

TRADE TERMS FOR SERVICE CONTRACTS

1. DEFINITIONS & INTERPRETATION

1.1. The following definitions and rules of interpretation apply to the Agreement and this Schedule 1 (Trade Terms):

Additional Services: shall have the meaning given in the Agreement Details.

Additional Fees: shall mean the fees payable for any Additional Services.

Authorised Representative: shall mean the Customer Authorised Representative and/or the Sesame Authorised Representative as set out in the Agreement Details.

Business Day: any day (other than a Saturday or Sunday) when banks are generally open for normal business in the UK”.

Call Out: shall mean an unscheduled visit to resolve a fault reported by the Customer.

Contract Start Date: shall be as set out in the Agreement Details or as may be otherwise agreed between the Parties in connection with the undertaking of the scheduled MS Services.

Customer: shall be as defined in the Agreement Details.

Check Sheet: The MS Services report sent to the Customer following a routine maintenance and Call Out.

Data Protection Legislation:

- a. To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b. To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Party is subject, which relates to the protection of personal data.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

Extended Term: shall have the meaning given in the Agreement Details.

Fault Report: the Customer’s report of a possible fault with the Sesame Lift.

Helpline: contact details to request a service or report a fault as set out in the Agreement Details.

Information Request: the Customer’s request for information in relation to the Sesame Lift.

Initial Term: shall have the meaning given in the Agreement Details.

Labour: refers to the work undertaken by Sesame.

Location: as set out in the Agreement Details.

MS Services: means the provision of routine maintenance and call out support services to the Customer under this Agreement and as set out in the Agreement Details. The MS Services constitute scheduled services representing the routine annual services provided under the applicable MS Services Level, and may include the on-going provision of unscheduled support and services delivered in response to a Fault Report or an Information Request.

MS Services Fees: as set out in the Agreement Details.

MS Services Fees Due Date(s): as set out in the Agreement Details.

MS Services Level(s): refers to the level of service purchased by the Customer as set out in the Agreement Details.

Parts: refers to the pieces of equipment that form part of the Sesame Lift which may be repaired or replaced under this Agreement.

Sesame Lift: the Sesame lift covered by the MS Services, distinguished by its unique ID and lift type as set out in the Agreement Details.

Site: www.Sesameaccess.com

Special Terms: as set out in the Agreement Details where applicable.

Term: as defined in condition 9.

Trade Terms: the terms set out in Schedule 1 to the Agreement.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

VAT: value added tax chargeable under English law for the time being and/or any other equivalent sales tax.

Wasted Time Call Out Fee: a wasted time call out fee incurred in accordance with the Agreement where due to a Customer error, act and/or omission the MS Services cannot be carried out by Sesame.

1.2. Condition headings do not affect the interpretation of these conditions.

1.3. A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application, or re-enactment and includes any subordinate legislation for the time being in force made under it.

2. BASIS OF AGREEMENT

2.1. The Customer shall engage Sesame to perform the MS Services subject to the terms of the Agreement.

- 2.2. A binding contract shall not come into existence between Sesame and the Customer unless and until both Parties sign the Agreement, or Sesame commences the MS Services (whichever occurs earlier). The terms of the Agreement shall take precedence over any terms supplied by the Customer whether as part of a Customer's purchase order or otherwise.
- 2.3. Sesame will perform the scheduled MS Services in accordance with the MS Services Level purchased. For the purposes of the Agreement, the MS Services will be initiated on the Contract Start Date.
- 2.4. The MS Services shall be invoiced and paid for in accordance with condition 4.
- 2.5. If at any time Sesame is not satisfied as to the creditworthiness of the Customer it may give notice in writing to the Customer that no credit (or no further credit) will be granted in which event the performance of the MS Services and/or or Additional Services shall cease other than against immediate cash payment. All MS Services Fees and Additional Fees owing by the Customer will in these circumstances be payable by the Customer forthwith.
- 2.6. Call Outs where the fault is due to a Customer fault or error or where Sesame personnel are unable to access the Customer's premises or the Sesame Lift Location will also incur a Wasted Time Call Out Fee.

3. MS SERVICES INFORMATION

- 3.1. The MS Services shall be as set out in the Agreement Details.
- 3.2. All samples, drawings, descriptive matter, specifications and advertising issued by Sesame, and any descriptions or illustrations contained in Sesame's catalogues, brochures or on the Site are issued or published for illustrative purposes only and they do not form part of the Agreement.
- 3.3. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Sesame shall be subject to correction without any liability on the part of Sesame.
- 3.4. Sesame reserves the right (but does not assume the obligation) to make any changes to one or more elements of the MS Services to be provided which are required to conform to any applicable legislation and which do not materially affect quality or performance.
- 3.5. The Customer is responsible for preparing the Location for the undertaking of the MS Services and for ensuring the provision of all necessary access and facilities reasonably required to enable Sesame to commence and complete the MS Services. The Customer shall ensure access/egress and working conditions that satisfy the requirements of the Health and Safety at Work Act 1974 and all other relevant legislation. If Sesame's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer (including any changes imposed, or requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give Sesame adequate information or instructions) other than by reason of a Force Majeure Event under condition 11, the Customer shall be liable to pay to Sesame all reasonable costs, charges or losses sustained by it as a result in the form of Additional Fees. For the avoidance of doubt, this includes any undue delays encountered while Sesame is attempting to perform the MS Services at the Location.
- 3.6. No-one other than the Sesame Authorised Representative is authorised to make any contractually binding representations concerning the MS Services. The Customer will not rely on any promises or claims written or verbally made by anyone other than the Sesame Authorised Representative. Any advice or recommendation given by Sesame or its employees, contractors or agents to the Customer (or its' employees, contractors or agents) about the MS Services which is not confirmed by the Sesame Authorised Representative is followed or acted on entirely at the Customer's own risk. In entering into the Agreement, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by the Sesame Authorised Representative.
- 3.7. Sesame shall carry out and undertake the MS Services in a proper and workmanlike manner, in compliance with industry specific legislation and statutory requirements and in conformity with all reasonable requirements of the Customer. Time for performance of the MS Services is not of the essence of the Agreement and provided Sesame commences and completes the MS Services within a reasonable time, Sesame shall not be liable for any delays, howsoever caused.
- 3.8. The Agreement shall not automatically cover any additional product(s) that the Customer may purchase. Any variation of the MS Services to cover such new product(s) shall occur only by written agreement between the Parties and may result in Additional Fees or an increase in the MS Services Fees.
- 3.9. The MS Services stated as being expressly excluded at Schedule 2 in the table Appendix 1 to shall only be undertaken at the discretion of Sesame and will incur Additional Fees.

4. MS SERVICES FEES AND PAYMENT OBLIGATIONS

- 4.1. The MS Services Level(s) purchased by the Customer shall be as stated in the Agreement Details and the Customer shall pay the applicable MS Services Fees as set out in the Agreement Details.
- 4.2. The MS Services Fees are based on the rate prevailing at the date of the Agreement. Sesame reserves the right, by giving notice to the Customer at any time before the MS Services are effected, to increase the MS Services Fees to reflect any increase in the cost to Sesame which is due to any factor beyond the control of Sesame (including but not limited to any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of Labour, Parts, materials or other costs of manufacture).
- 4.3. Sesame will invoice the Customer for the applicable MS Services Fees in line with the chosen MS Services Level(s) as set out in the Agreement Details. All invoices shall be sent to the Customer at the address detailed in the Agreement Details unless otherwise agreed by the Parties in writing and **shall be paid by the MS Services Fees Due Date(s)** or as otherwise agreed in writing between the Parties.
- 4.4. Effective as of the date of commencement of the first Extended Term and on each anniversary thereafter during the Term, Sesame may increase the MS Services Fees payable under the Agreement. In the event that the increase is greater than five per cent (5%), Sesame must serve not less than one (1) month's prior notice in writing to the Customer before such increase is to take effect and give the Customer the option to terminate the Agreement by serving not less than one (1) months' prior notice in writing to Sesame.
- 4.5. Time for payment of the MS Services Fees shall be of the essence of the Agreement. Without prejudice to any other right or remedy Sesame may have, if the Customer fails to pay any Sesame invoice on the due date, Sesame may (a) charge interest on the overdue sum from the due date for payment at the annual rate of 5% above the base rate from time to time of HSBC Bank plc, accruing on a daily basis (and compounded quarterly) until payment is made, before or after any judgment, or claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 (and, in either case, the Customer will pay the accrued interest immediately on demand) and (b) suspend the delivery of all MS Services, until payment has been made by the Customer in full.
- 4.6. Sesame may, without prejudice to any other rights it may have, set off any liability of the Customer to Sesame against any liability of Sesame to the Customer.
- 4.7. In the event that Sesame levies Additional Fees, such Additional Fees shall be invoiced by Sesame monthly in arrears and shall be payable by the Customer within thirty (30) days of the date on the invoice.
- 4.8. All sums specified in the Agreement are exclusive of any value added tax unless expressly stated otherwise.

5. DATA PROTECTION

Each Party shall comply with the obligations imposed on a data controller under the Data Protection Legislation.

6. CONFIDENTIAL INFORMATION

- 6.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party or of any member of the group of companies to which the other Party belongs, except as permitted by clause 6.2.
- 6.2 Each Party may disclose the other Party's confidential information:
 - (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with the Agreement. Each Party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other Party's confidential information comply with this condition 6; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 6.3 No Party shall use the other Party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement. The obligations of confidentiality in this condition 6 shall not be affected by the expiry or termination of this Agreement.

7. LIMITATION OF LIABILITY

- 7.1. All warranties, conditions and other terms implied by statute or common law are excluded from the Agreement to the fullest extent permitted by law.
- 7.2. Nothing in the Agreement limits or excludes Sesame's liability for (a) death or personal injury caused by its negligence; (b) fraud; or (c) any other liability which cannot be limited or excluded by law.
- 7.3. Subject to condition 7.2, Sesame will not have any liability to the Customer, whether in contract, tort, for breach of statutory duty, misrepresentation, restitution or otherwise, arising in connection with the Agreement, for (a) any loss of profits; (b) any loss of any sales, business, agreements or contracts; (c) any loss of anticipated savings; (d) any loss of (or damage to) goodwill; or (e) any indirect or consequential loss.

- 7.4. Subject to conditions 7.2 and 7.3, Sesame's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the Agreement shall in no circumstances exceed the total value of the MS Services Fees paid in the previous twelve (12) month period.
- 7.5. Sesame shall notify the Customer as soon as practicable if replacement Parts for a relevant Sesame Lift are unavailable. Sesame shall use its reasonable endeavours to source alternative Parts but shall not be liable for (a) any resultant failure to carry out the MS Services or the works; (b) any resultant delays to the performance of the MS Services or the works or (c) for any additional costs associated with the unavailability of such Parts.

8. RESPONSE TIME TARGETS FOR CALL OUTS

The response times are set out in the table at Appendix 1 to Schedule 2.

9. TERM AND TERMINATION

9.1. Subject to any termination provisions in this Agreement, this Agreement shall commence on the Contract Start Date and shall continue for an initial period of one (1) year ('Initial Term'). Thereafter, this Agreement shall continue for successive one (1) year periods (each an 'Extended Term') unless and until the Customer serves written notice on Sesame stating that the Customer does not wish to renew. Such notice shall be served at least one (1) month prior to the expiry of the current Extended Term. The Initial Term and any Extended Term(s) shall together constitute the Term.

9.2. Without prejudice to any other rights or remedies that either Party may have under or in connection with this Agreement, either Party may terminate this Agreement upon written notice to the other Party if:

9.2.1 the other Party commits a material or persistent breach of this Agreement that:

- (a) is capable of being remedied and, following written notice to remedy the breach, that Party does not take steps to remedy the breach within thirty (30) days (or any longer period agreed by the parties in writing); or
- (b) is not capable of being remedied;

9.2.2 the other Party is unable to pay its debts or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other Party (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer is appointed over all or any substantial part of the assets of the other Party or the other Party enters into or proposes any composition or arrangement with its creditors generally or anything analogous to the foregoing occurs in any applicable jurisdiction.

9.3. Where during the Term of the Agreement, Sesame determines in its sole discretion that a relevant Sesame Lift requires an upgrade then Sesame and the Customer shall agree in writing the work and services required to upgrade the Sesame Lift and the costs for doing so (the "Upgrade Works"). If the Customer and Sesame cannot agree on the scope and/or cost of such Upgrade Works, then either Party shall have the right to terminate the Agreement upon the giving of 7 days' notice.

10. INSURANCE

Sesame shall have and maintain during the Term adequate insurance cover in relation to the MS Services. The Customer shall have and maintain during the Term adequate insurance cover with reputable insurers acceptable to Sesame in relation to health and safety and the carrying out of the MS Services by Sesame at the Location.

11. FORCE MAJEURE

Sesame reserves the right to change or defer any dates for the MS Services to be carried out if it is prevented from or delayed in carrying out the MS Services by acts, events, omissions or accidents beyond its reasonable control, including without limitation strikes, epidemics, lock-outs or other industrial disputes (whether involving the workforce of Sesame or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or contractors ('Force Majeure Event').

12. GENERAL

Assignment: The Customer shall not, without the prior written consent of Sesame, assign, transfer, charge, sub-contract or deal in any other manner with all or any of the Customer's rights or obligations under the Agreement. Sesame may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

Variation: No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

Enforceability: If any one or more of the provisions of this Agreement should be held to be invalid, illegal or unenforceable in any respect, the validity and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired and the parties shall amend this Agreement to add a new provision having an effect as near as legally permissible to the one held to be invalid, illegal or unenforceable.

Entire Agreement: Each of the Parties acknowledge and agree that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement other than as expressly set out in this Agreement.

Notices: Any notice required to be given pursuant to this Agreement shall be in writing and shall be sent by email or delivered by hand or sent by pre-paid first-class post or recorded delivery post to the address of the other Party as set out in these conditions, or such other address as may be notified by one Party to the other. A notice delivered by email is deemed to have been delivered at the point it is received into the other Party's inbox and no failure of delivery notice has been received by the sender. A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

Remedies Not Exclusive: The rights and remedies of the parties set out in this Agreement are cumulative and not exclusive of any other rights or remedies provided by law.

Waiver: A waiver of any right under this Agreement is only effective if it is in writing and signed by or on behalf of the waiving Party, and it applies only to the Party to whom the waiver is addressed and the circumstances for which it is given.

13. THIRD PARTY RIGHTS

Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

14. GOVERNING LAW AND JURISDICTION

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

SCHEDULE 2 – SERVICE LEVEL SUMMARY

1. Scheduling and Rescheduling of MS Services

For the Standard Service Level, Enhanced Service Level, Total Service Level and Two Single Service Level, Sesame shall issue a provisional date for the performance of the MS Services six months for Standard and Two single MS Service, 4 months for Enhanced and 3 months for Total MS Service in advance (where possible) and confirm the actual date one month prior to the agreed date. Sesame shall use its reasonable endeavours to undertake the MS Services on the agreed date and provide at least 5 Business Days' notice of any change unless affected by sickness or matters out of Sesame's control.

In relation to any Call Out or Additional Services, the Customer and Sesame will agree a date for performance which will be confirmed by email and/or in the estimate provided by Sesame.

If Sesame needs to reschedule the MS Services, Sesame shall use reasonable endeavours to reschedule for a mutually agreeable date to take place within the subsequent six (6) months of the date that the MS Services were originally scheduled to take place. No refund of MS Services Fees shall be given in such circumstances and no set-off will be permitted as against the MS Services Fees.

If the Customer needs to postpone a date for the performance of the MS Services, at least 5 Business Days' notice must be given or a Wasted Time Call Out Fee will be charged.

If whether (a) at the Contract Start Date or (b) during the Term, more than 6 months has elapsed since the last service was carried out by Sesame on the relevant Sesame Lift, a diagnostic visit by Sesame will be required to assess the costs to bring the Sesame Lift up to Sesame's usual standard. The cost of such diagnostic visit will be charged at the then current Sesame call out rates and agreed with the Customer in writing in advance. In the event that the costs for such diagnostic visit cannot be agreed then Sesame reserves the right to terminate this Agreement.

Scheduled Maintenance

2.1 Scheduled maintenance shall include:

General (for all Sesame Lifts)

- Check operation of system
- Check operation of emergency lower system by operating emergency lower key
- Check operation of emergency stop switches
- Check scissor lift operation. Fully raise the scissor lift to full travel after operating maintenance keyswitch and engage safety prop
- Check pipework and fittings for leaks or damage, correct as necessary
- Check cylinder for leakage
- Check cylinder bearings and bearing pins for wear
- Check cylinder rods for damage
- Check scissor lift pipework and cabling for damage or chaffing
- Check tightness of main nuts and bolts
- Check for lubrication. Ensure that all joints between moving parts are lubricated and clean
- Before disengaging props, ensure that the scissor mechanism and roller tracks are free of obstruction
- Check hydraulic pipe work and fittings for leaks or damage. Correct as necessary
- Check drive chain and sprockets
- Check slide systems, clean as necessary
- Check cabling and connections
- Check battery terminals
- Check solenoid caps
- Check all E-stops operate safely

Sesame Lifts with Stairs

- Check hydraulic pipework and fittings for leaks or damage. Correct as necessary
- Clean bottom wheel runner plates
- Check tightness of main nuts and bolts

2.2 Within 3 Business Days of carrying out the MS Services, Sesame shall provide the Check Sheet to the Customer and will include a quote for remedial works if such remedial works are required.

Fault Report and information request procedure

If the Customer finds a particular fault with the Sesame Lift or requires information about the Sesame Lift, then the following procedure applies:

- (1) The Customer advises Sesame of the Fault Report or Information Request via the Helpline.
- (2) Sesame shall use its reasonable endeavours to meet the response times set out in the table at Appendix 1 to Schedule 2.
- (3) Within 3 Business Days of carrying out the Call Out, Sesame shall provide the Check Sheet to the Customer and will include a quote for remedial works if such remedial works are required.

Appendix 1

Sesame Access Systems Maintenance Service (MS Service) Contracts

What's included	Total Service Contract	Enhanced Service Contract	Standard Service Contract	Two Single Service contract
Duration	12 months duration (Rolling contract)			
No of services	4	3	2	2
Maintenance Service visit	Monday to Friday (09:00hrs to 17:00hrs) excluding Public Holidays			
Call Out -	Monday to Sunday (6:00hrs to 23:00hrs) including Public Holidays	Monday to Saturday (09:00hrs to 17:00hrs) excluding Public Holidays	Monday to Friday (09:00hrs to 17:00hrs) excluding Public Holidays	No Call Out – Call out fee of £250 for first hour applies and Engineer thereafter £50 per hour per engineer
Onsite assistance for call out	Guaranteed by next working day.	Guaranteed within two working days.	Guaranteed within three working days.	N/A
Telephone assistance Out of hours	Calls will be forwarded to a mobile phone with reasonable efforts made to answer and action the call as soon as reasonably practicable		Calls to be made to the office telephone number within office hours.	N/A
No of Engineer attendance	2	2	2	2
Travel	Travel up to 2 hours from KT14 7LF for all services and Call out			
Parts under £50	✓	✓	✓	✓
Parts under £350	✓	✓	✗	✗
PLC elements	✓	✓	✗	✗
Stonework	✗	✗	✗	✗
The following are NOT included in any service contracts or Call Out and are chargeable				
Repairs for misuse and abuse of all lift parts e.g. Estop				
Repairs to infrastructure that is external or ancillary to the lift				
Repairs due to modifications by a third party				
Issues caused by door actuators installed and maintained by a 3rd party				
Flooding				
Electrical supply issues				
Incorrect usage				
Call out due to user error				
Wasted journey due to user error, refusal to enter site, delays whilst undertaking works				

