

FM/Maintenance Services Agreement

I. DEFINITIONS

In this Agreement the following expressions shall have the following meanings:

“The Supplier” – Xcel Property Services (UK) Ltd

“Asbestos Risks” – any Loss arising out of or related in any way to or caused by contamination caused by asbestos or asbestos-containing materials.

“Charges” – the charges (subject to any Liability Supplement) payable by the Customer in accordance with clause 7 and as specified in Section A of any bespoke agreement issued.

“Customer’s Premises” – means the address/es specified in Section A of any bespoke agreement issued at which the Services are to be provided.

“Employment Details” – written details, including without limitation, in respect of each Transferring Employee: their age; the post in which they are employed; their length of service; their salary, wages and other remuneration including all employment benefits; their job description and contractual hours of working; their leave entitlement; the period of notice required to terminate their employment; any contractual entitlement to a redundancy or other severance payment which they may have; all other terms and conditions of employment including manuals, procedure guides, staff handbooks and collective agreements; the whole terms and conditions of any occupational pension scheme of which they are a member; full details of any employment related claims which they are pursuing or have indicated an intention to pursue; and full details of any job evaluation programmes that have been initiated or proposed; in each case as at the Start Date.

“Supply Chain Partners (SCP’s)/Agents” – those approved subcontractors appointed by the Supplier to carry out works on their behalf.

“Initial Period” – a period of one year (12 months) or as agreed between The Supplier and the client

“Law” – means any Act of Parliament, regulation, EU Directive or Regulation or judgement of any court or tribunal which, in each case, has legal effect in the United Kingdom or any part thereof.

“Liability Supplement” – the supplement to be applied to the Charges, as specified in Section A of any bespoke agreement issued.

“Limit of Liability” – the amount selected by the Customer and specified in Section A of any bespoke agreement issued.

“Loss” – any loss or damage suffered by the Customer howsoever arising, caused by any negligence, breach of duty or other wrongful act or

omission (including any deliberately wrongful act or omission and any breach, however fundamental, of any express or implied term of this Agreement) by the Supplier, its employees or agents under or in the course of performing this Agreement.

“Nuclear Risks” – any Loss directly or indirectly caused by or contributed by or arising from ionising radiations or contamination caused by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel, or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

“Maintenance Requirements” – the Maintenance requirements made in writing by the Supplier prior to the date of this Agreement.

“FM Services” – the services to be carried out by the Supplier as specified in Section A of any bespoke agreement issued.

“Start Date” – the date specified in Section A of any bespoke agreement issued.

“Transferring Employees” – individuals who may become employees of the Supplier or it’s SCP’s as a result of this Agreement by virtue of TUPE.

“TUPE” – the Transfer of Undertakings (Protection of Employment) Regulations 2006 or the EU Acquired Rights Directive as amended from time to time.

Any reference in this Agreement to:

- (a) any party includes its successors and permitted assigns; and
- (b) words and expressions importing the singular shall, where the context permits or requires, include the plural and vice versa.
- (c) “notice” shall mean a notice in writing
- (d) “notify” shall mean one party serving a notice in writing on the other party

2. DURATION

Subject to clauses 7.6 and 11, this Agreement shall commence on the Start Date and shall have effect for the Initial Period and shall continue thereafter unless or until terminated by either party giving the other not less than three months’ notice expiring at the end of the Initial Period or at any time thereafter.

3. THE SUPPLIER’S OBLIGATIONS

3.1 The Supplier shall provide and carry out the FM Services for the Customer at the Customer’s Premises on the terms and conditions set out in this Agreement.

3.2 The Supplier shall use all reasonable skill and care in the provision of the FM/Maintenance Services.

4. THE CUSTOMER’S OBLIGATIONS

4.1 Except as may be expressly provided in Section A of any bespoke agreement issued, the Customer shall, at its own expense, provide all necessary equipment and facilities at the Customer’s Premises to enable the Supplier’s employees to carry out the FM Services. Such facilities and equipment shall include, without limitation, adequate heating, lighting, power, toilet facilities, telephone, first aid and fire fighting equipment.

4.2 The Customer shall from time to time notify the Supplier of the existence and location of all materials at the Customer’s Premises which are defined as hazardous by the Control of Substances Hazardous to Health Regulations 1994 or its successor for the time being and the Customer shall ensure that those parts of the Customer’s Premises which the Supplier’s employees may visit, in order to carry out the FM/Maintenance Services, will constitute a safe place of work. The Customer shall indemnify the Supplier against all claims resulting from any failure by the Customer to comply with the obligations set out in clauses 4.1 and 4.2.

4.3 The Customer shall provide on a timely basis all information reasonably required to enable the Supplier to provide the FM/Maintenance Services. The Customer agrees that all such information disclosed to the Supplier is or will be true, accurate and not misleading in any material respect. The Supplier will rely on, and will not independently verify, the accuracy and completeness of any such information supplied by the Customer. The Customer shall be responsible for informing the Supplier of any changes to the information originally presented by it.

4.4 The Customer shall at its own expense comply with and fulfil the FM/Maintenance Requirements (if any).

4.5 The Customer shall notify the Supplier of any dishonest, wrongful or negligent acts or omissions of the Supplier’s employees or agents in connection with the FM Services as soon as possible after the Customer becomes aware of them.

5. CONFIDENTIALITY

5.1 Each party shall take all reasonable precautions not to disclose to any third party any confidential

information concerning the parties' FM/Maintenance arrangements or the business of the other party including without limitation any assignment instructions/works orders and the contents of this Agreement.

- 5.2 This obligation shall not apply to information that is or becomes public knowledge through no fault of the parties or which the receiving party can prove was lawfully in its possession before the date of disclosure; or is received from any third party having the right to disclose such information; or the disclosing party has by written approval agreed may be disclosed to third parties.

6. EMPLOYEES

- 6.1 The Customer warrants that:
- (a) no one other than those individuals whose names and details are set out in Section A of this Agreement will be Transferring Employees; and
 - (b) the information set out in Section A of this Agreement contains full, complete, and accurate Employment Details of all Transferring Employees.
- 6.2 The Customer shall indemnify the Supplier against all liabilities, costs, claims, damages, awards and expenses which the Supplier suffers or incurs as a result or in respect of:
- (a) any breach of the warranties given by the Customer in clause 6.1 above; and
 - (b) any acts or omissions of the employer in relation to any Transferring Employee prior to the Start Date.
- 6.3 The Supplier shall indemnify the Customer against all liabilities, costs, claims, damages, awards and expenses which the Customer suffers or incurs as a result or in respect of any acts or omissions of the Supplier during the period of this Agreement in relation to any of the Supplier's employees who transfer to the Customer by virtue of TUPE at the expiry or termination of this Agreement.
- 6.4 If during the period of this Agreement or within six months after its termination (howsoever caused), the Customer offers employment to or employs (other than as a consequence of the operation of TUPE) or contracts the services of any person who is or was within the six months before such offer, employment, or contract was made or such employment commenced carrying out the Services as an employee of the Supplier, and if such offer or contract is accepted, or such employment commences, the Customer agrees to and shall pay the Supplier by way of a fee a sum equal to 15% of the annual gross remuneration payable by the Customer to such employee.

7. CHARGES

- 7.1 The Charges shall be invoiced by the Supplier in accordance with the invoicing terms set out in Section A of any bespoke agreement issued, and the Customer shall pay such invoices within 30 days of the date of invoice without deduction or set-off.
- 7.2 The Charges are exclusive of Value Added Tax which will be charged in addition at the appropriate rate.
- 7.3 If any sums owing to the Supplier are overdue the Supplier may:
- (a) charge interest on the outstanding amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and any regulations made thereunder for the period commencing on the due date until the date of payment.
 - (b) suspend the provision of the FM/Maintenance Services (but the Customer shall remain liable for payment of the Charges to the extent that the Supplier is unable to mitigate such Charges during the period of suspension).
- 7.4 During the Initial Period the Supplier may only increase the Charges by giving one month's prior notice if and to the extent that the Supplier's costs are increased by increases in the cost of labour in the area in which the Customer's Premises are situated or by changes in Law which have effect after the Start Date.
- 7.5 At any time during the Initial Period the Supplier may increase the Charges by giving one month's prior notice.
- 7.6 In the event that the Supplier gives notice as described in clauses 7.4 or 7.5, the Customer may, within one month from the date of service of such notice, give the Supplier three months' notice to terminate this Agreement. During the period of such notice of termination the proposed increase in the Charges shall not apply.
- 7.7 Unless stated in Section A to be included, the Charges do not include the additional cost to the Supplier of performing the Services on Bank or other public holidays for which the Supplier may charge up to a total of three times the normal hourly charge for the FM Services. Such additional charges will be invoiced monthly in arrears and such invoices shall be paid by the Customer within fourteen days of receipt.
- 7.8 The Supplier shall invoice the Customer for any additional services, as agreed between the parties from time to time, monthly in arrears and the Customer shall pay such invoices within fourteen days of receipt.

8. LIMITATION OF THE SUPPLIER'S LIABILITY

- 8.1 Nothing in this Agreement shall limit or exclude the Supplier's liability for death or personal injury caused by the Supplier's negligence.
- 8.2 The Supplier and the Customer agree that:
- (a) The value of the property intended to be protected under this Agreement and the potential extent of Loss are each better known to the Customer than to the Supplier;
 - (b) The potential extent of Loss is disproportionate to the amounts which the Supplier can reasonably charge under this Agreement;
 - (c) The Supplier cannot obtain unlimited insurance cover for its potential liability under contracts such as this. There are some risks against which the Supplier cannot insure. The Customer is better able to and should insure the property intended to be protected under this Agreement and against any consequential loss the Customer might suffer;
 - (d) It is difficult to investigate claims unless they are received a short time after Loss is alleged to have occurred;
 - (e) the Supplier would wish to correct any ongoing default under this Agreement at the earliest opportunity;
- and that consequently the Supplier should restrict its liability for Loss to the circumstances described in this clause 8 and to the Limit of Liability selected by the Customer.
- 8.3 If the Supplier, its employees or agents have any liability to the Customer for any Loss, such liability shall in all cases whatsoever (subject to clause 8.4) be limited to the payment by the Supplier on its own behalf and on behalf of its employees or agents of an amount equal to the Limit of Liability in respect of any one event or series of related events attributable to one cause.
- 8.4 Without prejudice to the limitation of the Supplier's liability as provided in clause 8.3 above, the Supplier's liability to the Customer in any circumstances under or in the course of performing this Agreement (whether under the express or implied terms of this Agreement, or in tort (including negligence or breach of statutory duty) or in any other way and whatever the cause) for any loss of profit, business, contracts, revenues or anticipated savings, or special, indirect or consequential damage of any nature whatsoever suffered by the Customer shall be limited to the payment by the Supplier on its own behalf and on behalf of its employees or agents of an amount equal to 10% of the Limit of Liability in respect of any one event or series of related events attributable to one cause.
- 8.5 Except as provided for in Clause 8.1, the Supplier shall not be liable in any way whatsoever for any

Loss resulting from or in connection with any Nuclear Risks and Asbestos Risks.

8.6 The Supplier, its employees or agents, shall not be liable to the Customer in any circumstances or to any extent whatever in respect of Loss unless notice of claim is received by the Company within three months of the discovery by the Customer, its employees or agents of the Loss alleged to give rise to any such liability or within three months of the time when the Customer ought reasonably to have discovered such Loss, whichever is the earlier.

9. INDEMNITY BY THE CUSTOMER AGAINST CLAIMS FROM THIRD PARTIES

9.1 The Customer shall insure any property belonging to third parties (or insure against any liability for its loss) which is intended to be protected under this Agreement and/or obtain the agreement of such third parties to the Supplier's limitation of liability and consequently the Customer shall indemnify the Supplier as provided in clause 9.2.

9.2 The Customer shall indemnify the Supplier, its employees and agents against any claim whatsoever (and all costs incurred therein) made by any third party asserting any proprietary or possessory right or interest in any property in relation to which the Supplier provides any service under this Agreement or asserting that any duty of care is owed to it in the light of this Agreement which causes or which would otherwise cause the total liability of the Supplier to the Customer and such third party to exceed its liability to the Customer as limited by this Agreement.

10. FORCE MAJEURE AND DUTIES DURING INDUSTRIAL ACTION

10.1 Neither party shall be liable to the other for any failure or delay in carrying out its obligations hereunder where such failure or delay is caused by circumstances beyond its control which it could not reasonably be expected to have foreseen at the time the Agreement was made and whose effect it could not reasonably have avoided or overcome, provided that this clause shall not apply to an obligation to pay the Charges.

10.2 In the event of a strike or other industrial action at the Customer's Premises by the Customer's or a third party's employees, the Supplier's employees shall not be required to carry out any duties of a strike-breaking nature nor additional duties which do not relate to the Maintenance of the Customer's Premises or its contents.

II. TERMINATION

11.1 Either party may terminate this Agreement forthwith by giving notice to the other if:

- (a) the other party is in material breach of its obligations under this Agreement and, in the case of such breaches capable of being remedied, fails to remedy that breach within 21 days of receiving notice of such breach; or
- (b) the other party commits an act of bankruptcy or goes into liquidation other than for the purposes of reconstruction or amalgamation or suffers the appointment of a receiver or administrator of any of its property or income or makes any deed or arrangement with or composition for the benefit of any of its creditors or otherwise becomes insolvent.

12. GENERAL

12.1 This Agreement forms the entire agreement between the Customer and the Supplier relating to the provision of the FM Services. It replaces and supersedes any previous proposals, correspondence, understandings or other communications whether written or oral.

12.2 Any amendment of this Agreement shall not be effective unless agreed in writing and duly signed by the Supplier and the Customer.

12.3 If any term or provision in this Agreement shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this Agreement but the validity and enforceability of the remainder of this Agreement shall not be affected.

12.4 No waiver, delay or failure by either party in enforcing any provision of this Agreement shall prejudice or restrict the rights of that party under this Agreement, nor shall waiver by either party of any breach operate as a waiver of any subsequent breach.

12.5 Any notice required to be given under this Agreement shall be addressed to the relevant party at the address specified in this Agreement or as notified by the parties to each other from time to time.

12.6 This Agreement shall be construed in accordance with the laws of England and the Courts of England and Wales shall have exclusive jurisdiction in relation to any matters arising out of this Agreement (except enforcement of an order made by the Courts of England and Wales).