



Terms and conditions of our hardware and support contract

MAINTENANCE CONTRACT

Index of clauses

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THIS AGREEMENT is made the _____ day of _____ 20__
BETWEEN

(1) Aytel Systems Ltd. whose registered office is at 1st Floor, 113-116 Bute Street, Cardiff Bay, CF10 5AD (“Aytel Systems Ltd”)

(2) _____ of _____ (“User”)

NOW IT IS AGREED as follows:

1. DEFINITIONS

In this Agreement, unless inconsistent with the context or otherwise specified the following definitions will apply:

- 1.1 ‘Additional Call Out Fee’ means the hourly rate charged by Aytel Systems Ltd for Additional Services during Normal Support Hours as specified in Schedule B part II and amended from time to time in accordance with clause 4.5
- 1.2 ‘Additional Services’ means any Maintenance and Support Services provided by Aytel Systems Ltd in relation to the Equipment and Supported Software requested by the User from time to time in addition to the Standard Services as more particularly described in Schedule A part III
- 1.3 ‘Annual Support Fee’ means the cost of the Standard Services per item of Equipment or Supported Software as specified in Schedule B part I and amended from time to time in accordance with clause 4.5
- 1.4 ‘Basic Service’ means a next day response to User’s requests for Additional Services but only during Normal Office Hours
- 1.5 ‘Commencement Date’ means the date of this Agreement.
- 1.6 ‘Confidential Information’ means the information relating to the Supported Software and all other copyright and intellectual property rights contained in the Supported Software
- 1.7 ‘Equipment’ means the computer hardware equipment which Aytel Systems Ltd has agreed to maintain for the User and specified in Schedule B
- 1.8 ‘the Location’ means the Users premises where the Equipment or the Supported Software is installed
- 1.9 ‘Maintenance and Support Services’ means the computer and network maintenance services to be provided by Aytel Systems Ltd in relation to the Equipment and Supported Software as outlined in Schedule A part I
- 1.10 ‘the Normal Support Hours’ means from Monday through to Friday and from 0900 to 1730 (excluding national holidays).
- 1.11 ‘Premium Rate’ means the hourly rate charged by Aytel Systems Ltd for Additional Services outside Normal Support Hours as specified in Schedule B part III and amended from time to time in accordance with clause 4.5



- 1.12 'Quick Service' means a response within 4 – 8 hours of the User's request for Additional Services but only during Normal Office Hours
- 1.13 'Standard Services' means the provision of Maintenance and Support Services as outlined in Schedule A part II.
- 1.14 'Supported Software' means the software as set out in Schedule B together with any releases or enhancements of Supported Software that are being made available to the User during the duration of this Agreement

2. SERVICES TO BE PROVIDED

- 2.1 Aytel Systems Ltd hereby agrees to provide Standard Services to the User by way of technical support for the use of Supported Software and the Equipment in accordance with the terms and conditions of this Agreement in consideration of the Annual Support Fee.
- 2.2 Aytel Systems Ltd shall in addition upon request by the User provide Additional Services which will be rendered either on the basis of Quick Service or Basic Service as indicated in Schedule A part III and charged at the Additional Rate or the Premium Rate as the case may be.
- 2.3 For the avoidance of doubt the Standard Services and Additional Services do not include training in respect of the use of the Supported Software and/or Equipment, but Aytel Systems Ltd can at the request of the User provide such training at such place and such times and at such hourly rates as agreed in writing between Aytel Systems Ltd and the User.

3. TERM

- 3.1 This Agreement shall commence on the Commencement Date and shall remain in force for one year and thereafter unless and until terminated in accordance with any of the provisions of clause 6

4. PAYMENT

- 4.1 The User shall pay the Annual Support Fee in respect of the Standard Services applicable (being non-refundable) in full on the date of this Agreement or, if so agreed in writing by the parties, in four equal quarterly instalments the first instalment being payable on the date of this Agreement.
- 4.2 Any Additional Call Out Fee or Premium Rate or any other charges payable by the User for Additional Services pursuant to this Agreement shall become due and payable within 7 days after the receipt by the User of Aytel Systems Ltd's invoice in respect thereof.



- 4.3 The Annual Support Fee and other charges payable under clause 3.2 of this Agreement are exclusive of VAT, which shall be payable by the User at the rate and in the same manner for the time being prescribed by law against submission of a valid tax invoice.
- 4.4 Aytel Systems Ltd shall have the right to charge interest on overdue invoices at the rate of 4% per annum above the base rate of Natwest bank accruing at a daily rate calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment, whether before or after judgment.
- 4.5 Aytel Systems Ltd shall be entitled to review and increase the Annual Support Fee, Additional Call Out Fee and Premium Rate on an annual basis in accordance with Aytel Systems Ltd's standard scale of charges by giving to the User not less than 90 days' prior written notice such notice to expire on the following anniversary of the Commencement Date.

5. LIMITATION ON LIABILITY

- 5.1 Nothing in this Agreement shall limit or exclude Aytel Systems Ltd's liability for fraud or for death or personal injury resulting from negligence, or to the extent otherwise not permitted by law
- 5.2 Subject to clause 4.1 Aytel Systems Ltd shall be liable for direct loss or damage to the User arising out of or in connection with any breach of Aytel Systems Ltd obligations hereunder (but not otherwise) provided that:-
- 5.3 Aytel Systems Ltd shall have no liability under or in connection with this Agreement in respect of loss of profits, loss of revenue, loss of contract, loss of goodwill, loss of anticipated savings, loss of value of any Equipment or Supported Software, wasted management or other time or any indirect or consequential loss howsoever arising (including without limitation by reason of misrepresentation (whether made prior to or in this Agreement), negligence, breach of Statutory duty, other tort or breach of contract) and irrespective of whether Aytel Systems Ltd had been advised, knew or should have known of the possibility of such loss
- 5.4 Aytel Systems Ltd's total aggregate liability in any 12 month period for breach of Aytel Systems Ltd's obligations to provide services pursuant to Clause 1 of this Agreement shall not in any circumstances exceed an amount equal to the Annual Support Fee
- 5.5 Aytel Systems Ltd will not be liable for any delay in performing any of its obligations under this agreement if such delay is caused by the User or it is agreed by the User to be due to circumstances beyond the reasonable control of Aytel Systems Ltd.



6. USERS OBLIGATIONS

6.1 During the term of this Agreement the User shall:

- 6.1.1 operate the Supported Software, maintain data and databases in accordance with the instructions and advice given by Aytel Systems Ltd;
- 6.1.2 provide their staff with adequate training on the efficient use of the Equipment and Supported Software
- 6.1.3 not adapt, alter, amend, modify, reverse engineer, decompile, disassemble or decode the Supported Software or translate the Supported Software into another language or write or derive any program from the Supported Software;
- 6.1.4 keep the Equipment in good working condition;
- 6.1.5 during Normal Support Hours or upon request by the User outside Normal Support Hours grant access to the User's premises and/or systems at all times for Standard Services or Additional Services and to inspect the User's performance of the User's obligations under this Agreement;
- 6.1.6 make Equipment accessible to Aytel Systems Ltd's support staff, and when required enable logons/passwords required for such support staff (who will have their own logons) and all general and technical information, data and personnel as may be normally required by Aytel Systems Ltd to fulfil its obligations under this agreement ;
- 6.1.7 permit Aytel Systems Ltd to install the current version of Supported Software from time-to-time and when upgrades or fixes occur, to provide a reasonable level of assistance in implementation and testing;
- 6.1.8 provide notice of intention to change hardware or operating system or data-feeds in the Equipment.
- 6.1.9 provide Aytel Systems Ltd with reasonable direct and remote access to the User's Equipment and the Supported Software, and provide such reasonable assistance as the User may request, including, but not limited to, providing sample output and other diagnostic information.
- 6.1.10 ensure that all persons allowed to access to the Supported Software by the User will comply with the terms and conditions of this Agreement and any act or omission by any such user, which if it had been committed or omitted by the User would be in breach of this Agreement, will be deemed to be in breach of this Agreement by the User.
- 6.1.11 The User will effect and maintain adequate security measures to safeguard the Supported Software and Equipment from theft, or access by any person other than:-
- 6.1.12 Employees of the User in the normal course of their employment; and
- 6.1.13 any other persons properly instructed by the User in the normal course of the User's business
- 6.1.14 comply at all times with its obligations (if any) under the Data Protection Act 1988 and any subsequent enactment



7. TERMINATION

- 7.1.1 The term of this Agreement shall be for a period from the Commencement Date until the day before the anniversary of the Commencement Date and thereafter until terminated by either party serving not less than 60 days notice in writing such notice to expire on the day before the following anniversary of the Commencement Date.
- 7.1.2 Without prejudice to any other rights Aytel Systems Ltd may forthwith suspend or withdraw its performance under or terminate this Agreement at its absolute discretion if the User fails to comply with the terms and conditions of this Agreement or if the User is subject to an order for bankruptcy or in the event that the User is a company and shall have a receiver, manager, administrator, administrative receiver or liquidator appointed or shall pass a resolution for winding up (otherwise than for the purpose of amalgamation or reconstruction) or a court shall make an order to that effect or the User shall enter into any composition or arrangement with its creditors
- 7.1.3 Either party may (without prejudice to its other rights) terminate this Agreement by notice in writing (such termination to take effect either forthwith or at a date specified in such notice) to the other if the other party is in material breach of this Agreement and shall have failed either to remedy the breach or, in the case of an irremediable breach, to pay reasonable compensation to the party not in breach, in either case within 30 days of the receipt of a request in writing from the party not in breach to remedy the breach or pay reasonable compensation. Unless such request is a letter from Aytel Systems Ltd relating to the late payment of fees, any such request shall indicate that failure to remedy the breach or pay reasonable compensation may result in the termination of this agreement.
- 7.1.4 In the event of termination the User must pay to Aytel Systems Ltd all outstanding charges incurred prior to the date of termination and all costs incurred by Aytel Systems Ltd for materials, third party services and any other costs incurred at the request of the User.

8. WARRANTY

- 8.1.1 Aytel Systems Ltd warrants to the User that all services supplied under this Agreement will be carried out with reasonable care and skill by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated.



- 8.1.2 Except as expressly provided in this Agreement, no warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the satisfactory quality, fitness for purpose, or ability to achieve a particular result of the Supported Software is given or assumed by the Aytel Systems Ltd, and all such warranties, conditions, undertakings and terms are hereby excluded.
- 8.1.3 Aytel Systems Ltd does not warrant that all errors can and will be corrected. Aytel Systems Ltd shall use its reasonable endeavours to correct errors in the Supported Software and networking, so long as the errors are repeatable by Aytel Systems Ltd, or to provide a software patch or to bypass around such errors.
- 8.1.4 The User must promptly notify the Aytel Systems Ltd of any non-conformance to the above warranties and in any event within three months.

9. CONFIDENTIAL INFORMATION

- 9.1.1 The User undertakes to treat as confidential and keep secret the terms of this Agreement and all Confidential Information.
- 9.1.2 The User shall not, without the prior written consent of Aytel Systems Ltd divulge, any part of the Confidential Information to any person except:
 - 9.1.2.1 the User's own employees and then only to those employees who need to know the same;
 - 9.1.2.2 the User's auditors, HM Inspector of Taxes, HM Customs and Excise and any other persons or bodies having a right, duty or obligation to know the business of the User, and then only in pursuance of such right, duty or obligation;
- 9.1.3 The User undertakes to ensure that persons and bodies mentioned in clause 8.2 are made aware, prior to the disclosure of any part of the Confidential Information, that the same is confidential, and that they owe a duty of confidence to Aytel Systems Ltd. The User shall indemnify Aytel Systems Ltd against any loss or damage which Aytel Systems Ltd may sustain or incur as a result of the User failing to comply with such undertaking.
- 9.1.4 The User shall promptly notify Aytel Systems Ltd if it becomes aware of any breach of confidence by any person to whom the User divulges all or any part of the Confidential Information and shall give Aytel Systems Ltd all reasonable assistance in connection with any proceedings which Aytel Systems Ltd may institute against such person for breach of confidence.
- 9.1.5 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement.



10. INTERPRETATION

In this Agreement unless the context otherwise requires:

- 10.1 words importing any gender include every gender;
- 10.2 words importing the singular number include the plural number and vice versa;
- 10.3 words importing persons include firms, companies and corporations and vice versa;
- 10.4 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;
- 10.5 reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- 10.6 the headings to the clauses, schedules and paragraphs of this Agreement will not affect the interpretation;
- 10.7 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- 10.8 any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done respectively;
- 10.9 any party who agrees to do something will be deemed to fulfil that obligation if that party procures that it is done.

11. AMENDMENTS

This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties to this agreement.

12. ASSIGNMENT

This Agreement is personal to the parties. Aytel Systems Ltd shall be entitled to assign the benefit of this agreement at its discretion but the User may not assign any of his rights, licenses or obligations under this agreement without the prior written approval of the other party.



13. ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this agreement. However, the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect insofar as there is no conflict between the same. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

14. FORCE MAJEURE

Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party. If such circumstances continue for a continuous period of more than 6 months, either party may terminate this Agreement by written notice to the other party.

15. NOTICES

15.1 Any notice to be given under this Agreement shall be in writing and shall be sent by first class mail or air mail, or by fax (confirmed by first class mail or air mail), to the address of the relevant party set out at the head of this Agreement or such other address as that party may from time to time notify to the other party in accordance with this clause 15

15.2 Notices sent as above shall be deemed to have been received three working days after the day of posting (in the case of inland first class mail), or seven working days after the date of posting (in the case of air mail), or on the next working day after transmission (in the case of fax messages, but only if a transmission report is generated by the sender's fax machine, recording a message from the recipient's fax machine, confirming that the fax was sent to

15.3 the number indicated above and confirming that all pages were successfully transmitted).

15.4 In proving the giving of a notice, it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and despatched, and despatch of the transmission was confirmed and/or acknowledged as the case may be.



16. SCHEDULES

The provisions of the schedules to this Agreement shall form part of this Agreement as if set out here.

17. SUCCESSORS AND ASSIGNEES

- 17.1 This agreement shall be binding upon, and enure to the benefit of, the parties and their respective successors and permitted assignees, and references to a party in this Agreement shall include its successors and permitted assignees.
- 17.2 In this Agreement references to a party include references to a person:
- 17.2.1 who for the time being is entitled (by assignment, novation or otherwise) to that party's rights under this Agreement (or any interest in those rights); or
 - 17.2.2 who, as administrator, liquidator or otherwise, is entitled to exercise those rights;
 - 17.2.3 and in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that party. For this purpose, references to a party's rights under this Agreement include any similar rights to which another person becomes entitled as a result of a novation of this Agreement.

18. WAIVER

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement. No right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

19. COUNTERPARTS

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

20. THIRD PARTIES



The parties confirm their intent not to confer any rights on any third parties by virtue of this Agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

Aytel Systems Ltd

www.aytel.co.uk · email: info@aytel.co.uk · Tel: 029 20 655 655 · Fax: 029 20 473 000

21. PROPER LAW AND JURISDICTION

This Agreement and all matters arising from it and any dispute resolutions referred to below shall be governed by and construed in accordance with English Law notwithstanding the conflict of law provisions and other mandatory legal provisions

IN WITNESS whereof the parties have duly executed this Agreement on the date shown on the first page of this Agreement





Schedule A

Part I

Maintenance and Support Services

1. Aytel Systems Ltd will maintain the Equipment and Supported Software and networking administration and support including but not limited to analysis, coding, testing and release of corrections to faults on the Supported Software
2. Aytel Systems Ltd will endeavour to monitor poor network performance of the network,
3. Aytel Systems Ltd will endeavour to monitor the server requirements of the User and will provide the User with the necessary installation that Cynphil recommends for the satisfactory performance of the Supported Software
4. Aytel Systems Ltd will be responsible for the setting up of internet connections
5. Aytel Systems Ltd will monitor the performance of each piece of Equipment and the Supported Software
6. For the correction of critical errors or in the assistance to overcome specific Supported Software problems, Aytel Systems Ltd may, in its sole discretion, correct errors by 'patch' or by new version.
7. Aytel Systems Ltd shall provide information on availability of new versions of Supported Software [and install any such upgrades and new versions]

Part II

Standard Services

1. The User will receive monthly visits by a qualified engineer of Aytel Systems Ltd to undertake a check up on-site of the Equipment, Supported Software and network in order to provide Maintenance and Support Services



Part III

Additional Services

1. For an urgent problem, the User can telephone, email or fax Aytel Systems Ltd Hotline support which is available during the Normal Support Hours. An urgent problem is degradation or failure of the Supported Software, Equipment or network.
2. Aytel Systems Ltd will endeavour to solve troubleshooting network problems by way of hotline support as outlined above in the first instance. If this proves inadequate, a site visit will be arranged
3. Out-of-Hours support shall be provided if so requested by the User, but at the discretion of Aytel Systems Ltd.
4. When appropriate, Aytel Systems Ltd will endeavour to give an estimate of how long a problem may take to resolve. Aytel Systems Ltd will keep the User informed of the progress of problem resolution. Aytel Systems Ltd's support staff will attempt to solve a problem immediately, or as soon thereafter as possible.
5. The response time for Additional Services is



Schedule B

EQUIPMENT ANNUAL SUPPORT FEE

OTHER ANNUAL SUPPORT FEE

TOTAL ANNUAL SUPPORT FEE:

ADDITIONAL CALL OUT FEE:

PREMIUM RATE:

SIGNED ON BEHALF OF Aytel Systems Ltd

Name.....

Title.....

SIGNED ON BEHALF OF THE USER

Name.....

Title.....