

1. ACCESS

1.1 The Client shall grant (or procure, including from any tenants at the Site) such access as the Supplier, its agents and contractors require from time to time, to install, operate, replace, maintain or remove any Lighting Equipment.

1.2 The Supplier shall use reasonable endeavours to arrange access with the Client in advance and with the objective of minimising disruption to the Client's operations at the relevant Site.

2. INSTALLATION

2.1 The Supplier shall use all reasonable endeavours to commence and complete installation of Lighting Equipment within the dates specified in the Commercial Terms.

2.2 The Client acknowledges that the cost of Lighting Equipment specified in the Commercial Terms is based on quotes available at the date of the Agreement. The Supplier shall finalise the order for Lighting Equipment within 10 Business Days of execution of this Agreement. If there is an increase in cost of Lighting Equipment during this period and the Supplier cannot mitigate the increased costs then the Supplier reserves the right to amend the cost of Lighting Equipment and all related figures in the Commercial Terms. If the Supplier exercises this right it shall provide full details of the increases in cost of Lighting Equipment on an open book basis.

2.3 All installation, maintenance or removal of Lighting Equipment at the Sites by the Supplier or its contractors shall be carried out:

2.3.1 in a good and workmanlike manner;

2.3.2 in compliance with all health and safety legislation and other statutory requirements, including regarding the qualifications of persons that will perform electrical work as part of the installation of Lighting Equipment;

2.3.3 in accordance with BS7671 (with appropriate sign-off and certification to be passed to the Client);

2.3.4 in accordance with applicable manufacturers' instructions for installation of the Lighting Equipment; and

2.3.5 in accordance with any site rules and procedures of the Client notified in advance to the Supplier.

2.4 The Supplier shall notify the Client when it is satisfied that the installation of the Lighting Equipment at a Site is complete (a Completion & Verification certificate) which may include information regarding the number and quantities of the Lighting Equipment installed.

2.5 The Client shall provide the Supplier with any information in its possession relating to the presence of asbestos-containing materials (**ACM**) in areas where the Supplier may undertake installation or other works. If the Supplier becomes aware of or suspects the presence of ACM that may be disturbed by the Supplier's work it shall promptly suspend work and notify the Client. The Client shall be responsible at its sole expense for addressing the potential for or the presence of ACM in accordance with all applicable laws and addressing the impact of its disturbance before the Supplier will continue any relevant work. If work is delayed for more than 6 weeks the Supplier is entitled to cancel this Agreement and the Client agrees to reimburse any costs that the Supplier has

incurred. The Supplier has a duty to reasonably mitigate all such costs.

2.6 Following removal of the Clients Existing Lighting Equipment the Supplier or its contractors will take all necessary steps to dispose of this equipment, unless the Client advises the Supplier in writing that they wish to retain the existing equipment.

3. POST-INSTALLTION TESTING

3.1 The Supplier shall procure that performance tests are run in respect of the Lighting Equipment installed at a Site and shall notify the Client that when it is satisfied the installation of the Lighting Equipment at a Site is complete.

4. SERVICE LEVEL AGREEMENT

4.1 The Lighting Equipment is covered by both a Service Level Agreement that is outlined below and a manufacturer's warranty. The Client should contact the Supplier with regard to any potential claims. The Supplier will then contact the manufacturer.

4.2 The Client shall notify the Supplier if it considers that any response or works completed under the Service Level Agreement does not comply with its terms (Service Complaint). The Supplier shall investigate each Service Complaint as soon as reasonably possible and shall propose to the Client remedial actions to correct any confirmed non-compliance with the Service Level Agreement as soon as reasonably practical.

4.3 The following detailed service parameters are the responsibility of the Supplier in the ongoing support of this SLA:

4.3.1 This SLA does not extend to the management and maintenance of emergency light fittings ie replacement of batteries.

4.3.2 Following installation of the Lighting Equipment an individual component may either fail completely ("Wholesale Failure") or they may still operate, but at reduced lux levels or with an element of flickering ("Partial Failure"). In the event that there is a partial or full failure of the Lighting Equipment the Client should in the first instance contact the Supplier. The Lighting Equipment that has been installed has the benefit of a manufacturer's warranty and the Client will be entitled to benefit from that warranty as long as the Lighting Equipment has only have been used in accordance with applicable industry standards/norms and any instructions provided at the time of installation by the manufacturer. For the sake of clarity there is no liability either on the part of the manufacturer or the Supplier where damage or defect has been caused by the following:

(a) Temperature and voltage limits for the Lighting Equipment being exceeded

(b) Exposure to mechanical stresses and strains that are not in accordance with the intended use.

(c) Electrical supply conditions, including supply spikes, over-voltage and ripple current control systems that are outside the specified limits of the LED components and those defined by applicable supply standards.

(d) Wilful damage, misuse or negligence.

(e) Alteration or repair of the product (other than by or on behalf of the manufacturer or Supplier).

(f) Failures or damage caused by events beyond the reasonable control of the Client (for example lightning strikes, windstorms, sandstorms, natural disasters, acts of

war, terrorism, civil disobedience, riots, malicious mischief, vandalism, impacts, fire, prolonged submersion, acts of God or nature).

4.3.3 Where some of the Lighting Equipment has failed through fair wear and tear the Supplier, for one (1) year after the Commencement Date, will both provide and fit a replacement part free of charge to the Client. After the initial period of one (1) year the Supplier will provide a replacement service only if more than 2% of components are subject to Wholesale or Partial Failure.

4.3.4 Based on published data for the LED light engine and electronic components industry the failure rates for the Lighting Equipment through fair wear and tear are as follows:

- (a) Failure rate of the Driver (or other electronic components) is less than 1% per year.
- (b) LED mortality rate is less than 1% per year.
- (c) Light output (luminous flux) reduces by more than 2.2% per year (compared to the initial value at the time of installation) as measured over the entire installation
- (d) A maximum of ten (10) per cent or minimum of three (3) LEDs do not function in any individual fitting

4.4 Client responsibilities and/or requirements in support of this SLA include:

4.4.1 Payment for all service requests – see Clause 5.2 – within 30 days of invoice date.

4.4.2 Reasonable availability of Client representative(s) when resolving a service related incident or request.

4.4.3 Ensuring that the Lighting Equipment is looked after with due care and attention.

4.5 Coverage parameters specific to the service(s) covered in this Agreement are as follows:

- (a) Telephone support : 9:00 A.M. to 5:00 P.M. Monday – Friday (normal business hours)
- (b) Email support: Monitored 9:00 A.M. to 5:00 P.M. Monday – Friday (normal business hours)
- (c) Emails received outside of office hours will be collected, however no action can be guaranteed until the next working day
- (d) Onsite assistance in the event of wholesale failure of the Lighting Equipment guaranteed within 48 hours during the business week

4.6 All valid claims under this SLA will be covered by the Supplier free of charge to the Client.

In the event that the service request is found not to be directly related to the Lighting Equipment installed the following charges will apply. These charges may be subject to periodic review:

- £150 attendance including the first hour
- £37.50 per hour for every additional hour during normal business hours, and
- £50.00 per hour for every additional hour outside of normal business hours.

5. PAYMENTS

5.1 The Fees payable under this Agreement for which the Supplier may issue an invoice are:

- 5.1.1 the Monthly Fee;
- 5.1.2 any Termination Payment in respect of Lighting Equipment; and
- 5.1.3 any other amounts due to the Supplier under this Agreement.

The Client shall pay the Supplier all amounts due under the Agreement within 30 days of the invoice date. The Client agrees to complete a Direct Debit Mandate and not to revoke the mandate until the end of the Term of the Agreement. Under that mandate the Client agrees that the Supplier will deduct in full amounts due under this Agreement, 30 days after the invoice date.

5.3 INTEREST ON LATE PAYMENTS

If the Client fails to pay the Supplier an amount due under any invoice by the Payment Due Date then, without prejudice to any of the Supplier's other rights under this Agreement, the Client shall pay interest to the Supplier at the base lending rate for sterling of Barclays Bank plc applicable from time to time plus 3% commencing on and including the due date up to but excluding the date when payment is made.

5.4 DISPUTED PAYMENTS

If the Client disputes any amount shown as payable in an invoice, it shall: make payment of the full amount of such invoice on or before the due date for such payment; and give notice to the Supplier of the amount in dispute and the reasons for such dispute.

5.4.2 The Parties shall seek to resolve the dispute in good faith in accordance with Clause 21.

5.4.3 If, following the resolution of a dispute, an adjustment payment is required to be made by the Supplier to the Client, the Supplier shall make such payment within ten Business Days of the resolution as well as interest on that sum calculated in accordance with Clause 5.3, except that interest shall be calculated for the period commencing on the date that the payment should have been made if the dispute had not occurred and excluding the date when payment is actually made.

TAX

6.1 All amounts referred to in this Agreement are exclusive of any applicable VAT. Subject to each Party's obligations relating to VAT, each Party shall cause all Taxes legally payable by that Party arising in connection with this Agreement to be paid.

6.3 The Client shall do all things reasonably required by the Supplier to allow the Supplier to claim enhanced capital allowances in respect of the Lighting Equipment.

7. TERM OF AGREEMENT

7.1 This Agreement shall commence on the date of execution by the Parties and remain in force for the Term, subject to early termination in accordance with Clause 18 and subject to clause 12.

7.2 The obligation of the Client to pay the Fees shall commence on the Commencement Date.

8. OWNERSHIP OF LIGHTING EQUIPMENT

8.1 The Lighting Equipment shall at all times remain the property of the Supplier, and the Client shall have no right, title or interest in or to the Lighting Equipment and subject to Clause 12

8.2 The Client shall take all actions reasonably required by the Supplier to confirm and protect the Supplier's ownership interest in the Lighting Equipment.

9. **DAMAGE TO LIGHTING EQUIPMENT**

9.1 The Client shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Lighting Equipment.

9.2 The Client shall indemnify the Supplier in respect of any costs or losses suffered as a consequence of any damage to the Lighting Equipment (including the Fees that would have been payable had the damage not occurred), other than damage caused by the Supplier.

10. **INSURANCE**

10.1 The Supplier shall have (or shall ensure that contractors providing installation or maintenance services on its behalf have) the customary insurances carried by prudent contractors conducting similar works including employers liability and general third party liability.

10.2 The Client shall have in place for the Term of this Agreement at least the following insurances: general third party liability insurance; employers liability insurance to the minimum value required by applicable legislation; and general property insurance in respect of the Sites covering Insured Risks, including the costs of repair and reinstatement of the Lighting Equipment in the event of damage caused by an Insured Risk.

10.3 Whenever required by a Party, the other Party shall produce reasonable evidence of any insurances held in accordance with this clause.

11. **ADDITION OF SITES**

If the Client decides to investigate the installation of energy efficiency measures relating to lighting at sites it controls other than the Sites it shall notify the Supplier. The Supplier shall have the right to offer terms to supply Lighting Services to those sites prior to any other third party supplier. The Client shall provide information and access reasonably required by the Supplier to develop the offer.

12. **EXPIRY OF THE TERM**

On expiry of the Term by passage of time, the provision of the Lighting Services shall automatically continue (save that the Monthly Fee shall no longer be payable during such extended period and, in consideration for that, the Service Level Standards shall no longer apply) until it is determined by the Client by giving the Supplier not less than one month's notice in writing.

13. **CLIENT ACTIONS**

If the Client does not comply with its obligations under this Agreement (including its obligations to provide timely access) then the Supplier shall be entitled to charge, and the Client shall be required to pay, the amount which would have been payable had the Supplier not been prevented from providing the Lighting Services by the actions of the Client. In addition, the Supplier may elect to suspend the provision of Lighting Services.

14. **INTELLECTUAL PROPERTY**

Nothing contained in the Agreement will operate to transfer or grant to the Client any title or ownership interest in the Intellectual Property Rights of the Supplier.

15. **REPRESENTATIONS AND WARRANTIES**

15.1 Each Party represents, warrants and undertakes to the other Party as of the date

of this Agreement as follows:

15.1.1 it has the power and capacity to execute and perform its obligations under this Agreement;

15.1.2 it has taken all necessary action and obtained any corporate approvals required to authorise the execution, delivery and performance of this Agreement;

15.1.3 the execution, delivery and performance by it of this Agreement shall not: (a) conflict with its organisational documents; (b) conflict with or cause any default under any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales contract, loan or credit arrangement or other agreement or instrument to which it is a party or by which it or its properties may be bound or affected; or (c) conflict, in any material respect, with any applicable laws; and

15.1.4 there are no actions, suits, proceedings or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any governmental authority (whether or not covered by insurance) or any other issues that individually or in the aggregate could result in any materially adverse effect on its obligations under this Agreement.

15.2 **The Client Represents, Warrants And Undertakes To The Supplier As Of The Date Of This Agreement That:**

15.2.2 it is the legal and beneficial owner of the Existing Lighting Equipment and it grants the Supplier full authority to remove that equipment. In the event that any of the Sites are occupied by the Client under a leasehold arrangement the Client has obtained from the landlord of any Site occupied by the Client under a leasehold arrangement written, signed agreement to both the removal of the Existing Lighting Equipment and the installation of the Lighting Equipment by the Supplier or its contractors.

15.2.3 it has reviewed the Savings Report and its assumptions and confirms that it contains no errors to the best of its knowledge and belief;

15.2.4 it confirms that it accepts that the Savings Report prepared by the Supplier is a professional assessment of the forecast energy savings that may arise from installation of the Lighting Equipment referred to in the Savings Report;

15.2.5 it understands and accepts that the Fees have been derived from the forecast energy savings determined in the Savings Report and that the Supplier shall have no liability to the Client if the energy savings specified in the Savings Report are not realised by the Client;

15.2.6 it has satisfied itself with the accounting treatment of this Agreement and shall be wholly responsible for any changes relating to the same.

16. **FORCE MAJEURE**

Notwithstanding a Force Majeure Event, the Client shall continue to pay the Fees (other than the Variable Fee, if any, in accordance with the terms of this Agreement).

16.1 **RELIEF**

No failure, delay or omission by either Party to fulfil any of its obligations under this Agreement (other than the obligation to make payments when due) shall give rise to any claim against such Party or be deemed to be a breach of this Agreement if and to the extent such failure, delay or omission results from any

Force Majeure Event. Notwithstanding a Force Majeure Event, the Client shall continue to pay the Fees in accordance with the terms of this Agreement.

16.2 NOTICE AND RESUMPTION OF PERFORMANCE

16.2.1 A Party affected by a Force Majeure Event (the “**Affected Party**”) shall notify the other Party in writing as soon as reasonably practicable, such notice to specify:

- (a) the particulars of the occurrence giving rise to the Force Majeure Event, in as much detail as is then reasonably available;
- (b) the obligations the performance of which are delayed or prevented and the estimated period during which such performance may be suspended or reduced, including (to the extent known or ascertainable) the estimated extent of such reduction in performance; and
- (c) the particulars of the programme to be implemented, if any, to ensure full resumption of normal performance hereunder.

16.2.2 The Affected Party shall:

- take all reasonable steps to mitigate the effects of the Force Majeure Event and to ensure full resumption of normal performance of its obligations under this Agreement; and
- (b) update the other Party at reasonable intervals with respect to the items to be included in the notice provided pursuant to Clause 16.2.1.

17. LIABILITY

17.1 LIMITATION OF LIABILITY

Notwithstanding any term or provision hereof to the contrary, in no event shall the Supplier’s liability hereunder or related to this Agreement exceed:

- (a) in relation to any losses for which the Supplier is required to obtain insurance, the amount of insurance required to be procured or maintained pursuant to this Agreement by or on behalf of the Supplier in respect of such matters (whether or not such amount of insurance is procured or maintained or initiated in part or in whole); and
- (b) in relation to all other losses, an amount per year (calculated from the anniversary of the date of the Agreement) amounting to the aggregate of the Monthly Fees payable by the Client in that year; provided, however, that nothing in this Clause 17.1 shall limit the liability of the Supplier for death and / or personal injury.

17.2 REMEDIES

For breach of any provision for which an express remedy or measure of damages is herein provided, such express remedy or measure of damages shall be the sole and exclusive remedy, the liable Party’s liability shall be limited as set forth in such provision, and all other remedies or damages at law or in equity are waived unless otherwise provided in this Agreement. If no remedy or measure of damages is expressly herein provided, the liable Party’s liability shall be limited to direct actual damages only.

17.3 INDIRECT AND CONSEQUENTIAL LOSS

In no event shall either Party be liable to the other for any indirect, consequential, speculative (including, without limitation, loss of future profits or business opportunity), punitive, exemplary or special damages, whether by statute, in tort, for contract or otherwise, arising in any way out of this Agreement

or any breach of this Agreement; except, however, to the extent such damages or losses arise under Third Party claims to which a Party is entitled to indemnification.

17.4 FRAUD

Nothing in this Agreement limits or excludes liability for either Parties’ fraud or any acts or omissions for which the governing law prohibits the exclusion or limitation of liability.

18. TERMINATION

18.1 EVENT OF DEFAULT

18.1.1 If an Event of Default on the part of a Party has occurred, the other Party (the “**Non-Defaulting Party**”) may at any time at which such Event of Default is continuing terminate this Agreement by giving written notice of termination to the other Party.

18.1.2 For the purposes of this Clause 18.1 an “**Event of Default**” means the occurrence at any time with respect to a Party (the “**Defaulting Party**”) of any of the following events:

- (a) such Party is in material breach of its obligations and such Party fails to remedy such breach within twenty (20) Business Days of receiving notice of such breach from the Non-Defaulting Party and the Non-Defaulting Party’s intention to terminate this Agreement as a consequence;
- (b) in respect of the Client, the Client fails to pay any amount due under this Agreement and such failure is not remedied on or before the date which is five (5) Business Days after the due date for such payment;
- (c) an Insolvency Event occurs in respect of such Party;
- (d) the Client ceases or threatens to cease or carry on business or if there is any change in the Client’s direct or indirect ownership, whether legal or beneficial, or in the Control of the Client from that existing at the date of this Agreement that in the opinion of the Supplier would have an adverse effect on the Client’s ability to fulfil its obligations to the Supplier. For the purpose of this clause, "Control" has the meaning ascribed to it in the Corporation Tax Act 2010 sections 450 and 451;
- (e) if a Material Adverse Change occurs and the Client does not provide appropriate credit support for an amount and in a form reasonably acceptable to the Supplier for the performance of its financial obligations under this Agreement within three (3) Business Days of receiving a request from the Supplier to do so; or.
- (f) if any of the Lighting Equipment becomes a Total Loss.

18.2 CONSEQUENCES OF TERMINATION

18.2.1 The termination of this Agreement and or the provision of the Lighting Equipment prior to the expiry of the term for any reason shall be without prejudice to the rights and remedies of the Parties accrued prior to such termination, including in respect of any breach (whether or not a repudiatory breach) giving rise to such termination.

18.2.2 Upon termination of this Agreement and or the provision of the Lighting Equipment prior to the expiry of the term, however caused:

- (a) the Supplier may forthwith, by its authorised representatives, without notice and at the Client’s expense, retake possession of the Lighting Equipment and for this purpose may enter any Site or any other premises at which the Lighting

Equipment is located; and

- (b) without prejudice to any other rights or remedies of the Client, the Client shall forthwith pay to the Supplier on demand;
- (c) all arrears of Fees and other sums due but unpaid as at the date of termination;
- (d) the balance of Monthly Fees that would have been payable during the Term of the Commercial Schedule (save for such termination) less a rebate of 2% per annum on each of such Monthly Fee calculated on a day to day basis from the date each of such Monthly Fee would have become payable but for such termination up to the date of such termination; and
- (e) all expenses and costs reasonably incurred by the Supplier or the Lender (as relevant) in retaking possession of and selling or re-hiring the Lighting Equipment or attempting to re-sell or re-hire the Lighting Equipment and/or enforcing its rights under this Agreement

19. **DIRECT AGREEMENT**

19.1 The Client recognises that the Supplier has procured financing in order to **perform** its obligations under this Agreement. The Client also recognises that the entering into one or more direct agreements (by which there is given to the Lender(s) a right to fulfil the obligations of the Supplier under this Agreement and / or procure assignment of this Agreement) may be one of the preconditions to the provision of such financing by the Lender(s). Accordingly, the Client will co-operate in good faith with the Supplier, in order to satisfy on a mutually agreeable basis, the requirements of the Lender(s) in respect of such financing. In particular, the Client undertakes to use its reasonable endeavours to agree the text of one or more direct agreements.

19.2 Prior to any direct agreement being entered into under clause 19.1, each Lender shall be entitled to enforce the following provisions in accordance with the Contracts (Rights of Third Parties) Act 1999 at any time on or after the date on which the Supplier issues a written notice to the Client identifying that Lender (or the agent for that Lender):

19.2.1 The Client shall not (i) terminate or suspend its performance of the Agreement; (ii) exercise any right of set-off or counter-claim in respect of payments due to it under the Agreement; or (iii) commence any winding-up, insolvency or similar proceedings in respect of the Supplier, in each case without first giving notice (a **“Buyer Enforcement Notice”**) to the Lender in writing and unless the Lender fails to rectify the relevant event giving rise to the right of termination or right to commence winding-up, insolvency or similar proceedings within a period of not less than 90 Business Days following receipt of the Buyer Enforcement Notice;

19.2.2 Following the service of a notice to the Client that the Lender has enforced its rights against the Supplier (a **“Lender Enforcement Notice”**), the Lender may novate the rights and obligations of the Supplier under the Agreement to an entity nominated by the Lender in writing to the Client and which is capable of assuming all of the Supplier’s outstanding and future obligations under the Agreement. Following such notification, the Parties shall do all that is reasonably necessary to effect that transfer or novation as soon as practicable thereafter.

20. **GOVERNING LAW**

This Agreement and any non-contractual obligations arising from or connected with this Agreement shall be governed by and construed in accordance with the laws of England and Wales.

21. **DISPUTE RESOLUTION**

21.1.1 If any dispute arises in relation to the subject matter of this Agreement, senior management personnel from each Party shall within ten (10) Business Days of a request from the other Party meet to seek to resolve the dispute in good faith. If such dispute is not resolved within ten (10) Business Days of such meeting, such dispute shall be resolved in accordance with Clause 21.1.2.

21.1.2 Subject to Clause 21.1.1, the Parties irrevocably agree that the courts of England and Wales 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).

22. **CONFIDENTIALITY**

22.1 **PROHIBITION ON DISCLOSURE**

Except as provided in Clause 22.2 below, neither Party shall disclose any Confidential Information to a Third Party during the period from the Effective Date until the date which is [two (2)] years after the expiration of this Agreement, or earlier date of termination of this Agreement, whichever comes sooner in time.

22.2 **EXCEPTIONS**

- 22.2.1 A Party may disclose or permit the disclosure of Confidential Information:
- (a) to its own employees who are properly discharging an obligation or exercising a right pursuant to this Agreement, sub-contractors, agents and all other duly authorised persons, lenders, professional advisers, prospective purchasers or financiers, to the extent necessary to enable it or them to perform or cause to be performed or to enforce any of its rights or obligations under this Agreement;
 - (b) when it can demonstrate to the other Party’s satisfaction that it is required to comply with any applicable law, order, regulation or exchange rule;
 - (c) to the extent that the Confidential Information has become publicly available or generally known to the public at the time of such disclosure otherwise than as a result of a breach of this Clause 22.2; or
 - (d) if the other Party has given prior written approval to the disclosure.

22.2.2 Each Party shall use all reasonable endeavours to procure the observance of the restrictions in this Clause 22.2 by any person to whom it discloses information in accordance with Clause 22.2.1 and shall make such person aware of the requirements of this Clause 22.2.

22.3 **PRESS RELEASES AND ANNOUNCEMENTS**

Any press release or communication regarding the existence of this Agreement or related to the performance of it, whether oral or in writing shall be agreed between the Parties in confidence and neither Party shall release any communication or press release which has not been mutually agreed upon.

22.4 **REMEDIES**

Without prejudice to any other rights or remedies which a Party may have, the Parties acknowledge and agree that damages would not be an adequate remedy for any breach of this Clause 22 and the remedies of injunction, specific performance and other equitable relief are appropriate for any threatened or

actual breach of any such provision and no proof of special damages shall be necessary for the enforcement of the rights under this Clause 22.

23. **FINANCIAL INFORMATION**

Within nine months (270 days) following the end of Client's financial year, and unless the relevant annual report(s) is (are) publicly available on the Client's website, the Client shall provide the Supplier with a copy of the Client's annual report, containing audited consolidated financial statements for its most recently ended fiscal year

24. **TRANSFERS, ASSIGNMENT AND SUB-CONTRACTING**

Neither Party may, without the prior written consent of the other Party, transfer, assign, sub-contract, mortgage, charge or dispose of any or all of its rights or benefits under this Agreement or sub-contract or otherwise delegate any of its rights and / or obligations hereunder, save that the Supplier may, without the prior written consent of the Client, transfer, assign, sub-contract, mortgage, charge or dispose of any rights or benefits under this Agreement to the Lender(s), in connection with, but not limited to, any financing or other financial arrangements. The Parties agree to execute all notices, consents or other documents as may be reasonably required to facilitate any transfer or assignment agreed to by the Parties.

25. **GENERAL**

25.1 **NOTICES**

25.1.1 Unless otherwise agreed by the Parties, any notice, consent, invoice or other communication (notice) required to be given or made under this Agreement or in connection with the matters contemplated by it:

- (a) shall be given in writing in the English language;
- (b) shall be addressed as provided on the front of this Agreement;
- (c) shall be sent or delivered as follows:
 - (1) by personal delivery or express courier service, in which case it shall be deemed to have been given upon delivery at the relevant address; or
 - (2) by facsimile, in which case it shall be deemed to have been given when despatched, subject to confirmation of uninterrupted transmission by a transmission report, provided that any notice despatched by facsimile after 17:00 hours local time at the address of the recipient on any day, or on a day which is not a Business Day, shall be deemed to have been received at 08:00 hours at such local time on the next Business Day; or
 - (3) by e-mail, in which case it shall be deemed to have been given when despatched, subject to confirmation of receipt by return e-mail, provided that any notice despatched by e-mail after 17:00 hours local time at the address of the recipient on any day, or on a day which is not a Business Day, shall be deemed to have been received at 08:00 hours at such local time on the next Business Day.

25.1.2 Any Party may notify the other Party of any change to the address or any of the other details specified in Clause 17.2.1, provided that such notification shall only be effective on the date specified in such notice or eight (8) days after the notice is given, whichever is later.

25.1.3 Any notice given by facsimile or e-mail shall be followed by a hard copy to be sent or delivered to the relevant address specified in Clause 25.1.1, unless

otherwise agreed, but without prejudice to the validity of the original notice.

25.2 **RELATIONSHIP OF PARTIES**

Nothing in this Agreement shall be construed as creating an agency relationship, partnership, joint venture, or any similar relationship between the Supplier on the one hand and the Client on the other hand.

25.3 **RIGHTS OF THIRD PARTIES**

Subject to clause 19, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

25.4 **VARIATION**

No variation of this Agreement shall be effective unless in writing and signed by or on behalf of each of the Parties.

25.5 **ENTIRE AGREEMENT**

25.5.1 This Agreement and the documents referred to in it constitute the whole agreement and understanding of the Parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.

25.5.2 Each Party acknowledges that, in entering into this Agreement, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in this Agreement or the documents referred to in it.

25.5.3 Each Party agrees that all liability for and remedies in respect of any representations are excluded except as expressly provided in this Agreement.

25.6 **SURVIVAL**

Termination of this Agreement for any cause shall not release a Party from any liability which at the time of termination has already accrued to another Party or which thereafter may accrue in respect of any act or omission prior to such termination.

25.7 **SEVERABILITY**

25.7.1 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

25.7.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

25.8 **WAIVER**

No delay or omission by a Party in exercising any right, power or remedy shall impair or be construed as a waiver of such (or any other) right, power or remedy, and any single or partial exercise of a right, power or remedy shall not preclude any future or other exercise of such (or any other) right, power or remedy.

25.9 **COUNTERPART**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original but all the counterparts shall together constitute one and the same Agreement.

Definitions and Interpretation

1. Definitions and Interpretation

1.1 Definitions

Terms defined in the Commercial Terms have the meaning given therein. Unless the context requires otherwise, the following terms in this Agreement shall have the following meanings:

“**ACM**” has the meaning given in Clause 2.5;

“**Affected Party**” has the meaning given to it in Clause 16

“**Agreement**” means this Managed Energy Services Agreement (MESA);

“**Business Day**” means a day, other than a Saturday or Sunday, on which banks in the City of London are normally open for business;

“**Commencement Date**” the date notified by the Supplier that it is satisfied that the installation of the Lighting Equipment is complete;

“**Commercial Terms**” means the excel based terms that the Client and Supplier have executed and which refer to these General Conditions and other schedules;

“**Completion and Verification Certificate**” meaning the document described in clause 4.1 of the Service Level Agreement;

“**Confidential Information**” means:

- (a) this Agreement and any information regarding the terms and conditions of this Agreement;
- (b) all communications between the Parties and all information and other material supplied to, or received by, either Party from the other Party in connection with this Agreement which is either marked “confidential” or by its nature is intended to be for the knowledge of the recipient and/or any other person within Clause 22.2 alone; and
- (c) all information concerning the business transactions, strategy, suppliers, Clients, contracts, deliveries, technical plans or commercial or financial arrangements or affairs of the Parties;

“**Contract Year**” means each 12 month period from the Commencement Date until the expiry of the Term;

“**Defaulting Party**” has the meaning given to it in Clause 18;

“**Default Rate**” means the rate specified in the Commercial Terms;

“**Event of Default**” has the meaning given to it in Clause 18;

“**Existing Lighting Equipment**” means all of the Existing Lighting Equipment which at the date of signing this Agreement is installed in the Client’s Sites and which is to be replaced by the Lighting Equipment

“**Fees**” means all of the Fees that Supplier may charge the Client under this Agreement, including the Monthly Fee and any Termination Fee;

“**Force Majeure Event**” means the occurrence of any event(s) or circumstance(s), or any combination of events or circumstances (or any of the consequences thereof) which is beyond the reasonable control of the Affected Party and which results in or causes the failure of, or delay in, that Party to perform any of its obligations under this Agreement, including (but subject always to the foregoing):

- (a) act of God, explosion, flood, tempest, fire, accident or lightning;
- (b) war or threat of war, national emergency, sabotage, terrorism, insurrection, protest, riot, epidemic, civil disturbance or requisition;
- (c) Acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- (d) import or export regulations or embargoes;
- (e) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Supplier or of a Third Party);
- (f) restraints or delays affecting carriers, or inability or delay in obtaining supplies of adequate or suitable materials; or
- (g) power failure or breakdown in machinery;

“**General Conditions**” means the MESA terms and conditions and definitions contained in this **Error! Reference source not found.**;

“**Insolvency Event**” means where a Party:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts as they become due or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, that proceeding or petition: (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or (ii) is not withdrawn, dismissed, discharged, stayed or restrained in each case

within fifteen (15) days of the institution or presentation of that proceeding or petition;

- (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for substantially all its assets;
- (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and that secured party maintains possession, or that process is not withdrawn, dismissed, discharged, stayed or restrained, in each case within fifteen (15) days of that event;
- (h) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (g) (inclusive); or
- (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in paragraphs (a) to (h) (inclusive);

“Insured Risks” means the risk of loss or damage due to fire, explosion, earthquake, landslip, subsidence, riot, storm, civil commotion, malicious damage, impact by vehicles and by aircraft, flood damage and water, theft and third party liability and such other risks whether or not in the nature of the foregoing against which a reasonable and prudent property owner would normally insure;

“Intellectual Property Rights” means all patents and patent applications, trademarks, (whether registered or unregistered and including any goodwill acquired in such trade marks), service marks, trade names, business names, brand names, internet domain names, e-mail address names, rights in designs (whether registered or unregistered), copyrights (including rights in computer software), moral rights, database rights, rights in know-how, rights in confidential information, rights in inventions (whether patentable or not), rights in software, algorithms and report formats, lists and procedures, marketing methods and procedures and advertising literature, business methods and all other intellectual property rights, whether registered or unregistered and including applications for the grant of any of the foregoing and all similar or equivalent rights which may subsist anywhere in the world used in or produced in the course of a Party’s performance of its obligations under the Agreement;

“Lender” means the provider or providers to the Supplier of funding in respect of the Lighting Services Equipment or otherwise in respect of the subject matter of this Agreement;

“Lighting Equipment” means equipment installed, operated, and maintained at a Site for the provision or measurement of Lighting Services, including Meters and as further specified in Schedule 5 and the Commercial Terms;

“Lighting Services” means illumination at Sites by means of the Lighting Equipment installed or replaced in accordance with this Agreement, as specified further in the Commercial Terms;

“Material Adverse Change” means if in the reasonable opinion of the Supplier, one or more events occur which cause a material adverse change in the financial circumstances or creditworthiness of the Client, or any credit support provider of the Client, and which affects the Client’s ability to meet its financial, tax or other obligations under this Agreement;

“Meters” means metering equipment of whatever type the Supplier reasonably considers appropriate to use or install, including smart metering, for the purposes of measuring the supply of Lighting Services;

“Monthly Fee” means the monthly amount payable by the Client specified in the Commercial Terms;

“Non-Defaulting Party” has the meaning given to it in Clause 18;

“Payment Due Date” shall be the due date for payment by the Client in cleared funds as detailed in the Supplier’s invoice(s).

“Savings Report” means the report described in the Commercial Terms;

“Sites” means each of the properties described in the Schedule 4, as may be amended in accordance with Clause 11;

“Tax” means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest or penalties) that is imposed by any government or other taxing authority directly in respect of any payment or transfer request under this Agreement;

“Term” means the fixed term of the agreement specified in the Commercial Terms;

“Termination Payment” means the sums calculated in accordance with clause 18.2.2;

“Third Party” means any person other than the Parties;

Total Loss means if (in the opinion of the Supplier) the Lighting Equipment becomes irreparably damaged, destroyed, stolen or lost whatever cause;

“VAT” means value added tax chargeable in accordance with Council Directive 2006/112/EC and any other Tax of a similar fiscal nature and included any similar Tax charged from time to time in substitution for or in addition to it;

1.2 Interpretation

1.2.1 In this Agreement unless the context otherwise requires:

- (a) references to a statute, treaty or legislative provisions or to a provision of it shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment at any time then in force and to all subordinate legislation made from time to time under it;
- (b) words denoting the singular include the plural and vice-versa;

- (c) a reference to a person includes any natural person, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organisation or government or any agency or political subdivision thereof;
- (d) references to an agreement, deed, instrument, licence or other document (including this Agreement), or to a provision contained in any of these, shall be construed, at the particular time, as a reference to it as it may then have been amended, varied, supplemented, modified, suspended, assigned or novated;
- (e) references to Clauses, Sections, Schedules and paragraphs are to Clauses, Sections, Schedules and paragraphs of this Agreement;
- (f) references to times of day are to London time unless otherwise stated;
- (g) a reference to “writing” includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form;
- (h) a reference to a “day” means a calendar day;
- (i) a reference to a “month” means a calendar month;
- (j) in any reference to a period of days or Business Days after a given day (day “D”), the first day or (as the case may be) Business Day of the period is the day following day “D”;
- (k) “including”, “include” or “includes” means “including without limitation”; and
- (l) the index and headings to Clauses, Sections, Schedules and paragraphs are inserted for convenience of reference only and shall not affect the construction of this Agreement

