



CircoSense Ltd
Proof of Concept, Procurement and Maintenance Agreement
Terms & Conditions

1. Interpretation

This Agreement, which is the sole agreement and not party to, nor in conjunction with, any other document/agreement, where known or not, except CircoSense Ltd's own Proof of Concept and/or Sales documents (which will adopt in entirety terms noted herein), will have full contractual governance and will be the single reference document for contract terms, conditions and bindings.

The following words and phrases shall have the meanings set out below.

Procurement Date: the date of when Procurement was concluded/agreed (if different to the commencement date).

Commencement Date: the date as agreed between the parties as noted on the schedule of this agreement.

Data: any data stored by the Customer which relates to or is generated by the supplied Equipment or Software.

Good Industry Practice: in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgement and the making of any expenditure that would reasonably be expected from a skilled person engaged in the same type of undertaking under the same or similar circumstances. Note: All equipment supplied/installed is non-invasive therefore unaffected of any incumbent systems infrastructure integrity.

Proof of Concept: criteria set to establish proof of projected savings. (as noted on the Proof of Concept document).

Initial Period: a period of 12 months commencing on the Commencement Date.

Location: the location of the Equipment.

Maintenance Plan: the provision of the Services in accordance the maintenance plan as set out in the Schedule.

Maintenance Fees: the fees payable by the Customer for the provision of the Maintenance Plan as set out in the Schedule, as these fees are varied from time to time in accordance with the terms of this Agreement.

Annual Service: Each year, upon request from the Customer, CircoSense appointed technician will provide a full annual service on all equipment covered under this maintenance plan.

Charges: charges out with Maintenance Fees.

Service Charges: the charges payable by the Customer to CircoSense Ltd in accordance with each of the Services as set out in the Schedule, as these fees may be varied from time to time in accordance with the terms of this Agreement.

Working Days: means Monday to Friday 08:30pm to 5pm.

Response Service Level Agreement (SLA): CircoSense aim to provide a Technician within 3 **working days** from initial call-out request (UK mainland only).

RPI: the Retail Price Index

Services: the services as detailed in the Schedule.

Software: the software supplied with the Equipment including any updates.

Renewal Notice: the agreement is automatically renewed (maintenance) annually until cancelled.

Renewal Period: successive 12-month period(s) after the Initial Period as stated on the schedule.

Term: the initial period together excluding all Renewal Periods.

Excluded Causes:

- (a) use of the equipment or materials not supplied or approved in writing by CircoSense Ltd;
- (b) any maintenance, alteration, modification or adjustment performed by persons other than CircoSense Ltd or its employees or agents including consequential outcomes from adjusted connected third party systems;
- (c) the Customer or a third party:
 - (i) Opening or otherwise accessing the CircoSense unit(s); or
 - (ii) moving or otherwise transferring the location of the CircoSense unit(s);
 - (iii) adjusting temperature or other elements sent to/received by the CircoSense Unit(s);
- (d) a failure, interruption or surge in the electrical power or its related infrastructure connected to the equipment;
- (e) a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the equipment, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer; or
- (f) the neglect or misuse of the equipment.



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(g) change of use of system since original, or subsequent, (CircoSense Unit) installation by CircoSense Ltd or their approved installers.

(h) change of system configuration since original, or subsequent, (CircoSense Unit) installation by CircoSense Ltd or their approved installers.

Approved Installer: CircoSense Ltd technicians or CircoSense approved sub-contractor.

2. Services

2.1 During the Term, CircoSense Ltd shall, upon the Customer 's request, provide the Customer with the **annual service** for the Equipment installed at the **location** in accordance with the agreed Maintenance Plan (see schedule).

2.2 CircoSense Ltd shall perform that service within **Response Service Level Agreement (SLA)** from the date of the Customer 's Call-Out/Maintenance Request.

2.3 CircoSense Ltd shall not be obliged to provide the service where damage or a fault arises as a result of an Excluded Cause.

3. Customer 's Obligations

3.1 The Customer shall:

3.1.1 ensure that the equipment installed is not defaced, tampered with or suffers from removal of any attached signs/wording;

3.1.2 ensure that the equipment is kept under suitable environmental conditions, as specified in the relevant operations and maintenance manual (supplied by CircoSense), permit only trained and competent personnel to use the equipment and/or connected equipment/apparatus and follow any operating instructions (including general guidance) which CircoSense Ltd may give from time to time;

3.1.3 notify CircoSense Ltd promptly if the Equipment are discovered to be operating incorrectly;

3.1.4 at all reasonable times permit full and free access to the location and to the equipment to CircoSense Ltd, its employees, contractors and agents, and provide them with adequate and safe working space as are reasonably required to enable CircoSense Ltd to perform the Services required;

3.1.5 provide CircoSense Ltd with any information that is reasonably requested in relation to the performance of the equipment installed; and

3.1.6 take any steps reasonably necessary to ensure the safety of CircoSense Ltd 's personnel when attending the Location.

3.1.7 notify CircoSense promptly if any change of use and/or system configurations, where CircoSense unit(s) have been fitted or will be consequentially affected, are made or planned.

4. Charges

4.1 For the performance of the Services, the customer shall pay to CircoSense Ltd the Charges, if any, in accordance with the customer 's chosen Maintenance Plan.

4.2 All call-outs out-with annual service intervals will be deemed chargeable unless fault is covered within warranty or maintenance terms (see clauses 3 and 6).

4.3 If extra (non-standard) preparatory works are required as part of an installation or maintenance (i.e asbestos containment/removal) then arrangements for removal of such should be organised by you and any resulting charges in respect of this will be payable directly by you.

4.4 All Maintenance Fees and other charges shall be due and payable in full to CircoSense Ltd within 30 days of receipt of a valid invoice from CircoSense Ltd.

4.5 The maintenance plan will automatically renew for 12 months on the expiry date of the initial or extended term(s) unless notice of cancellation has been given to CircoSense, in writing, at least 30 days prior to the renewal date and out with the minimum contracted term.

4.6 In relation to clause 4.4 the maintenance plan charges may increase upon each renewal in keeping with **RPI** and other market/operating conditions.



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4.7 If the Customer fails to make payment(s) due to CircoSense Ltd under this Agreement by the due date for payment, then, without limiting CircoSense Ltd's remedies under this Agreement, the Customer shall pay interest on the overdue amount at the rate of 5% per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount.

4.8 All Charges are exclusive of VAT or any other applicable Procurements tax, which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.

4.9 The Customer shall not be entitled to set off or reduce payments by any amounts which it claims are owed to it by CircoSense Ltd under this Agreement or the Terms and Conditions of Procurement.

5. Company Standards

5.1 CircoSense Ltd represents and commits to the customer that all works shall be performed:

5.1.1 by an appropriate number of suitably qualified and experienced personnel;

5.1.2 using reasonable skill and care and in accordance with good industry practice; and

5.1.3 in accordance with all applicable UK laws and regulations in force at the time of commencement of works.

5.2 Nothing in this Agreement shall extend the warranties provided by CircoSense Ltd in the Terms and Conditions of Procurement unless a CircoSense Maintenance Plan is in place upon expiry of initial 12-month manufacturer warranty. No spare parts, software updates, repairs or updates to the equipment shall be covered by Warranty beyond its initial warranty expiry in accordance with this agreement.

5.3 To the extent permitted by the applicable law, CircoSense Ltd disclaims all other warranties, representations and/or conditions with respect to the equipment, either express or implied, including but not limited to any implied warranties, representations and/or conditions of satisfactory quality or fitness for any particular purpose.

5.4 The customer hereby acknowledges that the terms and conditions of this Contract and, in particular, the limitations of liability contained in appropriate clauses noted are reasonable in all the circumstances and having regard for the purchase by the Customer for the Equipment.

6. Liability

6.1 CircoSense Ltd shall not be liable to the Customer whether in contract, tort (including for negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

6.1.1 any loss (whether actual or by consequence) of profits, business, revenue, or goodwill;

6.1.2 any loss arising out of an Excluded Cause or a breach by the Customer of its obligations under clause 3; or

6.1.3 any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement.

6.2 Subject to clause 8 below and without prejudice to clause 6.1 above, CircoSense Ltd's total aggregate liability in contract, tort (including for negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise arising out of the subject matter of this agreement shall be limited to 100% of the totals paid by the customer to CircoSense Ltd during the 12 month period immediately preceding the date on which the cause of action first arose.

6.3 Nothing in this agreement shall exclude CircoSense Ltd's liability for death or personal injury or for fraud or fraudulent misrepresentation any matter in respect of which it would be unlawful for CircoSense Ltd to exclude or restrict liability.



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7. Term and Termination

7.1 This Agreement shall commence on the noted **commencement date** stated on the schedule. Unless terminated earlier in accordance with this clause 7, this agreement shall continue for the period stated within the schedule.

7.2 The Maintenance plan will auto-renew on each anniversary of expiry until minimum **term** has been accrued and notification to cancel has been received by CircoSense Ltd in writing affording a minimum of 30 days notice of intent to cancel prior to date of expiry/renewal.

7.3 Either party may give written notice to the other party, not later than 30 days before the end of the initial period as stated on the schedule or the relevant renewal period, to terminate this agreement at the end of the initial period or the relevant renewal period, as the case may be.

7.4 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, CircoSense Ltd may terminate this agreement with immediate effect by giving written notice to the Customer if:

7.4.1 the customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make that payment;

7.4.2 an Insolvency Event occurs; or

7.4.3 the customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business and/or operational function(s).

7.5 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.

7.6 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

7.7 On termination of this agreement for any reason, the customer shall as soon as reasonably practicable pay any outstanding amounts owed to CircoSense Ltd pursuant to this agreement.

7.8 Any, and all, equipment supplied and fitted remains the property of CircoSense Ltd until such time as any, and all, monies owing for the supply, fit and maintenance of equipment is paid in full.

8. Force Majeure

If either party is subject to an event of force majeure, that is circumstances outside its reasonable control, including but not limited to acts of god, war, fire, industrial disputes or civil commotion, it shall notify the other and the first party's obligations under this agreement shall be suspended until it notifies the other party of the end of such event of force majeure.

9. Assignment

9.1 CircoSense Ltd shall be entitled to, without the consent of the customer assign or sub-contract any part of the Contract.

9.2 The customer shall not be entitled to assign or sub-contract any part of the Contract.



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10. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11. Notice

Any notice or other communication required to be given to a party under, or in connection with, this contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next-working-day delivery service at its registered office (if a company) or (in any other case) its principal place of business.

12. Entire Agreement

12.1 This agreement, schedule and the terms and conditions constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

12.2 Each party acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the other party which is not set out in this agreement and the terms, schedule and conditions of Procurement.

13. Variation

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

14. Severance

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

15. Third-Party Rights

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

16. Governing Law and Jurisdiction

16.1 This agreement and any dispute or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

16.2 CircoSense Ltd and customer irrevocably agree that the English courts shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).