

**Extent of the Maintenance Agreement**

- 4.2 You shall be responsible for:
- 4.2.1 The cost of any maintenance or servicing of the Equipment, or repair or replacement of parts necessary due to your failure to comply fully with your obligations and your duties under this Agreement and as defined in clause 4.3, vandalism or theft, modifications or alterations to the Equipment which have not been approved or operation of the Equipment outside the terms of this Agreement.
- 4.2.2 Ensuring that any defects resulting from such failure to comply are corrected at your expense

**Your Duties**

- 4.3 You shall irrevocably agree to:-
- 4.3.1 Let us enter your premises to inspect, maintain and repair the Equipment in a suitable working environment;
- 4.3.2 Carry out at your own expense routine daily maintenance of the Equipment in accordance with the manufacturer's recommendations and ensure that the Equipment is in complete repair and working condition;
- 4.3.3 Keep the Equipment in a clean condition and free from debris or other material likely to affect normal operation;
- 4.3.4 Notify us immediately of any failure or reduction in the performance of the Equipment or any damage to it and stop using the Equipment if further damage is likely to occur;
- 4.3.5 Instruct us, unless otherwise agreed in writing, to repair all punctures and replace damaged or worn tyres, all at your expense, including those that in our opinion need replacement.
- 4.3.6 Where traction batteries are supplied, maintain the batteries and their chargers (at your own expense) in accordance with the manufacturer's recommendations, including installation, connection, charging, discharging and topping up; and
- 4.3.7 Carry out any other routine and periodical checks as specified by the manufacturer.

**Increase in Cost of Maintenance**

- 4.4 We reserve the right to increase the rentals payable under this Agreement by an equal amount to the equivalent increase in the Index of Retail Prices (all items) or 2.5%, whichever is the higher, since the date of this Agreement (or the date of the last increase under this clause if later) if the cost of performing our obligations has increased.
- 4.4.2 If we do so we will inform you in writing of the amount of the increase
- 4.4.3 This right will not be exercised more than once in each twelve month period.

**5.0 CONFIDENTIALITY**

Subject to sub-clause 8.2 below, each party shall treat as it does its own trade secret information, all information obtained from the other pursuant to the Agreement which is marked confidential or the equivalent or has the necessary quality of confidence about it.

**6.0 DEFAULT AND TERMINATION**

Upon any termination under this clause you shall pay to us immediately all amounts due under clause 7.

- 6.1 The occurrence of any of the following events shall be and shall be deemed to be a repudiatory breach of this Agreement by you:
- 6.1.1 If you are an individual and you die or have a petition for a bankruptcy order made or presented against you or you enter into a Voluntary Arrangement;
- 6.1.2 If you are a company and you have a winding up petition made or presented against you or you are placed in liquidation or if a receiver, receiver and manager, administrator or administrative receiver is appointed over all or any part of your undertaking or assets;
- 6.1.3 If you cease or threaten to cease to carry on your business or dispose of a substantial part thereof or of your assets (other than in the normal course of your trade) or you are unable to pay your debts as they fall due, all within the meaning of section 123 of the Insolvency Act 1986;
- 6.1.4 If you suffer any execution or distress against any of the Equipment;
- 6.1.5 If you fail to pay any rental(s) or instalment due under this Agreement within thirty days of the due date(s) for payment or you commit any breach of any other term or condition of this Agreement (and fail to remedy the same, if capable of remedy, within days of notice from us to do so);
- 6.1.6 If you are a company and in the event that your Ultimate Parent Company (the definition of ultimate parent company being the same as defined in the disclosure requirements of the Companies Act 1989, Section 6(2), Schedule 5 Part 1, subsection 12) changes from the Ultimate Parent Company disclosed in your latest audited accounts filed at Companies House prior to the date of this Agreement;
- 6.1.7 In our opinion, a material adverse change occurs in relation to your business; or
- 6.1.8 In our opinion, our right to title to the Equipment is at risk.
- 6.1.9 You agree the Agreement and the right to possession of the Equipment will terminate automatically upon the termination of any head lease agreement entered into between us as the owner and any Equipment lessor by reason of our insolvency or default in the terms of such head lease.
- 6.2 If you are treated as having repudiated this Agreement by the occurrence of any of the events referred to in clauses 6.1.2 and/or 6.1.3, this Agreement and the hiring of the Equipment thereunder shall terminate immediately and without notice to you. If you are treated as having repudiated this Agreement by the occurrence of any of the events referred to in clauses 6.1.4, 6.1.5, 6.1.6, 6.1.7, 6.1.8 and/or 6.1.9 we shall be permitted to terminate this Agreement forthwith upon notice to you.
- 6.3 Any termination of this Agreement and/or the hiring of the Equipment thereunder shall not be affected by any subsequent acceptance of any instalment of rentals, and upon any such termination your rights to the possession of the Equipment shall cease and we and/or our agents may without notice repossess the Equipment and for that purpose you irrevocably agree that we shall be entitled to enter any site or premises where the Equipment may be located.

**7.0 PAYMENTS ON TERMINATION**

On any termination of this Agreement you will immediately pay to us the aggregate of the Termination Sums referred to below.

- 7.1 All arrears of rentals and other sums;
- 7.2 If termination takes place during the MPH, by way of liquidated damages, all rentals which would but for termination have become due and payable from the date of termination up to the end of the MPH less a discount on each rental for accelerated payment at the rate of 3% per annum;
- 7.3 If the Equipment is not for any reason, returned or recovered by us in good condition and/or repair, a sum equal to any residual value investment that we have assumed in the Equipment as at the expiry of the MPH (such sum to be certified by us and to be binding in the absence of manifest error (the Residual Value));
- 7.4 If demanded, any costs incurred by us in repossessing, repairing, storing, insuring or selling the Equipment.

Your obligations under this clause will be treated as if they had arisen immediately before termination.

**8.0 GENERAL**

- 8.1 We will charge you for any losses we have to pay if you break the Agreement.
- 8.2 You agree that we may disclose details of this transaction with your consent and that we may refuse to enter into this Agreement without stating a reason. All personal information about you will be treated as private and confidential and we will only use and disclose information held about you (which may include information which is deemed sensitive under the Data Protection Act) and will not disclose any information to any other parties without your consent except in circumstances notified to you. You have a right to see personal information which is held by us. There is a charge if you want to do this. For more details write to us for the attention of The Data Protection Co-ordinator.
- 8.3 Any notices served hereunder shall be sufficiently served if sent by pre-paid letter post, or telex, or fax, or email to the usual or last known place of business of the addressee, and proof of dispatch shall be conclusive evidence of receipt by the addressee in the course of transmission.
- 8.4 If there are two or more of you, each of you is separately liable under this Agreement.
- 8.5 Although you may not assign this Agreement we may assign it and references to us shall include any such assignee.
- 8.6 Clause headings appear for ease of reference only and do not affect the construction of this Agreement.
- 8.7 This Agreement supersedes all prior agreements, arrangements and understandings between you and us and contains all the terms of the hiring agreed between you the customer and us. No variation, waiver or addition to the Agreement shall be effective unless recorded in writing and signed by or on behalf of both parties.
- 8.8 No agreement for hire and supply of services shall exist unless and until we accept a written acknowledgement of hire and confirmation in writing accepting our quotation.
- 8.9 In the event of our reasonably concluding that there has been a material alteration in the facts specified in any Rental Application Survey Report, or should the use of the Equipment change, we shall be entitled to increase the rentals payable under this Agreement in accordance with clause 4.4 herein.
- 8.10 You shall not in any circumstances or for any reason be entitled to make any deduction or withhold any sum from the rental by way of set-off or cross-claim or otherwise.
- 8.11 If any provision of the Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Agreement, and the remainder of the provisions in question, shall not be affected, and shall remain in full force and effect.
- 8.12 We may change the terms of the Agreement at any time by telling you about the change by written notice, giving 30 days prior to any change taking effect.

**9.0 LAW AND JURISDICTION**

- 9.1 The Agreement shall be governed by and construed in accordance with the laws of England and Wales.



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