

Service Maintenance Contract

Terms and Conditions of Contract



The Agreement shall become effective from the commencement date.

1. DEFINITIONS

“THE CUSTOMER” in relation to this contract means the party so defined at the front of this document forming part of the contract.
“TVC” shall mean TVC Monitoring, a division of LiftStore Ltd.
“THE EQUIPMENT” shall mean the items of hardware specified in the schedule at the front of this document.
“SOFTWARE” shall mean the bespoke software on the Central Management System, Alarm Monitoring System, Jupiter System or EMU Outstations.
“PRINCIPAL PERIOD OF MAINTENANCE” means the hours between 0830 and 1700 hours Monday to Friday inclusive but excluding weekends, public and bank holidays.
“THE INSTALLATION SITE” shall mean the location at which the parties have agreed that the equipment is to be installed.
“THE COMMENCEMENT DATE” shall mean the commencement date specified at the front of this document.
“THE EQUIPMENT INSTALLATION TEST” shall mean the standard set of checks and tests for the time being prescribed by TVC for the purpose of establishing that the Equipment has been installed/repaired and is working satisfactorily.

2. TERM OF AGREEMENT

This agreement shall have an initial term of one year for each item of the Equipment commencing from the Commencement Date and shall continue in effect from year to year thereafter until terminated by not less than 90 days written notice given by either party to the other such notice to expire on the expiry date of the initial term or any year thereafter.

3. CHARGES

3.1 Unless otherwise agreed all maintenance charges will be paid by the Customer in advance on the first day of the year to which the payments relates. The first payment will be due and payable on the Commencement Date. In the event of payment by the Customer of any annual maintenance charge or of any other payment being overdue or of any other failure by the Customer to comply with any of its obligations under the Agreement TVC shall be entitled at its sole discretion either to withhold TVC maintenance service on the Equipment until such time as the Customer is no longer indebted to TVC and/or has fulfilled its other obligations or to terminate this agreement pursuant to Clause 7 as the case may be, without prejudicing any other remedies which TVC may have.

3.2 This Agreement applies only to the maintenance of the Equipment and Software at the Installation Site. If the Equipment is to be transferred to any other location the Customer shall notify TVC in writing of the new address at least 30 days prior to any transfer occurring. If TVC reasonably consider that such transfer justifies a change in the terms of the Agreement, TVC shall be entitled to terminate this Agreement forthwith and will submit to the Customer details of the charges it proposed as the bases for new TVC hardware maintenance. Agreement in like form. All costs reasonably incurred by TVC in the transfer of the Equipment and its charges for the de-installation of the Equipment will be paid by the Customer upon being invoiced for the same by TVC.

3.3 The annual maintenance charge may be varied by TVC at renewal time upon giving to the Customer 30 days a written notice prior to any such alterations coming into effect or by way of invoice within 30 days of the annual renewal date.

4. MAINTENANCE SERVICE

4.1 Payment of annual maintenance charge shall entitle the Customer to TVC Maintenance Service on the Equipment during the Principal Period of Maintenance.

4.2 “TVC Maintenance Service” means subject to 4.3 below the inspection and maintenance of the Equipment, together with the carrying out of repairs and the supply and fitting of necessary replace parts by engineer of TVC or its authorised agents at the Installation Site in order to keep the Equipment in good working order.

4.3 TVC Maintenance Service does not include:-

- (a) Electrical work external to the Equipment.
- (b) Maintenance of accessories, commodities, attachment machines or other device not forming the Equipment.
- (c) Repair of damage arising from:-
 - (i) Transportation or relocation of the Equipment not approved by TVC.
 - (ii) Failure of electrical power air condition or humidity control.
 - (iii) Additions not performed by TVC.
- (d) Maintenance rendered more difficult because of changes alterations or additions other than changes alterations or additions made by TVC.
- (e) Equipment outside design specification or without documentation or manuals supplied with the Equipment.
- (f) Cleaning, painting, refinishing or touching up, specification changes, relocation of Equipment addition/removal of accessories attachments and other devices.
- (g) Repair of any malfunction due to radiation in the environment of the Equipment.
- (h) Diagnosis and/or rectification of problems not associated with the Equipment.
- (i) Diagnosis and/or rectification of problem arising from the operating environment.
- (j) Reconditioning of Equipment which cannot reasonably be carried out at the Installation Site if the item of Equipment has been subject of this or a like Agreement for a period of six years or more.
- (k) The repair or replacement of Equipment which has been deemed irreparable by TVC or its authorised agents due to the unavailability of spare parts or components whereby TVC has used all reasonable endeavours to procure such parts or components.
- (l) The rectification of failure resulting from:-
 - Misuse of the Equipment, deliberate or accidental damage to the Equipment or from an Act of God.
 - Failure of the Customer's electricity supply to conform to the relevant Board specifications from the main supply.
 - Failure by the customer to maintain the reasonable environmental conditions specified by the manufacturer of the Equipment or TVC.
 - Failure by the Customer to store stationery and magnetic media in accordance with the manufacturer of the Equipment of TVC instruction as given from time to time.
 - Failure by the Customer to keep the Equipment in the position in which it was installed.
 - The use of any of the Equipment in conjunction with any other equipment or supplies not provided by TVC unless such use of other equipment or supplies has previously been approved in writing by TVC. Such approval not to be unreasonably withheld or delayed.
 - The modification or repair of any of the Equipment which has not been carried out by or with the approval of TVC.
 - Electrostatic discharge through any Equipment arising in whole or in part from fabrics and material of the Installation Site.
 - Any failure of the Customer's telecommunications links to the Equipment which shall include without limitation any damage arising from the performance of the said links falling below the specification prescribed for that type of telecommunications link by the relevant telecommunications authority.
 - Any failure of hardware or software resulting from miscalculation of dates in the Year 2000 and beyond.
- (m) Equipment installed outside our recommended standards for installations to include cable specifications. This is applicable to our lift monitoring and autodialler products.

4.4 TVC will submit an estimate of its charges for replacement, repair or reconditioning of any Equipment in respect of the above and may carry out such work at the Customers expense if so authorised by the Customer.

4.5 If the Customer does not authorise the replacement, repair or reconditioning of any items of the Equipment as referred to in 4.4 hereof within 30 days of the date of submission of a TVC estimate for the same, TVC shall be entitled by written notice given at any time thereafter to the Customer, to exclude such items from the benefit of this agreement and shall thereupon make a reasonable reduction in the annual maintenance charge thereafter payable accordingly.

4.6 When replacement parts are fitted, the parts removed shall either become or remain the property of TVC or its agents as the case may be. The property in any replacement or additional part or parts fitted or supplied by TVC shall not pass to the Customer unless or until the property of the Equipment into which the parts have been fitted has so passed, pending which the Customer shall hold the same on the same basis and subject to the same restriction as it holds the Equipment.

4.7 Services outside the Principal Period of Maintenance (or any extended cover required by the Customer) may be provided by mutual agreement. TVC charges for the same will be calculated on a time basis in accordance with TVC then prevailing standard charges for such.

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5. MAINTENANCE

- 5.1 During the term of this Agreement the Customer shall:-
- 5.1.1 Permit and provide for TVC and its authorised agent's full and free access to the Equipment at all times during the Principal Period of Maintenance.
- 5.1.2 Neither perform nor cause, suffer or permit to be performed any maintenance adjustments or repairs to the Equipment by persons other than TVC or its authorised agents.
- 5.1.3 Notify TVC immediately it becomes aware that the Equipment is not operating properly via its call administration department.
- 5.1.4 Ensure that time is made available to TVC during the Principal Period of Maintenance for the purpose of the maintenance service.
- 5.1.5 Use the Equipment only by suitably trained operators and in a careful and proper manner and in accordance with the manufacturers of the Equipment. TVC or their authorised agents operation instructions or manuals.
- 5.1.6 Ensure that only such software and operating manuals supplied by the manufacturer of the Equipment or TVC are used with the Equipment.
- 5.1.7 Maintain in good order the Installation Site, the accommodation of the Equipment, the cables and fitting associated therewith and the electrical supply thereto.
- 5.1.8 Make freely available to TVC all documentation, media and software necessary for the efficient maintenance of the Equipment.
- 5.1.9 Ensure that no additional attachments, features or devices are employed or used with the Equipment and that no movement, change or alteration is made to the Equipment without the prior written approval of TVC in each case such approval not to be unreasonably withheld or delayed. If after giving such approval it subsequently appears to TVC that the maintenance of the Equipment is thereby being impaired, TVC may revoke such approval in which case the Customer shall forthwith and at its own expense effect the appropriate removal or alterations in strict accordance with the directions of TVC.

LIABILITY

6. TVC shall not be responsible or liable for any failure or delay or consequence thereof in the performance of any of its obligations under this Agreement owing to fire, strike, lockout, industrial dispute, flood, accident, delay in transport, shortage of fuel, neglect or default of any sub-contractor, inability to obtain materials, embargo, act, refusal of license, demand or requirement of any government or any government department or agency or any local authority or as a consequence of war or hostilities or armed conflict (whether war be declared or not) or any other cause whatsoever beyond TVC's reasonable control or the after effects of any of the foregoing, and whether the same take place or have effect in the United Kingdom or elsewhere. If any such delay occurs then (unless the cause thereof shall frustrate or render impossible or illegal the performance of the contract or shall otherwise discharge the same) the period for TVC to perform its obligations hereunder shall be extended by such period (not limited to the length of the delay as TVC may reasonably be required to complete such performance. To the extent that any of the above mentioned circumstances renders the performance of TVC obligations materially more expensive or onerous TVC may by notice in writing to the Customer terminate its outstanding obligations hereunder.
- 6.1 TVC will indemnify the Customer against any claim for or in respect of death or personal injury to any person if and the extent that is directly caused by the proven negligence (as defined under Section 1(1) of the Unfair Contract Terms Act 1977) of TVC.
- 6.2 TVC shall be liable up to a maximum of £5 million in the case of any one event or series of event in respect of damage caused by fire or explosion resulting from TVC proven negligence as so defined.
- 6.3 Except as otherwise expressly provided in this Agreement TVC will not under any circumstances whatsoever be liable for and the Customer shall indemnify and hold TVC harmless against any claim in respect of loss, injury or damage to property or persons directly or indirectly caused by or arising from the Customers negligence (including the use of any part of the Equipment otherwise than in accordance with the manufacturer of the Equipment, TVC or their authorised agents operating instructions or manuals) or by person not suitably trained or the Customers default (including any breach of non-compliance with any terms of this Agreement, any delay, any wrong information and any lack of required information) or the possession, operation, use or misuse, functioning or malfunction, or modification of any Equipment, software or other items supplied by TVC or their authorised agent.
- 6.4 In no event shall TVC or their authorised agents be liable in any circumstances for any loss of profits or contracts or for any indirect or consequential loss or damage suffered by the Customer howsoever arising.

7. TERMINATION

- In addition to the provisions for termination herein contained TVC may by notice in writing to the Customer terminate this Agreement forthwith if any of the following events occur.
- 7.1 If the Customer is in breach of any material term condition or provision of this Agreement or required by law including but not limited to non-payment, and (if capable of remedy) fails to remedy any such breach with 14 days after written notice from TVC.
- 7.2 If the Customer being a body corporate shall present a petition or have a petition presented by a creditor for its winding up or convene a meeting to pass a resolution for voluntary liquidation (other than for the purpose of reconstruction or amalgamation) shall call a meeting of its creditors, shall enter into any composition or arrangement with its creditors or shall have a receiver or administrative receiver or administrator appointed in respect of all or any of its undertaking or shall be deemed to be unable to pay its debts or shall cease to carry on business.
- 7.3 If the Customer being an individual shall die or being a firm/partnership shall be dissolved or determined or in any case shall commit in any act of bankruptcy or have a receiver or administrator appointed in respect of all or any of its undertaking or shall have a receiver or administrator appointed in respect of all or any of its undertaking or shall be deemed to be unable to pay its debts or shall cease to carry on business whensoever occurring the Customer shall pay to TVC all costs and expenses including legal and other fees incurred and all arrears of charges or other payments arising in respect of the Equipment under the Agreement.

8. GENERAL

- 8.1 Nothing in this Agreement shall cause the property in any Equipment or goods supplied to the Customer under this or any other Agreement between the parties to pass to the Customer where the property in such Equipment or goods has not so passed under the terms of such Agreement aforesaid.
- 8.2 The terms and conditions of this Agreement represents the entire Agreement between the parties. No change or modification, variation or waiver of the same or of any rights or obligations arising or have arisen hereunder shall be effective unless incorporated into a written document signed by a duly authorised office or employee of each of the parties and annexed hereto.
- 8.3 This Agreement and all rights and obligations hereunder shall for all purposes be treated and constructed as being separate and apart from any other agreement or agreements or any rights and obligations thereunder save only insofar as express provision requires to the contrary.
- 8.4 If any provision of this Agreement shall be held to be illegal or unenforceable, the enforceability of the remainder of this Agreement shall not be affected.
- 8.5.1 This Agreement or the benefit hereof may not be assigned by the Customer in whole or in part without the prior written approval of TVC such approval not to be unreasonably withheld or delayed.
- 8.6 This Agreement is made in and shall be governed by the laws of England and Wales.