

DATE: 02/06/2021

BACKGROUND

Microminder has agreed to provide IT Support for the customer's equipment on the terms set out in this agreement.

AGREED TERMS

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Business day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: the fees payable by the customer for the provision of the maintenance services, as set out in Section 4 (IT Support) of the Order, as these fees are varied from time to time in accordance with the terms of this agreement.

Commencement date: the date specified on the Order.

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.

Customer: the person, firm or company whose details appear in Section 1 of the Order.

Excluded causes: means:

- (a) A defect in the manufacturer's design of the equipment;
- (b) Faulty materials or workmanship in the manufacture of the equipment;
- (c) Use of the equipment with computer equipment or materials not supplied or approved in writing by Microminder;
- (d) Any maintenance, alteration, modification or adjustment performed by persons other than Microminder or its employees or agents unless approved by Microminder in accordance with clause 8.1(f);
- (e) The customer or a third party moving the equipment;
- (f) The use of the equipment in breach of any of the provisions of the agreement under which the equipment was supplied;

- (g) A failure, interruption or surge in the electrical power or its related infrastructure connected to the equipment;
- (h) A failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the equipment, or an error or omission in the correct use of that air conditioning or other environmental controls by the customer; or
- (i) The neglect or misuse of the equipment.

Exclusions: any support 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.

Good working order: the equipment operates in accordance with the operating manuals.

Location: the location of the equipment at the customer's premises as specified in Section 2 of the Order, or any other location as may be agreed by the parties in writing from time to time.

Equipment: the equipment referred to in clause 4.

Support Services: means either the "Standard" or "Premium" service plan set out in Section 5 (IT Support) of the Order as selected by the customer.

Microminder: Microminder Ltd (registered with company number 01831793).

Operating manuals: all operating manuals, specifications and other manufacturer documentation relating to the equipment.

Service & Support Information: the document set out in schedule [1].

Term: the term referred to in clause 3.

- 1.2 Clause, schedule and headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to writing or written includes faxes and e-mail.
- 1.11 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.12 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.
- 1.13 If there is an inconsistency between any of the provisions in the main body of this agreement and the schedules, the provisions in the main body of this agreement shall prevail.
2. Support Services
- 2.1 Microminder shall provide the support services as more particularly described in clause 6, in respect of the equipment, during the hours specified pursuant to clause 5 provided that the customer pays the charges on time and meets its other obligations under this agreement and subject to the terms and conditions set out in this agreement.
3. Term
- 3.1 This agreement shall commence on the commencement date for an initial term of three (3) months (initial period).
- 3.2 The agreement shall thereafter automatically extend after the initial term for successive periods of one calendar month unless either the customer or Microminder gives to the other 30 days written notice to terminate the agreement or the agreement is terminated pursuant to clause 14.

3.3 For the avoidance of doubt, until notice is given the agreement will continue and the customer will be liable for the charges.

4. Equipment Covered

4.1 The equipment initially covered by this agreement is listed in Section 5 of the Order.

4.2 Microminder will send to the customer a copy of the schedule of equipment covered (Equipment Schedule) when the customer wishes either to add or remove items of equipment from cover. The customer should check the Equipment Schedule carefully to ensure that it is accurate, as Microminder shall charge fees, in addition to the charges, at Microminder's then current standard time and materials charging rates for any item of equipment for which the customer has requested service that is not included in the Equipment Schedule.

4.3 If the customer wishes to include an additional item of equipment supported, it shall notify Microminder in writing of that fact. Microminder shall add it to the Equipment Schedule after an inspection (inspection) of such equipment and the customer shall pay Microminder's cost of the inspection. If the inspection reveals any problems, these will need to be rectified on a chargeable basis before the equipment will be accepted by Microminder and added to the equipment schedule.

4.4 Microminder may, in its sole discretion, remove any item from the Equipment Schedule if, in Microminder's reasonable opinion, the item of equipment is no longer economic to support or spare parts for the item of equipment are no longer available.

5. Hours

5.1 Microminder will provide the support services during its stated hours of support, and will send an engineer to the customer's premises within the response time, as set out in the Service & Support Information.

5.2 If Microminder agrees to provide its support services outside the hours set out in the Service & Support Information, it may charge the customer for the provision of those services at its then current charging rates.

6. Services Provided

6.1 Microminder will provide the following support services:

- (a) Microminder shall respond to a request for Technical Support be that by Telephone, "Chat" Facility or Dashboard Alert.
- (b) Microminder will, in the first instance conduct a telephone and remote dial-in assessment of the symptoms/issues experienced within the response time set out on the Service & Support Information, to diagnose the problem with the equipment, and will notify the customer of the problem and whether it is covered by this agreement.
- (c) If possible, Microminder will resolve the issue remotely. Where this has not been possible and at Microminder's sole discretion they will deploy an engineer to the customer's site to continue with diagnosis and resolution.
- (d) Microminder will send an engineer to the customer's premises within the response time set out on the Service & Support Information, to diagnose the problem with the equipment, and will notify the customer of the problem and whether it is covered by this agreement.
- (e) If possible, Microminder will repair the equipment and fit replacement parts where necessary, at the customer's premises.
- (f) If it is not possible to repair the equipment on the customer's premises, then Microminder, at its option, may choose to either repair the equipment at its own premises or replace the equipment with equipment of an equivalent specification. If this is necessary, Microminder will advise the customer of its estimate of the time it will take to repair or replace the equipment, and will keep the customer informed as to its progress. If the customer's file server requires repair or replacement, Microminder will, within one working day of being notified of the fault either complete the repair or replacement of the equipment, or alternatively lend to the customer a file server until the repair or replacement is completed.
- (g) In the event that repairs or replacement of the equipment is excluded for any reason under this agreement, Microminder will notify the customer immediately of that fact and if possible provide an estimate as to how much it will cost to repair or replace the equipment. If the customer wishes Microminder to proceed, Microminder will carry out the necessary repairs or replacement and will invoice the customer accordingly.

7. Exclusions

7.1 Microminder is not obliged to perform any support where exclusions apply.

7.2 Where Microminder is performing or has performed the support services in circumstances where it is established that the equipment was not in good working order due to any of the excluded causes, Microminder may charge and the customer shall pay Microminder's additional fees in respect of that work.

8. Customer's Obligations

8.1 The customer shall:

- (a) Ensure that the equipment is installed and kept in suitable premises and under suitable conditions, as specified in the agreement under which the equipment was supplied or the operating manuals, permit only trained and competent personnel to use it and follow any operating instructions as Microminder may give from time to time;
- (b) Notify Microminder promptly if the equipment is discovered to be operating incorrectly;
- (c) At all reasonable times permit full and free access to the location and to the equipment to Microminder, its employees, contractors and agents, and provide them with adequate and safe working space, and any telecommunications facilities as are reasonably required to enable Microminder to perform the maintenance services while at the location;
- (d) Provide Microminder with any information that is reasonably requested in the performance of the maintenance services;
- (e) Take any steps reasonably necessary to ensure the safety of Microminder's personnel when attending the location and in particular to notify Microminder's personnel of all health & safety and security policies;
- (f) Not allow any person other than Microminder to maintain, alter, modify or adjust the equipment without the prior written approval of Microminder;
- (g) Not move the equipment from the location without the prior written approval of Microminder;
- (h) Only use supplies or materials supplied or approved by Microminder (approval not to be unreasonably withheld or delayed).

9. Charges

9.1 The charges for the support services payable in respect of each item of equipment are set out in Section 5 of the Order.

9.2 Microminder shall not be entitled to increase the support charges during the period of twelve (12) months from the commencement date. After the first anniversary of the commencement date, if Microminder proposes to increase the charges, it shall give not less than 30 days prior notice of increase, then, notwithstanding the provisions of clause 3, the customer shall be entitled to terminate this agreement by giving written notice to terminate to Microminder within 30 days of receipt of such notice.

- 9.3 The charges shall include the travel, accommodation and subsistence expenses in Great Britain of Microminder's employees (including the cost of time spent travelling) incurred in the provision of the support services.
- 9.4 Where customer's locations are outside of Mainland UK, Northern Ireland or Republic of Ireland, Microminder reserves the right to charge for exceptional travel costs, including but not limited to, flight or ferry costs; also charge for additional allocated service time due to travel schedules dictated by other travel operators/services where those sites are situated outside Mainland UK, Northern Ireland and Republic of Ireland.
- 9.5 The charges shall not include the cost of any services provide pursuant to clause 7, which shall be charged additionally.
- 9.6 If any requested attendance at a location is, in Microminder's reasonable opinion, considered to be unwarranted, then Microminder may make a charge for the time (including travelling time and expenses) as a result of the call.
- 9.7 The charges shall generally be levied monthly in advance by Microminder and paid by the customer by direct debit.
- 9.8 Customer's may choose to make a payment in advance for longer periods f time.
- 9.9 If the customer fails to make any payment due to Microminder under this agreement by the due date for payment, then, without limiting Microminder's remedies whether under this agreement or otherwise, the customer shall pay interest on the overdue amount at the rate of 8% per annum above the Royal Bank of Scotland'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.
- 9.10 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.
- 9.11 Microminder reserves the right to withhold the provision of maintenance services until the customer has paid all outstanding invoices in full.

10. Microminder Warranties

10.1 Microminder represents and warrants to the customer that:

- (a) The maintenance 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) The customer shall have a free and unencumbered title to any replacement parts for the equipment supplied hereunder;
- (c) The customer shall enjoy quiet possession of any such replacement parts and that these will be of satisfactory quality and reasonably fit for their purpose; and
- (d) Microminder has the full capacity and authority and all necessary permissions, licences and consents necessary to enter into, and perform its obligations under, this agreement.

10.2 Microminder does not warrant that the services provided hereunder will cause the equipment to operate without interruption or error.

10.3 Except as expressly stated in this agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including fitness for purpose and suitability) are hereby excluded to the extent permitted by law.

11. Liability

11.1 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.

11.2 Subject always to clause 11, neither party shall be liable whether in contract, tort (including for negligence and 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) Loss or corruption (whether direct or indirect) of data or information; or

- (c) Any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement.

11.3 Subject always to clause 11, 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 this agreement shall be limited to the greater of:

- (a) £500; and
- (b) 50% of the total charges paid by the customer to Microminder during the 12 month period immediately preceding the date on which the cause of action first arose.

12. Confidentiality

12.1 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.

12.2 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 this 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.

- 12.3 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 Error! Reference source not found..
- 12.4 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.
- 12.5 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 this agreement.
- 12.6 The provisions of this clause Error! Reference source not found. shall continue to apply after termination of this agreement.
13. Health & Safety
- 13.1 Microminder 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.
14. Termination
- 14.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- (a) The other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make that payment;
 - (b) The other party commits a material breach of any material term of this agreement (other than failure to pay any amounts due under this agreement) and (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing 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 14.1(c)(i) to clause 14.1(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 the 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 the other party or a receiver is appointed over the assets of the other party;
- (i) A creditor or encumbrancer of the 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 the 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 the 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 14.1(c) to clause 14.1(i) (inclusive);

- (k) The 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 the other party (within the meaning of section 1124 of the corporation tax act 2010).
- 14.2 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.
- 14.3 Termination of this 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.
- 14.4 On termination of this agreement for any reason, each party shall as soon as reasonably practicable:
 - (a) Return or destroy (as directed in writing by the other party) any documents, handbooks, cd-roms or dvds or other information provided to it by the other party or data for the purposes of this agreement, including all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's confidential information. If required by the other party, it shall provide written evidence (in the form of a letter signed by its relevant officer) no later than 14 days after termination of this agreement that these have been destroyed and that it has not retained any copies of them, except for one copy that it may use for audit purposes only, and subject to the confidentiality obligations in clause Error! Reference source not found.;
 - (b) Delete (to the extent possible) any proprietary software belonging to the other party and all the other party's confidential information from its it network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party. Each party shall provide written confirmation (in the form of a letter signed by its relevant officer) no later than 14 days after termination of this agreement that this software and confidential information has been deleted. The Customer shall allow Microminder to access their IT network to remove such files, programmes or applications prior to the termination date;
 - (c) Return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party remaining in possession shall be solely responsible for their safe-keeping;

- (d) Termination shall take effect at 5.30pm on the date of termination. Microminder will require access to the network between 5.30pm and 6.00pm in order to deactivate any installed services. Customers will enable this access.
- (e) Microminder shall provide all reasonable assistance to the customer and/or any third party engaged by the customer in connection with the support of the equipment;
- (f) The customer shall immediately pay any outstanding amounts owed to Microminder pursuant to this agreement.

14.5 Regardless of its obligations in this clause 14, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy under clause 14.4, it shall notify the other party in writing of that retention, giving details of the documents or materials that it must retain. Clause Error! Reference source not found. shall continue to apply to any retained documents and materials, subject to this clause 14.

15. Force Majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed or 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 4 weeks, the party not affected may terminate this agreement by giving 7 days' written notice to the affected party.

16. Assignment

16.1 The customer shall not, without the prior written consent of Microminder, assign, transfer, charge, sub-contract, hold on trust or deal in any other manner with all or any of its rights or obligations under this agreement.

16.2 Microminder may at any time assign, transfer, charge, sub-contract, hold on trust or deal in any other manner with all or any of its rights or obligations under this agreement.

17. Waiver

No failure or delay by a party to exercise any right or remedy provided under this 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.

18. Notice

18.1 Any notice or other communication required to be given to a party under or in connection with this contract shall be in writing and shall be delivered (i) by hand or (ii) sent by pre-paid first-class post or other next-working-day delivery service providing proof of delivery, at its registered office (if a company) or (in any other case) its principal place of business, or (iii) sent by fax to the other party's main fax number (iv) sent by email with an associated delivery and read receipt request.

18.2 Any notice or communication shall be deemed to have been received, (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address, or (ii) if sent by fax, at 9.00 am on the next business day after transmission, or (iii) if sent by post or delivery service at 9.00 am on the second business day after posting or at the time recorded by the delivery service. (iv) if sent by email the date and time that the sender received a successful delivery and/or read receipt notification.

18.3 This clause Error! Reference source not found. 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.

19. Entire Agreement

19.1 This 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.

19.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

19.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

20. Variation

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

21. Severance

21.1 If any provision or part-provision of this 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.

21.2 If any provision or part-provision of this 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.

22. No Partnership or Agency

22.1 Nothing in this 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.

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

23. Third-Party Rights

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

24. Rights & Remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

25. **Governing Law**

This 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.

26. **Jurisdiction**

Each party irrevocably and unconditionally 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 this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement is entered into upon the date stated on the Order Confirmation.