

# Commentary on the private SUDS model agreement C625 SUDS MA3

## COMMENTARY ON THE MODEL AGREEMENT

Details of parties	
	The details of both parties (Maintainer and Customer) should be entered into the tables. This defines the two Parties to the Agreement who are from here on referred to as the “maintainer” and the “customer”.
Section 1 – Definitions	
	<p>These clauses set out the definitions of the key terms used in the agreement as well as the annual maintenance charge and the commencement date.</p> <p>The specific actions required to maintain the SUDS are set out in Schedule 1.</p> <p>The agreed <i>annual maintenance charge</i> should be entered in the space provided in Clause 1.2.</p> <p>The commencement date is the date from which the Agreement comes into force. <i>This should be filled in using the space provided</i> in Clause 1.3. This may or may not be the date of the agreement.</p>
Section 2 – Maintenance services	
Clause 2.1, 2.2 & 2.3	<p>Section 2 sets out the terms and conditions under which the maintainer services will be carried out.</p> <p>The working hours during which it is acceptable for the maintenance to be carried out <i>should be entered in the space provided</i> in Clause 2.2. This ensures that the work will not be carried out at unsociable times unless in the case of an emergency and that the customer will be able to provide access.</p> <p>Clause 2.3 requires the maintainer to respond to any request for additional services promptly. This is to allow the customer to call on the maintainer to help resolve an unexpected maintenance problem. <i>The maximum response time should be entered in the space provided</i>. This should be fixed taking into account the maintainer’s mobilisation time and the likely urgency of repair.</p>
Clauses 2.4, 2.5 & 2.6	<p>Clauses 2.4 &amp; 2.5 set out that the agreement:</p> <ul style="list-style-type: none"> <li>○ takes precedence over the Maintainer’s standard conditions of sale</li> <li>○ doesn’t apply to any modifications to the SUDS</li> </ul> <p>Clause 2.6 states that the Maintainer must give 24 hours’ prior notice before carrying out work on site. This is to give the customer time to arrange access.</p>
Clause 2.7	This clause specifies the time interval between the commencement Date and the first maintenance visit. <i>This time interval should be entered</i> .
Section 3 – Maintenance charges	
Clause 3.1	<p>These clauses set out the terms that apply to the payment of the Maintenance Charges.</p> <p>The agreed charges will be paid every year in advance, on or before the commencement date and the same date of every following year that the agreement is kept in force.</p>
Clause 3.2	This clause sets out that services in addition to those set out in Schedule 1 will be subject to extra charges under the Maintainer’s usual terms.

Clause 3.3	<p>This clause sets out the Maintainer's right to amend the charges for the following year by written notice given at least 30 days before the annual renewal of the Agreement. The Customer is under no obligation to renew the Agreement for a further year.</p> <p>The Maintainer may terminate the Agreement if the Customer does not pay the Maintenance Charges on time. The Customer is given 30 days from the due date to pay the Maintenance Charges.</p>
<b>Section 4 – Maintainer's obligations</b>	
	<p>These clauses set out the maintainer's obligations under the Agreement. These are summarised as the following:</p> <ul style="list-style-type: none"> <li>○ carry out the maintenance in a proper, diligent and workmanlike manner.</li> <li>○ use appropriate equipment and competent staff.</li> <li>○ indemnify the customer against any losses due to the Maintainer's neglect or default.</li> <li>○ rectify any breach of the agreement identified by the customer.</li> </ul>
<b>Section 5 – Customer's obligations</b>	
	<p>These clauses set out the customer's obligations under the agreement. These are summarised as the following:</p> <ul style="list-style-type: none"> <li>○ pay the charges promptly.</li> <li>○ provide access.</li> <li>○ not modify the Equipment significantly.</li> <li>○ maintain associated drainage and pipework.</li> </ul>
<b>Section 6 – Commencement and term of the agreement</b>	
	<p>This clause sets out that the agreement will run for a year at a time or until one party gives 30 days' prior written notice.</p> <p>If the customer moves property it is advised that he terminates the contract (giving 30 days notice) and notifies the incoming owner/tenant of the agreement in advance to enable him to enter into a similar agreement.</p>
<b>Section 7 – VAT</b>	
	<p>These clauses set out that VAT should be paid in addition to any charges unless otherwise stated.</p>
<b>Section 8 – Termination</b>	
	<p>These clauses set out the reasons for which the Agreement may be terminated immediately. These can be summarised as follows:</p> <ul style="list-style-type: none"> <li>○ the customer or maintainer fails to comply in all respects with the agreement.</li> <li>○ either party dies or becomes bankrupt.</li> <li>○ either party is subject to liquidation or receivership.</li> </ul>
<b>Section 9 – Termination consequences</b>	
	<p>This section sets out the consequences of termination of the agreement.</p> <p><b>Note</b> It is essential that even if the Agreement is terminated, the drainage system is still properly maintained. Owners of drainage systems may be liable for damage if they do not maintain an effective drainage system.</p>
Clause 9.1 & 9.2	<p>These clauses set out that within 30 days of termination the maintainer must produce a final account taking into account:</p> <ul style="list-style-type: none"> <li>○ any refund due to the customer for maintenance paid for in advance but not yet carried out. This should be calculated in proportion to the total number of activities paid for.</li> <li>○ all arrears due to the Maintainer under this Agreement.</li> </ul> <p>This account should be settled within 30 days of receipt of the final account.</p>

Clause 9.3 & 9.4	These clauses give both parties the entitlement to use the rights granted by the Agreement, including enforcing the other party's liabilities and other common law rights available for redress as a consequence of breach of this agreement.
<b>Section 10 – Discretion</b>	
	This clause sets out that any discretion or opinion exercised will only be binding if it is agreed in writing by both parties.
<b>Section 11 – Change of address</b>	
	Under this clause both parties must give notice of a change of address or contact detail at the earliest possible opportunity, within a maximum of 48 hours.
<b>Section 12 – Notices</b>	
	These clauses set out the conditions which must be met for a notice to be considered to have been served.
<b>Section 13 – Proper law and jurisdiction</b>	
	English law and the jurisdiction of English courts apply to this Agreement.
<b>Section 14 – Interest</b>	
	This clause sets out the rate of interest payable on late payments. The interest rate is set by specifying an additional % above the base lending rate of a named bank.  <i>The additional interest rate, name of the bank, minimum total interest rate per year and type of base lending rate (daily/monthly/yearly etc.) to be used should be inserted in the spaces provided.</i>
<b>Section 15 – Force majeure</b>	
	This clause sets out that either party whose actions are prevented by <i>force majeure</i> must give prompt notice and use their best endeavours to carry out the action but will be excused if these fail.
<b>Section 16 – Whole agreement</b>	
	This section declares that the agreement does not rely on any other spoken or written agreements between the parties.
<b>Section 17 – Arbitration</b>	
	This clause allows the parties to refer disputes to a commonly-agreed independent arbitrator, or where one cannot be agreed upon, to an arbitrator nominated by the president of the Chartered Institution of Arbitrators.
<b>Section 18 – Sub-contracting</b>	
Clause 18.1	This clause sets out that the Maintainer may sub-contract its obligations subject to the Customer's prior written consent.
Clause 18.2	This clause sets out that the Customer may only assign or delegate any of the rights of the Agreement to another party with the prior written consent of the Maintainer.
<b>Section 19 – Third party rights</b>	
	No other parties may acquire any rights from this Agreement.
<b>Section 20 – Variation</b>	
	This clause allows the parties to refer disputes to a commonly-agreed arbitrator, or where one cannot be agreed upon, to an arbitrator nominated by the president of the Chartered Institution of Arbitrators.
<b>Signatures</b>	
	<i>A representative of the customer and of the maintainer should sign and insert their name and date of signature in the spaces provided.</i>

## COMMENTARY ON SCHEDULE 1

<b>Section 1 - Details of the SUDS</b>	
Clause 1	Details of the SUDS should be included in this section. Any drawings, maintenance manuals or other guidance should be included as Appendix 1 and a brief description of this information provided.
<b>Section 2 – Health, safety and environment</b>	
Clauses 2.1 & 2.2	<p>Maintenance of this equipment may be hazardous if not correctly managed. Risk assessments should be carried out by the maintainer in advance of carrying out this maintenance work, and all procedures should be strictly followed.</p> <p>A list of any site specific precautions should be included in the Schedule. This should include any information that is particularly relevant to the site, such as the storage of hazardous substances, etc. There are unlikely to be any site specific precautions in the domestic environment.</p> <p>More information about risk assessments and health and safety in the workplace is available from the Health &amp; Safety Executive (see &lt;<a href="http://www.hse.gov.uk">www.hse.gov.uk</a>&gt; for more details).</p>
Clauses 2.3 & 2.4	<p>These clauses relate to the environmental impact associated with the disposal of any materials removed from the system. These items should be disposed of in a safe and proper manner. The maintainer shall ensure that all relevant licences and consents from environment regulatory bodies have been received prior to commencement of any maintenance work.</p> <p>More information about waste disposal is available from the Environment Agency (see &lt;<a href="http://www.environment-agency.gov.uk">www.environment-agency.gov.uk</a>&gt; for more details).</p>
<b>Section 3 – The maintenance services</b>	
	<p>This section sets out the activities to be carried out as part of the maintenance service. For further details see Section 5.</p> <p>Here the detail of the activities required and the frequency at which they should be carried out should be entered. This may include activities such as;</p> <ul style="list-style-type: none"> <li>○ removing silt from silt traps</li> <li>○ cutting grass</li> <li>○ removing litter and other detritus</li> <li>○ inspecting chambers</li> </ul>