

APPENDIX C
TERMS AND CONDITIONS OF CONTRACT FOR SERVICES

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1. DEFINITIONS

1.1 In this Contract:-

“Approval”	means the written consent of the Authority and “Approve” and “Approved” shall be construed accordingly;
“Authority”	means the Authority identified in the Invitation to Tender;
“Commencement Date”	means the date the Contract commences;
“Confidential Information”	<p>Means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA, and does not include any information which:-</p> <ul style="list-style-type: none">(i) was public knowledge at the time of disclosure (otherwise than by breach of Clause 7.3 (Confidentiality));(ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;(iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure and/or use; or(iv) is independently developed without access to the Confidential Information;
“Contract”	means the written agreement between the Authority and the Supplier consisting of the Tender and these clauses;
“Contract Period”	means the period from the Commencement Date to the date of expiry set out in Clause 2.2 or such earlier date of termination of the Contract in accordance with the provisions of the Contract;
“Contract Price”	means the price exclusive of any applicable VAT, payable to the Supplier by the Authority under the Contract, as set out in the Tender, for the full and proper performance by the Supplier of its obligations under the Contract;
“Contracting Authority”	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006;
“Crown Body”	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies,

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	persons, commissions or agencies from time to time carrying out functions on its behalf;
“Deliverable”	means an item, materials or service associated with the provision of the Services (or a change in the provision of the Services) which is required to be delivered by the Supplier at any stage during the performance of this Contract;
“Default”	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other;
“Environmental Information Regulations”	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;
“Expiry Date”	means the expiry of the Contract which is [insert expiry date] (unless terminated earlier in accordance with the provisions of the Contract);
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
“Force Majeure”	means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, radiological, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:- <ul style="list-style-type: none">(a) any industrial action occurring within the Supplier’s or any sub-contractor’s organisation; or(b) the failure by any sub-contractor to perform its obligations under any sub-contract unless this is caused by a Force Majeure event or occurrence;
“Fraud”	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown;
“Good Industry Practice”	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced

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	person or body engaged in a similar type of undertaking under the same or similar circumstances;
“Guarantor”	means [insert name of company] a company registered in [] with company number [insert] and whose registered office is at [];
“Information”	has the meaning given under section 84 of the Freedom of Information Act 2000;
“Intellectual Property Rights” and “IPRs”	means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
“Invitation to Tender”	means the invitation to tender documentation together with any related documents issued by the Authority relating to the procurement for this Contract;
“Law”	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body;
“Month”	means calendar month;
“Party”	means the Supplier or the Authority;
“Persistent Default”	means two (2) Defaults within the Contract Period;
“Premises”	means the location where the Services are to be supplied, as set out in the Invitation to Tender;
“Quality Standards”	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with and any other quality standards set out in the Invitation to Tender;
“Supplier”	means the person, firm or company with whom the Authority enters into the Contract as identified in the Tender;
“Services”	means the services to be supplied as specified in the Invitation to Tender;
“Staff”	means all persons employed by the Supplier to perform its obligations under the Contract together with the Supplier’s

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	servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract;
“Tender”	means the document(s) submitted by the Supplier to the Authority in response to the Authority’s invitation to suppliers for offers to supply it with Services pursuant to the Contract;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
“Working Day”	means any day other than a Saturday or Sunday or public holiday in England and Wales.
“Works”	means all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Authority or a member of Staff in the provision of the Services which for the avoidance of doubt shall include the title of the course, the course structure any notes and training materials and the course syllabus (including indicative content and learning outcomes) but shall exclude any Supplier IPR.

2. INTERPRETATION

- 2.1 The interpretation and construction of this Contract shall be subject to the following provisions:-
- 2.1.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - 2.1.2 words importing the masculine include the feminine and the neuter;
 - 2.1.3 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
 - 2.1.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - 2.1.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
 - 2.1.6 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract; and
 - 2.1.7 reference to a Clause is a reference to the whole of that Clause unless stated otherwise.

2.2 Contract Period

The Contract shall take effect on the Commencement Date and shall expire automatically on the Expiry Date, unless it is otherwise terminated in accordance with the provisions of the Contract.

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- 3.1.2 If the Authority informs the Supplier in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default on the part of the Authority, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.
- 3.1.3 Timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date and performing any milestones by the relevant milestones date.

3.2 Manner of Carrying Out the Services

- 3.2.1 The Supplier shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Supplier shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and in any event, the Supplier shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 3.2.2 The Supplier shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 3.2.3 The Supplier shall and shall ensure that the Staff shall at all times during the Contract Period:-
- (a) faithfully and diligently perform those duties and exercise such powers consistent with them as are from time to time necessary in connection with the provision of the Services; and
 - (b) obey all lawful instructions and reasonable directions of the Authority and perform the Services to the reasonable satisfaction of the Authority.

3.3 Supplier's Staff

- 3.3.1 Access to the Premises shall be limited to such Staff and the Supplier's suppliers as are necessary for the Supplier to fulfil its obligations under the Contract. The Supplier shall co-operate with others working on the Premises to such extent as the Authority may reasonably require.
- 3.3.2 The Authority reserves the right to refuse to admit to, or to withdraw permission to remain on, the Premises:-
- (a) for any member of the Staff; or
 - (b) for any person employed or engaged by any member of the Staff, whose admission or continued presence would be, in the reasonable opinion of the Authority, undesirable.
- 3.3.3 At the Authority's written request, the Supplier shall provide a list of the names and business addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities

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in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

- 3.3.4 The Supplier's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside those premises.
- 3.3.5 If the Supplier fails to comply with Clause 3.3.3 within one (1) Month of the date of the request and in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Crown, then the Authority may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 3.3.6 The decision of the Authority as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with Clause 3.3.3 shall be final and conclusive.

4. COUNTERPART

- 4.1 This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Contract, but all the counterparts shall together constitute the same Contract.
- 4.2 No counterpart shall be effective until each party has executed at least one counterpart.

5. PAYMENT AND CONTRACT PRICE

5.1 Contract Price

- 5.1.1 In consideration of the performance of the Supplier's obligations under the Contract by the Supplier, the Authority shall pay the Contract Price in accordance with Clause 5.2 (Payment and VAT).
- 5.1.2 The Authority shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

5.2 Payment and VAT

- 5.2.1 In consideration of the Supplier performing its obligations under the Contract, the Authority shall pay all sums due to the Supplier in cleared funds within thirty (30) days of receipt of a valid invoice.
- 5.2.2 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services and that it is supported by any other documentation reasonably required by the Authority to substantiate the invoice.
- 5.2.3 Where the Supplier enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the sub-contract requirements.

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- 5.2.4 The Supplier shall add VAT to the Contract Price at the prevailing rate as applicable and the Authority shall pay the VAT to the Supplier following its receipt of a valid VAT invoice.
- 5.2.5 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this Clause 5.2.5 shall be paid by the Supplier to the Authority not less than five Working Days before the date upon which the tax or other liability is payable by the Authority.
- 5.2.6 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Contract under Clause 10.2.4 (Termination on Default) for failure to pay undisputed sums of money.
- 5.3 Recovery of Sums Due
- 5.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the Authority.
- 5.3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 5.3.3 The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.
- 5.3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

6. STATUTORY OBLIGATIONS AND REGULATIONS

6.1 Prevention of Corruption

- 6.1.1 The Supplier shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Authority or any other public body or person employed by or on behalf of the Authority or any other public body, any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Contract or any other contract with the Authority or any other public body or person employed by or on behalf of the Authority or any other public body (including its award to the Supplier, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such contract. The attention of the Supplier is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916, and the Bribery Act 2010.

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- 6.1.2 The Supplier warrants that it has not paid commission or agreed to pay any commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with the Contract or any other contract with the Authority or any other public body or person employed by or on behalf of the Authority or any other public body.
- 6.1.3 If the Supplier, its Staff or any person acting on the Supplier's behalf, engages in conduct prohibited by Clauses 6.1 or 6.1.2 above or commits any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010, the Authority may:-
- (a) terminate the Contract with immediate effect by giving notice in writing to the Supplier and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination; or
 - (b) recover in full from the Supplier and the Supplier shall indemnify the Authority in full from and against any other loss sustained by the Authority in consequence of any breach of this clause, whether or not the Contract has been terminated.

6.2 Discrimination

- 6.2.1 The Supplier shall not unlawfully discriminate when providing the Services under the Contract either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 6.2.2 The Supplier shall take all reasonable steps to secure the observance of Clause 6.2.1 by all Staff and shall comply with any Authority policy on the matters set out in Clause 6.2.1 as reasonably directed by the Authority.

6.3 The Contracts (Rights of Third Parties) Act 1999

A person who is not party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

6.4 Environmental Requirements

The Supplier shall, when working on the Premises, perform its obligations under the Contract in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

6.5 Health and Safety

- 6.5.1 The Supplier shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Authority shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Premises and which may affect the Supplier in the performance of its obligations under the Contract.

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- 6.5.2 While on the Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.
- 6.5.3 The Supplier shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 6.5.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the supply of the Services under the Contract.
- 6.5.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.
- 6.6 Criminal Records Bureau
- 6.6.1 Where specified by the Authority the Supplier shall procure that in respect of all potential Staff or persons supplying any of the Services (each a “Named Employee”) before a Named Employee enters the Premises:-
- (a) each Named Employee is questioned as to whether he or she has any convictions; and where appropriate to the Services being provided
 - (b) the results are obtained of a check of the most extensive available kind made with the Criminal Records Bureau in accordance with Part V of the Police Act 1997 in respect of each Named Employee. The check for each Named Employee shall include:-
 - (i) a search of the list held pursuant to the Protection of Children Act 1999 where the supply of the Services may involve contact with children; and/or
 - (ii) a search of the list held pursuant to Part VII of the Care Standards Act 2000 where the supply of Services may involve contact with vulnerable adults (as defined in that Act).
 - (c) a copy of the results of such check are notified to the Authority.
- 6.6.2 The Supplier shall procure that no person who discloses any convictions, or who is found to have any convictions following the results of a Criminal Records Bureau check, is employed or engaged by the Supplier or on the Supplier’s behalf without the Authority’s prior written consent (such consent not to be unreasonably withheld or delayed).
- 6.6.3 The Supplier shall procure that the Authority is notified of any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the Supplier (or any employee of a sub-contractor involved in the supply of the Services). The Parties agree that where such notification is made it shall be reasonable for the Authority to withhold access to the Premises from the member of Staff concerned, pursuant to Clause 3.3 (Supplier’s Staff).
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6.7 Security Clearance

- 6.7.1 Where specified by the Authority or the Contract user, the Supplier shall be responsible for ensuring that all Staff are security cleared to the level required by the Security Requirements not less than 5 Working Days before such person begins to perform the Services. If the Authority is responsible for applying for security clearance for Staff pursuant to this Clause 6.7.1, the Supplier shall provide a completed security clearance application form for such members of Staff to the Authority not less than 30 days before such members of Staff begin to perform the Services.
- 6.7.2 The Authority shall issue a pass for all Staff who are security cleared to an appropriate level for the Premises in accordance with Clause 6.7.1 on or before the date when such member of Staff is required to enter onto the Premises in Order to perform the Services. Passes shall remain the property of the Authority and shall be surrendered on demand or on termination or expiry of this Contract.
- 6.7.3 A member of Staff not in possession of a pass who is required by the Supplier or any Sub-contractor to provide the services urgently shall be allowed temporary access to the Premises on condition that the Supplier ensures, or procures that any Sub-contractor shall ensure, that such individual is accompanied at all times while on the Premises by a member of Staff who has been issued with a pass in accordance with Clause 6.7.1.
- 6.7.4 Without prejudice to the provisions of Clauses 6.7.1 to 6.7.3 inclusive, the Authority may refuse any member of Staff Admission to the Premises or require the removal of any member of Staff from the Premises in accordance with Clause 3.3 if such member of Staff is not in possession of a pass pursuant to Clause 6.7.2 or accompanied in accordance with Clause 6.7.3.

7. PROTECTION OF INFORMATION

7.1 Data Protection Act

- 7.1.1 The Supplier shall (and shall procure that its entire Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.
- 7.1.2 Notwithstanding the general obligation in Clause 7.1.1, where the Supplier is processing personal data (as defined by the DPA) as a data processor for the Authority (as defined by the DPA) the Supplier shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
- (a) provide the Authority with such information as the Authority may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA;
 - (b) promptly notify the Authority of any breach of the security measures to be put in place pursuant to this clause; and

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- (c) ensure that it does not knowingly or negligently do or omit to do anything which places the Authority in breach of its obligations under the DPA.
- 7.1.3 The provisions of this clause shall apply during the Contract Period and indefinitely after the expiry of the Contract Period.
- 7.2 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989
- 7.2.1 The Supplier shall comply with and shall ensure that its Staff comply with, the provisions of:-
- (a) the Official Secrets Acts 1911 to 1989; and
 - (b) Section 182 of the Finance Act 1989.
- 7.2.2 In the event that the Supplier or its Staff fail to comply with this clause, the Authority reserves the right to terminate the Contract by giving notice in writing to the Supplier.
- 7.3 Confidential Information
- 7.3.1 Each Party shall:-
- (a) treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
 - (b) not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of either Party's obligations under the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.
- 7.3.2 The Supplier shall ensure that its Staff, professional advisors and consultants are aware of the Supplier's confidentiality obligations under the Contract and shall use its best endeavours to ensure that its staff, professional advisors and consultants comply with the Supplier's confidentiality obligations under this Contract.
- 7.3.3 The Supplier shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of the Contract.
- 7.3.4 Nothing in Clauses 7.3.1 to 7.3.3 shall prevent the Authority disclosing any Confidential Information obtained from the Supplier:-
- (a) for the purpose of the examination and certification of the Authority's accounts; or
 - (b) for the purpose of any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
 - (c) to any government department and the Supplier hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department; or

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(d) to any consultant, contractor or other person engaged by the Authority;

provided that in disclosing information under sub-paragraphs (c) and (d) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- 7.3.5 Nothing in Clauses 7.3.1 to 7.3.3 shall prevent either Party from:-
- (a) using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights, or
 - (b) disclosing Confidential Information which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations.
- 7.3.6 In the event that the Supplier fails to comply with Clauses 7.3.1 to 7.3.3, the Authority reserves the right to terminate the Contract with immediate effect by notice in writing.
- 7.3.7 Clauses 7.3.1 to 7.3.6 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
- 7.3.8 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services under the Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best industry practice.
- 7.3.9 The Supplier will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services under the Contract and will keep a record of such breaches. The Supplier will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Supplier's obligations under Clauses 7.3.1 to 7.3.3. The Supplier will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 7.3.10 The Supplier shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Supplier has failed to comply with Clause 7.3.8.

7.4 Security

- 7.4.1 The Authority shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Supplier shall comply with the reasonable Security Requirements of the Authority while on the Premises, and shall ensure that all Staff comply with such requirements.

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7.4.2 The Authority shall provide the Supplier upon request with copies of its written security procedures and shall afford the Supplier upon request with an opportunity to inspect its physical security arrangements.

8. CONTROL OF THE CONTRACT

8.1 Transfer and Sub-Contracting

8.1.1 The Supplier shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract.

8.1.2 The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

8.1.3 Where the Authority has consented to the placing of sub-contracts as set out in the Order, copies of each sub-contract shall, at the request of the Authority, be sent by the Supplier to the Authority as soon as is reasonably practicable.

8.1.4 Subject to Clause 8.1.6, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:-

(a) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or

(b) any private sector body which substantially performs the functions of the Authority,

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.

8.1.5 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 8.1.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Authority.

8.1.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 8.1.4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as "the Transferee"):-

(a) the rights of termination of the Authority in Clauses 10.1 (Termination on change of control and insolvency) and 10.2 (Termination on Default) shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee;

(b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Supplier.

8.1.7 The Authority may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential

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Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

- 8.1.8 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

8.2 Remedies in the event of inadequate performance

- 8.2.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Supplier's obligations under the Contract, then the Authority shall take all reasonable steps to ascertain whether the complaint is valid. If the Authority so decides, it may uphold the complaint, or take further action in accordance with Clause 10.2 (Termination on Default) of the Contract.

- 8.2.2 In the event that the Authority is of the reasonable opinion that there has been a material breach of the Contract by the Supplier, or the Supplier's performance of its obligations under the Contract has failed to meet the requirements set out in their Tender, without prejudice to its rights under Clause 10.2 (Termination on Default) of the Contract, do any of the following:-

- (a) without terminating the Contract, itself supply or procure the supply of part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Authority that the Supplier will once more be able to supply such part of the Services in accordance with the Contract or the Tender;
- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
- (c) terminate, in accordance with Clause 10.2 (Termination on Default), the whole of the Contract; and/or
- (d) charge the Supplier for and the Supplier shall pay any cost reasonably incurred by the Authority and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

- 8.2.3 If the Supplier fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage

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resulting from such failure) within ten (10) Working Days or such other period of time as the Authority may direct.

8.2.4 In the event that:-

- (a) the Supplier fails to comply with Clause 8.2.3 and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
- (b) the Supplier persistently fails to comply with Clause 8.2.3,

the Authority reserves the right to terminate the Contract with immediate effect by giving the Supplier notice in writing.

8.3 Guarantee

8.3.1 Before the Commencement Date, the Supplier shall procure that the Guarantor shall:-

- (a) execute and deliver to the Authority the guarantee; and
- (b) deliver to the Authority a certified copy contract of the board minutes of the Guarantor approving the execution of the guarantee.

9. LIABILITIES

9.1 Liability, Indemnity and Insurance

9.1.1 Nothing in this Contract shall be construed to limit or exclude either Party's liability for:-

- (a) death or personal injury caused by its negligence or that of its Staff; or
 - (b) fraud or fraudulent misrepresentation by it or its Staff;
 - (c) any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
 - (d) any claim under Clause 9.3; or
 - (e) any claim in respect of any breach of Clause 7.3,
- or any other matter which, by Law, may not be limited or excluded.

9.1.2 Subject to Clause 9.1.3 and Clause 9.1.4, the Supplier shall indemnify and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier. The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

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- 9.1.3 Subject to Clause 9.1.1 and Clause 9.1.4, the liability of either Party for Defaults shall be subject to the following financial limits:-
- (a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed one hundred thousand pounds sterling (£100,000); and
 - (b) except as set out in Clause 9.1.1(a), the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed the lesser of two hundred thousand pounds sterling (£200,000) or one hundred and fifty per cent (150%) of the Contract Price payable by the Authority to the Supplier in the year in which the liability arises.
- 9.1.4 Subject to Clause 9.1.1, in no event shall either Party be liable to the other for any:-
- (a) loss of profits;
 - (b) loss of business;
 - (c) loss of revenue;
 - (d) loss of or damage to goodwill; and/or
 - (e) loss of savings (whether anticipated or otherwise); and/or
 - (f) any indirect or consequential loss or damage.
- 9.1.5 The Authority may, amongst other things, recover as a direct loss:-
- (a) any additional operational and/or administrative expenses arising from the Supplier's Default;
 - (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Authority arising from the Supplier's Default; and
 - (c) the additional cost of procuring replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Supplier.
- 9.1.6 Nothing in this Contract shall impose any liability on the Authority in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Authority to the Supplier that may arise by virtue of either a breach of the Contract or by negligence on the part of the Authority, or the Authority's employees, servants or agents.
- 9.1.7 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract.
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- 9.1.8 The Supplier shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 9.1.9 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 9.1.10 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 9.1.11 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability referred to in Clause 9.1.2.

9.2 Professional Indemnity

The Supplier shall effect and maintain a professional indemnity insurance policy during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services effect and maintain appropriate professional indemnity insurance during the Contract Period. To comply with its obligations under this clause and as a minimum, the Supplier shall ensure professional indemnity insurance held by the Supplier and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than two million pounds sterling £2,000,000 for each individual claim or such higher limit as the Authority may reasonably require (and as required by law) from time to time. Such insurance shall be maintained for a minimum of six (6) years following the expiration or earlier termination of the Contract.

9.3 Warranties and Representations

- 9.3.1 The Supplier warrants and represents that:-
- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
 - (b) the Contract is executed by a duly authorised representative of the Supplier;
 - (c) in entering the Contract it has not committed any Fraud;
 - (d) as at the Commencement Date, all information, statements and representations contained in the Tender for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
 - (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets

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which will or might affect its ability to perform its obligations under the Contract;

- (f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- (h) it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (i) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (j) in the three (3) years prior to the date of the Contract:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (k) it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

10. DEFAULT, DISRUPTION AND TERMINATION

10.1 Termination on insolvency and change of control

- 10.1.1 The Authority may terminate the Contract with immediate effect by giving notice in writing where the Supplier is a company and in respect of the Supplier:
- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or

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- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in 9.1.1 (a)-(g) occurs under the law of any other jurisdiction.

10.1.2 The Supplier shall notify the Authority immediately if the Supplier undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 (“change of control”). The Authority may terminate the Contract by notice in writing with immediate effect within six (6) months of:

- (a) being notified that a change of control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the change of control,

but shall not be permitted to terminate where an Approval was granted prior to the change of control.

10.2 Termination on Default

10.2.1 The Authority may terminate the Contract by giving written notice to the Supplier with immediate effect if the Supplier commits a Default and if:-

- (a) the Supplier has not remedied the Default to the satisfaction of the Authority within fifteen (15) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the opinion of the Authority, capable of remedy; or
- (c) the Default is a material breach of the Contract.

10.2.2 The Authority may terminate the Contract by giving written notice to the Supplier with immediate effect if the Supplier commits a Persistent Default.

10.2.3 In the event that through any Default of the Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission and shall reimburse the Authority for any costs charged in connection with such Default of the Supplier.

10.2.4 If the Authority fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90)

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Working Days of the date of such written notice, the Supplier may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under Clauses 5.3.1 (Recovery of Sums Due).

10.3 Break

The Authority shall have the right to terminate the Contract at any time by giving three (3) Months' written notice to the Supplier.

10.4 Consequences of Expiry or Termination

10.4.1 Where the Authority terminates the Contract under Clause 10.2 (Termination on Default) and then makes other arrangements for the supply of Services, the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 10.2 (Termination on Default), no further payments shall be payable by the Authority to the Supplier until the Authority has established the final cost of making those other arrangements.

10.4.2 Where the Authority terminates the Contract under Clause 10.3 (Break), (subject to Clause 9), the Authority shall indemnify the Supplier against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under Clause 10.3 (Break).

10.4.3 The Authority shall not be liable under Clause 10.4.2 to pay any sum which:-

- (a) was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Supplier under the Contract, exceeds the total sum that would have been payable to the Supplier if the Contract had not been terminated prior to the expiry of the Contract Period.

10.4.4 Save as otherwise expressly provided in the Contract:-

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under Clauses

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5.2 (Payment and VAT), 5.3 (Recovery of Sums Due), 6.1 (Prevention of Corruption), 7.1 (Data Protection Act), 7.2 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 7.3 (Confidential Information), 9.1 (Liability, Indemnity and Insurance), 9.2 (Professional Indemnity), 10.4 (Consequences of Termination), and 11.1 (Governing Law).

10.5 Force Majeure

- 10.5.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.
- 10.5.2 Any failure or delay by the Supplier in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- 10.5.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or which is likely to give rise to any such failure or delay on its part as described in Clause 10.5.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

11. DISPUTES AND LAW

11.1 Governing Law and Jurisdiction

Subject to the provisions of Clause 11.2 the Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the jurisdiction of the English courts and agree that the Call-Off Contract is to be governed exclusively by and construed according to English law.

11.2 Dispute Resolution

- 11.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to those persons named in Clause 2.3 (Notices).
- 11.2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 11.2.3 If the dispute cannot be resolved by the Parties pursuant to Clause 11.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 11.2.5 unless (a) the Authority considers that the dispute is not

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suitable for resolution by mediation; or (b) the Supplier does not agree to mediation.

- 11.2.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation (or arbitration) and the Supplier and the Staff shall comply fully with the requirements of the Contract at all times.
- 11.2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.
 - (b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
 - (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
 - (f) If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

Signed for and on behalf of the Authority:

By:

Name:

Title:

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Date:

Signed for and on behalf of the Supplier:

By:

Name:

Title:

Date: