

Breathing Buildings Ltd. can provide a maintenance service for the equipment. While the equipment is extremely reliable and can be fully automatic, there are benefits to a maintenance contract as follows:

- Technical support line
- Complete system test, faulty / worn parts identified
- Cleaning of critical components
- Software upgrades
- Set-point alterations
- System demonstration / refresher (useful for new members of staff)

Equipment and Prices

The equipment included in our coverage is listed on the quotation provided.

Where access equipment is provided by Breathing Buildings, this is re-charged at cost plus 5%. The exact cost will vary according to the height and duration, access to a 5m roof will cost around £150 for the first day and £300 for a full week.

Full details of the services provided and exclusions can be found below in our service and maintenance agreement, which is signed on acceptance and a copy will be provided on request.

Dear Sirs

We are writing to confirm our appointment to provide maintenance services to equipment as more particularly described below in connection with the Property on the terms and conditions set out below.

1. Appointment

- 1.1. Our appointment shall take effect from the date of this letter (the “Commencement Date”) and this letter supersedes any previous agreements or arrangements between us in respect of such services for the Property.
- 1.2. Save were elsewhere defined in this letter, terms in this letter shall have the meaning given to them in Annex 1.
- 1.3. References in this letter to “clauses” and “Annex” are to the clauses and annexes of this letter.

2. Scope of Services

- 2.1. We shall provide the maintenance services for the Property specified in Annex 2 (the “Services”) in relation to the Equipment as specified in Annex 2 (the “Equipment”) for the period specified in clause 4.
- 2.2. For the avoidance of doubt, our obligation to perform the Services does not include any obligation to perform services of the type specified as exclusions in Part 2 of Annex 2.

3. Our Obligations

- 3.1. We warrant to you that in respect of all the Services to be provided by us under this letter we:
 - have exercised and shall continue to exercise all the reasonable skill, care and diligence to be expected of a properly qualified professional maintenance contractor who has held himself out as competent and experienced to perform the Services;
 - shall perform the Services in accordance with Annex 2;
 - shall allocate adequate resources to the performance of the Services and ensure that any personnel engaged in the performance of the Services are appropriately qualified and skilled; and
 - shall comply with any statutes, statutory requirements or any regulation or bye-law applicable to the Services.

4. Duration

- 4.1. Our appointment under this letter commences on the date of this letter and continues for an initial period of one year (“Maintenance Period”). At the end of the Maintenance Period our appointment under this letter may be extended on each annual anniversary of the Maintenance Period for a further period of one year (each such extension a “Subsequent Maintenance Period”) by our mutual agreement.

5. Remuneration

- 5.1. The fee payable in respect of the performance of the Services shall be the figure shown on page 1 of the quotation for the duration of the Maintenance Period calculated and paid in as specified in Annex 3 (the “Fee”).
- 5.2. If we both agree to continue the Services for the Subsequent Maintenance Period in accordance with clause 4, the fee payable in respect of performance of the Services for the Subsequent Maintenance Period shall be agreed between us and confirmed to you in writing (“Revised Fee”).
- 5.3. Any Revised Fee is payable in accordance with this clause 5 as if references to the Fee were references to the Revised Fee.
- 5.4. All instalments of the Fee as specified in Annex 3 are exclusive of VAT which shall be payable by you at the appropriate rate.
- 5.5. Payment of any instalment or stage of the Fee shall be due upon receipt by you of our invoice or (if later) the date specified in Annex 3. Notice from you of the amount you propose to pay in respect of such invoice,

the basis on which such amount is calculated and to what the amount relates due shall be given to us not more than 5 days after the due date for payment. The final date for payment of any instalment or stage of the Fee shall be 28 days after the due date for payment.

- 5.6. Where you intend to exercise any right to deduct withhold or set-off any sum from or against any payment due under clause 5.3 you must first give written notice of such intention not less than 7 days prior to the final date for payment setting out the ground or grounds for each such deduction withholding or set-off.
- 5.7. If any sum payable under this letter is not received within 30 days after the date for payment specified in Annex 3, we reserve the right to charge interest on such sum on a daily basis at the rate of 8% above the base rate of Barclays Bank.
- 5.8. For the avoidance of doubt where we are requested to perform the Services in the event of malfunction of the Equipment, where the same has arisen as a result of your breach of clause 6, we shall be entitled to charge additional fees for such services in the amounts specified in Annex 3.

6. Your responsibilities

6.1. During the Maintenance Period, you shall:

- provide us with safe and unimpeded access without unreasonable delay and at such times as are agreed in advance between us, to the Equipment and the Property for the purposes of providing the Services;
- Use and operate the Equipment strictly in accordance with the operating instructions issued by us;
- Not, without our prior approval, allow anyone other than us to adjust repair or maintain the Equipment; and
- Promptly notify us of any fault or defect arising in the Equipment or its operations or of any additions or alterations made to the Services.
- Not request us to perform the Services specified in Annex 2 on the basis that the Equipment is not performing a function, where such function is not part of the Equipment's operation in accordance with the operating instructions issued by us.

7. Assignment and Sub-Contracting

- 7.1. You agree that neither you nor we may assign or otherwise transfer this letter and/or our respective rights arising under this letter.
- 7.2. We agree will not sub-contract any part of the Services under this letter without your prior written consent.

8. Suspension

- 8.1. You may instruct us to suspend the performance of all or any of the Services. We shall be entitled to be paid for Services properly performed up to the date of suspension on a fair and reasonable basis. We shall resume the performance of any Services which have been suspended within fourteen (14) days of your instruction to do so.
- 8.2. If any part of the Fee remains unpaid beyond the date for payment specified in Annex 3, we may, on written notice to you, suspend our performance of the whole or any part of the Services. Our right to suspend works under this paragraph 8.2 of this letter shall cease upon receipt of payment of the outstanding portion of the Fee

9. Termination

9.1. You may terminate our appointment under this letter in the following circumstances:

- Immediately upon us suffering an Insolvency Event;
- Upon us committing a material breach of our obligations under this letter, within 28 days after you have given notice to us specifying the breach if we have not taken reasonable steps to rectify the same.

9.2. We may terminate our appointment under this letter in the following circumstances;

- Immediately upon you suffering an Insolvency Event;

- Without Prejudice to any right under clause 8.2, if any element of the Fee remains unpaid in accordance with the provisions of paragraph 5 and Annex 3 of this letter for a period of 30 days.

9.3. If our appointment is terminated for the reasons specified in clause 9.1 or 9.2 of this letter we shall with reasonable speed and economy bring to the end the performance of the Services.

9.4. In the event of any termination of our appointment under clause 9 of this letter you shall pay to us all sums due and owing at such termination and reasonable fee for services performed prior to such termination but not yet invoiced in accordance with clause 5 or Annex 3.

10. Notices etc.

10.1. Any notice, consent, approval, or request required or authorised to be given by the terms of this letter shall be in writing and shall be deemed to have been given if it is delivered by hand or sent by first class post or facsimile transmission to:

- **Breathing Buildings**, 15 Sturton Street Cambridge, CB1 2SN
Fax: 01223 450 061
- **The Property**

10.2. Notices, consents, approvals and requests delivered or sent in accordance with clause 12.1 shall be deemed to have been given:

- at the time of delivery if delivered by hand;
- two days after the date of posting if sent by first class mail; and
- at the time of transmission if sent by fax, provided that a transmission report confirming complete transmission of the document to the intended destination is obtained.

10.3. Where under this letter an act is required to be done within a specified period of days after or from the specified date, the period shall begin immediately after that date. Where the period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a Bank Holiday, that day shall be excluded.

10.4. For the avoidance of doubt, we both confirm that this letter shall not, and we do not intend that this letter shall, confer on any third party any right to enforce any term of this letter pursuant to The Contracts (Rights of Third Parties) Act 1999.

10.5. No variation to the terms and conditions of this letter after the date hereof shall be valid or of any effect unless agreed in writing and signed by a duly authorised representative of each party.

11. Liability

11.1. We shall not be liable to you, or any other body, for any loss, damage or injury to the extent that is caused by or arises from acts or omission from yourself, your employees, sub-contractors or agents.

11.2. In no circumstances shall we be liable, in contract or tort for any loss of profit, business, contracts, revenue or anticipated savings or for any special or indirect or consequential damage of any nature whatsoever.

11.3. For the avoidance of doubt, we shall have no liability under this appointment in connection with the removal, replacement or re-installation of the Equipment.

12. Insurance

12.1. We shall throughout the Maintenance Period and any Subsequent Maintenance Period maintain both Public Liability insurance cover and Employer's liability cover in an amount not less than £1M, for any one occurrence or series of occurrences.

13. Governing Law and Disputes

- 13.1. This letter shall be governed by English law and disputes or differences arising under or in connection with this letter shall, subject to paragraph 13.2 and our respective rights under statute, be referred to the exclusive jurisdiction of the English Courts.
- 13.2. Any dispute or difference arising as to or out of the terms of the letter or the performance of the Services may be referred to an Adjudicator under clause 13.5.
- 13.3. If either party disputes a decision of an Adjudicator it may commence proceedings in accordance with clause 13.6 but pending any settlement or judgment of the Court the parties shall give effect to the decision of the Adjudicator.
- 13.4. If the Court gives judgment or the parties settle the dispute on terms which differ from the decision of the Adjudicator, the party which has successfully contested the decision of the Adjudicator shall be entitled to recover from the other party any loss damage costs or expenses suffered by it as a consequence of complying with the decision of the Adjudicator pending the settlement or the conclusion of the proceedings but for the avoidance of doubt:
- The fact that a party incurs loss damages costs or expenses earlier than would otherwise have been the case but for an Adjudicator's determination shall not entitle that party to recover such loss damage costs or expenses from the other party under this clause; and
 - Where both parties are entitled to recover loss damage costs or expenses from the other the amounts payable shall be set off against each other and only any balance remaining shall then be paid.
- 13.5. Any dispute or difference arising under this agreement may be referred to adjudication in accordance with the following provisions:
- The Scheme for Construction Contracts SI No. 649 of 1998 (the "Scheme") shall apply and shall be deemed to be incorporated and set out in this agreement, subject to the following sub-clauses;
 - The nominating body for purposes of the Scheme shall be the President or Vice President (or other official nominated by them for these purposes) of the Chartered Institute of Arbitrators;
 - The Adjudicator's decision is binding until the dispute or difference is finally determined by agreement or by the English Courts as provided in clause 15.5; and
 - The Adjudicator shall be obliged to give reasons for his decision, to declare any interest in the subject matter of the adjudication or the parties and shall deliver his written decision to the parties within two (2) days from the date of the decision.
- 13.6. Subject only to the provisions of clause 13.5, any dispute or difference arising out of or as to the terms or existence of this letter or the performance of the Services shall be tried by the High Court of England and Wales or by the appropriate County Court and the parties shall use their best endeavours to ensure that the matter is tried by a Judge of the Technology and Construction Court.

14. Confidentiality

- 14.1. Each of us shall treat as confidential any information that each of us obtains about the other's business except to the extent that such information is in the public domain and shall not disclose it to anyone else save with the prior written consent of the other or where it is required to do so by some authority having the power by law to require such disclosure.

Kindly acknowledge your acceptance of the above by returning to us the enclosed copy of this letter duly executed by your firm.

Yours faithfully

Signed by or on behalf of

BREATHING BUILDINGS LIMITED



In the presence of:

Witness Signature

.....

Witness Name

.....

Witness Address

We hereby accept your appointment on the terms of this letter by executing and delivering this copy letter on today,

Signed on behalf of

.....

In the presence of:

Witness signature

.....

Witness Name

.....

Witness Address

Annex 1

“Insolvency Event” shall mean

the making of a composition or arrangement by a party with its creditors;

(b) the bankruptcy of the partners in a party (if applicable);

or if the party is a company:

(c) it makes a proposal for a voluntary arrangement for composition of debts or scheme of arrangements;

(d) it has a provisional liquidator appointed;

(e) it has a winding up order made;

(f) it passes a resolution for a voluntary winding up (except for the purpose of amalgamation or reconstruction);

(g) an administrator or an administrative receiver is appointed to the party or

(h) it is otherwise deemed to be unable to pay its debts as they fall due.

ANNEX 2

Part 1: Equipment and Services

ID	Breathing Buildings Ventilation Systems at the Property
	<ul style="list-style-type: none"> • Wipe grilles and inside of unit inc of fan blades and hub and damper blades • Test sequence performed ensuring correct operation of hardware and allowing damper blades to be fully opened for cleaning • Check fans for smooth operation • Check damper actuator alignment and drive clamp is tight • Perform software updates to system • Check electrical hardware for dust build up and hear/overload damage • Check terminations are good (potential can work loose if unit is subjected to vibration by other equipment) • Check sensors readings, indicators, replace u/s sensors if applicable

Timing

Routine maintenance will be carried out annually at a mutually agreed time. If the client requires routine maintenance outside of normal business hours (Monday – Friday, 8am – 5pm) a surcharge of 50% will be applied to the normal rate.

Part 2: Exclusions

Wholesale removal, replacement or reinstallation of the Equipment

Any provision for floor/wall protection

Any laying of floor/wall protection

Any making good of building fabric caused by access requirements or grille removal

Access equipment – this will be charged at cost plus 5% if not provided by the school

All Third Party Equipment defects including:-

- Window Actuators
- BMS fault

Annex 3

Payment Intervals – Maintenance Period

Instalment	Due	Amount
1.	Commencement Date	Whole of the Fee

Payment Intervals – Subsequent Maintenance Periods

Instalment	Due	Amount
1.	On the annual anniversary of the Commencement Date to which the Subsequent Maintenance Period relates	Whole of any Revised Fee
2.		
3.		

Rates for Additional Services

For additional services as specified in clause 5.8 we will charge £300 per person per call out and 65 pence per mile for travel.