of the Maintained Equipment; or
- (i) any damage caused to the Maintained Equipment as a result of any deliberate or negligent act of the Customer or User.

Excluded Maintenance: 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

(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 2.4 and clause 2.5.

Fix Time: the applicable fix times as set out in the SLA.

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: a period of [12] months commencing on the Commencement Date.

Location: the location of the Maintained Equipment at the Customer's premises as detailed in the SLA, or any other location as may be agreed by the parties in writing from time to time.

Maintained Equipment: the equipment specified in the SLA.

Maintenance Services: Preventative Maintenance, Corrective Maintenance, and Emergency Maintenance of the Maintained Equipment.

Normal Business Hours: the hours set out in the SLA which will be on a Business Day.

Operating Manuals: all operating manuals, specifications and other manufacturer documentation relating to the Maintained Equipment.

Preventative Maintenance: means:

(a) testing that the Maintained Equipment is functional;

(b) making any adjustments as may be required to ensure the Maintained Equipment remains in Good Working Order,
(c) cleaning the Maintained Equipment
in accordance with clause 2.2.

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

Response Time: the applicable response times as set out in the SLA.

SLA: the service level agreement, or any other written agreement, between the Supplier and the Customer setting out the terms upon which the Supplier will provide the maintenance.

Standard Maintenance Fees: the fees payable by the Customer for the provision of the Maintenance Services, as set out in the SLA, as these fees are varied from time to time in accordance with the terms of the SLA.

Term: the Initial Period together with all Renewal Periods.

User: any individual who has the use or benefit of the Maintained Equipment, or any other patient or visitor who comes into contact with the Maintained Equipment.

1.2 Clause, Schedule and paragraph headings of these Conditions shall not affect the interpretation of the Agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and reference to a statute or statutory

provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

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

1.7 References to clauses are to the clauses of these Conditions.

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

1.9 If there is an inconsistency between any of the provisions in the Conditions and the SLA, the provisions in these Conditions shall prevail.

2. MAINTENANCE SERVICES

2.1 During the Term, the Supplier shall provide the Customer with the Maintenance Services for the Maintained Equipment at the Location.

2.2 The Supplier shall attend at the Location during Normal Business Hours at the frequency set out in the SLA to perform Preventative Maintenance of the Maintained Equipment. If the SLA should not determine the frequency the Supplier shall attend once in every twelve months, commencing with the Commencement Date.

2.3 On the Customer informing the Supplier that the Maintained Equipment is malfunctioning or has failed or is otherwise not in Good Working Order, the Supplier shall:

(a) use all reasonable endeavours to attend at the Location during Normal Business Hours within the relevant Response Time; and

(b) use all reasonable endeavours to perform Corrective Maintenance of the Maintained Equipment within the relevant Fix Time.

2.4 On the Customer informing the Supplier outside of Normal Business Hours that the Maintained Equipment is malfunctioning, has failed or is not in Good Working Order, the Supplier shall:

- (a) use all reasonable endeavours to attend at the Location within the relevant Response Time; and
- (b) use all reasonable endeavours to perform Emergency Maintenance of the Maintained Equipment within the relevant Fix Time.

2.5 Emergency Maintenance shall be charged at the Additional Services Rates for each of the Supplier's 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.

2.6 In performing the Maintenance Services, the Supplier shall use all reasonable endeavours to restore any malfunctioning or failed Maintained Equipment to Good Working Order while in attendance at the Location. Where this is not reasonably practicable, or not reasonably practicable within Normal Business Hours (in the case of Preventative Maintenance and Corrective Maintenance), the Supplier shall either arrange for a further visit to the Location within Normal Business Hours to complete the repair, or remove the Maintained Equipment or part of the Maintained Equipment for repair off-site.

2.7 The Supplier shall procure that its personnel shall, while on site at the Location, comply with the Customer's reasonable health and safety and security policies provided that these policies have been brought to the attention of its personnel.

3. REPLACEMENTS AND SPARE PARTS

3.1 In performing the Preventative Maintenance, Corrective Maintenance and the Additional Services, the Supplier shall use all reasonable endeavours to source spare parts required to restore the Maintained Equipment to Good Working Order. The Supplier shall have the right to charge the Customer for the spare parts.

3.2 All spare parts and/or replacements provided by the Supplier to the Customer shall become part of the Maintained Equipment, and

- (i) If the Maintained Equipment belongs to the Customer the spare parts and/or replacement parts shall become the property of the Customer. The Supplier will assign to the Customer, with full title guarantee and free from all third-party rights, all spare parts and/or replacements provided by the Supplier; or
- (ii) If the Maintained Equipment is on hire from the Supplier, the Supplier shall retain ownership of the spare parts and/or replacement parts.

3.3 All parts and components removed from the Maintained Equipment by the Supplier in the course of performing the Preventative Maintenance, Corrective Maintenance and/or the Additional Services shall no longer constitute part of the Maintained Equipment and will be the property of the Supplier. The Customer will assign to the Supplier, with full title guarantee and free from all third-party rights, all parts and components removed from the Maintained Equipment by the Supplier.

3.4 For the purposes of clauses 3.2 and 3.3, 'assign' includes 'transfer ownership of'.

4. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) ensure that the Maintained Equipment is installed and kept in the Location, and under suitable conditions, as specified in the SLA, permit only trained and competent personnel to use it and follow any operating instructions as the Supplier may give from time to time;
- (b) notify the Supplier promptly if the Maintained Equipment is discovered to be operating incorrectly;
- (c) at all reasonable times permit full and free access to the Location and to the Maintained Equipment to the Supplier, its employees, contractors and agents, and provide them with adequate and safe working space, required to enable the Supplier to perform the Maintenance Services and the Additional Services while at the Location;
- (d) provide the Supplier with any information that is reasonably requested in the performance of the Maintenance Services and the Additional Services;

- (e) take any steps reasonably necessary to ensure the safety of the Supplier's personnel when attending the Location;
- (f) not allow any person other than the Supplier to maintain, alter, modify or adjust the Maintained Equipment without the prior written approval of the Supplier;
- (g) not move the Maintained Equipment from the Location without the prior written approval of the Supplier (approval not to be unreasonably withheld or delayed);
- (h) only use supplies or materials supplied or approved by the Supplier (approval not to be unreasonably withheld or delayed);
- (i) provide the Supplier with written particulars of any contamination or other hazard including any safety hazard that has arisen in respect of the Maintained Equipment before or at the time that the Supplier or the Supplier's personnel attend at the Location to undertake the Maintenance Services sufficient to facilitate compliance by the Supplier with statutory and other reasonable requirements to make safe the Maintained Equipment, the contamination and any other hazard so that it may be maintained, repaired, removed, transported or otherwise dealt with by the Supplier as may be appropriate; and.
- (j) ensure that authorised and appropriate personnel are present at the Location at the time that the Supplier is to attend to undertake any of the Maintenance Services and that the same are able to provide the information set out in clause 4(i).

5. EXCLUDED MAINTENANCE

5.1 The Supplier is not obliged to perform any Excluded Maintenance.

5.2 Where the Supplier is performing or has performed the Maintenance Services in circumstances where it is established in the reasonable opinion of the Supplier or the Supplier's personnel that the Maintained Equipment was not in Good Working Order due to any of the Excluded Causes, the Supplier may charge, and the Customer shall pay, the Additional Services Fees in respect of that work.

5.3 Where the Supplier attends to perform the Maintenance Services (other than the Preventative Maintenance) and establishes in the Supplier's or the Supplier's personnel's reasonable opinion that the Maintained Equipment was in Good Working Order and that any problem with the same is as a result of the Customer's or User's

errors in operation then the Supplier shall be entitled to charge the Customer a Call-out Charge.

6. CHARGES

6.1 For the performance of Corrective Maintenance and Preventative Maintenance, the Customer shall pay to the Supplier the Standard Maintenance Fees.

6.2 For the performance of any Additional Services, the Customer shall pay to the Supplier the Additional Services Fees.

6.3 The Standard Maintenance Fees and the Additional Services Fees shall be inclusive of all expenses, other than those recoverable in accordance with clauses 3.1 and 5.3, and the Supplier shall be responsible for all costs and expenses incurred in providing the Maintenance Services (other than those recoverable in accordance with clauses 3.1 and 5.3).

6.4 The Standard Maintenance Fees shall be due and payable in full to the Supplier as set out in the SLA, within 30 days of the end of the month in which the Supplier submits a valid invoice. If the SLA should not contain any terms relating to the payment of the Standard Maintenance Fees, then the Supplier shall be entitled to invoice once a calendar month at one-twelfth of the Standard Maintenance Fee.

6.5 Any Additional Services Fees and any Call-out Charge shall be due and payable monthly, within 30 days of the end of the month in which the Supplier submits a valid invoice. receipt of a valid invoice. Any charges for spare parts recoverable in accordance with clause 3.1 shall be due within 30 days of the end of the month in which the Supplier submits a valid invoice.

6.6 If the Customer fails to make any payment due to the Supplier under this agreement by the due date for payment, then, without limiting the Supplier's remedies under clause 10, the Customer shall pay interest on the overdue amount at the rate of 3% per annum above National Westminster Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the

overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

6.7 All Charges are exclusive of VAT or any other applicable sales tax, which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.

7. SUPPLIER WARRANTIES

7.1 The Supplier represents and warrants to the Customer that:

- (a) the Maintenance Services and the Additional Services shall be performed:
 - (i) by an appropriate number of suitably qualified and experienced personnel;
 - (ii) using all reasonable skill and care; and
 - (iii) in accordance with all applicable laws and regulations in force from time to time.
- (b) all components and equipment supplied or used in the course of the provision of the Maintenance Services and the Additional Services shall operate in accordance with their technical specifications;
- (c) the Supplier has the full capacity and authority and all necessary permissions, licences and consents necessary to enter into, and perform its obligations under the Agreement.

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 satisfactory quality, fitness for purpose and suitability) are hereby excluded to the fullest extent permitted by law.

8. LIABILITY

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

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by negligence; or
- (c) 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 clauses 8.1, neither party shall be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

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

8.3 Provided the Customer has fully complied with its obligations under clause 4(i), the Customer shall have no liability to the Supplier in respect of the contamination of or other hazard relating to the Maintained Equipment.

8.4 If the Customer fails to provide full information pursuant to its obligations under clause 4(i), the Customer shall be liable for all losses, injuries or damage caused to the Supplier or the Supplier's personnel undertaking the Maintenance Services. For the avoidance of doubt, clauses 8.2 and 8.4 shall not apply in respect of such losses, injuries or damage caused.

8.4 Subject always to clauses 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 Agreement shall be limited to 100% of the total Charges paid by the Customer to the Supplier during the 12 month period immediately preceding the date on which the cause of action first arose.

9. CONFIDENTIALITY

9.1 The term Confidential Information does not include any information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) 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;

(d) was known to the receiving party before the information was disclosed to it by the disclosing party;

(e) the parties agree in writing is not confidential or may be disclosed; or

(f) 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:

(a) use any Confidential Information except for the purpose of exercising or performing its rights and obligations under the Agreement (Permitted Purpose); or

(b) 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:

(a) it informs those Representatives of the confidential nature of the Confidential Information before disclosure; and

(b) 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 this agreement, are granted to the other party, or are to be implied from the Agreement.

9.6 The above provisions of this clause 9 shall continue to apply after termination of this agreement.

10. TERM AND TERMINATION

10.1 The Agreement shall commence on the Commencement Date. Unless terminated earlier in accordance this clause 10, the Agreement shall continue for the Initial Period and shall automatically extend for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period. Either party may give 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 Agreement at the end of the Initial Period or the relevant Renewal Period, as the case may be.

10.2 Without prejudice to any rights that have accrued under the Agreement or any of its rights or remedies, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 14 days after being notified to make that payment;
- (b) the other party commits a material breach of any term of the Agreement (other than failure to pay any amounts due under the Agreement) and (if that breach is remediable) fails to remedy that breach within a period of 14 days after being notified to do so;
- (c) the other party:
 - (i) suspends, or threatens to suspend, payment of its debts;
 - (ii) is unable to pay its debts as they fall due or admits inability to pay its debts;
 - (iii) (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (iv) (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
 - (v) (being a partnership) has any partner to whom any of clause 10.2(c)(i) to clause 10.2(c)(iv) apply.

- (d) 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;
- (e) 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;
- (f) 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 that other party (being a company);
- (g) 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;
- (h) a person becomes entitled to appoint a receiver over the assets of that other party or a receiver is appointed over the assets of that other party;
- (i) a creditor or encumbrancer of that 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 that other party's assets and that attachment or process is not discharged within 14 days;
- (j) any event occurs or proceeding is taken with respect to that 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(i) (inclusive);
- (k) that other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (l) there is a change of control of that other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

10.3 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination of the Agreement shall remain in full force and effect.

10.4 Termination of the Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

10.5 On termination of the Agreement for any reason, the Customer shall immediately pay any outstanding amounts owed to the Supplier pursuant to the Agreement.

11. FORCE MAJEURE

Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 8 weeks], the party not affected may terminate this agreement by giving written notice to the affected party.

12. ASSIGNMENT

The Agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any of its rights and obligations under the Agreement without the prior written consent of the other party.

13. WAIVER

No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14. NOTICE

14.1 Any notice or other communication required to be given to a party under or in connection with the Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

14.2 Any notice or communication shall be deemed to have been received, on the next Business Day after transmission or after posting.

14.3 This clause 14 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, writing shall not include e-mail.

15. ENTIRE AGREEMENT

15.1 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

15.2 Each party acknowledges that in entering into the Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement.

15.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

16. VARIATION

No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. SEVERANCE

17.1 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

17.2 If any provision or part-provision of the Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

18. NO PARTNERSHIP OR AGENCY

18.1 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

18.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

19. THIRD-PARTY RIGHTS

No person other than a party to the Agreement shall have any rights to enforce any term of this agreement.

20. GOVERNING LAW

The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

21. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).