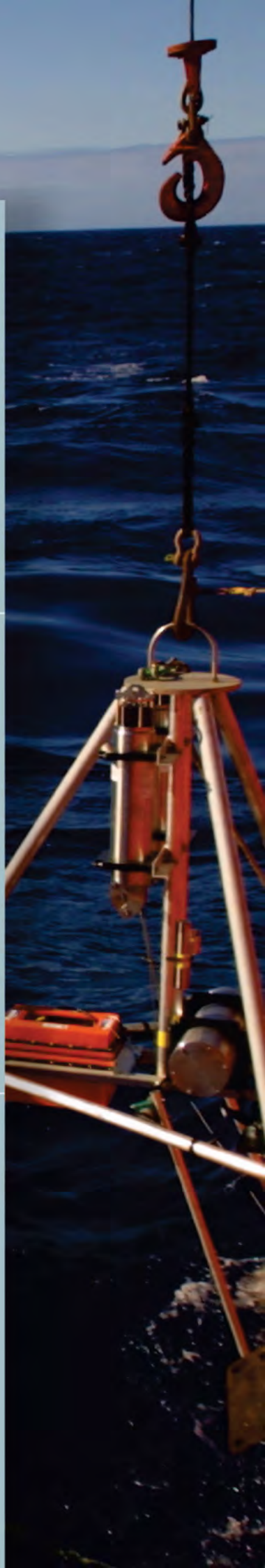
RS AQUA

# EQUIPMENT MAINTENANCE AGREEMENT



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# ORDER FORM

This Equipment Maintenance Agreement is between:

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| **R.S. AQUA LIMITED** |
| incorporated and registered in England and Wales with company number 01661817 whose registered office is at Abbey House Hickleys Court, South Street, Farnham, Surrey, England, GU9 7QQ (**"RS Aqua"**) |
| AND |
| CEFAS, an executive agency of DEFRA |
| |

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| **Maintenance Agreement Ref:** | 013250MA |
| **Hire Agreement Ref:** | N/A |
| **Commencement Date:** | 1st June 2022 |
| **Inspection Date:** | N/A |
| **Maintenance Term:** | 10 Months |
| **Location:** | Cefas, Units 19-29, Pinbush Road, Lowestoft, NR33 7NL |
| **Customer contact name:** | [redacted] |
| **Customer contact address:** | Cefas, Pakefield Road, Lowstoft, Suffolk, NR33 0HT |
| **Customer contact email:** | [redacted] |
| **Customer contact phone:** | [redacted] |
| **Equipment to be maintained including Consumables:** | The items of equipment and any consumables listed in the Equipment Schedule, including all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it. * |
| **Customer Equipment:** | Waverider DWRIII |
| **Currency:** | GBP (Great British Pounds) |
| **Maintenance Charge:** | Refer to Payment Schedule. |
| **Payment Terms:** | 30 days net from date of issue of invoice or as otherwise specified in Payment Schedule. |
| **Equipment Maintenance Schedule:** | Refer to Service and Maintenance Schedule. |

*Any additional Equipment requested during the Maintenance Term will require a new Order Form.

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| Signed for and on behalf of:<br>**R.S. AQUA LIMITED**<br>By: [redacted]<br>Date: 6/5/22 | Signed for and on behalf of:<br>CEFAS, an executive agency of DEFRA<br>By: To [redacted]<br>Date: 6/5/22 |

This Order Form is governed by RS Aqua's Standard Equipment Maintenance Agreement terms, attached.



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**BACKGROUND:** RS Aqua has hired/supplied certain equipment to the Customer and the Customer wishes RS Aqua to provide a maintenance and support service in relation to the equipment and RS Aqua is willing to supply the services on the terms set out in agreement.

**IT IS HEREBY AGREED**

1 **Interpretation**

1.1 In addition to the items defined in the Order Form, the following definitions and rules of interpretation apply in this Agreement.

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| **Agreement** | the Order Form together with these terms and conditions relating to Equipment Maintenance. |
| **Inspection Fee** | where relevant, the sum set out in the Payment Terms for RS Aqua's initial inspection of the Equipment pursuant to clause 3.1. |
| **Additional Services** | any Emergency Maintenance or Excluded [redacted] by RS Aqua un[redacted] [redacted]ement. |
| **Additional Services Charges** | [redacted] charges pa[redacted] consideration of the p[redacted]ision [redacted]ny Addit[redacted]vices, to be calcu[redacted]d in [redacted]dance wi[redacted]ment Terms. |
| **Business Day** | [redacted]y, other th[redacted]day, Sunday or publi[redacted]day in England, w[redacted]ks in London are open for [redacted]ess. |
| **Business Hours** | the period from 9.00 am to 5.00 pm on any Business Day. |
| **Calibration** | means the calibration to be carried out in accordance with RS Aqua's relevant SLA policy and the Service and Maintenance Schedule. |
| **Charges** | The charges to be paid for the Services under clause 8. |
| **Commencement Date** | the date specified on the Order Form. |
| **Confidential Information** | any information, which by its nature is confidential, concerning the business, affairs, customers, clients or suppliers of the other party or of any member of its Group. |
| **Consultancy Services** | the advisory [redacted]ces to be provided pursuant to clause 4.8. |
| **Consultancy Services Charges** | the charges to be paid in consideration of the provision of [redacted]ervices, to be calculated in accordance with the Payment Terms. |
| **Consumables** | non-durable [redacted]he operation of the Equipment including those items set out in the Order Form; |
| **Contract Year** | Any 12-month period starting on the Commencement Date and on each anniversary of the Commencement Date. |
| **Control** | has the meaning given in section 1124 of the Corporation T[redacted] 2010, and the expression **change of Control** shall be construed accordingly. |
| **Corrective Maintenance** | in accordance [redacted]<br>(a) making a[redacted]Equipment; or<br>(b) replacing any parts or components of the Equipmen[redacted]<br>(a) in each case, as required to restore the Equipmen[redacted]Order. |
| **Emergency Maintenance** | in accordance with clause 4.5:<br>(a) making any adjustments to the Equipment; or<br>(b) replacing any parts or components of the Equipment,<br>(b) in each case, as required to restore the Equipment to Good Working Order. |
| **Equipment** | the equipment specified in Order Form. |
| **Excluded Causes** | (a) a defect in the manufacturer's design of the Equipment;<br>(b) faulty materials or workmanship in the manufacture of the Equipment;<br>(c) the use of the Equipment with equipment or materials not supplied or approved in writing by RS Aqua or the manufacturer;<br>(d) any maintenance, alteration, modification or adjustment performed by persons other than RS Aqua or its employees or agents unless approved in writing by RS Aqua;<br>(e) the Customer or third party moving the Equipment unless approved in writing by RS Aqua;<br>(f) th[redacted]he E[redacted]in breach of any of the provisions of the agreement under which the Equipment was supplied;<br>(g) a failure, interruption or surge in the electrical power or its related infrastructure connected to the Equipment;<br>(h) a failure or malfunctioning of the environmental controls required for the normal operation of the Equipment, or an error or omission in the correct use of the environmental controls by the Customer; or<br>(i) the Customer's neglect or misuse of the Equipment. |
| **Excluded Maintenance** | any Maintenance Services required to restore any defect or malfunctioning or failure in the Equipment to Good Working Order where the defect or malfunctioning or failure results from or is caused by any of the Excluded Causes. |
| **Fix Time** | the applicable fix time set out in RS Aqua's relevant SLA policy. |
| **Good Industry Practice** | the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector. |
| **[redacted]orking Order** | operating in accordance with the applicable specification of the manufacturer of the Equipment. |
| [redacted] | in relation to a company, that company, any subsidiary or holding company at the date of this Agreement of that company, and any subsidiary at the date of this Agreement of a holding company of that company. |
| **Hire Agreement** | means, where relevant, an agreement between RS Aqua and the Customer for the hire of the Equipment. |
| **Initial Term** | has the meaning given in clause 2. |
| **Location** | the location of the Equipment as specified in the Order Form. |
| **[redacted]enance Services** | Routine Maintenance, Corrective Maintenance and Emergency Maintenance. |
| **[redacted] Form** | the order form setting out the key details of the Equipment Maintenance. |
| **Payment [redacted]ule** | a schedule appended to this Agreement which sets out the sums payable under this Agreement as referred to in the Order Form. |
| **Response Time** | the applicable response time set out in RS Aqua's relevant SLA policy. |
| **Routine Maintenance** | (a) testing that the Equipment is functional;<br>(b) making any adjustments as may be required to ensure the Equipment remains in Good Working Order; and |



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| | (c) replacing any Consumables that require replacing, in accordance with clause 4.2 and<br>(d) performing Calibration. |
| **RS Aqua's relevant SLA policy** | means the service level agreement policy notified by RS Aqua to the Customer from time to time, appropriate to the Services and the Equipment. |
| **Service Levels** | the service levels to which the Services are to be provided, as set out in RS Aqua's relevant SLA policy. |
| **Services** | the Maintenance Services and the Consultancy Services and as set out in the Service and Maintenance Schedule. |
| **Services Managers** | the managers appointed by the parties in accordance with clause 4.10 and clause 6.6. |
| **Spare Parts** | all spare components and subassemblies of the Equipment supplied for installation in the Equipment [redacted] the p[redacted]f the Services. [redacted] |
| **Standard Maintenance Charges** | [redacted] harges pa[redacted]onsideration of the p[redacted]sion [redacted] the Rou[redacted]intenance and Co[redacted]ective [redacted]tenance, [redacted]ulated in accordance [redacted]n the [redacted]ent Terr[redacted]ed from time in acc[redacted]ance [redacted]lause 8.6 [redacted] |
| **Term** | [redacted] Maintenar[redacted] [redacted] |
| **VAT** | [redacted] added t[redacted]equivalent tax chargeable in the UK or elsewhere. |

1.2 Clause, Schedule and paragraph 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) and that person's legal and personal representatives, successors and permitted assigns.

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 and any reference to this Agreement includes the schedules.

1.5 A reference to a **company** sha[redacted]lude any company, corporation or other body corporate, wher[redacted] and however incorporated or established.

1.6 Unless the context otherwis[redacted] the singular shall include the plural and in the p[redacted] ingular.

1.7 Unless the context otherwis[redacted]erence 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 **writte**[redacted] includes email.

1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be [redacted]

1.12 A reference to **this Agreer**[redacted] other agreement or document referred to in this Agreement is a reference to this Agreement or such other a[redacted]ment as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.

1.13 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.

1.14 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.

2 **Commencement and duration.** This Agreement shall commence on the Commencement Date. Unless terminated earlier in accordance with clause 3.5, clause 13 or this clause 2, this Agreement shall continue for the Maintenance Term. Where the parties have entered into a Hire Agreement between them, the Maintenance Term shall continue (and charges under this maintenance agreement shall continue to accrue) until such time as the Equipment has been returned to RS Aqua.

3 **Inspection of the Customer Equipment:** (this clause shall only apply when this Maintenance Agreement is in respect of equipment already purchased by the Customer and is not applicable to the Customer hiring the equipment under a Hire Agreement).

3.1 **Inspection.** On or shortly after the Commencement Date and upon [redacted]yment by the Custo[redacted]e Ins[redacted]e, RS Aqua shall carry [redacted]ut an inspection of the Customer Equipment to determine whether [redacted] is in Good Working Order.

[redacted] **ood Working Order confirmation**. If RS Aqua finds the Customer [redacted]quipment to be in Good Working Order, it shall promptly issue [redacted] ritten confirmation to the Customer confirming this.

3.3 **Quotation to restore to Good Working Order.** If RS Aqua finds the Customer Equipment not to be in Good Working Order, it shall issue a quotation to the Customer for the work and parts required to restore the Customer Equipment to Good Working Order.

3.4 **Acceptance of quotation.** If the Customer accepts the quotation referred to in clause 3 3, RS Aqua shall carry out the work in accordance with the quotation, to the standard set out in clause 9.2.1. Upon completion of the work it shall submit its invoice for the work and upon payment of such invoice it shall issue written confirmation to the Customer confirming that the Customer Equipment is in Good Working Order.

3.5 **Automatic termination on rejection of quotation.** If the Customer refuses the quotation, this Agreement shall terminate automatically. RS Aqua shall be entitled to retain the Inspection Fee and charge the Customer for its reasonable costs of returning or disposing of the [redacted]ustomer Equipment.

[redacted] **Aqua 's obligations**

[redacted] **pply of Services.** During the Term, RS Aqua shall supply the Services to the Customer, and where relevant in accordance with any [redacted]ommended maintenance schedule relating to the Equipment, whether determined by the manufacturer, or RS Aqua and as may be [redacted]tained in any Equipment Hire Agreement between RS Aqua and the Customer. RS Aqua shall be entitled to provide the Services directly or indirectly using any sub-contractor.

4.2 **RS Aqua 's representative.** A representative of RS Aqua (including any authorised sub-contractor) shall perform the Routine [redacted]nance in accordance with RS Aqua's relevant SLA policy and [redacted] Aqua's discretion, either at the Location or by sending newly [redacted]rviced and calibrated equipment ("Fresh Equipment") to the Customer to be swapped out by the Customer, whereby the [redacted]ustomer shall (at its own cost) return the original equipment to RS Aqua within 10 Business Days (of receipt of the Fresh Equipment), to [redacted] sent insured, tracked and priority shipped. When choosing to attend at the Location, RS Aqua's representative shall perform the [redacted]outine Maintenance during Business Hours at such times as may be agreed in advance between the Customer and RS Aqua from time to time.

4.3 **Equipment malfunction.** If RS Aqua's representative, having chosen to attend the Location, discovers that the Equipment is defective or is malfunctioning or has failed or is not otherwise in Good Working Order during the course of the Routine Maintenance the representative will use all reasonable endeavours to repair it during



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that visit at the Location. If that is not reasonably practicable (or it is not reasonably practicable to do so during Business Hours) RS Aqua's representative shall either arrange for a further visit to the Location within Business Hours to complete the repair, or if reasonably practicable arrange for the removal of the Equipment (or part of the Equipment, if applicable) for repair off-site. The Customer will be responsible for all shipping costs of removing the Equipment and sending it for repair off-site. The Equipment must be sent insured, tracked and priority shipped. The Customer will keep RS Aqua indemnified at all times in respect of any loss in relation to any equipment to be returned or which is found to be damaged.

4.4 **Corrective Maintenance.** On the Customer informing RS Aqua that the Equipment is defective or is malfunctioning or has failed or is not otherwise in Good Working Order, RS Aqua shall use reasonable commercial endeavours to ensure that one of its representatives shall in accordance with RS Aqua's relevant SLA policy and at RS Aqua's discretio[redacted]

4.4.1 send Fre[redacted]quipment [redacted]tomer to be swappe[redacted]t by the Cust[redacted], whereb[redacted]tomer shall (at its ov[redacted]cost) return th[redacted]iginal equ[redacted] RS Aqua within 10 b[redacted]ness Days (of [redacted]pt of the [redacted]ipment), to be sent [redacted]red, tracked and priority sh[redacted]; or

4.4.2 attend the location du[redacted]ess Hours within the relevant Respons[redacted]me to p[redacted]orrective Maintenance and complete the Corrective Maintenance within the relevant Fix Time.

4.5 **Emergency Maintenance.** On the Customer informing RS Aqua that the Equipment is defective or is malfunctioning or has failed or is not otherwise in Good Working Order, and requires repair outside of Business Hours, RS Aqua shall use reasonable commercial endeavours to ensure that one of its representatives shall in accordance with RS Aqua's relevant SLA policy and at RS Aqua's discretion, either:

4.5.1 send Fresh Equipment to the Customer to be swapped out by the Customer, whereby the Customer shall (at its own cost) return the original equipment to RS Aqua within 10 Business Days (of receipt of the Fresh Equipment), to be sent insured, tracked and priority sh[redacted]; or

4.5.2 attend the Location v[redacted]sponse Time to perform Emergency Maintenance and complete the Emergency Maintenar[redacted]Fix Time.

4.6 **Further site visits or repair[redacted]** it is not reasonably practicable for RS Aqua's re[redacted] complete Corrective Maintenance or Emergency [redacted] Location on their first visit RS Aqua's representative shall either arrange for a further visit to the Location within Business Hours to complete the repair, or if reasonably practicable arrange for the removal of the Equipment (or part of the Equipment, if applicable) for repair off-site. The Customer will be responsible for all shipping costs of removing the Equipment and sending it for [redacted] off-site. The Equipment must be sent insured, tracked and priority shipped. The Customer will keep RS Aqua indemnified at all ti[redacted]oss in relation to any equipment to be returned or which is found to be damaged.

4.7 **Liability for delay if Customer refuses on-site repair.** RS Aqua shall not be liable for any delay i[redacted]elevant Maintenance Service if in RS Aqua's reasonable opinion it needs to remove the Equipment (or part of the Equ[redacted]) for repair off-site and the Customer refuses this request.

4.8 **Provision of information.** RS Aqua shall:

4.8.1 provide to the Customer from time to time in writing with such up to date and accurate information as to the application and use of the Equipment as may be available to RS Aqua and as RS Aqua may reasonably determine to be necessary or desirable to be provided; and

4.8.2 use reasonable commercial endeavours to respond promptly and during the relevant Response Time, during Business Hours, by telephone or in writing, as appropriate, to any request from the Customer for information concerning the application and use of the Equipment, or the repair of any defect in or malfunctioning of the Equipment.

4.9 **Health and safety compliance.** RS Aqua shall procure that its representatives shall, while on site at the Location, comply with the Customer's reasonable health and safety and security policies provided that these have been brought the attention of its representatives.

4.10 **Services manager.** RS Aqua shall appoint a manager for the Services. That person shall have authority to contractually bind RS Aqua on all matters relating to the Services. RS Aqua shall use reasonable endeavours to ensure that the same person acts as RS Aqua's [redacted]anager throughout th[redacted], but may replace that person from [redacted]me to time where [redacted]ly necessary in the interests of RS [redacted]qua's business.

[redacted]he Customer will grant appropriate access to RS Aqua for the [redacted]urposes of retrieving deployed equipment for RS Aqua to maintain [redacted]nd/or calibrate as part of the Services; or if reasonably required by [redacted]S Aqua, the Customer will retrieve the equipment for RS Aqua to [redacted]maintain, service and/or calibrate and then deploy the equipment itself.

5 **Spare parts and consumables**

5.1 **Supply of Spare Parts and Consumables.** RS Aqua shall supply and fit at the Customer's cost such Spare Parts and Consumables as required to maintain the Equipment in Good Working Order or to restore the Equipment to Good Working Order.

5.2 **Quality of Spare Parts and Consumables.** All Spare Parts shall be either new, or reconditioned or reassembled Spare Parts which are equivalent to new Spare Parts in performance. All Consumables shall be new.

6 **Customer's obligations**

6.1 **Proper use of Equipment.** The Customer shall at all times during the [redacted]rm:

[redacted] use the Equipment only in accordance with the instructions and recommendations of the manufacturer of the Equipment or as may be advised in writing from time to time by RS Aqua;

[redacted] permit only trained and competent personnel to use the Equipment;

[redacted] notify RS Aqua promptly if the Equipment is discovered to be defective or malfunctioning or has failed or is otherwise not in Good Working Order;

6.1.4 keep the Equipment in the environmental conditions recommended by the manufacturer of the Equipment or as [redacted]may be advised in writing from time to time by RS Aqua;

[redacted]5 not allow any other person than RS Aqua's representatives to adjust, maintain, repair, replace or remove the Equipment or any part of it, unless otherwise agreed in writing by RS Aqua; and

[redacted]6 not move the Equipment from the Location without the prior written consent of RS Aqua.

6.2 **Access to Equipment.** The Customer shall ensure that RS Aqua's representatives have full and free access to the Location and to the Equipment and to any records of its use kept by the Customer , and shall provide them with adequate and safe working space and facilities as are reasonably required to enable RS Aqua to perform its obligations under this Agreement.



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6.3 **Provision of information to Supplier.** The Customer shall provide RS Aqua with such information concerning the Equipment, its application, use, location and environment as RS Aqua may reasonably request to enable it to perform its obligations under this Agreement.

6.4 **Safety.** The Customer shall take all such steps as may be necessary to ensure the safety of any of RS Aqua's representatives when attending the Location.

6.5 **Malfunction reports.** The Customer shall report that the Equipment is defective or malfunctioning or has failed or is otherwise not in Good Working Order either in writing or by telephone, or in such manner as RS Aqua may reasonably require from time to time.

6.6 **Customer Services manager.** The Customer shall appoint a manager for the Services. That person shall have authority to contractually bind the Customer on all matters relating to the Services. The Customer shall [redacted] to ensure that t[redacted] person acts as [redacted] Customer [redacted] throughout the Te[redacted] but may replace that person fr[redacted] to time where reasonably necessary in the [redacted] rests of t[redacted] er's business.

6.7 **Delay due to C[redacted]er.** If RS[redacted] rformance of its ob[redacted]ons under this Agre[redacted]nt is preve[redacted] layed by any act or o[redacted]ion of the Custo[redacted], its age[redacted] ontractors, consult[redacted] or employees, the [redacted] thout pre[redacted] any other right or remedy it may have, RS Aqua shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer. In the event that the customer wishes to reschedule or cancel any dates for the performance of any Services agreed with RS Aqua, less than 30 days from the agreed date, RS Aqua shall have the right to charge the Customer for any associated costs of such cancellation or rescheduling, including but not limited to the full costs that would have been charged by RS Aqua if the date had not been cancelled.

7 **Excluded maintenance**

7.1 **No obligation to perform Excluded Maintenance.** RS Aqua is not obliged to perform any Excluded Maintenance.

7.2 **Additional Services Charges.** Where RS Aqua is performing or has performed the Maintenance Services in circumstances where it is established that the Equipme[redacted]s not in Good Working Order due to any of the Excluded Ca[redacted] RS Aqua may charge, and the Customer shall pay, the Additi[redacted]n respect of that work.

7.3 **Investigation charges.** If on investigation RS Aqua reasonably determines that any defect in [redacted]g of the Equipment is the result of an Excluded Cause, the Customer shall pay Additional Services Charges in respect of [redacted] RS Aqua in making the investigation and determining the cause of the defect in or malfunctioning of the Equipment.

8 **Charges and payment**

8.1 **Standard Maintenance C[redacted]s.** In consideration of the performance of the Routine Maintenance and the Corrective Maintenance the Customer [redacted] a the Standard Maintenance Charges in accordance with the Payment Terms as indicated, in the Currency. [redacted]

8.2 **Additional Services Charges.** [redacted] of the performance of any Additional Services the [redacted] pay to RS Aqua the Additional Services Charges. [redacted]

8.3 **Consultancy Services Charges.** In consideration of the performance of any Consultancy Services the Customer shall pay to RS Aqua the Consultancy Services Charges.

8.4 **Time and materials.** Where the Charges are calculated on a time and materials basis:

8.4.1 RS Aqua's daily fee rates for each individual person as set out in the Payment Schedule, the Payment Terms shall be calculated on the basis of an eight-hour day, worked during Business Hours;

8.4.2 RS Aqua shall ensure that every individual whom it engages on the Services completes time sheets to record time spent on the Services, and RS Aqua shall indicate the time spent per individual in its invoices.

8.5 **Exclusive charges.** The Charges shall be exclusive of all expenses and the cost to RS Aqua of any materials or services procured by RS Aqua from third parties for the provision of the Services which shall be recoverable by RS Aqua in addition to the Charges.

8.6 **Charge increases.** RS Aqua may increase the Charges on a compounded annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the [redacted]etail Prices Index in [redacted]eding [redacted] period, and the first [redacted]uch increase shall take effect on the first anniversary of the [redacted]ommencement Date and shall be based on the latest available [redacted]gure for the percentage increase in the Retail Prices Index.

[redacted]**Monthly invoices.** RS Aqua shall invoice the Customer monthly in [redacted]dvance at the beginning of each month for Services to be performed [redacted]uring that month.

8.8 **Payment timing.** The Customer shall pay each invoice submitted to it by RS Aqua within 30 days of receipt to a bank account nominated in writing by RS Aqua from time to time.

8.9 **Failure to pay.** Without prejudice to any other right or remedy that it may have, if the Customer fails to pay RS Aqua any sum due under this Agreement on the due date:

8.9.1 the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.9.1 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and

8.9.2 RS Aqua may suspend all or part of the Services until payment [redacted] has been made in full.

[redacted] **and set-off.** All sums payable to RS Aqua under this Agreement:

[redacted] 8.10.1 are exclusive of VAT, and the Customer shall in addition pay [redacted] an amount equal to any VAT chargeable on those sums on [redacted] delivery of a VAT invoice; and

[redacted] 8.10.2 shall be paid in full without any set-off, counterclaim, [redacted] deduction or withholding (other than any deduction or withholding of tax as required by law).

9 **Warranty**

9.1 **Legal status of parties.** Each party warrants that:

[redacted] it has full capacity and authority to enter into and to perform [redacted] this Agreement;

[redacted] 9.1.2 this Agreement is executed by a duly authorised [redacted] representative of that party;

[redacted] [redacted]3 there are no actions, suits or proceedings or regulatory [redacted] investigations pending or, to that party's knowledge, [redacted] threatened against or affecting that party before any court or [redacted] administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement; and

9.1.4 once duly executed, this Agreement will constitute legal, valid and binding obligations.

9.2 **Quality of Services.** RS Aqua warrants on an ongoing basis that:



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9.2.1 it shall discharge its obligations under this Agreement using personnel of the required skill, experience and qualifications and with all due skill, care and diligence including in accordance with Good Industry Practice.

10 **Limitation of liability**

10.1 The restrictions on liability in this clause 10 apply to every liability arising under or in connection with this Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

10.2 **Liability for deliberate default.** Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

10.3 **No limitation of the Customer's payment obligations.** Nothing in this clause 10 shall limit the Customer's payment obligations under this Agreement [redacted]

10.4 Nothing in this A[redacted]ement lim[redacted]bility which cannot le[redacted]y be limited including liability for:

10.4.1 death or personal injury caused by negligence;

10.4.2 fraud or fraudulent mi[redacted]tation;

10.4.3 breach of the terms i[redacted] section 7 of the Supply of Goods a[redacted]ervices Ac[redacted]on 8 of the Supply of Goods (Implied Terms) Act 1973;

10.4.4 any matter in respect of which it would be unlawful for the parties to exclude or restrict liability.

10.5 **Total aggregate liability of RS Aqua.** Subject to clause 10.4 RS Aqua's total aggregate liability in respect of all claims, losses or damages arising in each Contract Year, shall not exceed the total charges. The total charges means all sums paid by the Customer under this Agreement in respect of the Services supplied by RS Aqua in that Contract Year.

10.6 **Exclusions of liability of RS Aqua.**

Subject to clause 10.4, RS Aqua shall not be liable under this Agreement for any:

10.6.1 Loss of profits.

10.6.2 Loss of sales or business.

10.6.3 Loss of agreements or [redacted]

10.6.4 Loss of anticipated sav[redacted]

10.6.5 Loss of use or corrupti[redacted] or information.

10.6.6 Loss of or damage to goodwill.

10.6.7 Indirect or consequential loss.

10.7 Subject to clause 10.4, all implied terms and conditions as to the quality or performance of t[redacted]rvices and any other goods or services provided under this Agreement by RS Aqua are, to the fullest extent permitted by law, exc[redacted]ment. The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 on RS Aqua are, t[redacted]rmitted by law, excluded from this Agreement.

11 **Dispute resolution procedure**

11.1 **Dispute notices, escalation, a**[redacted]spute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**), then, except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:

11.1.1 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 documents. On service of the Dispute Notice, the Services Managers of each of the parties shall attempt in good faith to resolve the Dispute;

11.1.2 if the Services Managers of each of the parties are for any reason unable to resolve the Dispute within 10 days of service of the Dispute Notice, the Dispute shall be referred to the Operations Director of the Customer and Operations Director of RS Aqua who shall attempt in good faith to resolve it; and

11.1.3 if the Operations Director of the Customer and Operations Director of RS Aqua are for any reason unable to resolve the Dispute within 10 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 10 days of service of the Dispute Notice, the mediator shall be nomin[redacted]CEDR. To initiate the mediation, a party must serve no[redacted]ting [redacted]ice) to the other party to the Dispute, referring the dispute to mediation. Unless otherwise agreed between the parties, the mediation will start not later than 10 days after the date of the ADR notice.

[redacted]**ediation and court proceedings.** The commencement of [redacted]ediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 30 (Jurisdiction), which clause shall apply at all times.

12 **General**

12.1 **Conflict.** 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.

13 **Termination**

13.1 Without affecting any other right or remedy available to it, RS Aqua may terminate this Agreement with immediate effect by giving written notice to the Customer if:

13.1.1 the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;

[redacted]2 the Customer commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of seven days after being notified in writing to do so;

[redacted]3 the Customer repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

13.1.4 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits [redacted]inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

[redacted]1.5 the Customer 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 (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;



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13.1.6 the Customer applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

13.1.7 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 the Customer (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

13.1.8 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Customer (being a company);

13.1.9 the holder of a qualifying floating charge over the assets of the Customer (being a company) has become entitled to appoint [redacted] nistrative receiver;

13.1.10 a person [redacted] comes ent[redacted] ppoint a receiver ov[redacted] or any of th[redacted] sets of th[redacted] er or a receiver is ap[redacted] nted over all or any of the a[redacted] e Customer;

13.1.11 a creditor or encumbra[redacted] e Customer attaches or takes possessi[redacted] f, or a dist[redacted] ution, sequestration [redacted] er such pro[redacted] is levied [redacted] ed on or sued against, the whole o[redacted] y part [redacted] stomer's assets and such attachment or process is not discharged within fourteen days;

13.1.12 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1.4 to clause 13.1.11 (inclusive);

13.1.13 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy; or

13.1.14 the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

13.1.15 there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).

13.2 For the purposes of clause 13.1.2, material breach means a breach (including an anticipatory bre[redacted] the widest sense of having a serious effect on the benefit which RS Aqua would otherwise derive from:

13.2.1 a substantial portion o[redacted] ; or

13.2.2 any of the obligations [redacted]

over the term of this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

13.3 Without affecting any other right or remedy available to it, RS Aqua may terminate this Agreem[redacted] with immediate effect by giving written notice to the Customer if RS Aqua reasonably determines that the Equipment can no l[redacted] n Good Working Order by the provision of Spare Parts or Consumables or the Equipment is damaged bey[redacted] otherwise than through RS Aqua's fault.

[redacted]

14 **Consequences of termination**

[redacted]

14.1 On termination or expiry of this Agreement the Customer shall immediately pay to RS Aqua all of RS Aqua's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, RS Aqua may submit an invoice, which shall be payable immediately on receipt.

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 or expiry of this Agreement shall remain in full force and effect.

14.3 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

15 **Non-solicitation**

15.1 In order to protect their respective legitimate business interests each party covenants with the other for itself and as agent for each member of its Group that it shall not (and shall procure that no member of its Group shall) (except with the prior written consent of the other party):

[redacted] .1 attempt to sol[redacted] ce av[redacted]

[redacted] .2 solicit or entice away,from the employment or service of the other party or any member of its Group the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the other party or any member of its Group.

15.2 **Term of restrictive covenant.** The parties shall be bound by the covenant set out in clause 15.1 during the Term, and for a period of 12 months after termination or expiry of this Agreement.

15.3 **Restricted Persons.** For the purposes of this clause 15, a **Restricted Person** shall mean any firm, company or person employed or engaged by a party or any member of its Group during the Term, who has been engaged in the provision of the Services or the management of this Agreement.

15.4 **Consent.** Any consent given in accordance with clause 15.1 shall be subject to payment to the consenting party of a sum equivalent to 20% of the then current annual remuneration of the Restricted Person or, if higher, 20% of the annual remuneration to be paid to the Restricted Person.

[redacted] **Force majeure.** Neither party shall be in breach of this Agreement [redacted] or liable for delay in performing, or failure to perform, any of its [redacted] gations under this Agreement (excluding payment of money), if [redacted] such delay or failure results from events, circumstances or causes [redacted] ond its reasonable control. In such circumstances the affected [redacted] party shall be entitled to a reasonable extension of the time for [redacted] forming such obligations. If the period of delay or non-[redacted] performance continues for four weeks, the party not affected may [redacted] minate this Agreement by giving seven days' written notice to the affected party.

17 **Confidential information**

17.1 Each party undertakes that it shall not at any time during this Agreement, and for a period of two years after termination or expiry [redacted] Agreement, disclose to any person any confidential [redacted] information concerning the business, affairs, customers, clients or [redacted] uppliers of the other party or of any member of the group of [redacted] mpanies to which the other party belongs, except as permitted by [redacted] ause 17.2.

[redacted] ch party may disclose the other party's confidential information:

[redacted] 2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with clause 17; and



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17.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

17.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

18 **Assignment and other dealings.** This Agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

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 matt[redacted]

19.2 Each party ackn[redacted]dges that [redacted]g into this Agreemen[redacted]oes not rely on, and [redacted] have no [redacted]n respect of, any sta[redacted]ment, representation, [redacted]rance or [redacted] whether made inno[redacted]y or negligently) tha[redacted]ot set ou[redacted]reement. Each part[redacted]ees that it shall [redacted]ave no [redacted] innocent or negligent misrepresentati[redacted] or negli[redacted]tatement based [redacted]any statement in th[redacted]reement.

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 **No partnership or agency**

21.1 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.

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

22 **Further assurance.** At its own expense, each party shall, and shall use all reasonable endeavours to [redacted]re that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably b[redacted]ose of giving full effect to this Agreement.

23 **Counterparts**

23.1 This Agreement may be executed in any number of counterparts, each of which shall consti[redacted]ginal, but all the counterparts shall together constitute the one agreement.

23.2 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Agreement. If such method of transmission is adopted, without prejudice to the validity of the agreement thus made, [redacted]uest provide the other with the "wet ink" hard copy original of their counterpart.

23.3 No counterpart shall be effe[redacted]has delivered to the other at least one executed counterpart.

24 **Third party rights**

24.1 Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

24.2 The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

25 **Notices**

25.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:

25.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

25.1.2 sent by email to the address specified in the Order Form.

25.2 Any notice or communication shall be deemed to have been received:

25.2.1 if delivered by hand, at the time the notice is left at the proper address;

[redacted]2.2 if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

[redacted]2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, where business hours resume. In this clause 25.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

25.3 This clause 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.

26 **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 such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

27 **Rights and remedies.** Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement [redacted]e in addition to, and not exclusive of, any rights or remedies provided by law.

[redacted]**erance**

[redacted]ny provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that [redacted]l not affect the validity and enforceability of the rest of this Agreement.

28.2 If any provision or part-provision of this Agreement is deemed deleted under clause 28.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

[redacted]**ning law.** This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection [redacted]ith it or its subject matter or formation shall be governed by and construed in accordance with the laws of England.

[redacted]**urisdiction.** Each party irrevocably agrees that the courts of England [redacted]hall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in [redacted]onnection with this Agreement or its subject matter or formation.



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# Equipment Schedule

The following Equipment is covered by the clauses described in the Agreement:

Quantities above are based on a 12 month contract.



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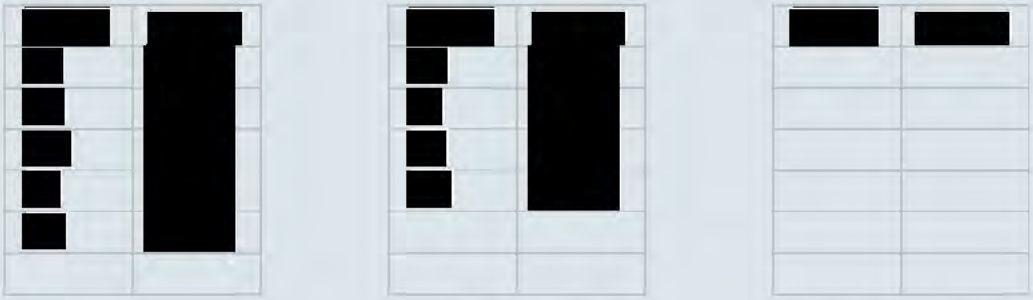
# Payment Schedule

## Standard Maintenance Charges

Periodic account statements will be supplied throughout the term of the Agreement and a full account reconciliation will be completed within thirty days of the end of the Agreement term. RS Aqua reserves the right to issue catch-up invoices if usage levels exceed those originally forecast.

Total Maintenance Charge: £ 47952 Maintenance Term: 9 months

Payment breakdown:

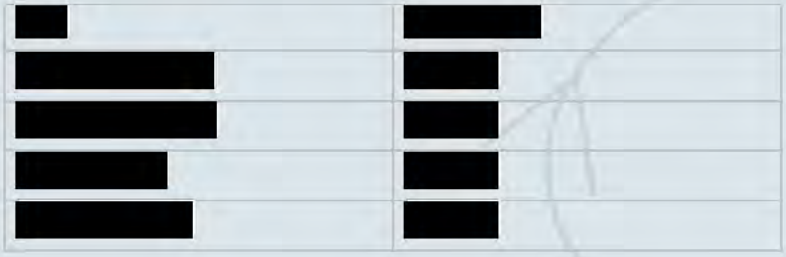


## Additional Services Charges

Emergency (out of hours) or Excluded Maintenance will be charged to the Customer at twice Time and Materials Rates, for a minimum of one hour. Subsequent time will be billed in thirty minute blocks following the initial hour.

## Consultancy Service Charges

## Time & Materials Rates



## Inspection Fee

N/A



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# Service and Maintenance Schedule

## Training

Training in the proper use of the Equipment and the upkeep required to maintain the Equipment in Good Working Order shall be provided to the Customer by RS Aqua remotely over video link or on-site at the Customer Location as appropriate.

It is recommended that the training should be attended by the Customer Service Manager and other relevant Customer staff. The training will include:

- Hardware component Inspection and maintenance
- Pre deployment configuring
- T[redacted] and [redacted]ics
- D[redacted] format [redacted]luation
- S[redacted] m oper[redacted]

Upon Cust[redacted]mer accep[redacted]f the Hire Agreement Equip[redacted]elivery, RS Aqua will make reasonable commerci[redacted]efforts to [redacted]y agree a suitable date for the delivery of such training with the Customer, within five Busin[redacted]Days of [redacted] acceptance.

Consultancy Services Charge related to the delivery of Customer training are included within the Standard Maintenance Charges.

## Equipment deployment support

RS Aqua will provide the Customer with guidance on the commissioning and deployment of the Equipment remotely over video link or on-site at the Customer Location.

For remote and on-site deployment support, activities will include:

- Configuration of communications options
- Battery test[redacted]
- Mooring Ins[redacted]e
- Pre deployment testing [redacted]

Excluded:

- Offshore op[redacted]

## Maintenance and Calibration Services

RS Aqua maintenance and calibration services are subject to the following clauses:

1. Unless agreed in advance and recorded in this Schedule, RS Aqua shall have the right to either service/calibrate equipment on site (directly or indirectly), or, send newly serviced and calibrated equipment to th[redacted]wapped out. In th[redacted]on, the Customer shall return the original equipment to RS Aqua within 10 working days of receipt of the newly serviced and calibrated equipment. Which must be s[redacted]racked and priority ship[redacted]e Customer will keep RS Aqua indemnified at all times in respe[redacted]relation to any equi[redacted]o be returned or which is found to be damaged.
2. The Customer will grant access to RS Aqua for the purposes of retrieving deployed equipment for RS Aqua to maintain and/or calibrate; or if required by RS Aqua, the Customer will retrieve the equipment for RS Aqua to calibrate and then deploy the equipment itself.
3. For RS Aqua to provide on-site services, the Customer agrees to provide a clean, dry, heated, safe and secure work space with mains power supply, fresh running water, and rudimentary maintenance



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equipment (e.g. water buckets and janitorial equipment) for RS Aqua to carry out the service and calibration activities.

4. Maintenance and calibration services, where relevant, may include firmware updates, mandatory manufacturer upgrades and fixes, and the supply of relevant calibration certificate, where applicable.

## Routine Maintenance obligations

**RS Aqua obligations:**

| ITEM | ACTIVITY | FREQUENCY |
|---|---|---|
| DWR Calibration | Calibrate / test all sensors<br>Replace O rings and consumables<br>Check sensor fluid<br>Firmware up | During calibration |
| DWR [redacted] Replacement | Replace Batteries, including if required<br>Power use check | During calibration |
| DWR Painting | Remove old paint and apply new | During calibration |
| Hand load test | Test each handle to 500 | During calibration |

**Customer obligations:**

Activities to be completed as per the associated User Manual(s), identified in the Equipment Schedule.

| ITEM | ACTIVITY | FREQUENCY |
|---|---|---|
| DWR | Clean and remove bio-fouling from the Equipment. | Prior to return |
| | | |

## Calibration

Calibration will be provided by RS Aqua as follows:

Calibration of STANDARD Equipment will involve sensor calibration with primary or secondary standards, traceable to national standards

Calibration of NON-STANDARD Equipment may require manufacturer input and specialist facilities. RS Aqua reserve the right to return NON-STANDARD Equipment to the equipment manufacturer for calibration.



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# Signature Certificate

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Author: [redacted] Creation Date : 28 Jun 2022, 13:22:44, PDT Completion Date : 29 Jun 2022, 08:02:00, PDT

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## Document Signed By:

Name: [redacted]

Email: [redacted]

IP: [redacted]

[redacted]

Location: PORTSMOUTH, ENG (GB)

Date: 29 Jun 2022, 04:25:13, PDT

Consent: eSignature Consent Accepted

Security Level: Email

Name: [redacted]

Email: [redacted]

IP: [redacted]

[redacted]

Location: LONDON, ENG (GB)

Date: 29 Jun 2022, 08:01:59, PDT

Consent: eSignature Consent Accepted

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