

TERMS & CONDITIONS

PARTIES:

- (1) ****The Client** (The Client)**
- (2) **The PCS Group Ltd** a company incorporated in England and Wales under number 02127550 whose registered office is at 3a Horseshoe Close, Oxgate Lane, London, NW2 7JJ (**Supplier**)

(each of the Supplier and the Customer being a party and together the Supplier and the Customer are the parties).

RECITALS:

- (A) The Supplier conducts the business of supplying cleaning/security services and the Customer wishes to outsource the provision of such Services to the Supplier.
- (B) The parties have agreed that the Supplier shall supply the Services to the Customer on the terms set out in this Agreement.

THE PARTIES AGREE:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

"Business Day" means a day other than a Saturday, Sunday or bank or public holiday in England;

"Applicable Laws" means the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the performance of the Services;

"Business Hours" means 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday.

"Commencement Date" means the date of this Agreement;

"Confidential Information" means any information that relates to any party's personal data, business, affairs, operations, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, personnel, together with all information derived by the receiving party from such information whether marked as confidential or not.

"Service Times" means the times set out in Schedule 3 in respect of the Offices or as otherwise agreed by the parties in writing.

"Force Majeure" means any event or sequence of events beyond a party's reasonable control such as an 'act of God' including, but not limited to, fire, flood, drought, earthquake, windstorm or other natural disaster; act of any sovereign including war, invasion, act of foreign enemies, acts of terrorism; radioactive contamination; law, judgment, order, decree, embargo, blockade, labour dispute including strike, lockout or boycott; interruption or failure of utility service including to electric power, gas, water or telephone service. For the avoidance of doubt inability to pay is not Force Majeure;

"Offices" means the Customer's offices as set out in **Error! Reference source not found.** to which the Supplier shall supply, or procure the supply of, the Services;

"**Price**" means the price of any of the Services determined under clause 4;

"**Services**" means the provision of (cleaning/security) services (Monday to Saturday) at the Offices set out in **Error! Reference source not found.**;

"**Supplier Personnel**" means all employees, officers, staff, other workers, agents, and consultants of the Supplier who are engaged in the performance of the Services from time to time;

"**Term**" has the meaning given in clause 2.1;

"**TUPE Regulations**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, re-enacted or extended from time to time).

1.2 In this Agreement:

- (a) a reference to this Agreement includes its schedules, appendices and annexes (if any);
- (b) a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- (c) words in the singular include the plural and vice versa; and
- (d) a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time.

2. SUPPLY OF SERVICES

2.1 This Agreement commences on the Commencement Date and shall continue for a period of 36 months when it shall automatically renew each year thereafter on a rolling basis unless terminated earlier under clause 3.6, clause 8 or clause 15.2 (the **Term**).

2.2 During the Term, the Supplier agrees to supply, and the Customer agrees to purchase, the Services on the terms set out in this Agreement.

3. PERFORMANCE OF THE SERVICES

3.1 The Services shall be performed by the Supplier during the agreed Service Times at the Offices of the Customer and the Customer shall make the Offices available during the Service Times for the Supplier to perform the Services and ensure they are safe.

3.2 The Supplier shall provide the materials it requires to perform the Services.

3.3 The Customer shall provide the Supplier and its Supplier Personnel with:

- (a) all necessary light, hot water and other facilities distinct from materials required by the Supplier to perform the Services; and
- (b) suitable and safe accommodation for storage of equipment and materials as the Supplier reasonably deems necessary to store at the Offices.

3.4 The Supplier shall not be liable for any delay in or failure to perform the Services to the extent it is caused by:

- (a) the Customer's failure to: (i) make the Offices available or accessible (ii) prepare the Offices in accordance with the Supplier's instructions or (iii) provide the Supplier with adequate instructions or information as requested by the Supplier in writing from time to time; or
- (b) an event of Force Majeure.

3.5 If the Customer fails to make the Offices available or accessible for the Supplier or such Supplier Personnel to provide the Services the Services shall be deemed to have been performed by the Supplier and chargeable in full.

3.6 If the Customer is dissatisfied with the performance of the Services by the Supplier or its Supplier Personnel, the Customer shall give written notice of such dissatisfaction and identifying in sufficient detail the nature and extent of the defects within 2 Business Days of such occurrence, upon receipt of which the Supplier shall take all necessary steps to investigate and rectify the issue at its own cost.

3.7 If the Customer's dissatisfaction with the Service continues the Customer shall give written notice of such dissatisfaction in accordance with 3.6 at least three times so as to give the Supplier ample opportunity to improve the Service before such dissatisfaction would form a material breach under clause 8.2(a) of this Agreement and following which, the

Customer may refuse to accept any subsequent attempts to supply the Services and terminate this Agreement immediately by serving notice in writing on the Supplier to this effect.

4. PRICE

4.1 The Prices payable by the Customer in respect of the Services are contained in Schedule 2 and are exclusive of VAT.

4.2 The Prices will be subject to an annual increase of 3% which will be applied on the anniversary of the Commencement Date of the Agreement. If the Supplier believes that, in the next 12 months to the following anniversary, there will be material increases in the cost of supplying the Services which are caused by statute or governmental regulation, the Supplier shall at any time in those 12 months be entitled to propose an increase in the prices for the Services over the 3% annual increase from the date the cost increases are incurred by the Supplier. The Customer shall be entitled to see the Supplier's information concerning the additional costs and subject to being satisfied that such costs are necessary and not reasonably capable of being mitigated, shall increase the price payable to the Supplier in respect of such costs but on a cost price, zero margin basis. For the avoidance of doubt, the whole of the cost increase shall be paid in addition to the annual 3% increase.

4.3 The Supplier shall at the Customer's request provide such additional items including but not limited to soap, toilet

rolls, paper towels, and black bin bags and the price of such additional items shall be agreed between the parties upon request.

5. PAYMENT

5.1 The Supplier shall issue invoices for the Services on the 15th day of each calendar month and the Customer shall pay all invoices within 30 days of receipt of each invoice to the bank account nominated by the Supplier.

5.2 Time of payment is of the essence. Where sums due hereunder are not paid in full by the due date:

- (a) the Supplier may, without limiting its other rights, charge interest on such sums at 3% a year above the base rate of Barclays Bank Plc from time to time in force; and
- (b) interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

6. LIMITATION OF LIABILITY

6.1 The extent of the parties' liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 6.

6.2 Subject to clauses 6.4 and 6.5 the total liability of the Supplier howsoever arising under or in connection with this Agreement shall

not exceed the sum of amounts received by it from the Customer in respect of any matter which is not insured and £10,000,000 in respect of insured matters.

6.3 Subject to clauses 6.4 and 6.5, neither party shall be liable for consequential, indirect or special losses.

6.4 Notwithstanding any other provision of this Agreement, the liability of the parties shall not be limited in any way in respect of the following:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any other losses which cannot be excluded or limited by applicable law;
- (d) any losses caused by wilful misconduct.

7. INSURANCE

7.1 The Supplier shall put in place and maintain in force at its own cost suitable insurance cover including but not limited to public and products liability insurance, professional indemnity and employer's liability insurance with a reputable insurer to cover its relevant potential liabilities in connection with this Agreement for the Term.

7.2 On each policy renewal (including where any modifications are made to any policy) and otherwise at the Customer's request, the Supplier shall provide the Customer with details of the insurance including the risks covered, indemnity limits and

premiums paid and copies of the certificates of insurance.

8. TERMINATION

8.1 Unless otherwise stated, this Agreement may be terminated at any time by the Customer giving not less than 3 months' notice in writing to the Supplier.

8.2 Either party may terminate this Agreement at any time by giving notice in writing to the other party if:

- (a) the other party commits a material breach of this Agreement and such breach is not remediable;
- (b) the other party commits a material breach of this Agreement which is not remedied within 14 days of receiving written notice of such breach;
- (c) any consent, licence or authorisation held by the other party is revoked or modified such that the other party is no longer able to comply with its obligations under this Agreement or receive any benefit to which it is entitled.

8.3 Either party may terminate this Agreement at any time by giving notice in writing to the other party if that other party stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so or the other party reasonably believes that is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or is subject to any analogous circumstances.

8.4 On termination of this Agreement for any reason:

- (a) the Supplier shall promptly invoice the Customer for all Services performed but not yet invoiced;
- (b) the parties shall within 5 Business Days return any materials of the other party then in its possession or control; and
- (c) the accrued rights and liabilities of the parties (including any rights in relation to breaches of contract) shall not be affected.

8.5 The following clauses of this Agreement shall survive termination, howsoever caused:) clause 6 (limitation of liability); clause 7 (insurance); (indemnity); clause 8.4 (consequence of termination); clause 11 (confidential information); clause 12 (dispute resolution); clause 14 (notices); clause 24 (third party rights); and clauses 25 and 26 (governing law and jurisdiction).

9. TUPE AND EMPLOYEES ON TERMINATION WHERE APPLICABLE

9.1 Where TUPE applies, the parties agree that the outsourcing of the Services to the Supplier shall constitute a service provision change as defined in regulation 3(1)(b) of the TUPE Regulations and that on the Commencement Date the employment of the Employees shall transfer to the Supplier pursuant to the TUPE Regulations.

9.2 The parties will comply with their obligations to provide information to a

replacement supplier about the individuals assigned to the Services and to inform and consult with affected employees in relation to any potential transfer to a replacement supplier under the TUPE Regulations.

10. NON-SOLICITATION

10.1 Except in relation to a relevant transfer to a replacement supplier under the TUPE Regulations, neither the Customer nor the Supplier will, during the period of this Agreement or for a period of 12 months following expiry or termination of this Agreement, howsoever caused, directly or indirectly solicit or attempt to solicit from the employment of the other party any person employed or engaged by the other who during the period of 12 months prior to the termination of this Agreement was involved in the provision of the Services.

11. CONFIDENTIAL INFORMATION AND DATA PROTECTION

11.1 Each party agrees to keep confidential all Confidential Information of the other party and not disclose it without consent or unless required by Applicable Laws or governmental authorities.

11.2 The Supplier will comply with its obligations in relation to Applicable Laws on data protection. More details can be found in the Supplier's Privacy Statement which can be found at (INSERT LINK TO GDPR POLICY).

12. DISPUTE RESOLUTION

12.1 Any question or difference which may arise concerning the construction, meaning or effect of this Agreement shall in the first instance be referred to each party's representative responsible for the Agreement or any other representative nominated by that party for discussion and resolution as soon as reasonably possible and, in any event, within twenty-one (21) days of such referral. If the unresolved matter is having serious effect on the Services, the parties will use reasonable endeavours to reduce the elapsed time in completing the process.

12.2 If the dispute is not resolved in accordance with clause 12.1 the parties may seek to resolve disputes between them by an alternative dispute resolution technique recommended by the Centre for Effective Dispute Resolution (CEDR).

13. ENTIRE AGREEMENT

13.1 This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, understandings and arrangements between the parties, whether in writing or oral in respect of its subject matter.

14. NOTICES

14.1 A notice given to a party under or in connection with this Agreement shall be in writing and in English and shall be delivered by hand or sent by pre-paid first-class post, recorded delivery or special delivery in each case to that party's office as set out in this Agreement or as that party may

notify to the other party in accordance with this Agreement.

- 14.2 Delivery of a notice is deemed to have taken place (provided that all other requirements in this clause 17 have been satisfied) if delivered by hand, at the time the notice is left at the address, or if sent by post on the second Business Day after posting, unless such deemed receipt would occur outside Business Hours, in which case deemed receipt will occur when business next starts in the place of receipt, or by email upon receipt of a delivery receipt email from the correct email address unless such deemed receipt would occur outside of Business Hours in which case deemed receipt will occur when the next Business Day starts in place of receipt.

15. FORCE MAJEURE

- 15.1 A party shall not be liable if delayed in or prevented from performing its obligations under this Agreement due to Force Majeure, provided that it:
- (a) promptly notifies the other of the Force Majeure event and its expected duration; and
 - (b) uses reasonable endeavours to minimise the effects of that event.
- 15.2 If, due to Force Majeure, a party:
- (a) is or is likely to be unable to perform a material obligation; or
 - (b) is or is likely to be delayed in or prevented from performing its obligations for a total in any 12 months of operation of this Agreement

of more than 10 Business Days,

either party may terminate this Agreement on not less than 4 weeks' written notice.

16. FURTHER ASSURANCE

Each party shall at the request of the other, and at the cost of the requesting party, do all acts and execute all documents which are necessary to give full effect to this Agreement.

17. VARIATION

No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.

18. ASSIGNMENT AND SUBCONTRACTING

- 18.1 Neither party may assign, subcontract, transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights under this Agreement, without the written consent of the other (such consent not to be unreasonably withheld).

19. SET OFF

Any amount that the Supplier owes to the Customer under this Agreement whether now or at any time in the future, whether it is liquidated or not and whether it is actual or contingent, may be set off from any amount due to the Supplier from the Customer under this Agreement. Any exercise by the Customer of its rights under

this clause will not prejudice any other right or remedy available to it.

20. NO PARTNERSHIP OR AGENCY

The parties are independent and are not partners or principal and agent and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither party shall have, nor shall represent that it has, any authority to make any commitments on the other party's behalf.

21. SEVERANCE

21.1 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.

22. WAIVER

22.1 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

23. CONFLICTS WITHIN AGREEMENT

If there is a conflict between the terms contained in the main body of this Agreement and the terms of the schedules, the terms of the main body of the Agreement shall prevail.

24. THIRD PARTY RIGHTS

24.1 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement.

25. GOVERNING LAW

This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

26. JURISDICTION

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).