

SECURITY, CLEANING & FACILITIES MANAGEMENT SERVICES TERMS AND CONDITIONS

BACKGROUND

- (A) The Contractor is part of the **MADIGANGILL RESOURCE LIMITED** (Company Registration Number 07037354) whose registered office is at 10 Dominion Street, London EC2M 2EF, email *andy.black@madigangill.co.uk* (**'Contractor'**)
- (B) The Client wishes to engage the Contractor to provide certain services at the Premises (as defined in clause 1.1 below) and the Contractor wishes to accept such engagement, all in accordance with the provisions of this agreement.

THE PARTIES AGREE...

1 Interpretation

1.1 In this agreement:

- (a) **'Claims'** means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise);
- (b) **'Commencement Date'** means [date];
- (c) **'Expiry Date'** means [date] or such other date as the parties may agree in writing;
- (d) **'Fees'** means the amounts set out or referred to in Schedule 2 or such other fees as the parties may agree in writing, and where the fee for any item of Services provided under this agreement is not so set out or agreed then the Contractor's standard charging rate for the time being;
- (e) **'Losses'** means all losses including financial losses, damages, legal costs and other expenses of any nature;
- (f) **'Premises'** means the premises known as [address] or such other or additional premises as the parties may agree in writing;
- (g) **'Operatives'** means the Contractor's personnel who are allocated to perform the Services;
- (h) **'Services'** means the services to be provided by the Contractor as set out in the latest quotation issued and/or Schedule 1 to this agreement or such other or additional services related services as the parties may agree in writing; and
- (i) **'Term'** means the period from the Commencement Date to the Expiry Date or earlier termination of this agreement in accordance with its terms or by operation of law.

1.3 Words importing any gender include every gender.

1.4 Words importing the singular number include the plural number and vice versa.

- 1.5 Words importing '**persons**' include firms, companies and corporations and vice versa.
- 1.6 References to numbered clauses and Schedules are references to the relevant clause in or Schedule to this agreement.
- 1.7 Reference in any Schedule to this agreement to numbered paragraphs relate to the numbered paragraphs of that Schedule.
- 1.8 Any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done.
- 1.9 The headings to the clauses, Schedules and paragraphs of this agreement are not to affect the interpretation.
- 1.10 Any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment.
- 1.11 Where the word '**including**' is used in this agreement, it shall be understood as meaning '*including without limitation*'.

2 Provision of services

- 2.1 In consideration of the payment of the Fees, the Contractor shall, during the Term, provide the Services to the Client in respect of the Premises.
- 2.2 Notices indicating that the Premises are being serviced by the Contractor, shall be supplied to the Client on request, who may display such notices prominently on and around the Premises, and in addition the Client shall display such notices as the Contractor may from time to time direct. Ownership of such notices shall remain with the Contractor and the Contractor shall be permitted to remove all or any such notices at any time and on termination of this agreement.
- 2.3 The Contractor shall not be obliged to provide any Services where the provision of such services would, in the reasonable opinion of the Contractor, expose all or any of the Operatives to the risk of physical injury.
- 2.4 These terms are to be aligned to the latest quotation issued by the Contractor.

3 Warranties

- 3.1 The Contractor warrants that, for the duration of this agreement:
- (a) it shall provide the Services with reasonable care and skill;
 - (b) it shall provide the Services in compliance with all relevant British Standards Code of Practice, legislation and regulations;

- (c) all Operatives have been subjected to a medical inspection and passed fit for their duties;
- (d) it shall provide only Operatives who hold a current, valid front-line licence issued by the Industry Authority;
- (e) all Operatives will be supervised by an inspector or other senior operative of the Contractor who will make periodic spot-check visits and each such inspector or other senior operative of the Contractor shall hold a current, valid non-front-line licence issued by the Industry Authority;
- (f) all equipment, instruments, and where applicable guard dogs, used by such Operatives will be supplied by the Contractor;
- (g) a record of attendance at the Premises will be kept by the Operatives for each shift in which the Operatives will record any irregularities or other incidents discovered on that shift; and
- (h) it shall ensure that any keys provided to the Contractor are kept safe.

3.2 Notwithstanding the warranties above, the parties acknowledge that the purpose of the Services is to reduce the risk of damage to the Premises. Accordingly, the parties acknowledge that the Contractor does not, and cannot, guarantee the of the Premises and that nothing in this agreement shall be interpreted as a warranty to that effect.

4 Client's obligations

At all times during the Term the Client shall provide:

- (a) a safe workplace;
- (b) welfare facilities; and
- (c) a healthy working environment,

for all Operatives whilst present at the Premises, in each case in accordance with all applicable health & safety law, including in particular the Health & Safety at Work etc Act 1974, and all applicable workplace health, safety & welfare regulations and general and specific workplace Guidances from time to time published by the Health & Safety Executive (currently see <https://www.hse.gov.uk>).

5 Insurance

The Contractor will obtain and maintain appropriate insurance in relation to the performance of the Services including insurance against claims for injury sustained by Operatives in the course of carrying out the Services, and unless such injury is due to the act, neglect or default of the Client or of any person for whom the Client is responsible the Contractor shall indemnify the Client against all actions, claims and demands in respect of such injury.

6 Liability and indemnity

- 6.1 Subject to clause 6.2 below, the liability of the parties under or in connection with this agreement, whether arising in contract, tort, negligence, breach of statutory duty or otherwise, shall be limited in accordance with this clause 6.
- 6.2 Notwithstanding anything else contained in this agreement, neither party seeks to exclude or limit liability where such exclusion or limitation is precluded by applicable law including liability in respect of death or personal injury resulting from a party's negligence or fraud.

- 6.3 The cumulative liability of the Contractor in respect of all claims made in respect of or in connection with this agreement, including claims arising in contract, tort, breach of statutory duty or arising in any other way out of the subject matter of this agreement, shall not exceed a sum equal to the Fees actually received in the previous 12 months. The provisions of this clause 6.3 shall not apply to the indemnity given in clause 6.5.
- 6.4 Neither party shall be liable to the other party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature incurred or suffered by that other party of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill.
- 6.5 The Contractor shall indemnify and hold harmless the Client from and against all Claims and Losses arising from the dishonesty of any Operatives, save that in respect of any such Claim the Client shall have a duty to mitigate its Losses.

7 Fees

- 7.1 The payment of the Fees shall be made by the Client to the Contractor within 30 days of the date of the Contractor's invoice in respect of the Services specified in the invoice.
- 7.2 The Contractor shall be entitled to invoice the Client monthly in advance.
- 7.3 All amounts stated are exclusive of VAT and any other applicable taxes, which will be charged in addition at the rate in force at the time the Client is required to make payment.
- 7.4 If the Client does not make a payment by the date stated in an invoice or as otherwise provided for in this agreement then the Contractor shall be entitled to:
- (a) charge interest on the outstanding amount at the rate of 8% a year above the base lending rate of the Bank of England, accruing daily;
 - (b) require the Client to pay, in advance, for all or any of the Services which have not yet been performed; and
 - (c) not perform all or any further Services.
- 7.5 When making a payment the Client shall quote relevant reference numbers and the invoice number.
- 7.6 If the Contractor fails to carry out the Services before the date appointed for payment of the Fees, the Client may (without prejudice to any other right or remedy) give notice to the Contractor of its intention not to pay the Fees until such Services have been duly carried out, and upon so doing may withhold payment accordingly.
- 7.7 The Contractor may increase the Fees on an annual basis with effect from each anniversary of the date of this agreement in line with the percentage increase in the Retail Prices Index in the preceding 12 month period or by 5%, whichever is the greater.
- 7.8 The Contractor may also from time to time increase the Fees to account for any increases in the statutory minimum wage, income tax rates, National Insurance contributions, pension scheme contributions, the apprenticeship levy, and all other similar workplace costs and expenses relating to any Operative or other person employed or engaged by the Contractor or any other member of its group in the provision of the Services.

8 Equipment etc to remain the Contractor's property

All equipment, instruments, and where applicable K9 Units, supplied by the Contractor shall remain the sole property of the Contractor.

9 Term

This agreement shall become effective on the Commencement Date and shall continue for the Term, terminating on the Expiry Date or any earlier termination in accordance with clause 11 or any other term of this agreement or by operation of law.

10 Confidentiality

The Contractor acknowledges that during the performance of the Services, the Contractor and the Operatives, may from time to time have access to confidential information belonging to the Client. The Contractor shall, and shall procure that its Operatives shall, keep the confidential information of the Client confidential and secret.

11 Termination

11.1 Without prejudice to the other remedies or rights a party may have, either party may terminate this agreement, without the need for cause, by giving not less than 90 days written notice to the other party.

11.2 Without prejudice to the other remedies or rights a party may have, either party may terminate this agreement, at any time, on written notice to the other party ('Other Party'), such notice to take effect as specified in the notice, if:

(a) the Other Party is in material breach of its obligations under this agreement, and if the breach is capable of remedy it is not remedied within 14 days by the Other Party receiving notice which specifies the breach and requiring the breach to be remedied; or

(b) the Other Party becomes insolvent or if an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the Other Party's assets or business, or if the Other Party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt.

11.3 On the determination of this agreement the Contractor shall be permitted to remove all its apparatus and equipment which may have been placed by it upon the Premises.

11.4 The Client and each other member of its group shall not employ or engage or directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment or engagement by the Contractor or any other member of its group, any Operative or other person employed or engaged by the Contractor or such member in the provision of the Services, at any time during the Term or for a further period of 6 months after the termination of this agreement, other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the Contractor or any other member of its group. If the Client commits any breach of this clause 11.4, it shall, on demand, pay to the Contractor a sum equal to 25% of one year's basic salary or the annual fee that was payable by the Contractor or any other member of its group to that employee, worker or independent contractor plus the recruitment costs incurred by the Contractor or such member in replacing such person.

12 Data protection

Each party shall comply with all applicable data protection legislation and regulations in force (including Council Regulation (EU) 2016/679 and the Data Protection Act 2018 and any modifications or re-enactments of them for the time being in force).

13 General

13.1 Force majeure

Neither party shall have any liability under or be deemed to be in breach of this agreement for any delays or failures in performance of this agreement that result from circumstances beyond the reasonable control of that party. The party affected by such circumstances shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances exist for a continuous period of more than 28 days, either party may terminate this agreement by written notice to the other party.

13.2 Amendments

This agreement may only be amended in writing signed by duly authorised representatives of the parties.

13.3 Assignment

13.3.1 The Contractor may at any time sub-contract all or any of its obligations under this agreement to any other member of the MadiganGill Group, and may sub-contract to any other person with the prior written consent of the Client (such consent not to be unreasonably withheld, delayed or conditioned).

13.3.2 Subject to clause 13.3.1, the Contractor shall not assign, delegate, mortgage, charge or otherwise transfer any or all of its rights and obligations under this agreement without the prior written consent of the Client.

13.3.2 The Client shall not assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this agreement without the prior written consent of the Customer.

13.4 Entire agreement

This agreement contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to its subject matter. The parties confirm that they have not entered into this agreement on the basis of any representation that is not expressly incorporated into this agreement. Nothing in this agreement excludes liability for fraud.

13.5 Waiver

No failure or delay by either party in exercising any right, power or privilege under this agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in this agreement are cumulative and not exclusive of any rights and remedies provided by law.

13.6 Agency, partnership etc

This agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this agreement. Neither party shall have, nor represent that it has, any authority to make any commitments on the other party's behalf.

13.7 Further assurance

Each party to this agreement shall at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of this agreement or to make it easier to enforce.

13.8 Severance/Redundancy/TUPE

If any provision of this agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this agreement and rendered ineffective as far as possible without modifying the remaining provisions of this agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this agreement.

The Client agrees to indemnify the Contractor against any additional costs of providing the services which arise from:

13.8.1 Any redundancy rights and costs and any basic and/or compensatory awards and/or awards of damages of whatever nature in respect of the Employees (including those previously employed by the Customer the Contractor or others at the Premises prior to the Commencement Date) howsoever arising including but not limited to redundancy rights and costs arising on expiry or termination of the agreement for whatever reason.

13.8.2 The Transfer of Undertakings (protection of employment) regulations 1981 ("the regulations") which the parties acknowledge will apply on the expiry of this agreement. In the event that it is found or alleged that the regulations do not apply the Customer shall either offer to employ the Employees preserving any continuity of employment and/or indemnify the Contractor against the costs incurred in making any Employee redundant to include any statutory redundancy payments any compensation which the Contractor has to pay as a result of the award of an industrial tribunal or such other competent court together with any legal costs incurred as a result of defending any such claim.

13.8.3 Any staff termination costs (including inter alia any basic or compensatory award made by an industrial tribunal in connection with a complaint or unfair dismissal and any damages awarded for breach of Contract) which the Contractor may incur or be liable to and arising from or in connection with any changes or changes initiated or agreed by the Client.

13.9 Announcements

No party shall issue or make any public announcement or disclose any information regarding this agreement unless prior to such public announcement or disclosure it furnishes all the parties with a copy of such announcement or information and obtains the approval of such persons to its terms. However, no party shall be prohibited from issuing or making any such public announcement or disclosing such information if it is necessary to do so to comply with any applicable law or the regulations of a recognised stock exchange.

13.10 Notices

13.10.1 Any notice to be given under this agreement shall be in writing and shall be hand delivered or sent by first class mail to the address of the relevant party or sent by email to the relevant email address, in each case as set out at the head of this agreement, or to such other address within the UK mainland or email address as that party may from time to time notify to the other party in accordance with this clause 13.

13.10.2 Notices sent as above shall be deemed to have been received in the case of hand delivery at the time of delivery or in the case of first class mail 3 working days after the day of posting or in the case of email on the next working day after sending.

13.10.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left,

or that the envelope containing the notice was properly addressed and posted, or that the email was properly addressed and sent.

13.11 Law and jurisdiction

The validity, construction and performance of this agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the parties submit.