

DATED _____

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(2) << >>

PLANT MAINTENANCE AGREEMENT

THIS AGREEMENT is made the day of

BETWEEN:

- (1) <<Name of Client>> a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered Office>> ("the Client") and
- (2) <<Name of Service Provider>> a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered Office>> ("the Service Provider")

WHEREAS:

- (1) The Service Provider is engaged in the business of maintaining and servicing plant and equipment.
- (2) The Client wishes to procure plant and/or equipment maintenance services from the Service Provider for the Equipment specified in Schedule 1 of this Agreement and the Service Provider agrees to provide those services for that Equipment under the terms and conditions set out in this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"Confidential Information"	means all business, technical, financial or other information created by a Party to this Agreement or exchanged between the Parties, in either case throughout the Term of this Agreement;
"Equipment"	means any and all plant and/or equipment listed in Schedule 1 of this Agreement in addition to new or replacement plant and/or equipment supplied by the Service Provider in their provision of the Services;
"Services"	means the plant and/or equipment maintenance services to be provided to the Client by the Service Provider as set out in Clause 4 of this Agreement;
"Service Fee"	means a fixed sum to be paid monthly by the Client to the Service Provider as defined at Clause 3 of this Agreement;
"Sites"	means the locations at which the Service Provider shall provide the Services as set out in Schedule 2.

- 1.2 Unless the context otherwise requires, each reference in this Agreement to:

- 1.2.1 “writing”, and any communication, includes a reference to any electronic or facsimile transmission or similar means;
- 1.2.2 a statute or regulation is a reference to that statute or regulation in force at the relevant time;
- 1.2.3 “this Agreement” means this Agreement and each of the Schedules attached hereto at the relevant time;
- 1.2.4 a Schedule means a Schedule attached to this Agreement; and
- 1.2.5 a Clause or paragraph means a reference to a Clause of this Agreement or a paragraph of the relevant Schedule.
- 1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 Words imparting the singular include the plural and vice versa.
- 1.5 References to any gender include the other gender.
- 2. Term**
- 2.1 The Service Provider shall provide the Services to the Client at the Sites from <<Insert Date>> until the end of the “Term”), unless and until earlier terminated in accordance with Clause 2.2 of this Agreement.
- 2.2 The Term may be extended by mutual agreement of the Parties so agree in writing to >> [months] OR [years] if both Parties agree in writing to extend the Term.
- 3. Fees and Payment**
- 3.1 The Service Provider shall invoice the Client in advance for the Service Fee of £<< >> for each month of the Term (e.g. 23rd day of the previous month).
- 3.2 The Client will pay to the Service Provider monthly in advance on the <<e.g. 1st>> day of each month throughout the Term in consideration of the Service Provider providing the Services as set out in Clause 2 of this Agreement to the Client.
- 3.3 The Service Provider shall, upon supplying any new Equipment to the Client, invoice the Client for the value of such Equipment. The value added tax (“VAT”) on the exclusive price payable for such Equipment shall be borne by the Client. The Service Provider has to pay the VAT on the exclusive price which the Service Provider has to pay to the Client. The Client will pay such invoices within 30 days of the date of the invoice.
- 3.4 The Service Provider shall deliver the Client’s address for invoices by first class post to the Client at the first page of this Agreement unless otherwise agreed in writing.
- 3.5 All sums specified in the invoices shall be exclusive of any VAT unless expressly stated otherwise.
- 4. Services**
- 4.1 The Services shall be as follows:

- 4.1.1 Initial commissioning and configuration of the Equipment including installation and
- 4.1.2 Repair of faults or breakdowns of the Equipment;
- 4.1.3 Supply of materials and spare parts for the Equipment;
- 4.1.4 Preventative maintenance of the Equipment to take place <<Insert number>> times per year. The maintenance to include (but not be limited to) testing, inspection, cleaning, oiling, greasing, adjustment and lubrication. The provision of such maintenance shall be at times planned and agreed between the Parties.
- 4.1.5 Corrective maintenance of the Equipment to include replacement of worn or defective parts as may be required, such maintenance to include replacement of worn or defective parts as may be required by the Service Provider.
- 4.2 The Service Provider shall provide the Services in a timely manner and in accordance with practice in the industry.
- 4.3 Where any Equipment fails or is damaged, the need for the Services necessarily gives rise to the requirement for the Service Provider to use reasonable endeavours to rectify the failure, but if it does not do so, the requirement for the Service Provider to use reasonable endeavours shall then apply.
- 4.4 Where, as provided in this Clause, the Service Provider shall promptly complete the relevant work to the Equipment so that it performs all essential functions and does not exceed those provided for in the Equipment's specifications.
- 4.5 Where the nature of the Services is such that such work takes place on an on-demand basis (as opposed to a scheduled basis), the Service Provider shall provide the Services within <<Insert time period>> [hours] OR [days] of receipt of notification from the Client that such Services are required.
- 4.6 In the event that components of the Equipment require replacement, the Service Provider shall supply any necessary parts on an exchange basis without any additional charge. Any replaced parts shall be new parts. [Any replaced parts shall become the property of the Service Provider.]
- 4.7 This Agreement shall automatically cover any additional Equipment that the Client acquires (whether from the Service Provider or a third party) during the term of the Agreement. The Services to cover such new Equipment shall be agreed in writing between the Parties and shall be at an additional Fee, such increase being at the discretion of the Service Provider.
- 4.8 The following are excluded from the Services and the Service Provider will only undertake them at the discretion and at extra cost to the Client:
- 4.8.1 Repairs to Equipment that has been misused, abused or damaged deliberately by the Client or any third party;
- 4.8.2 Repairs to Equipment that has been damaged as a result of war, terrorism, fire, explosion or other external causes.

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- 4.8.3 Repairs to electrical infrastructure that is external to the Equipment;
- 4.8.4 Repairs to ancillary equipment, including but not limited to, ancillary to the Equipment unless expressly indicated otherwise;
- 4.8.5 Repairs to Equipment shall not be modified, moved, reinstalled or repaired by the Client or any Third Party without the prior written approval of the Service Provider.

4.9 [If, in its reasonable opinion, the Service Provider considers that any Equipment cannot be repaired or replaced so as to put it in a maintainable condition and it is not economically feasible to do so, then, accordingly, the Service Provider will discontinue any Services in relation to that Equipment and it will no longer be listed in Schedule 1.]

5. Client's Obligations

- 5.1 The Client will ensure that the Service Provider has access to the Sites at all times during which the Service Provider is required to provide the Services. The Service Provider may require such access in order to provide the Services, which may include use of and access to HVAC systems, lighting, power outlets, computer equipment and other facilities which the Service Provider reasonably requires.
- 5.2 The Client will provide the Service Provider with detailed reports of any and all problems that require the Services. Such reports shall be in the form provided by the Service Provider. Where no such form is specified, in such a form that clearly sets out the details relating to the problem, such details to include an accurate description of the problem by the Service Provider.
- 5.3 The Client shall ensure that the Services are stored and used in an appropriate manner and, where applicable, in accordance with any and all guidelines and instructions issued by the Service Provider.
- 5.4 The Client shall ensure that all employees are fully trained in the correct operation of the Equipment.
- 5.5 The Client will take all necessary steps to protect the health and safety of the Service Provider and its employees and sub-contractors while on any of the Sites.

6. Service Provider's Obligations

- 6.1 The Service Provider shall endeavour to ensure that it does not:
 - 6.1.1 Create any unsafe conditions at the Sites;
 - 6.1.2 Materially interfere with the operation of HVAC systems, plumbing, fire protection systems, or other equipment at the Sites; or
 - 6.1.3 Impose any unreasonable burden in connection with its use or operation of the Equipment.
- 6.2 The Service Provider shall indemnify the Client of:
 - 6.2.1 Any damage to property, real or personal; and
 - 6.2.2 Any injury to persons.

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7. Warranty

7.1 The Service Provider warrants that the Services supplied under this Agreement will be performed with reasonable care and skill by personnel whose qualifications and experience are appropriate for the tasks to which they are allocated.

7.2 Except as expressly stated in this Agreement, no warranty, condition, statutory or otherwise, as to the ability to achieve a particular result, of the Services is made by the Service Provider, and all such warranties, conditions and representations are hereby excluded.

7.3 The Client agrees that in the event of any non-conformance with the Agreement is that the Service Provider (by itself or through a third party) in its opinion, it is unable to remedy such non-conformance, the Service Provider will refund the Service Fee for the month in which the non-conformance occurred, or the month in which the Client paid [, whereupon the Client shall immediately terminate.]

7.4 The Service Provider warrants that all problems can and will be corrected but the Client agrees to use all reasonable endeavours to ensure that problems are replicable or otherwise identifiable by the Service Provider.

7.5 The Client must provide a written statement to the above warranty in the event of any non-conformance from the remedy set out in sub-Clause 7.3, and in a

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8. Liability

8.1 [The Service Provider shall, as its employer's liability, negligence insurance policy, shall be connected with this Agreement, maintain product liability and professional indemnity insurance of its liabilities arising out of or in connection with the performance of its services to be to a minimum value of £<<e.g. 1,000,000> The Service Provider will on request provide copies of the relevant certificates of insurance to the Client as evidence that such insurance policies remain in force. The Service Provider will use all reasonable endeavours to pursue claims on behalf of the Client.]

8.2 The Service Provider shall be liable to the Client for personal injury or death caused by the negligence in connection with the performance of the Services under this Agreement or by defects in any Equipment or other property supplied by the Service Provider pursuant to this Agreement.

8.3 The Service Provider shall be liable to the Client for direct damage to tangible property caused by the negligence in connection with the performance of the Services under this Agreement or by defects in any Equipment (or other property supplied by the Service Provider pursuant to this Agreement). The Service Provider's liability under this sub-Clause shall be limited to £<<e.g. 500,000> per event or series of connected events.

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| | 8.4 | In no event will the Service Provider be liable by reason of any breach by it of any express term or condition or other term of the Agreement, whether caused by it of any implied warranty, innocent misrepresentation, or any negligence or otherwise, for: | |
| | 8.4.1 | loss of or damage to tangible property; | |
| | 8.4.2 | loss of use of tangible property; | |
| | 8.4.3 | loss of use of intangible property; | |
| | 8.4.4 | interruption of business operations; | |
| | 8.4.5 | loss of income; | |
| | 8.4.6 | loss of profit; loss of business opportunity, or goodwill; | |
| | 8.4.1 | loss of anticipated savings; | |
| | 8.4.2 | any indirect, consequential or other claims actually foreseen or reasonably foreseeable arising from any act or omission in the performance of its obligations under the Agreement. | |
| | 8.5 | Except as provided herein, the Service Provider shall not be liable for personal injury, death and damage to tangible property, and fraudulent misrepresentation, the Service Provider's liability shall be limited to the Client under this Agreement or otherwise for any claim or damages suffered in the form of the additional cost of remedial services required to return the equipment to the greater of: | |
| | 8.5.1 | [the sum for which the Service Provider carries comprehensive general liability insurance covering such claims; or] | |
| | 8.5.2 | a sum equivalent to the replacement value of the equipment or other products that are damaged, if the Service Provider's damages limited to 25% of the total costs directly, reasonably and necessarily incurred in obtaining alternative products and/or services. | |
| | 8.6 | The Parties acknowledge that the limitations contained in this Clause 8 are reasonable in all circumstances. | |
| | 8.7 | These limitations shall apply regardless of the form of action, whether contract or tort, including negligence, and shall apply regardless of the time of discovery. | |
| | 8.8 | Nothing in this Agreement shall exclude or limit the Service Provider's liability for damages caused by the Service Provider's negligent acts or omissions or fraudulent misrepresentation by the Service Provider. | |
| | 8.9 | For the purposes of this Agreement, the term 'Service Provider' includes its employees, subcontractors and agents. | |
| | 8.10 | The employees, subcontractors and agents of the Service Provider shall all have the benefit of the limitation of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999. | |

9. Termination

- 9.1 The Service Provider shall terminate this Agreement in the event that:
- 9.1.1 The Client fails to pay the Fee to the Service Provider for a period exceeding << >> months and fails or refuses to do so following written notice from the Service Provider >> days; or
 - 9.1.2 The Client does not do not form part of the Services Agreement and which are not covered by the Agreement.
- 9.2 The Client shall be deemed to have terminated this Agreement in the event that:
- 9.2.1 The Service Provider has rendered << >> consecutive occasions within a period of << >> months to render the required Services to the Client in the manner and in accordance with the terms of this Agreement;
 - 9.2.2 The Service Provider has lost, stolen, damaged or Equipment or parts, damaging the Client.
- 9.3 Either Party has the right to terminate this Agreement immediately if the other:
- 9.3.1 commits a material breach of this Agreement, unless such breach is capable of remedy and the Party has the right to terminate immediately will be exercisable if the Party has failed to remedy the breach within 14 days after written notice;
 - 9.3.2 goes into bankruptcy, liquidation or other voluntary or compulsory (save for the purposes of corporate reconstruction or amalgamation) or is appointed in respect of the whole or any part of its assets.
- 9.4 In the event of termination, all payments committed by the Client, all payments required under this Agreement shall be due and immediately payable.
- 9.5 Any and all obligations arising from or on or expiration of this Agreement shall survive termination.

10. Confidentiality

- 10.1 Each Party undertakes to keep confidential and not disclose, authorised in writing, the Information provided by sub-Clause 10.2 or as otherwise required by the Agreement, it will, at all times during the continuance of this Agreement and for a period of << >> years] after its termination, in relation to Confidential Information, in the same manner as the other Party:
- 10.1.1 keep confidential the Information;
 - 10.1.2 not disclose the Information to any other person;
 - 10.1.3 not use any Confidential Information for any purpose other than as contemplated by the terms of this Agreement;
 - 10.1.4 not make any Confidential Information available in any way or part with possession of Confidential Information and
 - 10.1.5 ensure that any officers, employees, agents or advisers do not disclose Confidential Information by that Party, would be a breach of the provisions of the provisions of 10.1 to 10.1.4 above.

13. **Assignment**

Neither Party shall assign, or in any other manner make over to any third party the benefit of this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld.

14. **Force Majeure**

Neither Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay is caused from any cause that is beyond the reasonable control of that Party, which includes, but are not limited to: power failure, Internet Service Provider failure, natural action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, war, governmental action or any other event, whether or not similar to those mentioned, that is beyond the reasonable control of the Party in question.

15. **Severance**

The Parties agree that, if any provision of this Agreement is found to be unlawful, void or unenforceable by any court or other authority, that / those provisions shall be severed from the remainder of this Agreement. The remainder of the Agreement shall be valid and enforceable.

16. **Entire Agreement**

- 16.1 This Agreement constitutes the entire agreement and understanding between the Parties and shall supersede all previous oral or written agreements, understandings or representations relating to the subject matter of this Agreement.
- 16.2 Neither Party shall enter into any agreement, understanding or arrangement not in accordance with this Agreement, save for any representation made in writing.
- 16.3 Unless otherwise stated, this Agreement may be executed in counterparts, each of which when taken together shall be deemed to constitute one and the same agreement. Wherever in this Agreement, this Agreement may be signed by the duly authorised representatives of the Parties.

17. **No Waiver**

No failure or delay by the Parties in exercising any of its rights under this Agreement means that it has not waived any of its rights. No waiver by the Service Provider of a breach of any provision of this Agreement means that it will waive any subsequent breach of the same provision.

18. **Non-Exclusivity**

The relationship between the Parties under this Agreement is and shall remain non-exclusive. Both Parties are permitted to enter into similar relationships with other parties.

19. **[Dispute Resolution (ADR)]**

- 19.1 The parties shall attempt to resolve any dispute arising out of or relating to this Agreement through their appointed representatives who

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19.2 If negotiations under
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In the presence of
<<Name & Address of Witness>>

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for and on behalf of <<Service Pro

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Equipment

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Sites

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