



Framework Maintenance Agreement

This Agreement is made on the Date of Invoice.

PARTIES

Egton Medical Information Systems Limited incorporated in England & Wales and having its registered office at Fulford Grange, Micklefield Lane, Rawdon, Leeds, LS19 6BA ("EMIS" which expression shall include its agents, successors and assigns) (1)

and

The Customer described in the Invoice (2)

BACKGROUND

- (A) The Framework Maintenance Agreement has been designed to underpin the numerous maintenance services provided by EMIS.
- (B) The service relevant to this agreement is detailed in the Appendix.
- (C) The Appendix is the only section of this agreement that will change depending on the service being provided by EMIS to Customer.

AGREEMENT

1. Definitions

The terms (when used in this agreement or any Schedule(s) or Appendix) set out in the Schedule are used with specifically defined meanings. They are identified in the main text by the use of capital first letters.

2. Commencement and Duration

- (a) Notwithstanding the date hereof or any other date referred to herein, the "Maintenance Period" shall commence on the Effective Date and shall apply to other item(s) of Equipment, if more than one, on the respective Effective Date(s) relating to such item(s).
- (b) This Agreement shall continue from the respective Effective Dates for one (1) year and shall automatically continue from year to year thereafter until or unless terminated in terms of this Agreement or upon either party giving to the other party ninety (90) days prior written notice of that party's wish to terminate.

3. Charges

- (a) Maintenance Charges for each item in the Appendix are payable quarterly in arrears or as stated on the Invoice. Where payment of the charges or any part thereof is not made, then EMIS, without prejudice to its other rights hereunder or in law, shall be entitled to charge interest on the outstanding amount at the rate of 4 per cent per month above the base rate from time to time of Clydesdale Bank plc from the due date until the outstanding invoiced price or outstanding part thereof is paid.
- (b) Maintenance Charges listed in the Appendix may be subject to annual increase upon ninety (90) days prior written notice from EMIS. Such increase shall affect this Agreement on expiry of the period of notice unless the Customer has notified EMIS within such period that it wishes to terminate this Agreement.
- (c) The Maintenance Charges are based on services provided during Working Hours (excluding local and national holidays) unless otherwise specified in the Appendix.

- (d) All Maintenance Charges are exclusive and net of any taxes, duties or such other additional sums including, but without prejudice to the foregoing generality, purchase tax, excise tax, tax on sales, property or use; import or other duties, whether levied in respect of this Agreement, the Equipment its use or otherwise.
- (e) EMIS shall charge separately for services requested by the Customer which are not specifically covered by this Agreement.

4. Maintenance not included and which shall be charged for:

- (a) electrical work external to the Equipment;
- (b) maintenance of accessories, consumables, attachments, machines or other devices not supplied by EMIS nor listed in the Appendix;
- (c) repair of damage arising from:
 - (i) transportation or relocation of the Equipment not performed by EMIS;
 - (ii) failure of electrical power, air conditioning or humidity control;
 - (iii) changes, alterations or additions not performed by EMIS;
 - (iv) operator error or omission.
- (d) maintenance rendered more difficult because of changes, alterations or additions;
- (e) attendance to faults caused by operating the Equipment outside design specifications or outside any 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) software maintenance;
- (h) repair of any malfunction due to radiation in the environment of the Equipment;
- (i) diagnosis and/or rectification of problems not associated with the Equipment;
- (j) diagnosis and/or rectification of problems arising from the operating environment;
- (k) workshop overhaul or repair of Equipment which, as a result of fair wear and tear, can no longer be maintained in good working order. For such items EMIS will, upon request by the Customer, submit a cost estimate of the work required. In the event that the Customer does not authorize the work to be carried out, the item or items concerned may be deleted from the Appendix and such deletion initialled by a signatory authorised by EMIS.
- (l) refusal, difficulty or inability of EMIS to obtain access to the Equipment for the performance of its obligations hereunder.

5. Alterations and Additions

Alterations and additions to or in connection with any of the Equipment may only be carried out by EMIS and no liability whatsoever shall be accepted by EMIS for any alterations or additions carried out in contravention of this clause nor for any effect such alterations or additions may have on the Equipment. Any Equipment or Component that is replaced by EMIS becomes the property of EMIS.

EMIS must be informed of any alterations and additions to or in connection with any of the Equipment required by the Customer that may affect the provision of the services detailed the Appendix.

6. Termination

In addition to provisions for termination herein contained, EMIS may by notice in writing to the Customer terminate this Agreement forthwith if the Customer:

- (a) is in breach of any term, condition or provision of this Agreement or required by the law relating to this agreement, including but not limited to, non-payment and has failed to remedy such breach (if capable of remedy) within 14 days of having received notice from EMIS specifying the nature of the breach;

- (b) 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 winding up, or shall enter into any liquidation whether compulsory or voluntary (other than for the purposes of reconstruction or amalgamation), shall call a meeting of its creditors, shall enter any composition or arrangement with its creditors, or shall have a receiver of all or any of its undertakings or assets appointed, or shall be unable to pay its debts or shall cease to carry on business in accordance with the law relating to this Agreement.

On termination howsoever or whenever occurring, the Customer shall pay to EMIS all costs and expenses, including legal and other fees incurred and all arrears of charges or other payments arising in respect of the Equipment, this Agreement or otherwise in addition to any rights and remedies EMIS may have under this Agreement or in accordance with the law relating to this Agreement.

7. Liability & Compensation

- (a) The following provisions set out the entire financial liability of EMIS (including any liability for the acts or omissions of its employees, agents and subcontractors to the Customer in respect of:
 - (i) Any breach of this Agreement;
 - (ii) Any representation, statement or tortious act or omission, including negligence, arising under or in connection with this Agreement).
- (b) All warranties, conditions and other terms implied by statute or common law (except for the conditions implied by section 12 of the Sales of Goods Act 1979) are, to the fullest extent permitted by law, excluded from this Agreement.
- (c) Nothing in this Agreement excludes or limits the liability of EMIS for death or personal injury cause by EMIS's negligence, or for fraud or fraudulent misrepresentation.
- (d) Subject to clauses 7(b) and 7(c):
 - (i) EMIS's total liability for Compensation, direct loss or damage in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance of or failure to perform this Agreement shall be limited to Total Cost plus 20%; and
 - (ii) Subject to clause 7(d)(i), EMIS shall not be liable to the Customer for any economic loss, loss of profit, loss of data, loss of business, depletion of goodwill or otherwise (in each case whether direct, indirect or consequential), or for any costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Agreement
 - (iii) The parties agree that this limitation of liability clause is reasonable in all the circumstances including, but not limited to, the availability of insurance to the Customer.

8. Assignment

The Customer shall not assign or otherwise transfer all or any part of this Agreement without the prior written consent of EMIS.

9. Cross-claims and Set-off

The Customer hereby waives any and all existing and future claims and set-offs against any instalment, charge or other payment due hereunder and agrees to pay the charges and other amounts due hereunder regardless of any set-off or cross-claim the Customer may have against the EMIS.

10. Force Majeure

EMIS shall be under no liability to the Customer in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of force majeure, namely, circumstances beyond the control of EMIS which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority; breakdown of equipment and labour disputes of whatever nature and for whatever cause arising including (but without prejudice to the generality of the foregoing) work to rule, overtime bars, strikes and lockouts and whether between either of the parties hereto and any or all of its employees and/or any other employer and any or all of its employees and/or between any two or more groups of employees (and whether of either of the parties hereto or any other employer).

11. Waiver

Failure or neglect by EMIS to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of EMIS's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice EMIS's rights to take subsequent action.

12. Notices

All notices to or by the respective parties hereto shall be in writing and shall be deemed to have been duly given when delivered by hand, posted by recorded delivery post or sent by facsimile to the party to which such notice is required to be given under this Agreement.

Notices delivered by hand or sent by facsimile/email shall be deemed received the first working day following such delivery or sending. Notices which have been posted first class as above shall be deemed received on the 2nd working day following posting.

13. Headings

The headings of the Terms and Conditions herein contained are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the Terms and Conditions.

14. Severability

In the event that any of the terms, conditions or provisions of this Agreement shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the body of this Agreement and the remainder thereof shall continue to be valid and enforceable to the fullest extent permitted by law.

15. Law & Dispute Resolution

The parties hereby agree that the Agreement concluded between them and constituted on these Terms and Conditions shall be construed in accordance with English Law and, save as expressly stated otherwise, subject to the jurisdiction of the English Courts.

If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (in this clause called a "Dispute") then, except as expressly provided in this agreement, the parties shall follow the dispute resolution procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documentation. On service of a Dispute Notice EMIS and Customer shall attempt in good faith to resolve the Dispute;
- (b) if EMIS and Customer are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by Centre for Effective Dispute Resolution (CEDR) Solve. To initiate the mediation, a party must serve notice in writing Alternative Dispute Resolution notice "ADR

notice” to the other party requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator.

No party may commence any court proceedings in relation to any dispute arising out of this agreement until 30 days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay.

16. Application of Terms

(a) EMIS agrees to provide the Customer with services upon the terms and subject to the conditions of this Agreement (“Terms and Conditions”) in relation to the equipment specified in the Appendix (the “Equipment”). Terms, conditions or stipulations contained in the Customer’s purchase order or other form of writing or otherwise stipulated by the Customer and which are at variance with or additional to these Terms and conditions are not binding upon EMIS unless specifically accepted in writing by a Director of EMIS.

(b) Subject to:

- (i) the Customer not causing or substantially contributing to the issue; and
- (ii) The Customer complying with the obligations described in the Appendix; and
- (iii) the issue not being caused by a Disaster;

Egton will pay Compensation as defined in clause 7 and in the circumstances described in the Appendix.

(c) These Terms and Conditions shall supersede any arrangements, statements, representations or negotiations made or existing between the parties prior to the execution of this Agreement which shall constitute the entire understanding between the parties hereto. Except as otherwise provided herein, no addition, amendment or modification to these Terms and Conditions shall be effective unless it is in writing and signed or accepted by a director of EMIS.

Schedule – Definitions

“Beyond Economic Repair”

At Egton’s discretion a Peripheral or Local Server that is beyond economic repair

“Cat5” & “Cat5e”

Conforming to the stated specification for UTP Category 5 installation, ISO/IEC 11801 Class D. and tested to TSB 67, with certified level 2 test equipment.

”Compensation”

Monies due to the Customer as described in clause 7 and the Appendix.

“Component”

Any part of the Equipment.

“Disaster”

Fire, flood or other act of God, vandalism, theft or any similar catastrophic cause beyond the Customer’s reasonable control.

“Disaster Recovery Service”

The following Disaster recovery arrangements, which are available free of further charge in the event of System Down, or failure of the Local Server caused by a Disaster. In such an event Egton will use such endeavours as it considers reasonable to restore the Functionality of the Local Server. Where necessary a server will be supplied to the Customer free on loan (on Egton’s conditions of loan as published from time to time) for up to two weeks (after which the loan can continue, if needed, but a reasonable rental charge will be levied).

“Effective Date”

Date of Invoice

“Egton”

A trading division of Egton Medical Information Systems Ltd “EMIS”

“EMIS Clinical Software”

The latest supported release version of EMIS’ clinical software.

“EMIS System”

This means the EMIS System the Invoice, as installed under Egton supervision at the location described in the Invoice, together with anything else specifically mentioned in the Schedule of Equipment attached to the Invoice.

“Functionality”

The Equipment will be restored to the original default settings.

“GP Practice IT System”

All Peripherals connected to the Network within the Location.

“Hardware”

The system unit and their internal components and supplied peripherals such as monitors, keyboards, mouse and speakers.

“Incident”

Any event reported to the Egton Help Desk which is not part of the standard operation of a service provided by Egton as defined in the Appendix and which causes, or may cause, an interruption to, or a reduction in, the quality of that service.

“Invoice”

The invoice provided by Egton and paid by the Customer for the service defined in the Appendix.

“Loan Equipment”

Hardware supplied by Egton (on its loan terms from time to time) on a like for like basis in the event of a failure to Customer's support hardware.

“Local DDS Server”

The server, when present, that is used as a local cache for all PCS attachments and as a hub to distribute patches installed at the Customer's address, including the Hardware, Operating System and Standard Applications.

“Local Server”

EMIS Clinical Server, Local DDS Server, Primary Domain Controller or any other named server provided and supported as part of the service defined in The Appendix.

“Local Spoke Server”

The server, when present, that is used as a local cache for the most recent attachments and as a hub to distribute patches installed at the Customer's address, including the Hardware, Operating System and Standard Applications.

“Location”

The building(s) that contain the Equipment on the Effective Date.

“Maintenance Charges”

As detailed in the Invoice

“Network”

A series of interconnected computers.

“Network Connection”

The PC or printer set-up and configured enabling the PC or Printer to see and be seen by the local workgroup or domain computers.

“Network Infrastructure”

Middleware such as a switch, HUB, or print server.

“Operating System”

The operating system software pre-installed on the PC, Local Server or PDA at delivery and any approved upgrades.

“PC”

The Personal Computer(s) including laptop devices comprising the Hardware, Operating System and Standard Applications.

“PDA”

A handheld device, comprising the Hardware, Operating System and Standard Applications.

“Peripheral”

Any PC or PDA or Printer connected to the Network Infrastructure

“Printer”

The computer printer(s) as specified in this agreement.

“Resolution”

To return the Functionality of the supported Equipment

“Response”

Remote support from Egton provided by a technically appropriate Egton staff member

“Scanner”

The document scanning devices as attached to the system.

“Standard Applications”

Other Server, PC/PDA applications software pre-installed on the Equipment as supplied by or approved by Egton.

“Standard Maintenance Hours”

The availability of Egton Network Consultant visiting a Customer to provide elements of this service is from 9 am to 5 pm every Working Day.

“System Down”

Any state in which the Customer does not have any form of access to the EMIS System excluding lack of access caused by a Disaster.

“Total Charge”

All payments due from the Customer to Egton each year under this agreement

“Working Hours”

The methods available for communication with Egton Service Desk and the corresponding Working Hours are as follows unless otherwise specified in the Appendix:

Method	Operational Days	Operational times
Helpline	Monday to Friday	7 am to 10 pm
	Saturday	8 am to 1 pm
	Bank Holiday (except Christmas day, Boxing day and New Year day)	8 am to 4 pm
Dedicated fax machine*	Monday to Sunday	24 hours a day
Email and ECR tracker*		24 Hours
Answer phone*	Monday to Friday	10 pm to 7 am
	Saturday	Up to 8 am and from 1 pm
	Sunday	24 hours

* These will be responded to during normal operational Working Hours

“Working Day”

Any day other than Saturdays, Sundays and public holidays

Appendix – accompanying Service Description and Service Level