



SCHEDULE TO THE STANDARD TERMS AND CONDITIONS FOR MAINTENANCE CERTIFICATION SERVICES.

1 CUSTOMER INFORMATION

Full Name of Legal Entity / Individual:			
Registration Number / ID Number / Passport Number:			
Physical Address:			
Postal Address:			
Telephone Number:		Fax Number:	
VAT Registration Number:		Director Responsible:	
Purchase Order:		Other Directors:	
Annual Turnover <u>for the purposes of the Consumer Protection Act, No 68 of 2008</u>	Over R2 million	YES	NO

2 PRIMARY CONTACT / ACCOUNT QUERIES

Full Name:			
ID Number:		Position:	
Telephone Number:		Cell Number:	
Email:		Fax Number:	

3 EQUIPMENT

#	Instrument Description	Serial number	Site Address of Equipment
1.			
2.			
3.			

4 MAINTENANCE PACKAGE AND FEES

Maintenance Service Package:			
Service Period start date :			
Service Period end date :			
Maintenance Fee:			
Additional Fee:			
Travel Fee:	As per Narich's standard travel rates		
Address for delivery:	21 Clare Street, Gardens, Cape Town, 8001	Contractual Warranty Period:	3 months
Payment Terms:	50% deposit unless otherwise indicated		
Quote reference:			

Maintenance Service Packages

Standard – allows you to choose the time to send in your instruments for calibration maintenance service on an *ad hoc* basis

Premium – is a "return to base" service offering preventative annual maintenance for **three years**.

	STANDARD	PREMIUM
Cleaning of the instrument	✓	✓
Calibration check in line with Konica Minolta procedure	✓	✓
Adjustment if necessary	✓	✓
Printed Certificate showing traceability of calibration	✓	✓
Annual maintenance standard	1 Year	✓
Discount from Standard Rates	x	✓

5 STANDARD TERMS AND CONDITIONS FOR MAINTENANCE SERVICES PERFORMED BY NARICH (PROPRIETARY) LIMITED

TERMS AND CONDITIONS

1. Interpretation

1.1. In this Agreement, unless the context indicates otherwise –

- 1.1.1. **"Additional Fee"** means the hourly rate at which any services additional to the services will be rendered by us from time to time, the current rates being those stipulated in part 4 of the Schedule;
- 1.1.2. **"AFSA"** means the Arbitration Foundation of Southern Africa;
- 1.1.3. **"Agreement"** means the agreement comprising the Schedule and the standard terms and conditions as set out in this document;
- 1.1.4. **"Business Day"** means a day which is not a Saturday, Sunday or gazetted public holiday in South Africa;
- 1.1.5. **"Business Hours"** means from 08h30 until 17h00 on a Business Day;
- 1.1.6. **"CPA"** means the Consumer Protection Act, No 68 of 2008;
- 1.1.7. **"Customer"** or **"you"** means the entity referred to in part 1 of the Schedule;
- 1.1.8. **"Equipment"** means the equipment as specified in part 3 of the Schedule and includes any related parts and components;
- 1.1.9. **"Laws"** shall mean all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any Governmental Body; and the common law, and **"law"** shall have a similar meaning;
- 1.1.10. **"Maintenance Fee"** means the maintenance fee payable by the Customer to Narich as stipulated in part 4 of the Schedule or any invoice furnished to the Customer;
- 1.1.11. **"Narich"** or **"we"** or **"us"** means Narich (Proprietary) Limited, registration number 2012/009858/07, a limited liability private company, duly incorporated according to the Laws of South Africa;
- 1.1.12. **"Outstanding Amount"** means, at any time, the amount outstanding and owed by the Customer in respect of the Equipment serviced including any other related charges levied in terms of this Agreement;
- 1.1.13. **"Parties"** means the Customer and Narich and **"Party"** shall mean any one of them as the context may indicate and include a reference to that Party's successors in title and assigns allowed in law;

- 1.1.14. **"Prime Rate"** means the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365 (three hundred and sixty five) day year irrespective of whether or not the year is a leap year, from time to time published by Narich's bankers from time to time as being its prime overdraft rate, as purportedly certified by any representative of that bank whose appointment and designation it shall not be necessary to prove;
- 1.1.15. **"Sales Quotation and Agreement"** means the sale agreement entered into between Narich and the Customer, in terms of which Narich sold the Equipment to the Customer;
- 1.1.16. **"Services"** means those maintenance services stipulated in part 4 of the Schedule which will be provided by us to the Customer on the terms and conditions set out in this Agreement;
- 1.1.17. **"Schedule"** means the document which specifies certain salient details of the maintenance services between Narich and the Customer, which Schedule is subject to these Terms and Conditions;
- 1.1.18. **"Sites"** means the location/s stipulated in part 3 of the Schedule where the Equipment is located;
- 1.1.19. **"South Africa"** means the Republic of South Africa;
- 1.1.20. **"Terms and Conditions"** means the terms and conditions contained in this document;
- 1.1.21. **"Travel Fee"** means the fee charged for travelling to sites located more than 40 km (forty kilometres) from the Narich service centre, the current fee being the rate stipulated in part 4 of the Schedule;
- 1.1.22. **"VAT"** means value-added tax in terms of the Value-Added Tax Act, No. 89 of 1991, as amended; and
- 1.1.23. **"Warranty"** means the manufacturer's warranty on the Equipment, the terms and conditions which are included in this agreement by way of reference.

1.2 Any reference to the singular includes the plural and vice versa;

1.3 A natural person includes a juristic person and vice versa; and

1.4 any gender includes the other genders.

2. Important Notices

- 2.1. **This document contains the Terms and Conditions on which we maintain and service Equipment on behalf of Customers who are consumers for the purposes of the CPA, namely Customers that are natural persons contracting in their individual capacity or small businesses with an annual turnover or gross asset value of less than R2 million.**
- 2.2. **This Agreement contains terms and conditions which appear in similar text style to this clause and which –**
- 2.2.1. **may limit the risk or liability of Narich or a third party; and/or**
- 2.2.2. **may create risk or liability for the Customer; and/or**
- 2.2.3. **may compel the Customer to indemnify Narich or a third party; and/or**
- 2.2.4. **serve as an acknowledgement, by the Customer, of a fact.**
- 2.3 **To the extent that the Customer is a consumer for the purposes of the CPA, the Customer's attention is drawn to these Terms and Conditions because they are important and should be carefully noted.**
- 2.4 **Nothing in this Agreement is intended to or must be understood to unlawfully restrict, limit or avoid any rights or obligations, as the case may be, created for either of the Customer or Narich in terms of the CPA.**

3. Service Period

This Agreement shall endure until each Party fulfils its respective obligations where after it will automatically lapse and be of no further force or effect ("**Service Period**").

4. Charges

In consideration for us rendering the Services, you agree to pay the Maintenance Fee to us.

A deposit as reflected on the Schedule shall accompany your order and is a condition precedent to secure the Maintenance Services (the "**Deposit**").

In respect of any additional services as contemplated in clause 5.4, you agree to pay the Additional Fees to us.

We will submit an invoice to you for the Maintenance Fee, Additional Fees and the travel fees, if any, and such invoice shall be paid within 30 (thirty) days from the date of invoice.

The terms of payment shall, unless otherwise agreed, be a 50% (fifty percent) deposit with the balance payable on presentation of our invoice.

- 4.1. Without prejudice to any of our rights in terms of this Agreement, should any payment under or arising from this Agreement not be paid by the due date thereof then, such overdue amounts will bear interest at 1.5 (one point five) percentage points above the Prime Rate calculated from the due date of payment until the date of full payment, both days inclusive.
- 4.2. We may appropriate any payments made by or on behalf of you to any indebtedness of yours of whatsoever nature and all such payments shall first be allocated to accrued interest.
- 4.3. Notwithstanding anything to the contrary in this Agreement, we may vary the Maintenance Fee, Additional Fee and travel fee at any time provided that 90 (ninety) day's written notice is given to you.

5. Services

5.1. Services

- 5.1.1. You will receive Maintenance Services under the package specified in part 4 of the Schedule or as you may separately order from us.
- 5.1.2. We will, subject to the provisions of this Agreement, make inspections, carry out such adjustments and repairs and replace such parts as we or our authorised dealer may deem necessary to keep the equipment in good working order throughout the Service Period.
- 5.1.3. We will perform the maintenance Services at either of our facilities in Johannesburg or Cape Town. All Services shall be performed in compliance with the applicable manufacturer's manuals and procedures.
- 5.1.4. Your order or request for Services to be performed shall be deemed to be proper and correct. We shall not be liable or responsible for any claim for damages whatsoever arising from an improper or incorrect order or request for Services issued by you to us (whether placed directly or through the Customer's representative) nor for the verification of the Customer representative's authority to issue an order/request and the Customer hereby indemnifies and agrees to hold us harmless from any and all claims and liabilities arising from our acceptance of such order, request or instruction.

5.2. Procedure for Requesting the Services

- 5.2.1. You shall, whenever you require us to perform the Services, adhere to the following procedure (the "**Request Procedure**") –
 - 5.2.1.2 the Request Procedure form on the website must be completed .
 - 5.2.1.3 We shall not be obliged to provide the Services unless the Request Procedure is followed by you. We shall however be entitled, but not obliged, to waive compliance with this requirement.

5.3. Response Times

- 5.3.1. We shall, during Business Hours and within a reasonable time from receipt of request, provide the Services.
- 5.3.2. We shall use our reasonable endeavours to perform the Services promptly, but any response times furnished by us are merely estimates and no warranty is given in respect of any times for response, or performance by us.

5.4. Additional Services

We shall not be held liable to perform any Repair Services in addition to the Certification Services, but should we agree to perform any additional services they will be offered to the Customer at the Additional Fee and on such terms as the Parties may agree in writing from time to time. It is specifically recorded that the Customer shall be responsible for the cost and payment of any parts required for the repair of the Equipment.

5.5. Warranty

- 5.5.1. The repair or replacement of components of the Equipment supplied by us to you carry a 3 (three) month manufacturer's warranty and your rights (except insofar as the CPA gives you additional rights) in respect of defective goods or goods that fail are limited to the manufacturer's warranty. A qualifying customer may elect to rely on either the manufacturer's warranty or any statutory warranty implied by the CPA and set out in clause 8 but not both.
- 5.5.2. The contractual Warranty only covers the repair or replacement of components of the Equipment which are defective as a result of material or manufacturing faults and only for the duration of the warranty period.
- 5.5.3. In order for the warranty to be valid the Equipment must at all times be operated within the product specifications and must be maintained and cared for in accordance with the user manual.
- 5.5.4. If we determine, after being called to the Site, that the problem is not covered under the Warranty, you will be responsible for all costs of the call out, and if required the repair or rectification of the problem, at the additional and travel fee.

5.6. Service Exclusions

5.6.1. For the avoidance of doubt, the Services do not include services in respect of malfunctions or damage resulting from –

5.6.1.1 incorrect use of the Equipment;

5.6.1.2 your negligence; or

5.6.1.3 failure or fluctuation of electrical suppliers, riots, insurrection, hardware failures, accidents or natural disasters.

5.6.2. We shall not be obliged to provide any Services where there is a refusal, difficulty or inability of us to obtain access to the Site for the performance of our obligations hereunder, where such difficulty or inability is a result of an action or inaction of you, your employees or your agents.

6. Location of Equipment

6.1. All Equipment shall remain on the premises specified at the time of purchase in terms of the Sales Quotation and Agreement and may not be removed therefrom without the prior written consent of Narich.

6.2. You undertake to notify us in writing of the change of Site of the Equipment as provided for in part 3 of the Schedule.

6.3. Where required, we will reinstall the Equipment at our additional hourly fees.

7. General Responsibilities

7.1. You shall –

7.1.1. use the Equipment correctly and in accordance with the user manual and in accordance with the manufacturers guidelines;

7.1.2. designate your key operator to request the Services, and inform us accordingly;

7.1.3. where the Premium On-Site maintenance package is selected, provide us with access at all reasonable times to the Site in order to perform the Services;

7.1.4. not make any modification or addition to the Equipment.

8. Statutory Warranties

8.1. We warrant and represent that all spare parts used by us will be free from defects in materials and workmanship for a period of not less than 6 (six) months from the date of installation of the spare part in your Equipment.

8.2. Notwithstanding the provisions of clause 8.1 above –

8.2.1. if any defect in the Equipment, or components of the Equipment, relates to acts, omissions or alterations contrary to the instructions of or when the Equipment is no longer under the control of us, we will not be liable for those defects, including in respect of any possible liability in terms of the implied warranty of quality contained in the CPA; and

8.2.2. any warranty given by us will cease to apply if any material information provided by you, specifically insofar as the intended use of the Equipment is concerned, is incomplete or incorrect or if there is any material change in operating conditions or misuse, abuse or material neglect of the Equipment by you.

8.3. It is your duty to return any defective goods to our premises. On return of defective goods we may at our sole discretion exchange the goods, grant credit to you or return the goods to the manufacturer under the manufacturer's warranty. A qualifying customer may elect to rely on either the right of return under the manufacturer's warranty or any statutory right of return imposed by the CPA but not both.

8.4. Save as may be expressly set out in clause 8.1 of this Agreement or the Sales Quotation and Agreement, no representations or warranties of whatsoever nature are made or given, or shall be deemed to have been made or given, by us (or our agents or employees) to you in connection with the Services and in respect of the Equipment.

9. Indemnity and Limitation of Liability

9.1. **You indemnify and hold us harmless from any and all expense, loss, damage or liability arising out of your receipt, use and storage of the Equipment, unless such expense, loss, damage or liability is due entirely to our gross negligence. You further indemnify us against all damage and liability arising from any act or omissions of you and/or your employees, servants, clients, agents or subcontractors in connection with the Equipment.**

9.2. **We shall not have any liability, howsoever arising and whether as a result of a breach of contract, negligence or otherwise, for any loss of profit, anticipated profit, physical loss or damage to cargo, or loss of contract(s), in each**

instance whether such losses are direct, consequential or otherwise nor, without prejudice to the foregoing, shall we be liable for any consequential, indirect or special losses or special damages, suffered by you.

- 9.3. To the fullest extent permitted by law, you indemnify us and our employees, contractors and agents ("Indemnified Parties") against any claim brought against us or any of the other Indemnified Parties by any visitor to a place where the Equipment is used, arising from any loss, destruction or damage to property or any death, injury, illness or trauma and all economic loss suffered as result thereof, caused by or attributable to any product failure or you supplying or providing access to any unsuitable, unsafe, defective or hazardous goods (as these terms are defined in the CPA) or the failure to provide adequate warnings or instructions in relation to any hazard arising from or associated with the use of any goods as contemplated in the CPA.

10. Breach

- 10.1. You shall be in default of your obligations in terms of this Agreement if you –
- 10.1.1. fail to pay any amount due to us on or before the due date thereof; or
 - 10.1.2. commit any other breach of any material term of the Agreement and fail to remedy such breach within 3 (three) Business Days from receipt of a written notification from us which requires that you remedy the said breach; or
 - 10.1.3. allow any judgment against you to remain unsatisfied for a period of 5 (five) Business Days; or
 - 10.1.4. compromise or attempt to compromise any debt with any of your creditors; or
 - 10.1.5. are provisionally or finally sequestrated, liquidated, wound-up or placed under business rescue or curatorship or cease to conduct business;
 - 10.1.6. if you are given notice by us, twice or more in any 12 (twelve) month period in terms of clauses 10.1.1 or 10.1.2 above.
- 10.2. If you are in default in accordance of any of the provisions of clause 10.1 above, we shall, without prejudice to any other rights that we may have at Law or in terms of this Agreement be entitled to –
- 10.2.1. cancel this Agreement on written notice to you; or
 - 10.2.2. claim specific performance of our obligations in terms of this Agreement; and
 - 10.2.3. in each of the above events, to claim damages from you.
- 10.3. Without derogating from the provisions of 4.1, if you cancel or purport to cancel this Agreement then, notwithstanding anything to the contrary herein, the Outstanding Amount shall immediately be due and payable by you to us.

11. Certificate of Indebtedness

- 11.1. A certificate signed by any director (whose appointment, authority or qualification need not be proved) for the time being of Narich shall be –
- 11.1.1. *prima facie* proof of the quantum of the Outstanding Amount; and
 - 11.1.2. valid, together herewith, for any purpose and as a liquid document (alternatively as proof of a liquidated amount) in any Court or forum of competent jurisdiction for the purpose of obtaining provisional sentence, summary judgement or any other judgement against you, and you acknowledge your indebtedness in respect of any amount so certified.

12. Force Majeure

- 12.1. Neither of the Parties shall be responsible for any failure to fulfil its respective obligations under this Agreement if fulfilment has been delayed, hindered, interfered with, curtailed or prevented by –
- 12.1.1. any circumstance beyond the reasonable control of either Party including but not limited to insurrection, war, terrorism, explosion, bombing, revolution, riot, civil commotion, legal and illegal strikes, lock-outs, inability to obtain labour or materials, fire, flood, storm or other acts or elements of God, accident, government restrictions or appropriation or other causes whether like or unlike the foregoing;
 - 12.1.2. any shortage, curtailment, failure or cessation of supply of Equipment or any parts thereof;
 - 12.1.3. compliance with any order, demand or request of any international, national, port, transportation, local or other authority or agency or anybody or person purporting to be or to act for such authority or agency;
 - 12.1.4. any strike, lock-out, stayaway, go-slow or labour dispute, whether or we are a party thereto or would be able to influence or procure the settlement thereof and whether or not alternative labour is provided or could have been provided, or the cause is only partial.

13. Domicilium and Information

- 13.1. You hereby choose as your *domicilium citandi et executandi* for all purposes under or arising from this Agreement your physical address provided to us in part 1 of the Schedule.
- 13.2. Any notices sent by email shall be deemed to have been received on the date of transmission provided that the transmission or receipt report does not indicate otherwise.
- 13.3. Any Party shall notify the other Party in writing on 10 (ten) Business Days' notice of a change of address, provided that no address may be changed to a post office box or *poste restante*.
- 13.4. You shall notify us in writing of any changes in the information provided to us in the Schedule. We shall not be liable for any damages, loss or expenses suffered or incurred by you as a result of the non-compliance by you with this clause 13.4.

14. Legal Costs

In the event of a default by you under this Agreement, you will be liable for all legal costs, which will include but not be limited to –

- 14.1. legal costs on the scale as to attorney and own client, including all cost of an advocate instructed by the attorney;
- 14.2. collection charges and tracing fees, at the recognised tariff of attorneys applicable from time to time in respect of such collection;
- 14.3. VAT added thereon; and
- 14.4. where appropriate, the cost of an arbitration, including the costs of the arbitrator/s.

15. Applicable Law, Jurisdiction and Dispute Resolution

- 15.1. This Agreement will in all respects be governed by and construed under the Laws of South Africa.
- 15.2. Any dispute arising in the Republic of South Africa shall at the sole discretion of us, be determined by arbitration in Cape Town. Such arbitration shall take place in accordance with the provisions of the AFSA rules, which arbitration shall be administered by AFSA.
- 15.3. Where we elects not to proceed by way of arbitration in respect of any dispute in terms of 15.2, you hereby consent and submit to the non-exclusive jurisdiction of the Western Cape High Court (Cape Town) but we may seek appropriate relief in any other competent jurisdiction of our choice.

16. General

- 16.1. The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 16.2. If any definition contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the body of this Agreement, notwithstanding that it is only in the interpretation clause.
- 16.3. If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case the last day shall be next succeeding Business Day.
- 16.4. You acknowledge that at the time of signing the Schedule, the Schedule was fully completed and all the particulars therein are true and correct.
- 16.5. If any provisions of this Agreement are found to be unlawful, unenforceable or invalid, it shall be deemed to be separate and severable from the remaining provisions of this Agreement and to the extent that same is unlawful, unenforceable or invalid, be deemed to be *pro non scripto*.
- 16.6. No extension of time or other indulgences granted by us to you in respect of its obligations will constitute a waiver or novation of or otherwise affect any of credit provider's rights to enforce strict compliance with the terms of this Agreement.
- 16.7. You shall not be entitled to cede, assign or delegate any of your rights and/or obligations in terms of or arising from this Agreement to any third party.
- 16.8. No alteration, consensual cancellation, novation or variation of, or addition to this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.

16.9. This Agreement constitutes the whole agreement between the Parties and no Party shall be bound by any undertakings, representations, warranties and promises or the like not recorded herein.

6 SIGNATURE			
Full Name of (duly authorised) signatory			
Designation of signatory			
Signature			
Date Signed		Place Signed	

BY YOUR SIGNATURE HERETO YOU AGREE AND UNDERTAKE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT AND WARRANT THAT YOU ARE DULY AUTHORISED TO REPRESENT THE CUSTOMER AND TO BIND THE CUSTOMER TO THIS AGREEMENT

NB: Please email this form as a scanned attachment to accounts@narich.co.za.