Rev 28 February 2023

**TYPICAL MAINTENANCE SLA FOR LIFTS AND ESCALATORS**

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| --- |
| **Customer** |
| **Contract Reference** **Addendum …..** |
| **Building/s** |
| **Lift/Escalator Contractor**  **LIFT/ESCALATOR CONTRACTORS’ DETAILS** |

|  |  |
| --- | --- |
| **CONTACT PERSON:** |  |
| **CONTACT NUMBER:**  |  |

1. **Interpretation**
	1. The headings and clauses are used for convenience only and shall not be taken into consideration in interpreting the meaning/effect of any clause.
	2. Reference to natural persons shall include legal persons and vice versa and reference to any gender shall include the other gender.
	3. Words purporting the singular shall include the plural and vice versa.
2. **Definitions**

In this Contract the following expressions shall have the meanings set out hereunder:

**“Annexure A”** means the Annexure marked “A” which forms part of this Contract and which contains the details of the Customer.

**“Breakdown”** means an occurrence to any unit of Equipment, which renders the unit of equipment incapable of operation or likely to entrap or cause physical injury to a passenger.

**“WB”** means major clean down

**“Conditions”** means these Terms and Conditions of Service which together with the Scope of Services, Annexure “A” and the Contract Schedule, constitute the entire contract (the “Contract”) for the provision of the Services.

**“Customer”** means the Owner of the Building or a duly authorised agent appointed by the Owner of the Building who assumes liability together with the Owner of the Building for this Contract, or any other party specified under Customer, the details of who are set out in Addendum …..”.

“Lift/Escalator Contractor” or “Contractor” means the individual, organisation or company providing the contract services

“Lift/Escalator Consultant” or “Consultant” means any officially appointed representative of the Customer having the responsibility of resolving or dealing with the Contractor/s with a view to investigating, inspecting or resolving lift, hoist or dumbwaiter related problems or advising on appropriate solutions.

**“Commencement Date”** means the date as specified in the contract schedule and which is the date on which the contract begins, whether or not it is the same date than date of signature.

**“Day”** means a business day and excludes a public holiday, Saturday and Sunday.

**“First year”** means the period of 12 months immediately after the commencement date.

**“Month”** means a calendar month.

**“Parties”** means the Lift/Escalator Contractor and the Customer.

**“the Building”** means the Customer’s premises where the Equipment is installed.

**“the/this Contract”** means the Maintenance Contract, the Scope of Services including the Terms and Conditions of Service, Addendums, and the Contract Schedule which is constituted between the Parties upon the last party signing the Contract, all of which form one Contract.

**“the Equipment”** means each unit of equipment specified in the Contract Schedule, which schedule may be varied by the written agreement of the parties.

**“the price adjustment month”** means the month immediately following the completion of the twelve month period after the commencement date, in which month the remuneration due to the Lift/Escalator Contractor is increased as set out hereunder.

**“the Services”** means the services to be provided by the Lift/Escalator Contractor to the Customer in relation to the Equipment in accordance with the Contract, details of which are set out in the Scope of Work.

**“the Scope of Work”** means that part of this Contract which details the Services.

**“the Term”** means the duration of this Contract as this is explained in more detail in clause 7.

**“Working Hours”** means the hours between 08h00 and 17h00 on Monday to Friday inclusive, excluding public holidays unless varied in the Contract Schedule.

1. **Contract Objectives and Contractor Obligations**
	1. **Contractors Qualifications**

The Lift/Escalator Contractor shall have an established record of satisfactorily maintaining equipment of the types identified, and shall possess the capability, including qualified technicians, technical expertise and support infrastructure, to provide all services called for by these specifications. All work shall be performed by competent elevator mechanics directly employed and supervised by the Lift/Escalator Contractor. It is implicit to the contract that all lift mechanics utilised by the Contractor and thereby employed by it to carry out contract services will have been specifically trained on the equipment being serviced at any point in time.

* 1. **Maintenance Objectives and Performance Requirements**
		1. **Maintenance Objectives**

Without limiting statutory responsibilities, the Lift/Escalator Contractor shall ensure:

* the safety and comfort of passengers using the equipment, in accordance with the OHS Act;
* the accuracy and reliability of the equipment’s performance taking into consideration the type and age of the equipment;
* that preventative maintenance is carried out at all times as per the maintenance plan;
* that the equipment and associated spaces are kept clean and presentable at all times; and
* that the maintenance is carried out in a programmed sequence, in strict accordance with the Maintenance Plan, so as to protect the Customer’s investment.
	+ 1. **Non-Achievement of Maintenance Objectives**
* Achievement of the maintenance objectives is a principal obligation of the Lift/Escalator Contractor under this contract. In the event that the Lift/Escalator Contractor fails to meet this obligation the Customer will set out the details of the failure in a written notice to the Lift/Escalator Contractor calling on the Lift/Escalator Contractor to rectify the failure, within 7 (seven) days of such notice.
* The Lift/Escalator Contractor will investigate the failure and provide a plan to rectify the failure.
* Once the client has accepted the plan, in writing, the Lift/Escalator Contractor will implement the plan within 30 (thirty) days or any extended period as agreed with the Customer (the ‘rectification period’).
* Notwithstanding any other Contractual rights that the Customer may have, and notwithstanding any other provision of this Contract, if the unsatisfactory situation is not rectified within the rectification period as stated above, then the Customer reserves the right thereafter to:
* Suspend any payments that are due in respect of the failed unit/s until the customer is satisfied that substantial progress toward rectification has been undertaken, or the unsatisfactory situation has been rectified; or
* Terminate the maintenance service provided in this Contract forthwith, by giving notice in writing to the Lift/Escalator Contractor but only in respect of the building housing the units that formed the subject matter of the failure set out in the notice.
	+ 1. SABC to appoint a lift consultant to inspect the lift every two years and the report shall be made available to the lift contractor rectify any defect on the lift as required by law.
	1. **Performance Levels**
		1. **Breakdown Rate**

The Lift/Escalator Contractor shall ensure that the frequency of equipment break-downs does not result in the target number of Breakdown per unit per annum, being exceeded, as set out in **“ADDENDUM B”** of this Agreement. The fault analysis / Breakdown rate shall be compiled with by The Lift/Escalator Contractor on a monthly basis and assessed / calculated using a simple annualisation methodology. The 12 (twelve) month period used to assess the Breakdown rate shall be the period from the commencement date of this Contract, to the end of the month preceding the following anniversary date.

* + 1. **Down-time**

The Lift/Escalator Contractor’s maintenance plan shall be structured and implemented so as to ensure a maximum equipment operation, and the maximum unplanned down-time should not exceed 4 (four) hours, per unit, per month for the Lift/Escalator Contractor and other OEM (Original Equipment Manufacturer) installations. In respect of non Lift/Escalator Contractor or non OEM equipment, the Lift/Escalator Contractor gives the customer the commitment that within 24 (twenty four) hours of being notified of the breakdown it will have a plan in place that will set out the period of down time expected for such equipment and the Lift/Escalator Contractor shall act to minimise the down time for the equipment in each instance of break down.

* + 1. **Breakdown Response Times**

Maintenance contractor must have 24 hours call centre were breakdowns and emergencies can be reported. The Contractor shall ensure at any time of the day or night, 7 (seven) days a week, inclusive of public holidays, throughout the term of this Contract, that the Lift/Escalator Contractor’s mechanics are available to respond to Breakdowns and emergencies related to the contracted equipment. The response times to Breakdown shall be within the time period as set out in the Addendum, and shall be calculated from the time that the call is received by the Lift/Escalator Contractor, to the time that the Lift/Escalator Contractor’s mechanic arrives at the building where the equipment is installed:

* + 1. An assessed shortfall in the achievement of any of the maintenance objectives, as set out in clause 3 above, shall constitute grounds for action by the Customer, as envisaged in clause 3.2.2
	1. **Dispute Resolution Clause**
		1. Where the customer has suffered a loss arising out of the Lift/Escalator Contractors clear failure to meet its maintenance obligations, the determination of whether there has been clear failure on the part of the Lift/Escalator Contractor, and the quantum of the loss suffered by the customer arising out of such clear failure, and the maintenance work necessary to reinstate the equipment to an acceptable standard in terms of this Contract, shall be referred to arbitration in accordance with the rules of the Arbitration Foundation of South Africa (“AFSA”) in which case an arbitrator or arbitrators shall be appointed by the Sandton Branch of AFSA and the parties agree that the arbitration shall be held in Johannesburg and to accept the decision made by the arbitrator or arbitrators so appointed and their decision shall be final and binding on the parties
		2. The arbitrator shall be an advocate who shall have at least 10 (ten) years experience
	2. **Penalties Applicable to Non-Achievement of Performance Criteria**
* **Annual Performance Penalty Measures**

Without restricting the Customer’s other rights in terms of this Contract, the following penalties shall apply in the circumstances:-

* + **Breakdown Rate Penalty**

The call back rate penalty will be the penalty as set out in the table of “**Addendum B**” to this Agreement. Where it is proven that technical staff allocated by the Contractor to resolve problems, are not adequately qualified in terms of 3.1 above, penalty rates will be doubled

* + **Down Time Penalty**

If the maximum unplanned down-time per unit, per calendar month, exceeds 4 (four) hours, the customer shall be entitled to a penalty credit equal to 10% (ten percent) of 1 (one) month’s fee, for the units where the down-time limit has been exceeded.

* + **Breakdown Response Time Penalty**

The Lift/Escalator Contractor will be liable to the Customer for a call back response time penalty equivalent to a maximum of 10 % (ten percent) of one month of the monthly maintenance charge for the unit in question (determined and granted in the month immediately following the default) and credited to the maintenance costs of the Customer. For the avoidance of doubt, only one penalty of a 10 % reduction in the following month’s maintenance charge per unit, may be claimed per month irrespective of the number of call back failures in respect of that unit in any month.

1. **Scope of work**
	1. The Lift/Escalator Contractor shall provide all labour, supervision, tools, equipment, materials (except as specified) and transportation to:-
		1. Perform preventive maintenance services in accordance with manufacturers' published procedures and recommendations, and code-mandated safety/mechanical inspections and tests on specified elevator and escalator equipment.
		2. Replace worn and defective "consumable" parts, and adjust equipment for proper operation, following manufacturer's recommendations and code requirements.
		3. The contractor to provide a Budget/Allowance for Major repairs
	2. In carrying out responsibilities defined in 4.1 the contractor will:
* Replace all parts timeously, thereby limiting the incidence of break-downs, unplanned maintenance or repair and consequently maintain maximum equipment operation.
* Ensure that the performance levels (down-time, breakdown rate and response time) do not exceed the maximum allowed in terms of this Agreement.
* Provide within a two (2) month period after being appointed for the maintenance work, a customer communication logbook situated at a mutually agreed location for effective two-way communication, between the Building Management staff and the Contractor's personnel. This logbook shall accurately record each and every site visit.
* Notify the Customer in writing of immediate or potential risk(s) and where the Customer's lift equipment fails to comply with the safety rules or standards as set out or defined in **SANS 50081-80:2005 (EN 81-80:2003),** "Rules for the improvement and safety of existing passenger and goods lifts". The notification required in terms of this section relates to providing the Customer with the necessary information to responsibly assess and manage the risk(s) (extreme, high, medium or low) associated with equipment installed under past or out-dated safety standards or regulations, but does not cover the improvements to the equipment. Improvements to the equipment shall be regarded as chargeable items.
	1. Ongoing Maintenance Work, shall commence at 12:01 a.m. on the date of Contract Award, and consist of all maintenance required prior to issuance of the Notice to Proceed and to the end of the term of the contract, or to approved extensions of the contract.
	2. The following is excluded from the contract scope:
* New construction or modification of existing equipment.
* Repair of damage caused by negligence or misuse of elevator equipment by anyone other than the Lift/Escalator Contractor or Lift/Escalator Contractor's staff.
* Repair of damage caused by fire, flood or other disaster
* Items specifically agreed as excluded and contained in **Addendum E** to this contract

**Services Included**

* 1. **Preventative Maintenance Services**
		1. Unless superseded by more stringent requirements of these specifications or code requirements, all maintenance service shall conform to the requirements of the **“OHSAct”, SANS-10360 and SANS 50081-80:2005 (EN 81-80:2003)**.
		2. The Lift/Escalator Contractor shall perform certain minimum services as per the maintenance program **schedule in Addendum C** for each elevator, as and when required to maintain satisfactory operation or as recommended by the equipment manufacturer, following the manufacturer's recommended service procedures. This includes but is not limited to the following:
* Perform a complete operational check on each Lift or Escalator. Check starting, operating, levelling and stopping parameters, including proper operation of elevator car and hoistway doors. Adjust or repair equipment as required to maintain operation within manufacturer’s tolerances and **SANS 50081-80:2005 (EN 81-80:2003) on lifts and SANS 21-1 on Escalator** requirements.
* Check all hall and car position indicators and signals and call devices. Check car lighting fixtures (including emergency lighting); replace burned-out lamps and ballasts as necessary.
* Check operating components requiring periodic lubrication. Lubricate as necessary, following manufacturer’s recommendations and specifications.
* Maintain machine rooms, hoist way pits, elevator car tops, in clean and neat condition. Remove excess lubricant, wipe up oil leaks and prevent dust accumulation in all elevator machine spaces, car tops and hoistway mechanical equipment.
* Perform periodic inspections and tests of elevators, elevator hoisting equipment (including wire ropes and sheaves), governors, including annual and 24 month periodic compliance inspections(Annex B), to the specifications required by **SANS 50081-80:2005 (EN 81-80:2003)**.
* Deliver copies of test reports to the client’s offices and their appointed consultant(s), within thirty (30) days after performing required tests.
	+ 1. The contractor will in addition provide a list of scheduled maintenance routines listed by month and attached as **Addendum C**. Maintenance services included in **Addendum C** will as a minimum include the following maintenance routines:
			1. Routines to be carried out monthly

To test car and landing door locks mechanical and electrical, car door leading edge safety devices, emergency alarm bells, intercom, car door open buttons, and escalator handrail brush contacts and emergency stop switches. To visually inspect lift floor levels and pits.

* + - 1. Routines to be carried out every two months

A test of buffer electrical safety contacts, safety gear electrical contacts, governor electrical contacts, emergency stop switches.

* + - 1. Routines to be carried out every 6 months

Inspect at maximum six (6) monthly intervals, the main hoisting ropes, final limits, governor rope and selector rope / tape

* + - 1. Routines to be carried out every 12 months

Test the car and counterweight safety gear, speed governors, main brakes and buffers.

* 1. **Replacement Parts**
		1. The Lift/Escalator Contractor shall demonstrate in-stock warehouse availability of major and critical parts for replacement of door operator components, controller parts and electronic modules, door protective devices, hangers, bearings, hoist way switches and contacts.
		2. The Lift/Escalator Contractor shall maintain sources of supply so that other major components are available and can be delivered within three (3) days after a written notice to proceed for repair has been issued to the Lift/Escalator Contractor.
		3. If required parts are not readily available, the Lift/Escalator Contractor shall make every effort to perform emergency repairs that will allow safe operation of the equipment within the shortest practicable time. All emergency repairs will be considered temporary and incomplete until standard parts are procured and installed. If parts are needed and which are out of stock, the Lift/Escalator Contractor shall act in good faith to obtain the parts with the least practicable delay and shall provide the Building Manager a written schedule for delivery, based on Lift/Escalator Contractor's best estimate. Replacement parts shall meet the elevator original equipment manufacturer’s specifications in all respects.
		4. The Contractor agrees to give the Customer and/or Consultant access to its’ warehouse to view spares held with a view to ensuring contract terms per 4.6.1 are being complied with.
		5. Within the contract scope of work, the Lift/Escalator Contractor shall provide all consumable parts, components and supplies required to maintain the equipment in service.
		6. The Lift/Escalator Contractor shall guarantee all replacement parts for a period of 12 (Twelve) months, and replace such parts failing during this period at no additional cost to the Customer.
	2. **Major Repairs**
		1. A “major repair” is defined as furnishing and installing necessary “major” replacement parts beyond the scope of specified periodic inspection and preventive maintenance services.
		2. After determining, as far as practicable, the extent of major repairs needed to restore defective equipment to full service, the Lift/Escalator Contractor shall provide the Building Manager and the Lift Consultant with a written proposal outlining the scope of repairs, a cost estimate and an estimated time for completion.
		3. The Lift/Escalator Contractor shall not proceed with major repairs until directed to do so, in writing, by the Building Manager or Lift consultant.
	3. **Emergency Service**
		1. To maintain elevator equipment fully operational at all times, the Lift/Escalator Contractor shall provide emergency or Breakdown service on an as-needed basis. Such Breakdown service shall be provided twenty-four (24) hours per day, seven (7) days per week including public holidays. For Breakdown response times, refer to **Addendum D**

* + 1. Response to a Breakdown shall consist of providing an elevator mechanic on-site within the above time frames after being notified of an elevator breakdown.
	1. **Inspections**

In addition to the periodic inspections required in Section V, Subsection C., the Lift/Escalator Contractor together with the Lift Consultant, (if a consultant has been appointed by the customer), shall perform an annual survey and inspection of all elevator equipment covered by this contract and provide the customer with a written report, including any noted functional or code compliance deficiencies.

* 1. **Service Reports**

The Lift/Escalator Contractor shall provide the local Building Manager with a service report at the completion of each inspection or service call, noting the elevator(s) serviced, a description of the trouble and how repaired and any recommendations regarding the equipment. All deficiencies or repairs considered to be outside the scope of this contract shall be specifically described. Service reports shall be submitted to and signed by the local Building Manager.

* 1. **Service Records**

The Lift/Escalator Contractor shall prepare a service record book for each elevator and post in a conspicuous place in each elevator machine room. The service record book format is optional with the Lift/Escalator Contractor, but shall contain at least the following information:

* + 1. Elevator serial number and Department of Labour elevator inspector’s designation;
		2. Date when each preventive maintenance service and inspection (described in Technical Specification Section V) was performed;
		3. Signature or initials of elevator mechanic performing the work.

Service record books shall be maintained in each machine room during the life of the contract, and be kept for a period not less than ten (10) years.

* 1. **Record Keeping System**

A record keeping system at unit level will be maintained by the contractor and will be detailed enough to keep track of each specific maintenance procedure completed. The documentation system will also log all reports of elevator trouble calls placed to the Lift/Escalator Contractor and track the time and date of each occurrence, the response time and nature of the problem both reported and ultimately discovered and the steps taken to correct the deficiency.

1. **Contract terms and Conditions**
	1. **Contract Priority**
		1. These Terms and Conditions read with the Scope of Services, **all Annexures** and the Contract Schedule shall constitute the entire Contract between the parties and shall not incorporate or be deemed to incorporate the provisions of any other or extraneous document and shall supersede the provisions of any previous Contract, warranty or representation given relating to the Services or Equipment of this Contract.
		2. Notwithstanding anything to the contrary contained in this agreement, the customer shall be entitled at his sole discretion to cancel this agreement in the event of any change of ownership, control or possession of the building in which the lifts are situated.
		3. These terms and conditions shall take precedence over any contrary provision contained in any other document relating to the Services.
	2. **Financial**
		1. **Maintenance fee**

In consideration of the Lift/Escalator Contractor agreeing to perform the Services, where the payment terms will be 60 days, without deduction or set off (other than any discount expressly provided in the Contract Schedule) the Fee in the amount specified in the Contract Schedule as varied in accordance with the provisions of **clause 4.2.**

* + 1. **Escalation**

The Fee for the First Year shall be fixed at the rate appearing in the Contract Schedule. Both thematerial and labour portions of the Maintenance Price will be adjusted annually on the first day of the price adjustment month.

The material portion of the index is the Production Price Index for Electrical Machinery PO142.1 (Table 1.1 – item 2.18) published by the Central Statistical Service.

The Labour portion index is the actual labour cost based on the Minimum Straight Time Hourly Labour Rate.

The current year values of the material and labour portions of the Maintenance Price will be adjusted annually on the first day of the price adjustment month in proportion to the percentage change between the current years applicable labour and material indices in the relevant index month and the same indices applicable 12 (twelve) months prior.

The price adjustment table selected in the Contract Schedule selected at the inception of the agreement shall remain unchanged throughout the period of the agreement.

* + 1. **Vat**

The Fee and all other charges are expressed ***exclusive of VAT*** or other similar governmental levies or taxes which shall be payable by the Customer at the same time as the relevant Fee or charged at the then prevailing rate.

* 1. **Term**

This contract shall commence on the ……day, of …………………………., ……….. and subject to any earlier termination as provided for in these Terms and Conditions, shall, unless otherwise specified in the Contract Schedule, continue for a term of five (5) years, provided that the customer shall be entitled to cancel the contract at any time after 1 (one) year by giving three (3) months written notice.

* 1. **Termination And Breach**
		1. **Breach**

If any Party (“defaulting party”) commits a material breach of this contract and fails to remedy such breach:

* in the case of the Customer’s default in the payment of the Fee or any part thereof, within 7 (seven) days of receiving a written notice from the Lift/Escalator Contractor; or
* in the case of any other breach of this contract, not less than 90 (ninety) days of receiving a written notice from the other party identifying the breach and requesting its remedy; then the non-defaulting party shall be entitled to terminate this contract without further notice and claim damages.
	+ 1. **Termination Rights**
			1. In the event of default on the part of the Customer, The Lift/Escalator Contractor shall be entitled to, without prejudice to any other rights it may have, claim:
* settlement of all amounts due and payable as at date of termination, and
	+ - 1. A certificate signed by any one of The Lift/Escalator Contractor’ managers (whose appointment and authority need not be proved) in which –
* the amount of the Customer’s indebtedness to The Lift/Escalator Contractor; and
* the interest rate applicable to the Customer’s The Lift/Escalator Contractor account is stated, which shall not be greater than the prime rate of interest charged by the Contractor’s Bankers from time to time to their most favourable clients, shall be accepted as prima facie proof of the Customer’s indebtedness in any legal proceedings.
	1. **Termination Process**

Any Lawful termination of the Lift/Escalator Contractor’s Services in general or in respect of any unit by the Customer in terms of this Contract must be by way of written notice (given in terms of the provisions of this Contract) either directly from the Customer, or by a duly authorised and appointed third party or managing agent, in order for the notice to be valid.

* 1. **Safety compliance**
		1. **Safety Codes**

Compliance with Safety Codes

The Lift/Escalator Contractor shall maintain elevator equipment in compliance with the latest adopted edition of the Safety Code for Elevators and Escalators **(SANS 50081-80:2005 (EN 81-80:2003), SANS-10360)** and all other applicable codes and regulations in effect in the jurisdiction where the equipment is located. The Lift/Escalator Contractor shall promptly report to the Building Manager all known equipment deficiencies and provide prompt cost proposals for corrective work outside the scope of this contract, which may be required.

* + 1. **Safety Requirements**

The importance of following safe work practices demands that the Lift/Escalator Contractor have an active and effective safety program. The Lift/Escalator Contractor will demonstrate that it has a history of safe work practices, that regular safety education is given to its employees, and that all national safety mandates are complied with and properly documented.

* The Lift/Escalator Contractor shall have a written safety program or employee handbook which contains the safety policies governing: general safety rules, hazard awareness, personal protective equipment, fall protection, lockout/ tagout and a range of potentially hazardous job site conditions. Lift/Escalator Contractor shall have trained employees on this policy or handbook. Lift/Escalator Contractor shall have an ongoing safety training program to continuously educate employees on safety issues.
* In order to ensure compliance with the aforementioned safety policies, the Lift/Escalator Contractor, will have an established written policy of self-audit of all aspects of the safety programs outlined above. This is to include regular (at least annual) audits of job site conditions and Work practices. Audits are to be conducted and formally documented by the Lift/Escalator Contractor’s supervisory personnel and such persons are required to have been assessed by the contractor as competent to carry out this task.
	+ 1. **Maintenance Site Register**
* In terms of the Act and this Contract, the monthly signing of the Maintenance Site Register by the Lift/Escalator Contractor is essential from a legislative compliance perspective, are a vital performance criteria in terms of this Contract.
* If the Lift/Escalator Contractor fails to verify the monthly maintenance on-site work by signing the Maintenance Site Register, the Customer shall be entitled to a penalty credit equal to 100% (one hundred percent) of 1 (one) month’s fee, which reduction shall be applicable to the units in question.
* Technical staff carrying out any work on the contracted units will follow the exact nature of work carried out under programmed maintenance to allow the Customer and/or Consultant to review work carried out against agreed maintenance schedules provided for in **Addendum C**
	+ 1. If an employee or representative fraudulently completes the Maintenance Site Register it will immediately constitute Breach and will entitle the Customer to cancel the contract with immediate effect with the right to any legal and financial recourse applicable. Fraudulent completion includes but is not restricted to –
* Signing for work that has not been carried out
* Indicating that work has been carried out in a period that precedes the actual work completion date
	1. **Legal matters**
		1. **Law and Jurisdiction**
* This contract shall be governed by and shall be construed in accordance with the Laws of the Republic of South Africa.
* The South Gauteng High Court shall have jurisdiction for the enforcement of any provisions herein contained and/ or any damages suffered by either party arising out of the agreement between the parties~~.~~ without prejudice to the innocent party referring the matter to AFSA for determination as set out in clause 3.4 hereof.
* The defaulting party agrees to make payment of all costs arising out of enforcement of the agreement, which costs shall include costs on the attorney and client scale, collection commission and the costs of a tracing agent if necessary.
	+ 1. ***Domicilium* *Citandi Et Executandi***
			1. The Parties select as their *domicilium citandi et executandi* the addresses set out in Annexure “A”.
			2. The parties may at any time change its *domicilium citandi et executandi* by giving the other party written notice provided that the new *domicilium* is within the Republic of South Africa and is a physical address at which process may be served.
			3. Any notice in terms of this agreement must be delivered by hand~~.~~ Any notices sent as aforesaid shall be deemed to be delivered upon receipt.
		2. **Limit Of Liability**

The Lift/Escalator Contractor shall only incur liability for direct damages caused to the Customer’s property or person, including personal injury or death and caused only by the Lift/Escalator Contractor’s negligence (including gross negligence), which amount shall be limited to R20 000 000.00

* + 1. **Variation to Contract**

No variation, extension, omission or cancellation of the express terms of this Contract shall be valid unless reduced to writing and signed by a duly authorised officers of both parties.

* + 1. **Severability**

If any provision in this Contract is found by a Court of Law or by way of Arbitration to be invalid or void, such provision shall be severed from the remaining provisions and the remaining provisions shall continue to be of force and effect.

* + 1. **Waiver**

No latitude, extension of time or any other indulgence or latitude which may be given or allowed by either party to the other in respect of any payment provided for in this Contract or the performance of any other obligation shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of or otherwise affect any of that party’s rights in terms of or arising from this Contract, or prevent such party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term of this Contract.

* + 1. **Force Majeure**

Neither party shall be liable for any delay in performing any of its obligations hereunder if such delay is caused by circumstances beyond the reasonable control of the party so delayed and such party shall be entitled to a reasonable extension of time for the performance of such obligations.

* + 1. **Modernisation of Contract Elevators**

Should the Equipment be modernised, the Customer reserves the right to appoint any contractor of its choice for the modernization.

* + 1. **Working Hours and Conditions**
			1. Services may be performed during normal business hours (7:00 a.m. to 7:00 p.m. weekdays). Notification shall be made to the designated Building Manager any time work is performed under this contract.
			2. To prevent unnecessary disruption to building operations, the Lift/Escalator Contractor shall coordinate with the designated Building Manager for any and all planned equipment shutdowns. All work to be performed outside of normal business hours shall be coordinated with the designated Building Manager.
			3. Due to the number of lifts and size of the building we need 2x technician(qualified and assistance to be stationed in the building during working hours).
1. **The Customer’s Obligations**
	1. The Customer undertakes to report promptly to The Lift/Escalator Contractor irregular performance of, or defect in or damage to the Equipment
	2. During the Term, the Customer shall use all reasonable endeavours to ensure that:
* the Equipment is used in a normal and proper manner, including preventing a material change in the use or usage of the Equipment and the Equipment is not used to lift loads in excess of the specified competence of the Equipment,
* the Equipment is not vandalised, abused or misused and does not suffer accidental damage,
* the Equipment is kept clean, and that no act or omission on the part of the Customer results in the cost of providing the Services or The Lift/Escalator Contractor’s ability to provide the Services being adversely affected, and that the Equipment is not damaged by the presence of, or contaminated by, water or other material.
	1. If the Customer failed to fulfil the obligations set out in 6.2, in the opinion of the Customers’ appointed Lift Consultant, the Services shall exclude any work necessitated as a result of the Customer’s failure.
	2. The Customer undertakes to comply with all statutory and common law requirements, including without limitation the Occupational Health and Safety Act, Act 85 of 1993 as amended, providing for the health and safety of any persons using, operating or working on the Equipment. The Lift/Escalator Contractor may suspend the Services:
* If The Lift/Escalator Contractor informs the Customer that work outside the Scope of the Services is required for the safe or efficient operation of the Equipment or the performance of the Services and the Customer fails within such time as is stipulated by The Lift/Escalator Contractor, or failing such stipulation, within a reasonable time, to have the work carried out, or
* if such Services may involve exposure to any Hazardous Material. The Customer will at its expense promptly remove or neutralize the effects of the Hazardous Material. Hazardous Material means any hazardous or toxic material, technique or process which may have adverse consequences to the health of any person brought into contract with, or close proximity to it.
	1. Unless otherwise expressly stated in the Scope of Services, the Services do not include any work in relation to decorative and architectural finishes, the cleaning of bottom tracks and shaft externals or any work resulting from the shrinkage or settlement of the Building and on hydraulic lifts the inspection or replacement of buried or sunken piping, cylinders or pistons if these extend below the bottom of the shaft.
	2. Notwithstanding any other provision of this Contract, in no event shall the Services include work required by accidental damage such as the lift pit being filled with water or any other environmental conditions which have an impact on the operation and condition of the equipment, rust and corrosion or other than fair wear and tear incurred in the ordinary and proper use of the Equipment.
	3. Unless otherwise expressly provided in the Scope of Services, the Services do not include any work necessitated:
* as a result of any failure by the Customer to comply with the provisions of Conditions 6.1 to 6.7 inclusive;
* to repair or replace consumable items such as car lighting;
* by modifications to the Equipment not performed by The Lift/Escalator Contractor.
	1. Charges shall be calculated at The Lift/Escalator Contractor’ then prevailing rates for such visit with a minimum charge equal to the then charge for one (1) hours of an The Lift/Escalator Contractor mechanic’s time.
	2. The Lift/Escalator Contractor shall not be regarded being in breach of contract, if at any time during the course of this Contract, the equipment becomes obsolete in the opinion of the Customers’ appointed Lift Consultant, thus preventing The Lift/Escalator Contractor to perform its services in terms of this contract. The Lift/Escalator company warrants that it has inspected all the lifts and that no equipment in any of the lifts is obsolete.
	3. If the modernisation work contract is awarded to other than the Lift/Escalator Contractor, the maintenance of such elevators and any other elevators in that building will be awarded to the modernization Contractor until the modernization 12-months warranty period expires.
	4. The Customer will have the option to return these elevators to the Lift/Escalator Contractor’s contract, or request a bid from the modernization Contractor.

Domicilium et Citandi

For purposed of this contract this is demmed to be:

Contractor

Customer

SIGNED at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_this \_\_\_\_\_\_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_20\_\_\_\_.

AS WITNESS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNED at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_this \_\_\_\_\_\_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_20\_\_\_\_.

AS WITNESS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**“ADDENDUM A”**

**CONTRACT SCHEDULE**

**MONTHLY LIMITED MAINTENANCE PRICING BREAKDOWN**

**Contract Term**

• Commencement Date:

• Contract duration:

|  |  |  |  |
| --- | --- | --- | --- |
| **Building** | **Unit Number** | **Certificate Number** | **Maintenance Price** |
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|  |  | **SUM TOTAL** |  |

**“ADDENDUM B”**

**PERFORMANCE PENALTY MEASURES**

**Performance Penalty Measures**

**Call back Rate:**

The Lift/Escalator Contractor shall ensure that the frequency of equipment break-downs does not result in the target number of call-backs per unit per annum, being exceeded. The fault analysis / call-back rate shall be compiled by The Lift/Escalator Contractor on a monthly basis and assessed / calculated annually. The 12 (twelve) month period used to assess the call-back rate shall be the time the final handover certificate is achieved and formally accepted by the lift consultant. The target number of call-backs within this twelve month period shall not be more than 3 call-backs.

The call-back penalty shall be calculated as follows:

1. The penalty shall apply at unit level
2. Once the three call-backs threshold for a particular unit has been acceded a financial penalty equal to ONE month’s maintenance for that particular unit will be applied for every call-back greater than three

**Down-time:**

The Lift/Escalator Contractor’s maintenance plan shall be structured and implemented so as to ensure a maximum equipment operation, and the maximum unplanned down-time should not exceed 4 (four) hours, per unit, for the period of the first 12 months after the unit has been put into service.

If the maximum unplanned down-time per unit exceeds 4 (hours) hours, the customer shall be entitled to a penalty credit equal to 10% (ten percent) for the annual maintenance value of that unit for every 2 hours exceeding the six hours included above, for the units where the down-time limit has been exceeded.

**Call-back response times**

The Lift/Escalator Contractor shall ensure at any time of the day or night, 7 (seven) days a week, inclusive of public holidays, throughout the term of this Contract, that the Lift/Escalator Contractor’s mechanics are available to respond to call-backs with regard to emergencies or breakdowns of the equipment. The response times to call-backs shall be within the time period as set out in the chart below, and shall be calculated from the time that the call is received by the Lift/Escalator Contractor, to the time that the Lift/Escalator Contractor’s mechanic arrives at the building where the equipment is installed.

The Lift/Escalator Contractor will be liable to the Client for a call back response time penalty equivalent to 10 (ten) percent for the annual maintenance value of that unit where any response time parameter has not been met as per the Target Call-back Response Time table below..

**“ADDENDUM C”**

**SCHEDULE OF MONTHLY MAINTENANCE ROUTINES**

**(LIFT COMPANY TO PROVIDE)**

**“ADDENDUM D”**

**Target Callback Response Time**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Callback Category** | **Location** | **Normal working hours (08:00-17:00)** | **Outside normal working hours** |
| 1. | Trapped Passenger | Central business district | 30 minutes | 40 minutes |
| 2. | Trapped Passenger | Outside of Central business district | 40 minutes | 60 minutes |
| 3. | Lift out of service | Central business district | 40 minutes | 90 minutes |
| 4. | Lift out of service | Outside of Central business district | 60 minutes | 120 minutes |

**“ADDENDUM E”**

**CONTRACT EXCLUSIONS**