

## Service Contracts

### 1. Definitions

- 1.1. **Customer:** Signatory of the sales order and this Agreement
- 1.2. **Service Contract:** As defined in the quotation and sales order, represented by scheduled site attendances by Myriad H&PP to service the boiler on an ongoing/term basis and other services as defined therein
- 1.3. **Service Customer:** A customer who holds a current service contract with Myriad H&PP for a boiler.
- 1.4. **Agreement:** Contract covering the delivery of the "Service Contract"
- 1.5. **Breakdown:** Unscheduled visit to site.
- 1.6. **Business Hours:** 08:00 and 17:00 UK time excluding Saturday, Sunday and Bank or public Holidays
- 1.7. **Changes:** any additions or amendments to the Services that the customer requests MYRIAD H&PP to make.
- 1.8. **Standard labour rates for service customers (Business Hours):** As detailed in the main proposal document
- 1.9. **Standard labour rates non-service customers (Business Hours):** As detailed in the main proposal document
- 1.10. **Overtime hours (outside business hours):** should the work be required outside of business hours, the labor rate applied will be subject to an increase of 1.5 times the standard labour rate as outlined in 1.8 and 1.9
- 1.11. **Parties:** means MYRIAD H&PP and the customer
- 1.12. **Excluded Work:** means those services listed in clause 8, except for those services that are expressly included in the quotation and sales order.
- 1.13. **Aborted visit:** Where Myriad cannot undertake the complete works during the visit for reasons where the responsibility lies with the customer, including, but not limited to, the site conditions are not as agreed, or the customer supplies poor, incorrect or incomplete information to Myriad.

2. **Contract:** Your signature of this Agreement acknowledges that you will be bound by these Terms and Conditions.

### 3. Payment:

- 3.1. 100% of the stated price is due at the commencement of the Agreement. Prices are subject to VAT at the current rate.
- 3.2. If a payment is not made in line with credit terms then Myriad H&PP reserves the right to either terminate or suspend this agreement without prior notice, in which case works will not proceed.
- 3.3. The annual review of service contract rates will be on the 1<sup>st</sup> April each year. The service contract cost will remain at the quoted rate throughout the contract period. Subsequent years are subject to an annual inflationary rise linked to RPI. Myriad also review the maintenance rates (call out and labour rates) annually but there may be a requirement to adjust the rates during the year due to unexpected market conditions before the year end.

### 4. Limit of liability:

- 4.1. Myriad H&PP' total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the value of Services provided in any 12-month period. Nothing herein shall limit any liability for fraud or death or personal injury caused by negligence.
- 4.2. Myriad H&PP shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Agreement
- 4.3. Except as otherwise provided herein, each party (the "Indemnifying Party") shall fully indemnify, defend, hold harmless and keep the other party and its directors, officers, agents and employees (each an "Indemnified Party") on demand against any and all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions which the Indemnified Party may sustain or incur or which may be brought or established against it by any person and which in any case arise out of or in relation to or by reason of the fraud, gross negligence, or willful misconduct of the Indemnifying Party, its directors, officers, agents and employees.

5. **Customer Obligations:** Prior to any Service visit the Customer shall ensure the following:

- 5.1. The Customer will provide Myriad H&PP unrestricted access to the biomass boiler and associated plant in order to carry out any scheduled or unscheduled service and/or breakdown work. The site shall be in a condition which is safe and suitable for work to be carried out, including but not limited to:
  - 5.1.1. Boiler switched off for a minimum of 12 hours
  - 5.1.2. Full access between 8am and 6pm
  - 5.1.3. Heat load for minimum of 4 hours
- 5.2. Pay the deposit, the fee and additional charges by the due dates and without set-off or deduction. In the absence of any stated due dates then payment terms are 30 days from the date of invoice.
- 5.3. The maintenance operations and frequency is detailed in the operations and maintenance manual supplied with the boiler. The Customer must comply with all requirements set out within the manual to ensure that the boiler operates

- 5.4. Unless specifically included in this Agreement, inspection, testing and cleaning of the flue pipes is excluded. The flue needs to be inspected and cleaned, preferably immediately prior to a major service visit but at least on an annual basis. The flue sweeping contractor must be a professional flue service contractor and be a member of the NACS (National Association of Chimney Sweeps). Where flue gas cleaning does form part of this Agreement, the Customer shall provide access where flue height exceeds 6m.
- 5.5. Before any service work can be carried out, it is important that the boiler is allowed to cool down for a period of 12 hours prior to the scheduled attendance to ensure a safe working environment for the engineer. Myriad H&PP will advise the Customer prior to any intended service visit so that boiler can be switched off to allow a service to take place.
- 5.6. The Customer shall ensure that there is adequate fuel, to the correct specification, available during the visit.
- 5.7. Aborted visits, or site visits that are cancelled less than 24 hours before the agreed visit time/date, the customer will be charged at £250, or for all time spent by the engineers at the rates outlined in 1.8, 1.9 and 1.10 if this is the greater amount.
- 5.8. For wood pellet stores, the Customer must ensure that the fuel store vent filter is cleaned immediately after every fuel delivery.
- 5.9. The Customer must ensure that the fuel store is completely cleaned out twice a year where operating hours exceed 3000 hours per year; annually where operating hours are between 1500-3000 hours per year and every two years where operating hours are less than 1500 hours per year.
- 5.10. Comply with all reasonable requests or instructions made by Myriad H&PP in order to assist Myriad H&PP in performing its obligations under this agreement.
- 5.11. Comply with all applicable legislation including but not limited to the act, and all planning permissions, building warrants, licenses and consents of whatever nature issued by the public or other statutory body in respect of the subject matter of this agreement.
- 5.12. Be solely responsible for maintaining backup and disaster recovery procedures.
- 5.13. Be deemed to have accepted all proofs or work provided by MYRIAD H&PP within 3 working days of receipt, including any errors or omissions contained in them. MYRIAD H&PP reserves the right to revise any errors or omissions in any such document at any time.
- 5.14. Ensure the proper environmental conditions are maintained for the equipment and will maintain in good condition the accommodation of the equipment, the cables and fittings associated with them and any electricity supply to them.
- 5.15. Not permit any third party to make any modification, adjustment, or repair to the equipment otherwise than in accordance with this agreement or as expressly permitted by MYRIAD H&PP.
- 5.16. Not use in conjunction with the equipment any accessory, attachment or additional equipment other than that which has been supplied or approved by MYRIAD H&PP.
- 5.17. Promptly notify MYRIAD H&PP if the equipment needs maintenance or is not operating correctly, and notify MYRIAD H&PP within 48 hours of MYRIAD H&PP carrying out any services of any issues arising from the carrying out of such services. In the event that the Customer fails to notify MYRIAD H&PP of any problem within such time period then the Customer will be deemed to have accepted the same.
- 5.18. Grant MYRIAD H&PP engineers access to the site and provide adequate space around the equipment for the use of MYRIAD H&PP personnel, and make available such reasonable facilities as may be requested from time to time by MYRIAD H&PP for the storage and safekeeping of test equipment and parts.
- 5.19. Wherever possible, provide suitable vehicle parking facilities for use by MYRIAD H&PP personnel which is free from any legal restrictions and immediately close to the location with which the equipment is installed.
- 5.20. The customer acknowledges and accepts that MYRIAD H&PP is not responsible for and shall have no liability for any error, omission, quality or other fault relating to any material supplied by a third party
- 5.21. The customer will allow MYRIAD H&PP to bring third parties onto the site where the plantroom is located as required by MYRIAD H&PP providing all relevant Health and Safety regulations are adhered to.
- 5.22. The Customer warrants that:
  - 5.22.1. All information provided by it is true and accurate in all respects
  - 5.22.2. It will take steps necessary to protect MYRIAD H&PP including without limit providing details of any health and safety requirements
  - 5.22.3. It will notify MYRIAD H&PP immediately of any problems that may impact on the ability of MYRIAD H&PP to carry out the service which could endanger MYRIAD H&PP (save to the extent that it forms part of MYRIAD H&PP's obligations under the services) it has obtained all necessary permissions and licenses required in order to enable MYRIAD H&PP to carry out the services.

## Myriad Plantroom Services

## Service Contracts

### 6. Myriad H&PP Obligations: Myriad H&PP shall be responsible for the following:

- 6.1. Planned work: Service visits will be scheduled in accordance with previous visits, or alternatively to align the interim service for the winter months and the full service for the summer months. The service dates will be forwarded on receipt of the signed contract.
- 6.2. Myriad H&PP shall perform its duties in accordance with the Customer's safety manual (provided that the Customer has supplied one in advance of the Service or Breakdown visit) and applicable law. Myriad H&PP shall ensure that all Services are performed in an expeditious and workmanlike manner, using properly trained and skilled personnel.
- 6.3. MYRIAD H&PP shall use reasonable endeavors to provide a service in a timely manner. Unless agreed in writing by MYRIAD H&PP time shall not be of the essence.
- 6.4. MYRIAD H&PP reserve the right to make changes to planned visit dates but will aim to provide as much notice as possible to the customer.
- 6.5. MYRIAD H&PP reserves the right to subcontract any or all obligations under this agreement to a third party.
- 6.6. Provision of a Technical Help Line phone number, giving access to the Myriad H&PP technical help desk for Customers during the hours of 8:00 – 17:00 Monday to Friday, excluding Bank Holidays. This service is to establish whether the problem can be solved over the telephone in the first instance.

If you are eligible to receive telephone technical support as part of your service contract, it is important that the caller to the Myriad Technical Help desk is competent to take advice and to utilize it or instruct others regarding operation and safety of the plant. It is the customers responsibility to ensure that all involved are trained to a competent level.

All instructions provided by the Myriad telephone help desk is advice only, those receiving such advice directly or indirectly should only carry out works or operations that they are competent to do. Myriad take no responsibility for any injury or damage to persons, components or property resulting from a lack of such competence or understanding.

The Myriad H&PP Technical Help Desk is able to deal with the following:

- Fault diagnosis, step by step boiler restart and operation time adjustments
- Boiler/Buffer water temperature adjustment queries.
- Auto-de-ashing adjustments.
- Cleaning and maintenance items
- General technical questions

If further technical advice is required, then an engineer will telephone the Customer back within 4 hours of the call being logged into the Myriad H&PP CRM.

The initial telephone discussion will be to fault-find, and therefore the Customer may be asked to interrogate the boiler control panel and may also be asked to undertake some operations whilst under telephone supervision. The Technical Help Desk can therefore only assist those who are deemed competent to operate the equipment.

- 6.7. Provision of panel sealing tape, high temperature silicone sealant and all fire ropes will be provided free of charge if required by our engineer whilst on site.
- 6.8. Replacement parts that fail whilst under warranty will not be charged for.

### 7. The Services

- 7.1. The following terms shall apply to all Service Plans.
- 7.2. In return for advance payment of the Deposit (if applicable) and the Fee, MYRIAD H&PP will provide the Services as described in the quotation and sales order to the Customer.
- 7.3. MYRIAD H&PP will carry out these works in accordance with the appliance manufacturer's instructions and/or MYRIAD H&PP's operational procedure for generic work specifications (as MYRIAD H&PP may in its absolute discretion determine necessary). The Parties will agree the time and date of such work to be carried out.
- 7.4. In the event that the Customer requires further chargeable work that would fall outside of the agreed services, and should this work be required to take place outside normal Business Hours then MYRIAD H&PP will be entitled to levy Additional Charges in accordance with clause 5.2.
- 7.5. MYRIAD H&PP will visit the Customer within a reasonable time of the Customer notifying MYRIAD H&PP that the Equipment has broken down or failed, and MYRIAD H&PP will use reasonable endeavours to make any such repairs and adjustments to and replace any parts of the Equipment as may be feasible to restore the Equipment to its proper operating condition. MYRIAD H&PP is not responsible for any delay in the provision of replacement parts by MYRIAD H&PP's suppliers.
- 7.6. Subject to the relevant Service Plan, in carrying out either the Annual Service or the Breakdown Service, part/s of the Equipment become (in MYRIAD H&PP's reasonable opinion) obsolete, unobtainable or beyond economical repair MYRIAD H&PP may:
  - a. supply and fit adequate replacement parts which are not the same as the parts being replaced; or
  - b. if no adequate parts are available, notify the Customer and MYRIAD H&PP shall be under no further obligation to maintain, make good, repair,

replace or otherwise provide any of the Services in respect of any part of the Equipment. If this happens MYRIAD H&PP will refund the Customer an amount which MYRIAD H&PP deem to be an appropriate proportion of the Fee to reflect the fact that the Equipment (or part of it) is no longer covered. MYRIAD H&PP will have no further liability to the Customer.

- 7.7. MYRIAD H&PP reserve the right not to use and may refuse to accept any replacement parts not supplied by MYRIAD H&PP.
- 7.8. MYRIAD H&PP will not be responsible for or be liable to provide the Services if they are required as a result of, any inadequacy attributable to the original design or installation of the Equipment.
- 7.9. MYRIAD H&PP make no warranty as to the fitness for purpose or condition of the Equipment as at the start of the Agreement and MYRIAD H&PP shall not be under any obligation to put the Equipment into any better condition than it was in prior to the start of the Agreement.
- 7.10. MYRIAD H&PP reserve the right to carry out an initial inspection of any part of the Equipment and carry out any tests deemed necessary at the Customer's expense prior to the commencement of the provision of the Services and make recommendations as to remedial work which must be completed (also at the Customer's expense) before MYRIAD H&PP provides any of the Services. If the Customer fails to carry out any such remedial work MYRIAD H&PP may (at its discretion) reduce the Service Plan type being provided or (at its discretion) give 7 days' notice to terminate the Agreement.
- 7.11. Where an initial inspection of the Equipment has not been carried out by MYRIAD H&PP, MYRIAD H&PP shall be entitled at any time at its discretion to terminate the Agreement on 7 days' notice.
- 7.12. Where the Service Plan being provided is reduced or the Agreement is terminated pursuant to clause 13, MYRIAD H&PP will refund the Customer an amount which MYRIAD H&PP deem to be an appropriate proportion of the Fee.
- 7.13. If during the period of the Agreement, the Customer wishes to alter or extend the Equipment or if the Equipment is worked on by any person other than one of MYRIAD H&PP's technicians the Customer shall give two weeks prior written notice to MYRIAD H&PP and we may then either:
  - a) agree that the Agreement shall apply to the Equipment as altered or extended; or
  - b) terminate the Agreement forthwith whereupon MYRIAD H&PP will refund the Customer an amount which MYRIAD H&PP deem to be an appropriate proportion of the Fee to reflect that termination.
- 7.14. MYRIAD H&PP shall be entitled to terminate this Agreement forthwith if the Equipment is altered or extended without MYRIAD H&PP's prior agreement. The Customer shall not be entitled to any refund of the Fee.

### 8. Exclusions: The following are specifically excluded from this Agreement (unless otherwise specified in the Agreement)

- 8.1. Provision of any Service outside the UK mainland
- 8.2. Silo cleaning. For silos with residual fuel, this will be treated as an aborted visit and charged as per clause 5.7.
- 8.3. All non-warranty replacement part costs and the labour associated with fitting them are excluded from the Agreement. All other parts fitted during the service to ensure the boiler operates to the manufacturers recommendations will be charged at the retail price minus any agreed discount. General consumables included in the service price are limited to panel sealing tape, high temperature silicone sealant and all fire ropes
- 8.4. Monitoring, managing or maintaining any part of the wet system, including all pumps, valves and other pipe work associated equipment even if previously supplied by Myriad H&PP.
- 8.5. Monitoring, managing or maintaining any part of the electrical of heat distribution controls even if previously supplied by Myriad H&PP.
- 8.6. Inspection, testing and cleaning of the flue pipes does not form part of the Myriad H&PP scope of works for 'boiler servicing', unless quoted for and an order received. Flue needs to be fully swept prior to visit
- 8.7. Inspection, testing and cleaning of the flue pipes where the Agreement specifically includes cleaning of the flue. Call outs are not included within the service contract unless the fault is covered by the manufacturer's warranty.
- 8.8. The Services do not include any of the following (and if any such work is carried out by MYRIAD H&PP, the Customer will be liable to pay Additional Charges for that work) other than as may be required by law:
  - turning off or lighting up the Equipment and adjustment to time switches, controls, etc., unless such work is required as a result of a fault with an unrelated part of the Equipment;
  - the replacement of the appliance itself or decorative parts, trim or cases;
  - any work caused by or arising out of the failure by the Customer to comply with the instructions or recommendations of either MYRIAD H&PP or the manufacturer or the installer of the Equipment, or the Customer's failure to take reasonable precautions to protect or minimise damage to the Equipment when it breaks down or fails;
  - any work required as a result of wilful damage or negligence (other than that caused by MYRIAD H&PP);
  - any work required as a result of any fault or failure of the electrical system within the premises at which the Equipment is located, or the public electricity, gas or water supply to the Equipment;

Myriad Plantroom Services

Design / Project Management / Distribution / Servicing / Training

## Service Contracts

- any work or materials required to rectify an electric immersion heater;
  - any work required as a result of damage caused by hard water deposits or aggressive/corrosive water including the analysis and treatment of system water i.e. dosing with corrosion inhibitor, removal of deposits, sludge or microbiological growth, power flushing, cleansing or descaling;
  - provision of corrosion inhibitor or other water treatment chemicals;
  - making good any damage resulting from fire, flood, lightning, explosion, storm, tempest, frost, other natural hazards, act of terrorism, war or civil disorder;
  - any work required to the building, or the fixtures, decorations, furniture or fittings of the building, in which the Equipment is situated arising out of any cause whatsoever other than the negligent or wrongful act of MYRIAD H&PP;
  - work or inspection or testing of the electrical, gas or water supplies up to the respective appliance/system isolation controls;
  - any work on microprocessor based control systems including weather compensators, optimisers, humidifiers, evaporators, precipitators, air conditioning plant, washing machines, processing plant or similar installations, flues (except standard flue assemblies on domestic room sealed appliances);
  - any overhaul of circulation pumps and ventilating fans, unless such work is required as a result of a fault with an unrelated part of the Equipment;
  - repair or replacement of heat exchangers including plate heat exchangers, sacrificial anodes and/or other non-sacrificial means of protection;
  - repair or replacement of flues, mechanical flues, pressurisation units and associated controls;
  - any routine overhaul/ maintenance of unvented hot water components;
  - Fan convactor radiators unless specified in MYRIAD H&PP's acknowledgment of order;
  - any draining down or refilling of the system (excludes individual radiators and boilers);
  - any work on the electrical supply up to the isolation switch of the Equipment or the internal gas installation pipes up to the Appliance isolation valve;
  - repair or replacement of cold water supply tanks, unless the tank's sole purpose is to serve as an expansion tank and the means of conveying hot water from the appliance or hot water cylinder to the hot water taps including secondary circulation pumps;
  - any work required as a result of an inherent design fault in the Equipment or any installation of which the Equipment forms part, whenever such fault is discovered by MYRIAD H&PP;
  - draining and refilling of the hot water supply system where the means of isolating that hot water supply system is inadequate;
  - any additional work required to remove the sacrificial anodes where the required clearances are not available;
  - any work required as a result of the faulty installation (other than by MYRIAD H&PP) of the Equipment;
  - carrying out any examination required in order to comply with the Pressure Systems and Transportable Gas Container Regulations 1989;
  - any maintenance of the Equipment which is necessitated as a result of any cause other than fair wear and tear or MYRIAD H&PP's neglect or fault;
  - any further exclusions specified in MYRIAD H&PP's acknowledgement of order. (together "Excluded Works")
- 8.9. Notwithstanding the above, MYRIAD H&PP may (but shall not be obliged) carry out work despite it being Excluded Work save that MYRIAD H&PP shall be entitled to levy Additional Charges for such work.
- 9. Spares Availability**
- 9.1. All common parts are stocked in the UK and are typically accessible on a 3-5 working day delivery.
  - 9.2. For stocked parts a next-day delivery option is available at an additional cost.
  - 9.3. There are a small number of parts that would not be damaged during appropriate use and therefore are not stocked in the UK. These would require shipping from the manufacturer which could take around 7-10 working days.
- 10. Breakdown call Outs**
- 10.1. Scheduled call outs are available between the hours of 8:00 – 17:00 Monday to Friday
  - 10.2. The call out labour charge is at the rate outlined in 1.8, 1.9 and 1.10, which will include all costs associated with the engineer attending site. An annual inflationary rise will be applied after year one. If more than one person is required to attend site at the same time then the subsequent person will be charged at the same rate. Return visits to site are also charged at the same rate.
  - 10.3. Minimum call out charge will be for 1 hour spent on site. Engineer's time on site will be rounded up to the nearest half hour.
  - 10.4. Call outs will be invoiced on completion of the engineer's report. Normal payment terms apply (30 days from date of invoice).
- 11. General**
- 11.1. This clause is deliberately left blank.
- 12. Term**
- 12.1. This Agreement shall commence on the Commencement Date and continue until the Completion Date unless terminated in accordance with clause 13.
  - 12.2. Save where terminated prior to the Completion Date further to clause 13, this Agreement shall expire at the Completion Date where one Party has provided the other with written notice to that effect no less than 30 days prior to the Completion Date.
  - 12.3. Without prejudice to the rights of the Parties under clause 13, where no such notice under clause 12.2 is provided, the Completion Date shall be extended for a further twelve calendar months once the initial Completion Date is reached and this Agreement shall continue in full force and effect and this clause 12.3 shall be repeated in respect of that extended period.
- 13. Termination and Suspension**
- 13.1. **Suspension:** MYRIAD H&PP reserve the right to suspend some or all of the Services forthwith if:
    - a. it has reason to believe that the Customer is misusing the Services (or any of them);
    - b. it is required to do by law; or
    - c. the Customer should fail to pay any Deposit, Fee or Additional Charges by the due date.
 Any such suspension shall be confirmed by notice in writing.
  - 13.2. **Termination for insolvency:** Either Party may terminate this Agreement (in respect of all or any of the Services) immediately and without notice if the other Party becomes insolvent and/or unable to pay its debts, bankrupt or placed in the hands of a receiver or administrator or wound up, or suffers an analogous insolvency event.
  - 13.3. **Termination by either Party:** Either Party may terminate this Agreement on the Completion Date having given at least 30 days' notice in writing to the other Party.
  - 13.4. **Actions on termination by either Party:** In the event of termination of this Agreement for whatever reason:
    - a. the Customer will remain liable to pay MYRIAD H&PP all sums outstanding;
    - b. both Parties will continue to respect and uphold all confidentiality and IPR obligations;
    - c. both Parties will immediately stop using the IPR of the other.
 Upon termination (for whatever reason), MYRIAD H&PP shall be entitled to destroy any information or documentation (including any computer discs or CDs) provided by the Customer.
  - 13.5. **Termination by the Customer an order for Parts:** Where a customer terminates an order for parts, there is a cancellation fee of £200 or 30% of the value of the parts, whichever is greater, to allow for Myriad to recover costs for restocking, frustrated deliveries, management time spent and covering supplier costs.
  - 13.6. **Termination by the Customer of a Service contract:** Where a customer terminates a service contract, for any reason except a material breach by MYRIAD H&PP where clause 13.7 takes precedence, the customer will be liable for all the costs associated with completed works, visits (routine and emergency) and any technical support up to the date of termination. Furthermore, the Customer will be liable for 50% of the remaining contract value from the date of termination.
  - 13.7. **Termination by the Customer for a material breach by MYRIAD H&PP:** The Customer may by notice terminate this Agreement with immediate effect in the event of material breach by MYRIAD H&PP, provided the Customer has previously given MYRIAD H&PP 30 days' notice or such longer period as may be appropriate to rectify the material breach complained of. In the event the Customer terminates the contract, they will be liable for all costs associated with completed works, visits (routine and emergency) and any technical support up to the date of termination. Furthermore, as part of a 'multiple' year contract, the Customer will be liable for 35% of the remaining contract value from the date of termination.
  - 13.8. **Termination by MYRIAD H&PP:** MYRIAD H&PP may by notice terminate this Agreement immediately in respect of i) a breach or breaches by the Customer of any of its obligations in this Agreement where, if capable of remedy, the Customer fails to remedy within 7 working days of receipt of notice in writing or by e-mail from MYRIAD H&PP requiring the Customer to do so; ii) continuing non-payment after 7 days' notice, iii) the Customer intimating its abandonment of the Agreement, iv) a valid suspension of some or all of the Services by MYRIAD H&PP under clause 13.1 where the underlying cause of the suspension has not been rectified during the subsequent 28 day period.
  - 13.9. **Termination by MYRIAD H&PP:** MYRIAD H&PP may terminate this Agreement on 7 days' notice in respect of i) failure by Customer to carry out remedial works as per clause 7.10; or vi) the Customer's failure to permit access to MYRIAD H&PP to carry out an initial equipment inspection as per clause 7.11.
- 14. Ownership Rights**
- 14.1. All IPR relating to the Services and other items and materials created by MYRIAD H&PP, is either owned exclusively by MYRIAD H&PP or MYRIAD H&PP are properly licensed to use it and no right, title or interest in or to any of the same is granted, transferred or assigned to the Customer.

## Service Contracts

14.2. Subject to this Agreement, the Customer hereby grant to MYRIAD H&PP a non-exclusive, transferable (by means of sub-licence) worldwide license to use any material provided by the Customer for the purposes of carrying out the Services.

### 15. Confidential Information

- 15.1. Each Party will not use the other Party's Confidential Information other than for the purposes provided in this Agreement and will keep in confidence the other Party's Confidential Information made available to it; provided, however, that such restriction on disclosure shall not apply to any information that:
- a. is in the public domain through no fault of the Party receiving the disclosure;
  - b. was known to the receiving Party prior to disclosure by the disclosing Party;
  - c. is or was disclosed to the receiving Party by a third party that was not under a similar confidentiality agreement; or
  - d. is required to be disclosed by applicable law or an order of any governmental authority of competent jurisdiction.
- 15.2. Each Party shall be responsible for its own agents, workers and employees with respect to ensuring that no Confidential Information will be disclosed.
- 15.3. The Customer accepts that MYRIAD H&PP shall be entitled to announce (either verbally or in writing) for marketing purposes only that it has undertaken the Services for the Customer provided that MYRIAD H&PP will not disclose anything which is Confidential Information.
- 15.4. The Customer acknowledges that all copyright and title to intellectual property in relation to Services, Breakdown cover and the equipment provided by Myriad H&PP are the property of Myriad H&PP.

### 16. Data Protection

- 16.1. MYRIAD H&PP acknowledges and accepts that it is a data processor for the purpose of carrying out its obligations under this Agreement. Notwithstanding, the previous sentence, MYRIAD H&PP shall be entitled to use any Personal Information (as defined below) for the purposes and in accordance with Part A.
- 16.2. MYRIAD H&PP agrees that it shall not disclose any personal data received by MYRIAD H&PP pursuant to this Agreement or otherwise ("Personal Information") to a third party other than in accordance with the Services.
- 16.3. MYRIAD H&PP warrants that it has in place appropriate technical and organisational measures against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure of or access to the Personal Information and adequate security measures to ensure that unauthorised persons will not have access to the Personal Information and that any persons it authorises to have access to (including but not limited to its employees) will respect and maintain the confidentiality and security of the Personal Information.
- 16.4. MYRIAD H&PP warrants that all security measures referred to in clause 16.3 above will reflect the level of damage that might be suffered by, and any harm which might result to, the customers who are the subjects of the Personal Information as a result of unauthorised access or disclosure.
- 16.5. MYRIAD H&PP shall ensure that all processing of the Personal Information shall be carried out by MYRIAD H&PP at all times in accordance with the Act and
- 16.6. that it otherwise conducts itself in accordance with the Act.
- 16.7. In the event that MYRIAD H&PP discovers or has reasonable reason to believe that it is not complying with clause 16.3 it shall promptly notify the Customer of this and provide to the Customer such details of the non-compliance or suspected non-compliance as the Customer may reasonably request.
- 16.8. For the purpose of this clause 16, "processing", "personal data" and "data processor" shall have the meaning set out in the Act.

### 17. Representations, Warranties and Limitations

- 17.1. This clause 17 sets out MYRIAD H&PP entire liability to the Customer and all other liability is hereby excluded.
- 17.2. Save as required by law and save as may be set out in the agreement, MYRIAD H&PP disclaim and the customer waives all other warranties, express or implied, with respect to the services, arising by law or otherwise, including, without limitation any implied warranty of satisfactory quality, fitness for a particular purpose and any obligation, liability, right, remedy, claim in tort, notwithstanding any fault, negligence, strict liability or product liability of MYRIAD H&PP (whether express or implied).
- 17.3. MYRIAD H&PP shall not have any liability to the Customer in respect of any of the following losses or damage (whether such losses or damage were foreseen, foreseeable, known, direct, indirect or consequential or otherwise), loss of profits, loss of anticipated savings, loss of business, loss of goodwill, loss or use or downtime, loss of or corruption to data or other information.
- 17.4. Nothing in these Conditions shall limit or exclude the Parties' liability to each other for: death or personal injury caused by their negligence or those for whom they may at any time be responsible; fraud or fraudulent misrepresentation; or any matter in respect of which it would be unlawful for the Parties to exclude or restrict liability

### 18. General

- 18.1. This clause is deliberately left blank.

### 19. Waiver

- 19.1. The waiver by either Party of any breach or failure to enforce any of the terms and conditions of this Agreement at any time shall not in any way affect, limit or waive either Party's rights thereafter to enforce and compel strict compliance with every term and condition of this Agreement.

### 20. Notices

- 20.1. Any notice required or permitted by this Agreement shall be in writing and shall be deemed delivered a. if posted recorded or special delivery or by airmail, 48 hours following postage; b. if faxed or emailed, forthwith on the sender's receipt of proof of delivery.

### 21. Successors and Assigns

- 21.1. This Agreement shall be binding upon and inure to the benefit of the successors and assignees of MYRIAD H&PP and the Customer. MYRIAD H&PP may assign its rights or obligations hereunder at any time. The Customer may not assign, transfer, charge, or subcontract any or all of its rights or obligations under this Agreement without MYRIAD H&PP's prior consent.

### 22. Governing Law and Jurisdiction

- 22.1. This Contract shall be governed by English law

### 23. Severability

- 23.1. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the Parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each Party as close as possible to that under the provision rendered unenforceable. The unenforceable provision shall be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall be unaffected.

### 24. Entire Agreement

- 24.1. This Agreement and any document referred to herein constitutes the entire agreement of the Parties with respect to the subject matter hereof and all prior agreements with respect thereto are superseded. No amendment or modification hereof shall be binding unless in writing and duly executed by both Parties.

### 25. Third Party Rights

- 25.1. A person who is not a party to this Agreement shall not have any rights under or in connection with it.

### 26. Force Majeure

- 26.1. MYRIAD H&PP will not be liable for any delay or failure to carry out its obligations under this Agreement where such delay or failure arose as a consequence of matters beyond its reasonable control including without limit any acts of God, explosions, terrorism, transport failures, labour shortages or war.