

Schedule 2 B

Additional Service Contract

Part 1 – Order Form

This Order Form is issued subject to the provisions of the framework agreement RM6251 entered into between the Authority and the Supplier on 29th April 2024 (Framework Agreement). The Supplier agrees to supply the Additional Services specified below on and subject to the terms of this Additional Services Contract (including the terms of this Order Form). When completed by the Supplier and confirmed by the Customer, this Order Form shall be an Order for the purposes of Schedule 4 of the Framework Agreement.

| | | | |
|------|------------|--------------|--|
| Date | 20/01/2025 | Order Number | XXXXXXXXXX To be quoted on all correspondence relating to this Order. |
|------|------------|--------------|--|

From

| | |
|---------------------------|--|
| Customer | The Minister for the Cabinet Office on behalf of the Crown represented by the Government Property Agency |
| Customer Address | Floor 9 23 Stephenson Street Birmingham England B2 4BH |
| Invoice Address | GPAAPInvoices@gpa.gov.uk |
| Customer's Representative | Name: REDACTED Address: Floor 9, 23 Stephenson Street, Birmingham, England, B2 4BH Phone: E-mail: |

To

| | |
|---------------------------|---|
| Supplier | EDF Energy Customers Limited "Supplier" |
| Supplier's Address | 90 Whitfield Street, London W1T 4EZ |
| Supplier's Representative | Name: REDACTED Address: Phone: E-mail: |

Guarantor

The Additional Services Contract is conditional upon the provision of a Guarantee to the Customer from the Guarantor in respect of the Supplier.

| | |
|-------------------|---------------------|
| Guarantor | Not Required |
| Guarantor address | Not Required |
| Account Manager | Not Required |

1. Commencement Date

This Order shall be effective from the date that it has been executed by both parties and shall continue in full force and effect until the Allowances have been delivered to the Customer by the Supplier, and the Customer has made payment in full to the Supplier for the Allowances.

2. Additional Services Requirements

(2.1) Description of Additional Service

Purchase of UK Energy Trading Scheme (UK ETS) certificates via UK Government auctions held on the ICE Futures Europe platform.

Lodging purchased UK ETS Certificates on the Whitehall Systems Operators registered account.

(2.2) Timetable/Expiry Date

The Supplier shall use its reasonable endeavours to transfer to the Customer's Operator Holding Account, no later than 5 Business Days after receipt of cleared payment for the Allowances from the Customer or as soon as reasonably possible thereafter, the Allowances Purchased by the Customer.

3. Premises

Not applicable – Allowances are allocated to customer volumes, not premises

4. Supplier Solution

Supplier solution

The Sale and Purchase of Allowances

1.1 The Supplier shall sell, as legal and beneficial owner, the Contract Quantity of Allowances and the Customer shall purchase and pay the Contract Price for such Allowances in accordance with the terms of this Order and the UK ETS Trading System Rules.

1.2 The Customer shall:

- (a) do such things as are necessary in accordance with and as required by the UK ETS Trading System in order for the Supplier to transfer the Allowances to the Customer's Holding Account;
- (b) ensure that it has one or more Customer's Operator Holding Account(s) validly registered in the Registry in accordance with the UK ETS Trading System Rules;
- (c) ensure that it can accept such Allowances on to its Customer's Operator Holding Account;
- (d) not do, or omit to do, anything that would cause the Supplier to be in breach of the UK ETS Trading System Rules; and
- (e) conduct its affairs so as not to give the Relevant Authority cause to:
 - (i) refuse, reject or cancel any Transfer (whether in whole or in part) requested to be made pursuant to this Agreement; or
 - (ii) suspend or restrict either Party's right to request or effect any Transfer (including, without limitation, suspension or cancellation of any relevant Customer's Operator Holding Account and/or Supplier's Operator Holding Account).

For the purpose of this Order, unless the context otherwise requires, the terms set out in this Order shall have the meanings set out below in addition to the definitions set out in the Model Terms:

- **Allowance** has the meaning given to it in the UK Legislation;
- **Charges** means the ICE Futures UKA Daily Futures Settlement Price plus £REDACTED for an Allowance on the Date of Acceptance of this Order by the Supplier;
- **Contract Quantity** means allowances, in increments of the Minimum Contract Size; 7,000
- **Customer's Operator Holding Account** means an account in the Registry created in respect of an installation in accordance with the UK Legislation quoted as REDACTED ;(to be confirmed prior to transfer of UK ETS Certificates to the Government Property Agency Installation Registry)
- **Date of Acceptance** shall mean the date that the Supplier confirms to the Customer in writing that it has accepted this Order, which shall be a UKA Auction date as published by Ice Futures Europe. In 2022, the UKA Auction dates will occur fortnightly on Wednesdays from 12 January 2022 to 14 December 2022 as published at www.theice.com/publicdocs/circulars/21184.pdf;
- **UK ETS** means the UK Emission Trading Scheme established by the UK Legislation;
- **UK ETS Trading System Rules** means the rules and regulations of participation in, and operation of, the UK ETS as applicable in the UK;
- **ICE Futures Europe UKA Daily Futures, Settlement Price** means the £/te price as published by ICE on www.theice.com;
- **Minimum Contract Size** means 8,000 Allowances;
- **Registry** means the UK registry established by the UK ETS authority (as defined in the UK Legislation) in accordance with Article 25A and Schedule 5A of the UK Legislation;

- **Supplier's Operator Holding Account** means an account in the Registry created in respect of an installation in accordance with the UK Legislation, quoted as REDACTED; and
- **Transfer** means the transfer of Allowances from the Supplier's Operator Holding Account to the Customer's Operator Holding Account, pursuant to this Agreement; and
- **UK Legislation** means the Greenhouse Gas Emissions Trading Scheme Order 2020/1265, establishing a system for greenhouse gas emission allowance trading within the UK.

5. Charges

(5.1) Charges:

The Supplier shall pay the Charges for the Allowances.

(5.2) Invoicing of Charges:

5.2.1 Frequency of invoicing: The Supplier shall issue an invoice to the Customer for the Charges in respect of the Contract Quantity of Allowances purchased by the Customer pursuant to this Order following acceptance of this Order by the Customer.

5.2.2 Time of issue of invoice: The Supplier shall issue an invoice within 5 Business Days of the acceptance of this Order by the Supplier.

5.2.3 Content of invoice: Shall be in accordance with the Model Terms.

(5.3) Payment of Invoices:

5.3.1 Time and method of payment: The Customer shall pay the invoice by direct bank transfer or equivalent transfer of immediately available funds to the credit of the account specified in the invoice within 5 Business Days of the date of the invoice.

5.3.2 Invoices shall be payable by the Customer in Pounds Sterling. Where the Charges for the Allowances is in a currency other than Pounds Sterling, the Supplier shall calculate the invoice for the Customer based on the exchange rate secured by the Supplier on the date that the Supplier acquires the Allowances on behalf of the Customer.

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| 6. Other details |
| (6.1) Equipment Not Applicable |
| (6.2) Ownership of Equipment Not Applicable |
| (6.3) Key Personnel of the Supplier to be involved in the provision of the Additional Services REDACTED REDACTED |
| (6.4) Sub-Additional Services Contractors to be involved in the provision of the Additional Services Not Applicable |
| (6.5) Staff Vetting Procedures Staff vetting clearance level Not Applicable |
| (6.6) Relevant Convictions Not Applicable |

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| 7. Liability and insurance |
| <p>If the Transfer does not take place, or if the Transfer takes place but is ultimately found to be ineffective, due to an act or omission of the Customer, the Customer shall be liable to indemnify the Supplier for any costs and losses that it suffers as a result of such failure, including but not limited to the payment of any amount which would have been payable under this Order had the Transfer taken place. Such indemnity shall be outside of the cap set out at clause 18.1.5 of the Model Terms.</p> |

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| 8. Commercially Sensitive Information |
| Not Applicable |

9. Additional and/or Alternative Clauses

(9.1) Supplemental requirements in addition to the Call off terms

(9.1) Supplemental requirements in addition to the Model Terms

9.1.1 The additional terms listed in this Order, as set out above, shall apply to the provision of the Allowances by the Supplier in addition to the Model Terms.

9.1.2 Each of the parties agrees to act in accordance with the UK ETS Trading System Rules and the UK Regulations in the performance of their respective obligations pursuant to this Order.

9.1.3 In addition to representations, warranties and undertaking given by the parties pursuant to the Model Terms, each party confirms that the other Party is not acting as a fiduciary or an advisor for it, nor has the other Party given to it any advice, representation, assurance or guarantee as to the expected performance, benefit or result of this Agreement.

By signing and returning this order form the supplier agrees to enter a legally binding contract with the Customer to provide the Additional Services. This Additional Services Contract will be effective once the Customer acknowledges receipt of this Order Form signed by the Supplier.

The Parties hereby acknowledge that they have read and agree with the Terms of this Additional Services Contract (as amended by this Order Form) and by signing below agree to be bound by the terms of this Additional Services Contract.

By and duly authorised on behalf of the Supplier:

| | |
|----------------|---------------------------|
| Name: REDACTED | |
| Title | Strategic Account Manager |
| Date | |

By and duly authorised on behalf of the Customer

| | |
|-----------------|--------------------|
| Name : REDACTED | |
| Title | Head of Commercial |
| Date | |

Part 2 – Call Off Terms

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Appendices

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Between:

- (1) EDF Energy Customers Limited a company registered in England & Wales under company number 02228297, whose registered office is at 90 Whitfield Street, London W1T 4EZ (the "**Supplier**"); and
- (2) The Minister for the Cabinet Office on behalf of the Crown represented by the Government Property Agency, whose registered office is Floor 9, 23 Stephenson Street, Birmingham, England B2 4BH (the "**Buyer**").

Whereas:

- (A) The Authority provides energy contracting services for eligible (public and private) entities, including volume aggregation, competitive price determination and hedging of electricity supply, and the Customer is an eligible entity.
- (B) The Authority provides the services noted above through the use of the Framework Agreement with the Supplier. The Framework Agreement also governs provision by the Supplier to eligible entities of Additional Services by setting out, amongst other things, the Ordering Procedure.
- (C) The Supplier wishes to provide, and the Customer wishes to receive, the Additional Services. It is the intention of the Parties that this Additional Services Contract governs the terms and conditions on which the Additional Services will be provided.

Whereby it is agreed as follows:

1 General provisions

1.1 Definitions

In the Additional Services Contract the words and expressions defined in Appendix A (Definitions) shall have the meanings given to them in that Appendix, these definitions supplement those given in Schedule 1 of the Framework Agreement.

1.2 Interpretation

The interpretation and construction of the Additional Services Contract shall be subject to the following provisions:

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words **include**, **includes** and **including for example** and **in particular** and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
- 1.2.4 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;
- 1.2.5 the Appendices form part of these Call Off Terms and shall have effect as if set out in full in the body of these Call Off Terms (and any reference to the Additional Services Contract includes the Appendices);

- 1.2.6 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;
- 1.2.7 headings are included in the Additional Services Contract for ease of reference only and shall not affect the interpretation or construction of the Additional Services Contract;
- 1.2.8 references to **Clauses** and **Appendices** are, unless otherwise provided, references to the Clauses of and Appendices to these Call Off Terms;
- 1.2.9 references to **Paragraphs** are, unless otherwise provided, references to paragraphs of the Appendix in which the references are made;
- 1.2.10 terms or expressions contained in the Additional Services Contract which are capitalised but which are not defined herein shall be interpreted in accordance with the Framework Agreement save for such words as do not have a definition in the Framework Agreement in which case they shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate (or otherwise they shall be interpreted in accordance with the dictionary meaning);
- 1.2.11 reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
- 1.2.12 in the event of and only to the extent of any conflict between the provisions of the Additional Services Contract, any document referred to in the Additional Services Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Framework Agreement;
 - (b) these Call Off Terms;
 - (c) the Order Form; and
 - (d) any other document referred to in the Additional Services Contract.

2 **Due diligence**

2.1 The Supplier acknowledges that it:

- 2.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;
- 2.1.2 has raised all relevant due diligence questions with the Customer before the Commencement Date; and
- 2.1.3 has entered into the Additional Services Contract in reliance on its own due diligence alone.

3 **Guarantee**

Where the Customer has specified in the Order Form that the Additional Services Contract shall be conditional upon receipt of a Guarantee from the Guarantor, the Supplier shall deliver to the Customer an executed Guarantee substantially in the form set out in Appendix C (Guarantee) from the Guarantor, on or prior to the Commencement Date.

4 **Additional Services Contract Period**

4.1 The Additional Services Contract shall take effect on the Commencement Date and shall expire on the date [●that the Additional Services are completed]/[●set out in the Order Form], unless terminated earlier pursuant to Clause 19.

4.2 For the purposes of the Additional Services Contract, the period between the Commencement Date and the expiry or termination of the Additional Services Contract in accordance with its terms shall be termed the **(Additional Services Contract Period)**.

5 Supply of Additional Services

5.1 Performance of the Additional Services

Unless otherwise expressly agreed between the Parties in writing, time of performance in relation to implementing, commencing and/or supplying of the Additional Services shall be of the essence and if the Supplier (without prior Approval) fails to provide the Additional Services within the required timeframe the Customer may release itself from any obligation to accept and pay for the Additional Services and/or may terminate the Additional Services Contract, in either case without prejudice to any other rights and remedies of the Customer under the Additional Services Contract or at Law.

5.2 Supply of the Additional Services

5.2.1 The Supplier shall supply the Additional Services during the Additional Services Contract Period in accordance with the Additional Services Contract.

5.2.2 Except where otherwise provided in the Additional Services Contract, the Additional Services provided by the Supplier and/or any Staff shall be undertaken in respect of the Premises.

5.2.3 If the Customer informs the Supplier in writing that the Customer reasonably believes that the Supplier's performance of any part of the Additional Services does not meet the requirements of the Additional Services Contract, the Supplier shall at its own expense re-perform and carry out such Additional Services in accordance with the requirements of the Additional Services Contract within such reasonable time as may be specified by the Customer.

5.2.4 The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the supply of the Additional Services and the performance of its obligations under the Additional Services Contract.

5.3 Quality

5.3.1 The Supplier shall perform the Additional Services and its obligations under the Additional Services Contract in accordance with the Law and Good Industry Practice and the Industry Documents.

5.3.2 Not Used

5.3.3 The Supplier shall ensure that the Staff shall at all times during the Additional Services Contract Period:

(a) obey all lawful instructions and reasonable directions of the Customer and provide the Additional Services to the reasonable satisfaction of the Customer; and

(b) apply all due skill, care, diligence and be appropriately skilled, experienced, qualified, trained and where appropriate, supervised.

5.3.4 The Supplier shall perform its obligations under the Additional Services Contract in a timely manner.

- 5.3.5 The Supplier shall supply the Additional Services and in accordance with the specification in the Framework Agreement, the Order Form and in accordance with all applicable Laws.
- 5.3.6 The Supplier shall at all times during the Additional Services Contract Period ensure that:
- (a) the Additional Services conform in all respects with the specifications set out in the Order Form and/or where applicable the Framework Agreement;
 - (b) the Additional Services operate in accordance with the relevant technical specifications and correspond with all requirements and standards as set out in or required by the Order Form;
 - (c) the Additional Services are provided in accordance with any timetable set out in or required by the Order Form; and
 - (d) the Additional Services are supplied in accordance with the Supplier Solution (where applicable).
- 5.3.7 The Customer may inspect and examine the manner in which the Supplier supplies the Additional Services at the Premises.
- 5.4 Equipment that is to remain the property of the Supplier
- 5.4.1 This Clause 5.4 shall apply where the Order Form provides that Equipment is to be installed at the Premises by the Supplier, and to the extent that the Order Form provides that any such Equipment is to remain (as between the Supplier and the Customer) the property of the Supplier.
- 5.4.2 The Supplier shall procure that the Equipment is installed at the Premises, and is operated and maintained, in accordance with Good Industry Practice, and that it complies with all applicable Laws and is fit for its intended purpose. The Supplier shall not use the Equipment for any purpose other than for performing the Additional Services.
- 5.4.3 The Customer shall be entitled to witness and inspect the installation and/or maintenance of the Equipment. No such witnessing or inspection shall relieve the Supplier of its obligations under the Additional Services Contract.
- 5.4.4 Subject to Clause 10, the Customer will provide the Supplier with such access to the Premises as the Supplier may reasonably request in order to allow it to undertake the installation and/or maintenance of the Equipment.
- 5.4.5 The Supplier shall bear the cost of the installation and/or maintenance of the Equipment.
- 5.4.6 The Equipment shall (as between the Customer and the Supplier) remain the property of the Supplier.
- 5.4.7 The Customer shall not, and shall not knowingly suffer any person (other than the Supplier and its agents and Additional Services Contractors) to, interfere with the Equipment (subject to Clause 5.4.12).
- 5.4.8 The Equipment is installed at the Premises at the Supplier's own risk, and the Customer shall have no liability for any loss of or damage to the Equipment, unless and to the extent that the Supplier is able to demonstrate that such loss or damage was caused by the Customer's breach of Clause 5.4.7.
- 5.4.9 The Supplier shall be wholly responsible for the haulage or carriage and installation of the Equipment to and at the Premises, and (where required in

accordance with the Additional Services Contract) the removal thereof (in each case at the Supplier's sole cost and risk).

5.4.10 The Supplier shall, as soon as reasonably practicable following the Customer's written request:

(a) remove from the Premises any Equipment which in the reasonable opinion of the Customer is either actually or potentially defective, hazardous, noxious or not compliant with the Additional Services Contract; and

(b) replace such item with a suitable compliant substitute item of Equipment.

5.4.11 As soon as reasonably practicable after the end of the Additional Services Contract Period, the Supplier shall remove the Equipment from the Premises and shall leave the Premises in a clean, safe and tidy condition Subject to Clause 10 (Premises), the Customer will provide the Supplier with access to the Premises for such purpose.

5.4.12 Where the Supplier fails to remove the Equipment from the Premises within twenty (20) Working Days after the end of the Additional Services Contract Period, the Customer shall (unless such failure is caused by the Customer's breach of the Additional Services Contract) be entitled:

(a) (by giving notice to the Supplier) to take ownership of the Equipment, which will transfer to the Customer free of any and all encumbrances and at no charge; or

(b) to remove and dispose of the Equipment as the Customer sees fit (in which case the Supplier shall reimburse the Customer for all costs, expenses and liabilities incurred by the Customer in so doing).

5.5 Equipment that is to be owned by or leased to the Customer

5.5.1 This Clause 5.5 shall apply where the Order Form provides that Equipment is to be installed at the Premises by the Supplier, and to the extent that the Order Form provides that any such Equipment is to become the property of the Customer (or to be leased to the Customer under arrangements outside of the Additional Services Contract).

5.5.2 The Supplier shall procure that the Equipment is installed at the Premises in accordance with Good Industry Practice, and that (immediately following its installation) the Equipment complies with all applicable Laws and is fit for its intended purpose.

5.5.3 The Customer shall be entitled to witness and inspect the installation of the Equipment. No such witnessing or inspection shall relieve the Supplier of its obligations under the Additional Services Contract.

5.5.4 Subject to Clause 10, the Customer will provide the Supplier with such access to the Premises as the Supplier may reasonably request in order to allow it to undertake the installation of the Equipment.

5.5.5 The Supplier shall bear the cost of the installation of the Equipment.

5.5.6 Without prejudice to any arrangements outside of the Additional Services Contract under which the Equipment is leased to the Customer:

(a) title in, and ownership of, the Equipment shall transfer to the Customer immediately following its installation; and

(b) the Supplier shall ensure that title in the Equipment transfers to the Customer free of any and all encumbrances and liens.

Sourcing Playbook

- 5.6 It is the intention of the Government to publish the top KPIs in the majority of public contracts, to help facilitate this, the Customer may publish at least three KPIs and one Social Value KPI for this Customer Contract chosen at their absolute discretion [●every 3/6/12 months]
- 5.6.1 The Supplier agrees that any KPI which is published in accordance with Clause 5.6 above;
- 5.6.2 is not Confidential Information;
- 5.6.3 is not Commercially Sensitive Information;
- 5.6.4 is not exempt from publication;
- 5.6.5 shall not give rise to any Dispute;
- 5.6.6 shall not give rise to any form of liability on behalf of the Customer or the Authority
- 5.7 To enable the Customer to comply with Clause 5.6, the Supplier shall;
- 5.7.1 supply any information and or data requested by the Customer within [●10] Working Days of any request;
- 5.7.2 supply any reasonable assistance requested by the Customer or the Authority in relation to Clause 5.6 above.
- 5.8 The Customer shall have the discretion to categorise this Additional Services Contract as Gold, Silver or Bronze using the Cabinet Office Tiering Tool as a guide.
- 5.9 Where the Customer has specified that this Additional Services Contract is a Critical Services Contract (either in the Order Form or via another form of communication to the Supplier) then the Supplier shall comply with Part B of Schedule 17 of the Framework Agreement.
- 5.10 The Supplier shall comply with any request of the Customer to include an Insolvency Continuity Plan into the Supplier's BCDR plan in accordance with Schedule 17 of the Framework Agreement (such request to be made at the Customer's discretion).

6 Exit planning

- 6.1 The Supplier shall:
- 6.1.1 prior to the expiry or termination of the Additional Services Contract, where so requested by the Customer, provide all necessary assistance that the Customer may require to the Customer to migrate the provision of the Additional Services to a Replacement Supplier;
- 6.1.2 not knowingly do or omit to do or permit to be done or not done anything which may adversely affect the ability of the Customer to ensure an orderly re-tendering process; and
- 6.1.3 where the Supplier is not a bidder in any re-tendering process to appoint a Replacement Supplier, the Supplier shall at the Customer's request:
- (a) review and comment upon any draft plans proposed by bidders relating to exit and transition arrangements during any such re-tendering and/or transition process; and

- (b) attend meetings with bidders and/or the Replacement Supplier.
- 6.2 For the avoidance of doubt, such general assistance as is required pursuant to Clause 6.1 shall be provided by the Supplier at no cost and shall not be charged as a disbursement or pass-through expense.
- 6.3 Following the appointment of any Replacement Supplier, the Customer shall be entitled to bring the Replacement Supplier to any meetings relating to the Additional Services, provided that the Supplier may request that the Replacement Supplier be excluded from discussions relating to commercial issues which are sensitive to the Supplier's business and which are not relevant to the provision of the Replacement Services (including discussion of any proprietary processes or information that are reasonably considered confidential by the Supplier and that are not subject to release under the provisions of the Additional Services Contract).
- 7 Continuous improvement and benchmarking**
- 7.1 The Supplier shall notify the Customer of the outcome of any benchmarking or continuous improvement assessments undertaken pursuant to the Framework Agreement.
- 7.2 Clause 11.4 shall apply in the event of any reduction in the Framework Prices as a result of the assessments referred to in Clause 7.1.
- 8 Disruption**
- 8.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Additional Services Contract it does not disrupt the operations of the Customer, its employees or any other Additional Services Contractor engaged by the Customer.
- 8.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Staff or others, which affects or might affect the Supplier's ability at any time to perform its obligations under the Additional Services Contract.
- 8.3 In the event of industrial action by the Staff, the Supplier shall seek Approval to its proposals for the continued supply of the Additional Services in accordance with its obligations under the Additional Services Contract.
- 8.4 If the Supplier's proposals required under Clause 8.3 are reasonably considered insufficient or unacceptable by the Customer, then (unless the event constitutes Force Majeure) the Additional Services Contract may be terminated with immediate effect by the Customer by notice in writing.
- 9 Customer remedies for inadequate performance of the Additional Services**
- 9.1 Without prejudice to any other right or remedy which the Customer may have, if any Additional Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Additional Services Contract then the Customer, at the Customer's option and sole discretion, may (whether or not any part of the Additional Services have been performed) do any of the following:
- 9.1.1 give the Supplier the opportunity (at the Supplier's expense) to remedy any failure or defect in the performance of the Additional Services together with any damage resulting from such defect or failure (where such defect or failure is capable of remedy); or
- 9.1.2 without terminating the Additional Services Contract, itself perform or procure the performance of all or part of the Additional Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier is able to supply all or such part of the Additional Services in accordance with the Additional Services Contract (and, for the avoidance of doubt, the

Customer shall not be liable to pay the Charges relating to the Additional Services performed or procured by the Customer).

- 9.2 The Customer may charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Additional Services by the Customer or a third party pursuant to Clause 9.1.2, to the extent that such costs exceed the Charges which would otherwise have been due to the Supplier for such part of the Additional Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Additional Services.

10 Premises

- 10.1 The Customer hereby grants to the Supplier free of charge a non-exclusive licence to access and use the Premises solely for the purpose of performing its obligations under the Additional Services Contract. Such right is as licensee only, and is terminable on notice by the Customer (provided that any such notice shall constitute Force Majeure). Save in respect of the Supplier's obligations under Clause 5.4.11 (Equipment that is to remain the property of the Supplier), such licence shall automatically terminate immediately at the end of the Additional Services Contract Period.
- 10.2 The licence granted by the Customer to the Supplier pursuant to Clause 10.1 does not confer upon the Supplier any tenancy of whatsoever nature, and does not create any relationship of landlord and tenant between the Parties.
- 10.3 The rights granted to the Supplier under Clause 10.1 are to be used and enjoyed by the Supplier in common with the Customer and all others having like rights.
- 10.4 The Supplier shall not be entitled to exclusive occupation possession or use of any Premises and shall not at any time or in any manner do or omit to do any act which may impede the Customer or any person authorised by the Customer in the exercise of the Customer's rights of possession and control of any Premises.
- 10.5 The Customer gives no warranty that the Premises are legally or physically fit for the Supplier's intended use.
- 10.6 The Supplier shall limit access to the Premises to such Staff as is necessary to enable it to perform its obligations under the Additional Services Contract and the Supplier shall co-operate (and ensure that the Staff co-operate) with such other persons working concurrently on such Premises as the Customer may require.
- 10.7 Should the Supplier require modifications to the Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Supplier's expense. The Customer shall undertake any modification work which it Approves pursuant to this Clause 10.7 without undue delay. Ownership of such modifications shall rest with the Customer.
- 10.8 The Supplier shall (and shall ensure that the Staff shall) observe and comply with such rules, requirements and regulations (including conditions of access or Premises requirements (including security, health and safety requirements) that the Customer may impose) as may be in force from time to time for the use of the Premises and the conduct of personnel at the Premises as determined by the Customer. The Supplier shall pay for the cost of making good any damage caused by the Supplier or the Staff in exercising the Supplier's rights under this Clause (other than fair wear and tear). For the avoidance of doubt, such damage includes damage to the fabric of buildings, plant, machinery, fixed equipment or fittings therein.
- 10.9 The Parties agree that notwithstanding any rights granted pursuant to the Additional Services Contract, the Customer retains the right at all times to use the Premises in any manner it sees fit.

11 Customer payments and payment terms

11.1 Charges

In consideration of the Supplier's performance of its obligations under the Additional Services Contract in respect of each Premises, the Customer shall pay the Charges in accordance with Clause 11.2 (save where the Customer has opted in the Order Form to pay the Charges pursuant to the Customer Additional Services Contract, in which case the Supplier shall invoice and the Customer shall pay the Charges in accordance with the Customer Additional Services Contract).

11.2 Invoicing and payment

11.2.1 The Supplier shall issue invoices to the Customer in respect of the Charges properly due and payable to the Supplier from time to time in accordance with the timescales set out in the Order Form.

11.2.2 The Customer shall pay the sums properly included in each invoice issued in pursuant to this Clause 11.2 to the Supplier in cleared funds within the time period specified in the Order Form.

11.2.3 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Additional Services provided and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.

11.2.4 The Supplier shall not suspend the supply of the Additional Services for non-payment of Charges.

11.2.5 Interest shall be payable by the Customer on the late payment of any undisputed sums properly invoiced in accordance with this Clause 11.2. Such interest shall accrue in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

11.2.6 The Supplier shall accept the Government Procurement Card as a means of payment for the Additional Services where such card is agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover any such merchant fee from the Customer.

11.3 VAT

11.3.1 All sums specified in the Additional Services Contract are specified exclusive of VAT.

11.3.2 In addition to the Charges, the Customer shall, following delivery by the Supplier of a valid VAT invoice, pay the Supplier a sum equal to the VAT at the prevailing rate from time to time chargeable on the value of the Additional Services supplied in accordance with the Additional Services Contract.

11.3.3 The Supplier shall indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer 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 Additional Services Contract. Any amounts due under this Clause 11.3.3 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is due to be paid by the Customer.

11.4 Changes to Framework Prices

If at any time during the Additional Services Contract Period the Supplier reduces the Framework Prices for any Additional Services which are provided under the Framework Agreement in accordance with the terms of the Framework Agreement, the Supplier shall (to the extent necessary) immediately reduce the Charges applicable under the Additional Services Contract to ensure they are no higher than the Framework Prices (as amended).

11.5 Set Off

11.5.1 Wherever under the Additional Services 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 Customer in respect of any breach of the Additional Services Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due, to the Supplier under the Additional Services Contract or under any other agreement or Additional Services Contract with the Customer.

11.5.2 Any overpayment by either Party shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

11.5.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

11.6 Additional Payment of sub-Additional Services Contractors

The Supplier shall:

11.6.1 in relation to any sub-Additional Services Contract entered into in relation to this Agreement or the Supplier's obligations under it, (**Supplier Sub-Additional Services Contract**), pay all undisputed sums due under the Supplier Sub-Additional Services Contract within 30 (thirty) days of the relevant due date; and

11.6.2 include in each Supplier Sub-Additional Services Contract provisions such that all sub-Additional Services Contractors, of any tier in relation to Supplier Sub-Additional Services Contracts, must pay undisputed sums within 30 (thirty) days of the due date.

12 Key Personnel

12.1 The Parties have agreed to the appointment of the Key Personnel. The Supplier shall and shall procure that any Sub-Additional Services Contractor shall obtain Approval before removing or replacing any Key Personnel during the Additional Services Contract Period.

12.2 The Supplier shall provide the Customer with at least one (1) month's written notice of its intention to replace any member of Key Personnel.

12.3 The Customer shall not unreasonably delay or withhold its Approval to the removal or appointment of a replacement for any relevant Key Personnel by the Supplier or Sub-Additional Services Contractor.

12.4 The Supplier acknowledges that the persons designated as Key Personnel from time to time are essential to the proper provision of the Additional Services to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be at least as qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

- 12.5 The Customer may require the Supplier to remove (or procure the removal of) any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

13 Supplier's staff

- 13.1 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Premises:
- 13.1.1 any member of the Staff; or
- 13.1.2 any person employed or engaged by any member of the Staff,
- whose admission or continued presence would, in the opinion of the Customer, be undesirable.
- 13.2 At the Customer's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission to the Premises in connection with the Additional Services Contract, specifying the capacities in which they are concerned with the Additional Services Contract and giving such other particulars as the Customer may request.
- 13.3 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 within the boundaries of those premises.
- 13.4 If the Supplier fails to comply with Clause 13.2 within three (3) weeks of the date of the Customer's request, the Customer may terminate the Additional Services 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 Customer.
- 13.5 The decision of the Customer 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 13.2 shall be final and conclusive.

Relevant Convictions

- 13.6 The Supplier shall ensure (and shall procure that the Sub-Additional Services Contractors ensure) that no person who discloses that he has a Relevant Conviction, or who is found by the Supplier (or any Sub-Additional Services Contractor or any other third party) to have any Relevant Convictions (whether as a result of a police check or through the Criminal Records Bureau procedures or otherwise), is employed or engaged or permitted to remain employed or engaged in any part of the provision of the Additional Services without Approval.

14 Staffing security

- 14.1 The Supplier shall comply with the Staff Vetting Procedures in respect of all Staff employed or engaged in the provision of the Additional Services. The Supplier hereby confirms that, as at the Commencement Date, all Staff were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 14.2 The Supplier shall provide training on a continuing basis for all Staff employed or engaged in the provision of the Additional Services in compliance with the Security Policy.

15 Intellectual Property Rights

- 15.1 Save as expressly granted elsewhere under the Additional Services Contract:
- 15.1.1 the Customer shall not acquire any right, title or interest in or to the Supplier Intellectual Property Rights; and

- 15.1.2 the Supplier shall not acquire any right, title or interest in or to the Customer Intellectual Property Rights.
- 15.2 The Supplier hereby grants, or shall procure the direct grant, to the Customer (and the Replacement Supplier) of a perpetual, transferrable, irrevocable, sub-licensable, non-exclusive, royalty-free licence to use the Supplier Intellectual Property Rights to the extent necessary for the Customer to receive the Additional Services (and receive the Replacement Services provided by the Replacement Supplier).
- 15.3 The Customer hereby grants to the Supplier a non-exclusive, non-assignable royalty-free licence to use the Customer Intellectual Property Rights during the Additional Services Contract Period for the sole purpose of enabling the Supplier to provide the Additional Services. Such licence:
- 15.3.1 includes the right to grant sub-licences to Sub-Additional Services Contractors provided that any relevant Sub-Additional Services Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 16.5; and
- 15.3.2 is granted solely to the extent necessary for performing the Additional Services in accordance with the Additional Services Contract. The Supplier shall not, and shall procure that the Sub-Additional Services Contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Customer.
- 15.4 The Supplier shall on demand, during and after the Additional Services Contract Period, fully indemnify and keep fully indemnified and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or the Crown may suffer or incur as a result of any claim that the rights granted to the Customer pursuant to the Additional Services Contract and/or the performance by the Supplier of the Additional Services infringes or allegedly infringes a third party's Intellectual Property Rights (**Claim**) except where the Claim arises from:
- 15.4.1 items or materials based upon designs supplied by the Customer; or
- 15.4.2 the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of the Additional Services Contract.
- 15.5 The Customer shall notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:
- 15.5.1 shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
- 15.5.2 shall take due and proper account of the interests of the Customer;
- 15.5.3 shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and
- 15.5.4 shall not settle or compromise the Claim without Approval (not to be unreasonably withheld or delayed).
- 15.6 The Supplier shall have no rights to use any of the Customer's names, logos or trademarks without prior Approval.

16 Protection of information

16.1 Security Requirements

- 16.1.1 The Supplier shall comply, and shall procure the compliance of the Staff, with the Security Policy.
- 16.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 16.1.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Additional Services it may notify the Customer of the same and shall support any such notification with evidence of the cause of any increased costs of providing the Additional Services and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the procedure set out in Clause 32.
- 16.1.4 Until and/or unless a change to the Charges is agreed by the Customer pursuant to Clause 32 the Supplier shall continue to perform the Additional Services in accordance with its existing obligations.

16.2 Malicious Software

- 16.2.1 The Supplier shall, as an enduring obligation throughout the Additional Services Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software to and on the Supplier's computer and other business systems (including the Equipment).
- 16.2.2 Notwithstanding Clause 16.2.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the Additional Services to their desired operating efficiency.
- 16.2.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 16.2.1 shall be borne by the Parties as follows:
 - (a) by the Supplier, where the Malicious Software originates from the Supplier or the Customer Data (whilst the Customer Data was under the control of the Supplier); and
 - (b) by the Customer if the Malicious Software originates from the Customer or the Customer Data (whilst the Customer Data was under the control of the Customer).

16.3 Security of Premises

- 16.3.1 The Customer shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Supplier shall comply with all security requirements of the Customer while on the Premises and shall ensure that all Staff comply with such requirements.
- 16.3.2 The Customer shall provide the Supplier upon request copies of its written security procedures and shall afford the Supplier upon request an opportunity to inspect its physical security arrangements.

16.4 Customer Data

- 16.4.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.

- 16.4.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under the Additional Services Contract or as otherwise expressly Approved by the Customer.
- 16.4.3 To the extent that the Customer Data is held and/or processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format specified in the Additional Services Contract (if any) and in any event as specified by the Customer from time to time in writing.
- 16.4.4 To the extent that Customer Data is held and/or processed by the Supplier, the Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 16.4.5 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy.
- 16.4.6 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Customer may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of the Customer Data to the extent possible and the Supplier shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or
 - (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any expenses incurred in doing so.
- 16.4.7 If at any time the Supplier suspects or has reason to believe that the Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall:
- (a) notify the Customer immediately;
 - (b) inform the Customer of the remedial action the Supplier proposes to take and seek the Customer's Approval in relation thereto; and
 - (c) follow the Customer's directions in undertaking any such remedial action.
- 16.5 Confidentiality
- 16.5.1 Except to the extent set out in this Clause 16.5 or where disclosure is expressly permitted elsewhere in the Additional Services Contract, each Party shall:
- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 16.5.2 Clause 16.5.1 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, the Code or the Environmental Information Regulations pursuant to Clause 16.7;
 - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - (c) such information was obtained from a third party without obligation of confidentiality;

- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Additional Services Contract; or
 - (e) such information is independently developed without access to the other Party's Confidential Information.
- 16.5.3 The Supplier:
- (a) may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Additional Services and who need to know the information in order to perform the Additional Services; and
 - (b) shall ensure that such Staff are aware of and comply with these obligations as to confidentiality.
- 16.5.4 The Supplier shall not, and shall procure that the Staff do not, use any of the Customer Confidential Information otherwise than for the purposes of the Additional Services Contract.
- 16.5.5 At the written request of the Customer, the Supplier shall procure that the Staff identified in the Customer's written request sign a confidentiality undertaking prior to commencing any work pursuant to the Additional Services Contract.
- 16.5.6 In the event that any default, act or omission of any Staff causes or contributes (or could cause or contribute) to the Supplier breaching its obligations as to confidentiality under or in connection with the Additional Services Contract, the Supplier shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Staff, the Supplier shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings) to demonstrate that the Supplier is taking appropriate steps to comply with this Clause 16.5, including copies of any written communications to and/or from Staff, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality.
- 16.5.7 Nothing in the Additional Services Contract shall prevent the Customer from disclosing the Supplier Confidential Information:
- (a) to any Crown body and/or any other Contracting Body. All Crown bodies and/or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies and/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 Crown body or any Contracting Body;
 - (b) to any consultant, Contractor, professional adviser or other person engaged by:
 - (i) the Customer for any purpose relating to or connected with the Additional Services Contract (on the basis that the information shall be held by such consultant, Contractor, professional adviser or other person in confidence and is not to be disclosed to any other third party); and/or
 - (ii) the Authority for any purpose relating to or connected with the Framework Agreement (on the basis that the information shall be held by such consultant, Contractor, professional adviser or other person in confidence and is not to be disclosed to any other third party); and/or
 - (iii) any person conducting a Cabinet Office assurance review or any additional assurance programme;

- (c) for the purpose of the examination and certification of the Customer's accounts; or
 - (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 16.5.8 The Customer shall use reasonable endeavours to ensure that any person to whom the Supplier Confidential Information is disclosed pursuant to Clause 16.5.7 is made aware of the Customer's obligations of confidentiality.
- 16.5.9 Nothing in this Clause 16.5 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of the Additional Services Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.
- 16.5.10 In the event that the Supplier fails to comply with Clause 16.5.1 to Clause 16.5.6, the Customer reserves the right to terminate the Additional Services Contract with immediate effect by notice in writing.
- 16.5.11 The Supplier shall ensure that no unauthorised person gains access to any Confidential Information of the Customer or any data obtained by the Supplier from the Customer in the performance of the Additional Services Contract, and the Supplier undertakes to maintain adequate security arrangements that meet the requirements of the Security Policy and Good Industry Practice.
- 16.6 Section 182 of the Finance Act 1989
- 16.6.1 The Supplier shall comply with, and shall ensure that the Staff comply with, the provisions of [Section 182 of the Finance Act 1989].
- 16.6.2 If the Supplier or its Staff fails to comply with this Clause 16.6, section 182 of the Finance Act 1989), the Customer reserves the right to terminate the Additional Services Contract by giving notice in writing to the Supplier.
- 16.7 Freedom of information
- 16.7.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- 16.7.2 The Supplier shall and shall procure that its Sub-Additional Services Contractors shall:
- (a) transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - (b) provide the Customer with a copy of all Information relating to a Request for Information in its possession, or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and
 - (c) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to any Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 16.7.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Additional Services Contract or any other Additional Services Contract whether the Commercially Sensitive

Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

- 16.7.4 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 16.7.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 16.5) the Customer may, acting in accordance with the Code, be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Supplier or the Additional Services:
- (a) in certain circumstances without consulting the Supplier; or
 - (b) following consultation with the Supplier and having taken its views into account, provided always that where Clause (a) applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps where appropriate to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 16.7.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with the provisions of the Additional Services Contract and the requirements of Good Industry Practice and shall permit the Customer to inspect such records upon request from time to time.
- 16.7.7 The Supplier acknowledges that the description of information as Commercially Sensitive Information is of an indicative nature only and that the Customer may be obliged to disclose it in accordance with Clause 16.7.5.

16.8 Transparency

- 16.8.1 The Parties acknowledge and agree that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Additional Services Contract is not Confidential Information. The Customer shall be responsible for determining in its sole and absolute discretion whether any of the content of the Additional Services Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 16.8.2 Notwithstanding any other term of the Additional Services Contract, the Supplier hereby gives his consent for the Customer to publish the Additional Services Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including changes to the Additional Services Contract agreed from time to time, to the general public.
- 16.8.3 The Customer may consult with the Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its sole and absolute discretion.
- 16.8.4 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish the Additional Services Contract.

16.9 Data Protection

- 16.9.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA 2018. A Party may act as:
- (a) **Controller** in respect of the other Party who is **Processor**;
 - (b) **Processor** in respect of the other Party who is **Controller**;

in respect of certain Personal Data under a Additional Services Contract and shall specify in Appendix E (Processing Personal Data) which scenario they think shall apply in each situation.

- 16.9.2 Where a Party is a Processor, the only Processing that it is authorised to do is listed in Appendix E (Processing Personal Data) by the Controller.
- 16.9.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 16.9.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
 - (a) a systematic description of the envisaged Processing and the purpose of the Processing;
 - (b) an assessment of the necessity and proportionality of the Processing in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 16.9.5 The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Agreement:
 - (a) process that Personal Data only in accordance with Appendix E (Processing Personal Data), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Personal Data Breach;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:
 - (i) the Processor Personnel do not Process Personal Data except in accordance with the Additional Services Contract (and in particular Appendix E (Processing Personal Data));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this Clause 16;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Additional Services Contract; and

- (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
 - (iii) not transfer Personal Data outside of the UK or EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (iv) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (v) the Data Subject has enforceable rights and effective legal remedies;
 - (vi) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (vii) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
 - (viii) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Additional Services Contract unless the Processor is required by Law to retain the Personal Data.
- 16.9.6 Subject to Clause 16.9.7, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Additional Services Contract it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Additional Services Contract;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Personal Data Breach.
- 16.9.7 The Processor's obligation to notify under Clause 16.9.6 shall include the provision of further information to the Controller, as details become available.

- 16.9.8 Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Personal Data Breach; and/or
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 16.9.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 16.9. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the Processing is not occasional;
 - (b) the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - (c) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 16.9.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 16.9.11 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 16.9.12 Before allowing any Sub-processor to Process any Personal Data related to the Additional Services Contract, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and Processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 16 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 16.9.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 16.9.14 The Authority may, at any time on not less than thirty (30) Working Days' notice, revise this Clause 16.9 by replacing it with any applicable controller to processor standard Clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Agreement).

- 16.9.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Working Days' notice to the Supplier amend the Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

17 Warranties and representations

17.1 The Supplier warrants, represents and undertakes to the Customer that:

- 17.1.1 it has full power capacity and authority and all necessary consents, licences, permissions (statutory, regulatory, Additional Services Contractual or otherwise, including where its procedures so require, the consent of any Holding Company) to enter into and perform its obligations under the Additional Services Contract;
- 17.1.2 the Additional Services Contract is executed by a duly authorised representative of the Supplier;
- 17.1.3 in entering the Additional Services Contract it has not committed any Fraud;
- 17.1.4 it is duly incorporated and validly existing under the laws of the place of its incorporation;
- 17.1.5 neither the entry into this Additional Services Contract nor the obligations contemplated by this Additional Services Contract by it shall:
- (a) violate or conflict with the provisions of its constitutional documents;
 - (b) amount to a violation or breach of any applicable Laws or regulations in any relevant jurisdiction;
 - (c) amount to a violation or default with respect to any relevant order, decree or judgment of any court or any governmental or regulatory authority in any jurisdiction to which it is a Party or by which it is bound, which violation or default is material in the context of the transactions contemplated by this Additional Services Contract; or
 - (d) result in a breach of, or constitute a default under, any instrument to which it is a party or by which it is bound, which breach or default is material in the context of the transactions contemplated by this Additional Services Contract;
- 17.1.6 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- 17.1.7 it shall perform the Additional Services Contract in compliance with all Laws (as amended, updated, modified or replaced from time to time) and perform the Additional Services in compliance with the Additional Services Contract and Good Industry Practice;
- 17.1.8 as at the Commencement Date, all information, statements and representations contained in the Tender are true, accurate, complete and not misleading save as specifically disclosed in writing to the Customer prior to execution of the Additional Services Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false, inaccurate, incomplete or misleading and all warranties and representations contained in the Tender shall be deemed repeated in the Additional Services Contract;
- 17.1.9 its performance of the Additional Services shall conform in all material respects to the specifications in the Tender and shall be free of all material defects;

- 17.1.10 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 which will or might affect its ability to perform its obligations under the Additional Services Contract;
- 17.1.11 it is not subject to any Additional Services Contractual, regulatory, judicial or other obligation, compliance with which is or may have an adverse effect on its ability to perform its obligations under the Additional Services Contract;
- 17.1.12 as at the Commencement Date none of the following steps (or steps analogous or equivalent to the following steps under the laws of any other jurisdiction within the United Kingdom or throughout the world) are being taken considered or threatened by the Supplier or any other person (which have not been discharged or dismissed):
- (a) the Supplier ceases or threatens to cease to carry on business;
 - (b) the Supplier makes a composition or arrangement with its creditors;
 - (c) the Supplier goes into liquidation (other than voluntary liquidation for the purposes of a bona fide amalgamation or reconstruction the terms of which have been approved by the Customer and the Authority in writing);
 - (d) possession is taken of any of the Supplier's property under the terms of a fixed or floating charge;
 - (e) the Supplier is unable to pay its debts within the meaning of section 123 Insolvency Act 1986;
- 17.1.13 no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of its knowledge, are threatened) for:
- (a) the winding up or for the dissolution of the Supplier; or
 - (b) the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 17.1.14 it owns, has obtained or is able to obtain valid licences and necessary rights for and in all Intellectual Property Rights that are necessary for the performance of its obligations under the Additional Services Contract and shall maintain the same in full force and effect at all relevant times;
- 17.1.15 its performance of its obligations under the Additional Services Contract shall not infringe any third party IPRs;
- 17.1.16 the Authority is not in any way an agent, partner or representative of any kind of the Supplier or any of its associated group of companies;
- 17.1.17 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive element, including any virus, worm and/or Trojan horse, into systems, data, software or Confidential Information held in electronic form owned by or under the control of, or used by, the Customer;
- 17.1.18 it has acceded to all applicable Industry Documents and the Supplier undertakes that it shall remain in compliance with all applicable Industry Documents;
- 17.1.19 it has not relied on or been induced to enter into this Additional Services Contract by any representation other than those expressly set out in this Additional Services Contract; and

- 17.1.20 the obligations under this Additional Services Contract constitute its legal, valid and binding obligations enforceable in accordance with their terms, subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally, and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at law.
- 17.2 The Supplier warrants represents and undertakes to the Customer that:
- 17.2.1 the Additional Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- 17.2.2 it shall discharge its obligations hereunder (including the provision of the Additional Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;
- 17.2.3 in the three (3) years prior to the Commencement Date:
- (a) it has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and
- (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
- (c) 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 Additional Services Contract; and
- 17.2.4 it has no conflict of interest in relation to the Additional Services Contract;
- 17.2.5 for the Additional Services Contract Period all Staff will be vetted in accordance with Good Industry Practice and the Security Policy.
- 17.3 For the avoidance of doubt, the fact that any provision within the Additional Services Contract is expressed as a warranty shall not preclude any right of termination the Customer would have in respect of breach of that provision by the Supplier if that provision had not been so expressed.
- 17.4 The Supplier acknowledges and agrees that:
- 17.4.1 the warranties, representations and undertakings contained in the Additional Services Contract are material and are designed to induce the Customer into entering into the Additional Services Contract; and
- 17.4.2 the Customer has been induced into entering into the Additional Services Contract and in doing so has relied upon the warranties, representations and undertakings contained herein.

18 **Liabilities**

18.1 Limitation of liability

- 18.1.1 Nothing in the Additional Services Contract shall be construed to limit or exclude either Party's liability for:
- (a) death or personal injury caused by its negligence;
- (b) Fraud or fraudulent misrepresentation;

- (c) any claim under or in respect of a breach of:
 - (i) Clause 11.3.3 (VAT indemnity);
 - (ii) Clause 15.4 (IPR indemnity);
 - (iii) or in respect of a breach of Clause 16.5 (Confidentiality); or
 - (iv) Clause 17 (Warranties and representations); or
 - (d) any other matter which, by Law, may not be excluded or limited.
- 18.1.2 Subject to Clauses 18.1.3, 18.1.4 and 18.1.6, the Supplier shall on demand indemnify and keep indemnified the Customer 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:
- (a) the supply, or late or purported late supply or non supply, of the Additional Services;
 - (b) the performance or non-performance by the Supplier of its obligations under the Additional Services Contract;
 - (c) the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury or loss of or damage to property;
 - (d) financial loss arising from any advice given or omitted to be given by the Supplier; or
 - (e) any other loss which is caused directly or indirectly by any act or omission of the Supplier.
- 18.1.3 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is directly caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Additional Services Contract.
- 18.1.4 Subject always to Clause 18.1.1, the aggregate liability of the Supplier to the Customer under or in relation to the Additional Services Contract whether arising from breach of Additional Services Contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise:
- (a) in respect of loss of or damage to property, shall be limited to one million pounds (£1,000,000) per event or series of events; and
 - (b) in respect of all other defaults, claims, losses or damages, shall in no event exceed the higher of:
 - (i) a sum equivalent to one hundred and fifty percent (150%) of the aggregate Charges paid or payable under the Additional Services Contract; or
 - (ii) £50,000 (fifty thousand pounds).
- 18.1.5 Subject always to Clause 18.1.1, the aggregate liability of the Customer to the Supplier under or in relation to the Additional Services Contract whether arising from breach of Additional Services Contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise:
- (a) in respect of loss of or damage to property, shall be limited to one million pounds (£1,000,000) per event or series of events; and

- (b) in respect of all other defaults, claims, losses or damages, shall in no event exceed the higher of:
 - (i) a sum equivalent to one hundred and fifty percent (150%) of the aggregate Charges paid or payable under the Additional Services Contract; or
 - (ii) £50,000 (fifty thousand pounds).
- 18.1.6 Subject to Clauses 18.1.1 and 18.1.7, 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;
 - (e) loss of savings (whether anticipated or otherwise); and/or
 - (f) any indirect, special or consequential loss or damage.
- 18.1.7 The Customer may (inter alia) recover as a direct loss the following which for the avoidance of doubt shall not be subject to the limits of liability set out in Clause 18.1.6:
 - (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 Customer arising from the Supplier's Default;
 - (c) the additional cost of procuring Replacement Services for the remainder of the Additional Services Contract Period following termination of the Additional Services Contract as a result of a Default by the Supplier;
 - (d) any costs incurred by the Customer pursuant to Clause 18.2.3; and
 - (e) any losses, costs, damages, expenses or other liabilities suffered or incurred by the Customer which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Customer Data by the Supplier.
- 18.1.8 Subject to Clause 18.1.1, nothing in the Additional Services Contract shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, unless that liability arises as a direct result of the Customer's breach of the Additional Services Contract.
- 18.1.9 Each Party:
 - (a) shall indemnify and hold harmless the Authority against all claims, proceedings, losses, liabilities, costs (including legal costs and expenses), damages and expenses incurred as a result of any act or omission of that Party arising out of or in connection with this Additional Services Contract, including any breach by that Party of its obligations under the Additional Services Contract, tort (including negligence and breach of statutory duty), misrepresentation or any claim for restitution; and
 - (b) acknowledges and agrees that it is not entitled to bring any claim or proceedings against the Authority for any claims, proceedings, losses, liabilities, costs (including legal costs and expenses), damages and expenses incurred or suffered by that Party as a result of any act or omission of the other Party arising out of or

in connection with the Additional Services Contract, including breach of Additional Services Contract by the other Party, tort (including negligence and breach of statutory duty), misrepresentation or any claim for restitution.

18.2 Insurance

- 18.2.1 The Supplier shall effect and maintain in accordance with Good Industry Practice a policy or policies of insurance with a reputable insurance company in respect of all risks of the Supplier under or in relation to the Additional Services Contract. Such policies shall include any insurances specified in the Order Form. Such policies shall include cover in respect of any physical damage likely to be caused by the Supplier in performing the Additional Services, and any insurances required by Law. Such insurance shall be maintained for the Additional Services Contract Period and for the Minimum Insurance Period.
- 18.2.2 The Supplier shall give the Customer, on request:
- (a) copies of all insurance policies referred to in this Clause 18.2 (Insurance); or
 - (b) a broker's verification of insurance which demonstrates that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 18.2.3 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required pursuant to this Clause 18.2, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 18.2.4 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Additional Services Contract.
- 18.2.5 The Supplier shall ensure that all agents, professional consultants and Sub-Additional Services Contractors involved in the supply of the Additional Services effect and maintain appropriate professional indemnity insurance during the Additional Services Contract Period and for the Minimum Insurance Period.
- 18.2.6 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall notify the Customer as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.
- 18.2.7 The Supplier agrees that the terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Additional Services Contract. It shall be the responsibility of the Supplier to ensure that the amount of insurance cover is adequate to enable it to satisfy all its potential liabilities subject to the limit of liability specified in the Additional Services Contract.

18.3 Taxation, National Insurance and Employment Liability

The Parties acknowledge and agree that the Additional Services Contract constitutes a Additional Services Contract for the provision of services and not a Additional Services Contract of employment. The Supplier shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have assumed or been imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HMRC as an employer of the Staff whether during the Additional Services Contract Period or arising from termination or expiry of the Additional Services Contract.

19 Termination

19.1 Termination on insolvency

- 19.1.1 The Customer may terminate the Additional Services Contract with immediate effect by giving notice in writing to the Supplier 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 (which is not dismissed within fourteen (14) days of its service), a notice is given or an order is made for its winding-up or an application is made for the appointment of a provisional liquidator; or
 - (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 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) a moratorium comes into force pursuant to the Insolvency Act 1986; or
 - (h) any event similar to those listed in Clause 19.1.1(a) to 19.1.1(g) occurs under the law of any jurisdiction.

19.2 Termination relating to Guarantee

- 19.2.1 Where the Supplier has procured a Guarantee pursuant to Clause 3 (Guarantee), the Customer may terminate the Additional Services Contract with immediate effect if:
- (a) the Guarantor withdraws the Guarantee for any reason whatsoever;
 - (b) the Guarantor is in breach or anticipatory breach of the Guarantee;
 - (c) any of the events set out in Clauses 19.1.1(a) to 19.1.1(h) occurs in respect of the Guarantor; or
 - (d) the Guarantee becomes invalid or unenforceable for any reason whatsoever,
- and in each case the Guarantee is not immediately replaced by an alternative agreement acceptable to the Customer.

19.3 Termination for Cause or Default

- 19.3.1 The Customer may terminate the Additional Services Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a Default and if:
- (a) the Supplier has not remedied the Default to the satisfaction of the Customer within thirty (30) Working Days or such other period as may be specified by the

Customer, 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 Customer, capable of remedy; or
- (c) the Default is a Material Breach of the Additional Services Contract; or
- (d) the Default is persistent such that, taken together with other, similar or repeated breaches, it has a substantial impact on the Customer.

19.3.2 Either Party may terminate the Additional Services Contract immediately in Writing the other Party fails to make, when due, any undisputed payment required to be made by it under the Additional Services Contract, and such failure is not remedied on or before the twentieth (20th) Working Day after notice of such failure is given to the Party, save that:

- (a) any notice of termination from the Supplier to the Customer provided under this Clause 19.3.2 shall be deemed cancelled and ineffective if the Customer pays the undisputed sum of money due to the Supplier at least five (5) Working Days prior to the expiry of the notice of termination.

19.3.3 The Customer may terminate the Additional Services Contract immediately upon written notice in the event that:

- (a) any representation or warranty made by the Supplier in the Additional Services Contract is or becomes untrue, inaccurate or misleading in any material respect; or
- (b) any necessary licence, authorisation or consent of the other Party, including any financial services licence or exemption from holding such a licence, is revoked, not renewed or suspended, or any applicable conditions of such licence are not complied with.

19.4 Termination of Framework Agreement

The Customer may terminate the Additional Services Contract with immediate effect by giving written notice to the Supplier if the Framework Agreement is terminated for any reason whatsoever.

19.5 Termination on financial standing

The Customer may terminate the Additional Services Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where (in the reasonable opinion of the Customer), there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

- 19.5.1 adversely impacts on the Supplier's ability to supply the Additional Services in accordance with the Additional Services Contract; or
- 19.5.2 could reasonably be expected to have an adverse impact on the Supplier's ability to supply the Additional Services in accordance with the Additional Services Contract.

19.6 Termination on audit

The Customer may terminate the Additional Services Contract by serving notice in writing with effect from the date specified in such notice if the Supplier commits a Default under Clause 6 of the Framework Agreement insofar as relating to the Additional Services Contract.

19.7 Termination in relation to benchmarking

The Customer may terminate the Additional Services Contract by serving notice on the Supplier in writing with effect from the date specified in such notice if the Supplier refuses or fails to comply with its obligations as set out in Schedule 13 of the Framework Agreement.

19.8 Termination on bribery and corruption

The Customer may terminate the Additional Services Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where any conduct prohibited in Clause 24 and/or Clause 26 has occurred.

19.9 Termination by the Customer for material adverse publicity

The Customer may terminate the Additional Services Contract by written notice to the Supplier, with termination taking effect on such date as may be specified in the notice of termination, in the event that, in the sole opinion of the Customer, the Supplier:

19.9.1 breaches the provisions of Clause 21.3; or

19.9.2 causes, permits, contributes or is in any way connected to material adverse publicity relating to or affecting the Customer and/or the Additional Services Contract.

19.10 Termination for continuing Force Majeure event

The Party that is not the Affected Party may, by written notice to the Affected Party, terminate the Additional Services Contract with termination taking effect on the date specified in the notice of termination if a Force Majeure event endures for a continuous period of more than three (3) Months.

19.11 Partial termination

Where the Customer has any right of termination under the Additional Services Contract, it shall be entitled to terminate all of the Additional Services Contract, or terminate the Additional Services Contract in respect of only some or all of the Premises that are affected. In the case of partial termination, Clause 20 shall apply, but only in respect of those Premises in which the Additional Services Contract has been terminated.

20 Consequences of expiry or termination

20.1 Subject to Clause 20.2, the Supplier shall indemnify the Customer in full upon demand against any additional costs incurred by the Customer in making alternative arrangements for the alternative supply of the Additional Services as a result of the Customer's termination of the Additional Services Contract pursuant to Clause 19, but excluding termination pursuant to:

20.1.1 Clause 19.2; or

20.1.2 Clause 19.5, except where the Framework Agreement was terminated as a result of the Supplier's breach of the Framework Agreement.

20.2 The Customer shall take reasonable steps to mitigate the additional expenditure referred to in Clause 20.1.

20.3 On the expiry or termination of the Additional Services Contract for any reason, the Supplier shall:

20.3.1 immediately return to the Customer all Confidential Information in the Supplier's possession or in the possession or under the control of any Sub-Additional Services Contractors, which was obtained or produced in the course of providing the Additional Services;

- 20.3.2 cease to use the Customer Data and, at the direction of the Customer provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media agreed with the Customer and/or the Replacement Supplier;
- 20.3.3 except where the retention of Customer Data is required by Law, on the earlier of the receipt of the Customer's written instructions or twelve (12) months after the date of expiry or termination of the Additional Services Contract, destroy all copies of the Customer Data and promptly provide written confirmation to the Customer that the data has been destroyed.
- 20.3.4 assist and co-operate with the Customer and/or Replacement Supplier to ensure an orderly transition of the provision of the Additional Services to the Replacement Supplier as reasonably requested by the Customer;
- 20.3.5 return to the Customer any sums prepaid in respect of any of the Additional Services not provided by the date of expiry or termination (howsoever arising); and
- 20.3.6 promptly provide all information concerning the provision of the Additional Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Additional Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.
- 20.4 If the Supplier fails to comply with Clauses 20.3.1 to 20.3.6, the Customer may recover possession of the items to which they relate and the Supplier hereby grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted agents or Sub-Additional Services Contractors where any such items may be held.
- 20.5 The Supplier shall provide all assistance under Clause 20.3 free of charge.
- 20.6 Save as otherwise expressly provided in the Additional Services Contract:
 - 20.6.1 termination or expiry of the Additional Services Contract shall be without prejudice to any rights, remedies or obligations accrued under the Additional Services Contract prior to termination or expiration and nothing in the Additional Services Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
 - 20.6.2 termination or expiry of the Additional Services Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under the following Clauses or any other provision which expressly or by implication is intended to come into or remain in force on or after termination of the Contract:
 - (a) 1 (General provisions);
 - (b) 6 (Exit planning);
 - (c) 11 (Customer Payment and payment terms);
 - (d) 15 (Intellectual Property Rights);
 - (e) 16.5 (Confidentiality);
 - (f) 16.7 (Freedom of information);
 - (g) 18 (Liabilities);
 - (h) 20 (Consequences of expiry or termination);

- (i) 24 (Prevention of bribery and corruption);
- (j) 26 (Prevention of Fraud and Conflict of Interest);
- (k) 30 (Cumulative remedies);
- (l) 36 (Conflicts of interest);
- (m) 38 (The Contracts (Rights of Third Parties Act 1999);
- (n) 39 (Notices);
- (o) 41 (Disputes and governing Law); and
- (p) 42 (Official Secrets Acts)

21 Publicity, media and official enquiries

- 21.1 The Supplier shall not make any press announcements or publicise the Additional Services Contract in any way without Approval and shall procure that the Staff and its professional advisors comply with this Clause 21.
- 21.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise the Additional Services Contract in accordance with any legal obligation upon the Customer, including any examination of the Additional Services Contract by the Auditor.
- 21.3 The Supplier shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

22 Health and safety

- 22.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Additional Services Contract. The Customer 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 Additional Services Contract.
- 22.2 While on the Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.
- 22.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Additional Services Contract on the Premises where that incident causes any personal injury or damage to property or which could cause any personal injury or could give rise to personal injury.
- 22.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other Laws relating to health and safety, which may apply to Staff working on the Premises in the supply of the Additional Services under the Additional Services Contract.
- 22.5 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 Customer on request.

23 Environmental requirements

The Supplier shall perform its obligations under the Additional Services Contract in a manner consistent with the Customer's environmental policy concerning the conservation of energy, water, wood, paper and other resources, reducing waste and phasing out the use of ozone depleting substances and minimising the release of greenhouse gases, volatile organic

compounds and other substances damaging to health and the environment (as such policies are notified to the Supplier from time to time).

24 Prevention of bribery and corruption

24.1 The Supplier shall not:

- 24.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Customer or other Contracting Body or any other public body, or person employed by or on behalf of the Customer or other Contracting Body or any other public body, any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to the Additional Services Contract;
- 24.1.2 engage in or commit, and shall procure that no Staff, or any person acting on the Supplier's behalf, shall engage in or commit, in connection with the Additional Services Contract, a Prohibited Act.

24.2 The Supplier shall:

- 24.2.1 in relation to the Additional Services Contract, act in accordance with the Ministry of Justice Guidance pursuant to Section 9 of the Bribery Act 2010;
- 24.2.2 immediately notify the Customer and the Authority if it suspects or becomes aware of any breach of this Clause 24;
- 24.2.3 respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this Clause 24 and the Supplier shall co-operate with any investigation and allow the Customer to audit Supplier's books, records and any other relevant documentation in connection with the breach;
- 24.2.4 if so required by the Customer, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing the compliance with this Clause 24 by the Supplier and all persons associated with it or its Sub-Additional Services Contractors or other persons who are supplying the Additional Services. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
- 24.2.5 have, maintain and enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it and any of its Staff, or any person acting on the Supplier's behalf, from committing a Prohibited Act.

24.3 If the Supplier, its Staff, or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge fails to do anything required, or does anything prohibited, by:

- 24.3.1 this Clause 24; or
- 24.3.2 the Bribery Act 2010 in relation to the Additional Services Contract or any other Additional Services Contract with the Customer or Contracting Body or any other public body or any person employed by or on behalf of the Customer or Contracting Body or a public body in connection with the Additional Services Contract,

the Customer shall be entitled to terminate the Additional Services Contract by written notice with immediate effect.

- 24.4 Without prejudice to its other rights and remedies under this Clause 24, the Customer shall be entitled to recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from and against:
- 24.4.1 the amount of value of any gift, consideration or commission referred to in this Clause 24; and
 - 24.4.2 any other loss sustained by the Customer in consequence of any breach of this Clause 24.
- 24.5 For the avoidance of doubt, the Parties agree that the amounts payable by the Supplier to the Authority under the Framework Agreement do not constitute a payment of commission for the purposes of this Clause 24.
- 24.6 Notwithstanding the provisions of Clause 41.2, any dispute relating to the interpretation of this Clause 24 and/or the amount of any gift, consideration or commission shall be determined solely by the Customer and the Customer's decision shall be final and conclusive.
- 24.7 Nothing contained in this Clause 24 shall prevent the Supplier paying such commission or bonuses to his own staff in accordance with their agreed Additional Services Contracts of employment.
- 24.8 Any dispute or question arising in respect of:
- 24.8.1 the interpretation of this Clause 24; or
 - 24.8.2 the right of the Customer to terminate this Additional Services Contract; or
 - 24.8.3 the amount or value of any gift, consideration or commission,
- may be referred by either Party to the Authority, whose decision shall be final and conclusive.

25 **Discrimination**

The Customer is subject to the Equality Act 2010. The Supplier shall, and shall procure that its sub-Additional Services Contractors, agents and personnel shall, comply with the Equality Act 2010. Upon the Supplier breaching, or causing the Customer to breach, the Equality Act 2010 the Customer shall be entitled to terminate this Additional Services Contract with immediate effect by notice in writing to the Supplier and without prejudice to any other rights or remedies of either Party in respect of the breach concerned or any other breach of this Additional Services Contract.

26 **Prevention of Fraud and conflicts of interest**

- 26.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by the Supplier Staff or the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 26.2 The Supplier shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 26.3 If the Supplier commits any Fraud in relation to this or any other agreement with a Contracting Authority or the Customer, the Customer may:
- 26.3.1 terminate this Additional Services Contract with immediate effect by giving the Supplier notice in writing and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Term; and/or

- 26.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this Clause 26.
- 26.4 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Supplier Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Supplier Staff and the duties owed to the Customer under the provisions of this Additional Services Contract.
- 26.5 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 26.4 arises or is reasonably foreseeable.
- 26.6 The Customer reserves the right to terminate this Additional Services Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of this Additional Services Contract. The actions of the Customer pursuant to this Clause 26 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 26.7 The Supplier shall;
- 26.7.1 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) (**CFA**) [●to ensure that associated persons of the Supplier] do not commit tax evasion facilitation offences as defined under the CFA;
- 26.7.2 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the CFA.
- 26.8 This Clause 26 shall apply during the Term and for a period of two (2) years after expiry of the Term.
- 27 Transfer and Sub-Additional Services contracting**
- 27.1 The Customer has consented to the engagement of the Sub-Contractors listed in the Order Form. Subject to this Clause 27, the Supplier shall not otherwise Sub-Contract, assign, novate, or in any other way dispose of the Additional Services Contract or any part of it without Approval. The Supplier shall not substitute or remove a Sub-Contractor without the prior written consent of the Authority and the Customer. The Supplier shall supply such information about proposed Sub-Contractors (including providing copies of any proposed Sub-Contracts) as the Customer may reasonably require in order to enable the Customer to consider and decide whether to grant Approval, and the Supplier shall effect any modifications or amendments to such proposed Sub-Contracts that the Customer may require as a condition of the Customer's Approval in relation to any such Sub-Contract (including, without limitation, any or all of the provisions set out in Clause 27.4).
- 27.2 Sub-Contracting any part of the Additional Services Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Additional Services Contract. Notwithstanding any permitted Sub-Contract in accordance with this Clause 27, the Supplier shall be responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as though they are its own. An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that the Sub-Contractors and the Staff also do, or refrain from doing, such act or thing.
- 27.3 Where the Customer has consented to the placing of Sub-Contracts, copies of each Sub-Additional Services Contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.

- 27.4 The Customer may, at its sole and absolute discretion, require the Supplier to ensure that each Sub-Contract shall include:
- 27.4.1 a right under the Contracts (Rights of Third Parties) Act 1999 for the Customer to enforce the terms of that Sub-Contract as if it were the Supplier;
 - 27.4.2 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Customer;
 - 27.4.3 a provision requiring the Sub-Contractor to enter into a direct confidentiality agreement with the Customer on the same terms as set out in Clause 16.5;
 - 27.4.4 a provision requiring the Sub-Contractor to comply with the anti-corruption, anti-bribery and anti-fraud requirements pursuant to Clause 24 and Clause 26;
 - 27.4.5 a requirement that the Supplier pay any undisputed sum due to the relevant Sub-Contractor within a specified period that does not exceed thirty (30) calendar days from the date the Supplier receives the Sub-Contractor's invoice; and
 - 27.4.6 a provision restricting the ability of the Sub-Contractor to further Sub-Contract any elements of the service provided to the Supplier without first seeking the prior written consent of the Customer and the Authority, which the Customer and Authority may grant or withhold at their sole and absolute discretion.
- 27.5 If the Customer is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms than the Supplier with respect to the supply of any goods, services or other items used by the Supplier in the supply of the Additional Services, then the Customer may require the Supplier to replace its existing commercial terms with that Sub-Contractor or third party with the more favourable commercial terms obtained by the Customer in respect of the relevant goods, services or other items.
- 27.6 If the Customer exercises the option pursuant to Clause 27.5, then the Charges shall be reduced by a proportionate amount to be agreed between the Parties (such agreement not to be unreasonably withheld or delayed).
- 27.7 The Customer may assign, novate or otherwise dispose of its rights and/or obligations under the Additional Services Contract or any part thereof to:
- 27.7.1 any Contracting Body; or
 - 27.7.2 any Crown body; or
 - 27.7.3 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 Customer; or
 - 27.7.4 any private sector body which substantially performs the functions or any relevant functions of the Customer,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Additional Services Contract.
- 27.8 Any change in the legal status of the Customer such that it ceases to be a Contracting Body shall not affect the validity of the Additional Services Contract. In such circumstances, the Additional Services Contract shall bind and inure to the benefit of any successor body to the Customer.
- 27.9 Where, pursuant to the Framework Agreement, the Authority has issued a notice to the Supplier requiring the Supplier to assign or transfer the Customer to a new Electricity Supplier, the Parties shall execute such documents, give such consents, provide each other with such assistance and carry out all other actions as are necessary to enable such transfer as are required by the Authority.

- 27.10 For the purposes of this Clause 27 each Party shall at its own cost and expense, use its reasonable endeavours to carry out such further actions (including the execution of further documents) as the other Party reasonably requires from time to time for the purpose of giving full effect to this Clause 27.

28 **Force Majeure**

- 28.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Additional Services Contract to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use its reasonable endeavours to continue to perform its obligations under the Additional Services Contract for the duration of such Force Majeure.
- 28.2 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 28.1 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.
- 28.3 If an event of Force Majeure affects the Additional Services, the Customer may direct the Supplier to procure those Services from a third party service provider in which case the Supplier will be liable for payment for the provision of those Services for as long as the delay in performance by the Supplier continues. The Supplier shall use its best endeavours to mitigate the costs incurred for the procurement of such Services from a third party service provider as contemplated in this Clause 28.3.
- 28.4 The Supplier will not have the right to any payment from the Customer under the Additional Services Contract where the Supplier is unable to provide the Additional Services because of an event of Force Majeure. However, if the Customer directs the Supplier to use a third party service provider pursuant to Clause 28.3, then the Customer will pay the Supplier the Charges which the Supplier shall pass-through to such third party service provider without charge or any deduction whether for its costs of administering such payments or otherwise. If, in respect of the Additional Services that are subject to Force Majeure, the third party service provider's costs are greater than the Charges, the Customer will pay the Supplier the difference between the Charges and the third party service provider's costs, provided that the Supplier has satisfied the Customer that the Supplier has complied with its obligations under Clause 28.3 to mitigate all third party service provider costs, and in such circumstances the Supplier shall pass-through such difference to such third party service provider without charge or any deduction whether for its costs of administering such payments or otherwise.
- 28.5 A Party (the **Affected Party**) cannot claim relief pursuant to this Clause 28:
- 28.5.1 if the relevant Force Majeure event results from any wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure event of the Affected Party;
- 28.5.2 if the relevant Force Majeure event results from a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure event); or
- 28.5.3 to the extent that the Affected Party does not use all reasonable endeavours and Good Industry Practice, to mitigate the effect of the Force Majeure event and to continue to perform the relevant obligation notwithstanding the existence of the Force Majeure event.

29 **Waiver**

No delay or omission by either Party in exercising any right, power or remedy shall impair or be construed as a waiver of such right, power or remedy and any single or partial exercise thereof shall not preclude any future exercise of the same.

30 **Cumulative remedies**

Except as otherwise expressly provided by the Additional Services Contract, all remedies available to either Party for breach of the Additional Services Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

31 **Further assurances**

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of the Additional Services Contract.

32 **Variation**

32.1 Subject to the provisions of this Clause 32, the Customer may request a variation to the Additional Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a **(Variation)**.

32.2 The Customer may request a Variation by completing and sending the Variation form set out in Appendix B (the **Variation Form**) to the Supplier giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.

32.3 In the event that the Supplier is unable to provide the Variation to the Additional Services or where the Parties are unable to agree a change to the Charges, the Customer may agree to continue to perform their obligations under the Additional Services Contract without the Variation.

32.4 If the Parties agree the Variation and any variation in the Charges, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Additional Services Contract.

33 **Severability**

If any provision of this Additional Services Contract is declared invalid, unenforceable or illegal by any court of competent jurisdiction or any Competent Authority such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Additional Services Contract which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

34 **Mistakes in information**

The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier in connection with the supply of the Additional Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein, except where such mistakes are the fault of the Customer.

35 **Supplier's status**

At all times during the Additional Services Contract Period the Supplier shall be an independent Additional Services Contractor and nothing in the Additional Services Contract shall create a Additional Services Contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Additional Services Contract.

36 Conflicts of interest

- 36.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Customer under the provisions of the Additional Services Contract.
- 36.2 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 36.1 arises or is reasonably foreseeable.
- 36.3 The Customer reserves the right to terminate the Additional Services Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of the Additional Services Contract. The actions of the Customer pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

37 Entire agreement

- 37.1 The Additional Services Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 37.2 Each of the Parties acknowledges and agrees that in entering into the Additional Services Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Additional Services Contract.
- 37.3 The Supplier acknowledges that it has:
- 37.3.1 entered into the Additional Services Contract in reliance on its own due diligence alone; and
 - 37.3.2 received sufficient information required by it in order to determine whether it is able to provide the Additional Services in accordance with the terms of the Additional Services Contract.
- 37.4 Nothing in Clauses 37.1 and 37.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 37.5 The Order Form may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

38 The Contracts (Rights of Third Parties) Act 1999

- 38.1 Except where otherwise provided in the Additional Services Contract a person who is not a party to the Additional Services Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.
- 38.2 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of the Additional Services Contract or any one or more Clauses of it.

39 Notices

39.1 Any notices or other communications sent under this Additional Services Contract must be:

39.1.1 in writing;

39.1.2 be authenticated by signature or by such other method as agreed between the Parties;

39.1.3 be marked for the attention of the appropriate department or officer; and

39.1.4 be marked in a prominent position with the relevant Additional Services Contract number for the Additional Services Contract.

39.2 Notices may be served in the ways set out below and the following table sets out the respective deemed time and proof of service:

| Manner of Delivery | Deemed time of Delivery | Proof of Service |
|--|--|---|
| Personal delivery | On delivery, provided delivery is between 9.00 am and 5.00 pm on a Working Day (or otherwise on the following Working Day) | properly addressed and delivered |
| Prepaid first class or recorded delivery domestic postal service | 9.00 am on the third Working Day after posting or at the time and date recorded by the delivery service | properly addressed prepaid and posted |
| Prepaid airmail post | 9.00 am on the tenth Working Day after posting or at the time and date recorded by the delivery service | properly addressed prepaid and posted |
| Electronic confirmation | On receipt by the sender of verification of the transmission from the receiving instrument provided transmission is between 9.00 am and 5.00 pm on a Working Day (or otherwise on the Working Day following receipt by the sender of verification of the transmission from the receiving instrument) | properly addressed and transmitted (with no transmission error), and provided a copy is sent by prepaid first class or recorded delivery on the same or the following Working Day |
| Manner of Delivery | on the day of receipt if received before 17:00 hours on a Working Day or otherwise on the 1st Working Day after receipt | receipt in legible form |

39.3 For the purposes of Clause 39.2, the address, email address of each Party shall be the address, email address set out in the Order Form or as notified under Clause 39.4.

- 39.4 Either Party may change its address for service by serving a notice in accordance with this Clause 39.
- 39.5 For the avoidance of doubt, any notice given under the Additional Services Contract shall not be validly served if sent by or electronic mail (email) if not confirmed by a letter.
- 40 **Legislative change**
- The Supplier shall neither be relieved of its obligations under the Additional Services Contract nor be entitled to an increase in the Charges as the result of a Change in Law.
- 41 **Disputes and governing law**
- 41.1 Governing law and jurisdiction
- The Additional Services Contract and any dispute or claim arising out of or in connection with it (including non-Additional Services Contractual claims) shall be governed by and interpreted in accordance with the Laws of England. Subject to Clause 41.2, the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with the Additional Services Contract (including regarding the non-Additional Services Contractual obligations of the Parties).
- 41.2 Dispute Resolution
- 41.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Additional Services 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 the level of representative of each Party specified in the Order Form.
- 41.2.2 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.
- 41.2.3 Nothing in this Dispute Resolution Procedure shall prevent the Customer or the Supplier from applying for injunctive relief in the case of:
- (a) breach or threatened breach of confidentiality by the other Party;
 - (b) infringement or threatened infringement of its pre-existing Intellectual Property Rights; or
 - (c) infringement or threatened infringement of the Intellectual Property Rights of a third party.
- 41.2.4 If the dispute cannot be resolved by the Parties pursuant to Clause 41.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 41.2.6 unless:
- (a) the Customer considers that the dispute is not suitable for resolution by mediation; or
 - (b) the Supplier does not agree to mediation.
- 41.2.5 The obligations of the Parties under the Additional Services Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier and the Staff shall comply fully with the requirements of the Additional Services Contract at all times.

- 41.2.6 The procedure for mediation is 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 the mediation provider specified in Clause 41.2.6(a) 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 Additional Services Contract without the prior written consent of both Parties; and
 - (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.

42 Official secrets

42.1 In this Clause:

- 42.1.1 **Secret Matter** means any matter connected with this Additional Services Contract or its performance, which is designated in writing by the Customer as 'Top Secret', 'Secret' or 'Official', and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;
- 42.1.2 **Employee** shall include any person who is an employee or director of the Supplier or who occupies the position of a director of the Supplier, by whatever title given.

42.2 The Supplier shall:

- 42.2.1 take all reasonable steps to ensure that all Employees engaged on any work in connection with this Additional Services Contract have notice that the Official Secrets Acts 1911-1989 applies to them and will continue so to apply after the completion or termination of this Additional Services Contract; and
- 42.2.2 if directed by the Customer, ensure that any Employee shall sign a statement acknowledging that, both during the Term and after the completion or termination, of the Additional Services Contract he is bound by the Official Secrets Acts 1911-1989 (and where applicable by any other legislation).

- 42.3 Unless it has the written authorisation of the Customer to do otherwise, neither the Supplier nor any of its Employees shall, either before or after the completion or termination of this Additional Services Contract, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:
- 42.3.1 who is not a British citizen;
 - 42.3.2 who does not hold the appropriate authority for access to the Secret Matter; or
 - 42.3.3 in respect of whom the Customer has notified the Supplier in writing that the Secret Matter shall not be disclosed to or acquired by that person.
- 42.4 If at any time either before or after the completion or termination of this Additional Services Contract, the Supplier or any of its Employees discovers or suspects that any unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Supplier shall forthwith inform the Customer of the matter with full particulars thereof.
- 42.5 If the Supplier proposes to make a sub-Additional Services Contract which will involve the disclosure of Secret Matter to the sub-Additional Services Contractor, the Supplier shall:
- 42.5.1 submit for approval of the Customer the name of the proposed sub-Additional Services Contractor, a statement of the work to be carried out and any other details known to the Supplier which the Customer shall reasonably require;
 - 42.5.2 incorporate into the sub-Additional Services Contract the terms of the Appendix to this Additional Services Contract and such secrecy and security obligations as the Customer shall direct;
 - 42.5.3 inform the Customer immediately it becomes aware of any breach by the sub-Additional Services Contractor of any secrecy or security obligation and, if requested to do so by the Customer, terminate the sub-Additional Services Contract.
- 42.6 The Customer shall be entitled to terminate this Additional Services Contract immediately if:
- 42.7 the Supplier is in breach of any obligation under this Clause 42; or
- 42.8 the Supplier is in breach of any secrecy or security obligation imposed by any other Additional Services Contract with the Crown.

43 Contractor status

Nothing in this Additional Services Contract shall create or be construed as creating a partnership, joint venture, a of employment or relationship of employer and employee, or a relationship of principal and agent between the Customer and the Supplier.

Annex – Official Secrets Terms and Conditions to be Included in any supplier sub-contract

Provisions to be included in relevant Sub-contracts

1 Definitions

1.1 In this Clause:

| | |
|----------------------|---|
| the Customer | REDACTED |
| Employee | shall include any person who is an employee or director of the Second Party or who occupies the position of a director of the Second Party, by whatever title given |
| Secret Matter | means any matter connected with this Agreement or its performance, which the First Party informs the Second Party in writing has been designated by the Customer as 'Top Secret', 'Secret' or 'Official', and shall include any information concerning the content of such matter and anything which contains or may reveal that matter |

2 The Official Secrets Acts

2.1 The Second Party shall:

- 2.1.1 take all reasonable steps to ensure that all Employees engaged on any work in connection with this Agreement have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of this Agreement; and
- 2.1.2 if directed by the First Party or the Customer, ensure that any Employee shall sign a statement acknowledging that, both during the Term and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable by any other legislation).

3 Security measures

- 3.1 Unless it has the written authorization of the Customer to do otherwise, neither the Second Party nor any of its Employees shall, either before or after the completion or termination of this Agreement, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:
 - 3.1.1 who is not a British citizen;
 - 3.1.2 who does not hold the appropriate authority for access to the protected matter;
 - 3.1.3 in respect of whom the Customer has notified the Second Party in writing that the Secret Matter shall not be disclosed to or acquired by that person;
 - 3.1.4 who is not an Employee of the Second Party; and
 - 3.1.5 who is an Employee of the Second Party and has no need to know the information for the proper performance of this Agreement.
- 3.2 Unless he has the written permission of the Customer to do otherwise, the Second Party and his Employees shall, both before and after the completion or termination of this Agreement, take all reasonable steps to ensure that:

- 3.2.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of this Agreement; and
- 3.2.2 any Secret Matter is at all times strictly safeguarded in accordance with the Manual of Protective Security and upon request, is delivered up to the Customer who shall be entitled to retain it. A decision of the Customer on the question of whether the Second Party has taken or is taking reasonable steps as required by this Clause, shall be final and conclusive.
- 3.3 The Second Party shall:
 - 3.3.1 provide to the Customer:
 - (a) upon request, such records giving particulars of those Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with Clause [●];
 - (b) upon request, such information as the Customer may from time to time require so as to be satisfied that the Second Party and his Employees are complying with his obligations under this Clause, including the measures taken or proposed by the Second Party so as to comply with his obligations and to prevent any breach of them; and
 - (c) full particulars of any failure by the Second Party and his Employees to comply with any obligations relating to Secret Matter arising under this Condition immediately upon such failure becoming apparent; and
 - 3.3.2 ensure that, for the purpose of checking the Second Party's compliance with the obligation in Clause 3.3.2, a representative of the First Party or the Customer shall be entitled at any time to enter and inspect any premises used by the Second Party which are in any way connected with this Agreement and inspect any document or thing in any such premises, which is being used or made for the purposes of this Agreement. Such representative shall be entitled to all such information as he may reasonably require.
- 3.4 If at any time either before or after the completion or termination of this Agreement, the Second Party or any of his Employees discovers or suspects that any authorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Second Party shall forthwith inform the Customer of the matter with full particulars thereof.

4 Sub-Contracts

- 4.1 If the Second Party proposes to make a sub-contract which will involve the disclosure of Secret Matter to the Sub-Contractor, the Second Party shall:
 - 4.1.1 submit for approval of the Customer the name of the proposed sub-contractor, a statement of the work to be carried out and any other details known to the Second Party which the Customer shall reasonably require;
 - 4.1.2 incorporate into the sub-contract the terms of this Clause and such secrecy and security obligations as the Customer shall direct; and
 - 4.1.3 inform the Customer immediately it becomes aware of any breach by the sub-contractor of any secrecy or security obligation and, if requested to do so by the Customer, terminate this Agreement.

5 Termination

- 5.1 The First Party shall be entitled to terminate this Agreement immediately if:

- 5.1.1 the Second Party is in breach of any obligation under this Clause; or
- 5.1.2 the Second Party is in breach of any secrecy or security obligation imposed by any other contract with the Crown; or
- 5.1.3 where the Customer considers the circumstances of the breach authorised the secrecy or security of the Secret Matter and notifies its contractor accordingly.

Appendix A

Definitions

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| Act | the Electricity Act 1989 and the regulations made thereunder |
| Additional Services | means the services to be provided by the Supplier as referred to in the Order Form, and any Additional requirements of these Call Off Terms in respect of the same |
| Additional Services Contract | means this written agreement between the Customer and the Supplier consisting of the Order Form and the Call Off Terms |
| Additional Services Contract Period | has the meaning given to that expression in Clause 4.2 |
| Affiliate | means, in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with that body corporate |
| Affected Party | means the Party seeking to claim relief in respect of a Force Majeure |
| Approval | means the prior written consent of the Customer and Approve Approves and Approved shall be construed accordingly |
| Auditor | means the National Audit Office or an auditor appointed by the Audit Commission, the Customer or the Authority as the context requires |
| Authority | means the Minister for the Cabinet Office as represented by the Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at Floor The Capital Old Hall Street Liverpool L3 9PP |
| BSC | means the Balancing and Settlement Code and any other equivalent code in addition to or substitution thereof, required to be in place pursuant to a transmission licence granted under section 6(1)(b) of the Act |
| Call Off Additional Services Contract | the Call Off terms, in relation to Additional Services, set out at Schedule 2B to the Framework Agreement. |
| Change in Law | means any change in Law which impacts on the supply of the Additional Services and performance of the Additional Services Contract which comes into force after the Commencement Date |
| Charges | means, in respect of a Premises, the Supplier's charges for the Additional Services (inclusive of the management charge payable by the Supplier to the Authority under the Framework Agreement), as set out in the Order Form |
| Code | means the Secretary of State's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 |

| | |
|---|--|
| Commencement Date | means the date set out as such in the Order Form |
| Commercially Sensitive Information | means the information (if any) listed or described as such in the Order Form, which the Supplier has indicated to the Customer would, if disclosed by the Customer, in the Supplier's opinion cause the Supplier significant commercial disadvantage or material financial loss |
| Competent Authority | the Secretary of State, GEMA and any local or national agency, authority, department, inspectorate, minister, ministry, official or public, judicial, regulatory or statutory body or person (whether autonomous or not) of the government of the United Kingdom |
| Confidential Information | means the Customer Confidential Information and/or the Supplier Confidential Information as the context shall permit |
| Contracting Body | has the meaning given to that expression in the Framework Agreement |
| Control | means control in either of the senses defined in section 1124 and 450 Corporation Tax Act 2010 and Controls and Controlled shall be interpreted accordingly |
| Conviction | means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023), or being placed on a list kept pursuant to the Protection of Children Act 1999 (or any subsequent law) or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006) |
| Crown | 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, persons, commissions or agencies from time to time carrying out functions on its behalf |
| CUSC | means the Connection and Use of System Code and any other equivalent code in addition to or substitution thereof, required to be in place pursuant to a transmission licence granted under section 6(1)(b) of the Act |
| Customer | means the customer(s) identified in the Order Form |
| Customer Confidential Information | means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, IPR, personnel, and suppliers of the Customer, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked confidential) or which ought reasonably be considered to be confidential |

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| Customer Contract | means the Electricity supply contract entered into by the Supplier and the Customer pursuant to the Framework Agreement |
| Customer Data | <p>means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:</p> <p>(a) are supplied to the Supplier by or on behalf of the Customer; and/or</p> <p>the Supplier is required to generate, process, store or transmit pursuant to the Additional Services Contract</p> |
| Customer Intellectual Property Rights | (b) mean any Intellectual Property Rights vested in or licensed to the Customer prior to or independently of the performance by the Supplier of its obligations under the Additional Services Contract, or arising out of the performance by the Customer of its obligations under the Additional Services Contract |
| Customer Representative | means the representative named as such in the Order Form, or such other person appointed by the Customer from time to time in relation to the Additional Services Contract |
| Default | means any breach of the obligations of the Supplier (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 Supplier or the Staff in connection with or in relation to the subject-matter of the Additional Services Contract |
| Dispute Resolution Procedure | means the Dispute Resolution Procedure set out in Clause 41.2 |
| Electricity Supplier | a person who is authorised to supply electricity to customers pursuant to a licence granted to it by GEMA pursuant to Section 6 of the Act |
| 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 |
| Equipment | means the Equipment referred to in the Order Form |
| FOIA | means the Freedom of Information Act 2000 and any subordinate legislation made under that 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, occurrence, circumstance or matter outside of the reasonable control of the Affected Party which prevents or materially delays the Affected Party from performing its obligations under the Additional Services Contract, including: |

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| | <p>(a) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</p> <p>(b) acts of the Crown or Regulatory Bodies;</p> <p>(c) fire, flood, disaster or any act of nature; or</p> <p>(d) an industrial dispute affecting a third party for which a substitute third party is not reasonably available, but excluding any industrial dispute relating only to the Staff (or a subset of them);</p> <p>but always excluding: (1) any event, occurrence, circumstance or matter to the extent it (or its consequences) would have been avoided had the Affected Party acted in accordance with Good Industry Practice; (2) any event, occurrence, circumstance or matter to the extent it (or its consequences) is within the scope or contemplation of the disaster recovery or business continuity plans required of the Affected Party in accordance with the Additional Services Contract or Good Industry Practice; (3) any failure or delay caused by a third party in the performance of such third party's obligations to the Affected Party, unless such third party is itself prevented or delayed from complying with its obligations as result of a Force Majeure event; and/or (4) lack of funds</p> |
| Framework Agreement | means the framework agreement between the Authority and the Supplier referred to in the Order Form |
| Framework Price(s) | means the price(s) applicable to the provision of the Additional Services set out in Schedule 4 (Additional Services) of the Framework Agreement |
| Fraud | any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown |
| GEMA | the Electricity and Electricity Markets Authority established under Section 1 of the Utilities Act 2000, and shall include the Office of Electricity and Electricity Markets (as applicable) |
| Good Industry Practice | means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence, expertise, timeliness and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector |
| Guarantee | means the deed of guarantee set out in Appendix C (Guarantee) |
| Guarantor | means the person (if any) identified as such in the Order Form |
| Holding Company | shall have the meaning given to it in section 1159 of the Companies Act 2006 |
| HMRC | means Her Majesty's Revenue and Customs |

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| Industry Documents | all agreements, licences, authorisations and codes or procedures applicable to the Supplier and relating to or necessary for the supply of electricity to the Sites from time to time, including the BSC, CUSC and the REC |
| Information | has the meaning given under section 84 of the Freedom of Information Act 2000 |
| Intellectual Property Rights or IPRs | <p>means:</p> <ul style="list-style-type: none"> (a) patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, semi-conductor topography rights, rights in inventions, domain names and website addresses, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and the "look and feel" of any websites, trade or business names, trade secrets and rights in Confidential Information, the right to sue for passing off, rights in Know-How and moral rights and other similar rights or obligations whether registerable or not; (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and <p>all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including the United Kingdom)</p> |
| Key Personnel | (c) means the individuals (if any) identified as such in the Order Form |
| Know-How | means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how |
| Law | any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, by-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any [●regulatory body] [●or the directive of a Competent Authority] |
| Malicious Software | means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence |
| Material Breach | means any Default under the Additional Services Contract which is material and/or any breach by the Supplier |

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| Minimum Insurance Period | means a period of six (6) years from the expiry or earlier termination of the Additional Services Contract |
| Ministry of Justice Guidance | means Ministry of Justice Guidance in relation to Section 9 of the Bribery Act 2010 available at https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf , as updated, amended, modified or replaced from time to time |
| Month | means a calendar month and Monthly shall be interpreted accordingly; |
| Order | means the order submitted by the Customer to the Supplier in accordance with the Framework Agreement. |
| Order Form | the form containing details of the Order |
| Ordering Procedure | the procedure set out at Schedule 4 to the Framework Agreement under which the Customer is entitled to call-off Additional Services |
| Party | means the Supplier or the Customer and Parties shall mean both of them |
| Premises | means the premises referred to in the Order Form |
| Prohibited Act | <p>means:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; or (b) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act 2010; or (ii) under legislation creating offences concerning Fraud; or (iii) at common law concerning Fraud; or <p>committing (or attempting or conspiring to commit) Fraud</p> |
| Regulatory Bodies | <ul style="list-style-type: none"> (c) means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Additional Services Contract or any other affairs of the Customer and Regulatory Body shall be construed accordingly |

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| Relevant Conviction | means a Conviction that is relevant to the nature of the Additional Services to be provided or as is specified as such in the Order Form |
| Replacement Supplier | means any third party provider of Replacement Services appointed by the Customer from time to time |
| Replacement Services | means any services which are substantially similar to any of the Additional Services and which the Customer receives in substitution for any of the Additional Services following the expiry or termination or partial termination of the Additional Services Contract, whether those services are provided by the Customer and/or by any third party |
| Request for Information | means a request for information relating to the Additional Services Contract or the provision of the Additional Services or an apparent request for such information under the Code, the FOIA or the Environmental Information Regulations |
| REC | means the Retail Energy Code, being the energy industry code of that name which is operated as at the date of this Agreement by the Retail Energy Code Company |
| Security Policy | means the Customer's security policy notified to the Supplier, as updated from time to time |
| Staff | means all persons employed engaged or authorised by the Supplier and/or any Sub-Contractor to perform its obligations under the Additional Services Contract together with the Supplier's and/or any Sub-Contractor's servants, consultants, agents, suppliers, and any Sub-Contractors used in the performance of its obligations under the Additional Services Contract |
| Staff Vetting Procedures | means the Customer's procedures and departmental policies for the vetting of personnel as set out as such in the Order Form |
| Sub-Contract | means any contract or agreement between the Supplier and a Sub-Contractor whereby that Sub-Contractor agrees to provide the Additional Services or any part thereof or facilities or services necessary for the provision management, direction or control of the Additional Services or any part thereof |
| Sub-Contractor | means each of the Sub-Contractors listed (Sub-Contractors to be involved in the provision of the Additional Services) and/or any third party with whom the Supplier enters into a Sub-Contract |
| Supplier | means the person, firm or company with whom the Customer enters into the Additional Services Contract as identified as such in the Order Form |
| Supplier Confidential Information | means any information belonging to the Supplier that is provided to the Customer and clearly marked at the time of its provision as being confidential: (a) which is of a confidential nature; and |

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| | that relates to the business, affairs, developments, trade secrets, IPRs, personnel and suppliers of the Supplier, together with information derived from the foregoing |
| Supplier Intellectual Property Rights | (b) mean any Intellectual Property Rights vested in or licensed to the Supplier prior to or independently of the performance by the Customer of its obligations under the Additional Services Contract, or arising out of the performance by the Supplier of its obligations under the Additional Services Contract |
| Supplier Representative | means the representative named as such in the Order Form, or such other person appointed by the Supplier from time to time in relation to the Additional Services Contract |
| Supplier Solution | means the Supplier's solution for the provision of the Additional Services (if any) as referred to in the Order Form |
| Tender | has the meaning given to that expression in the Framework Agreement |
| Term | means the Additional Services Contract Period |
| Variation | has the meaning given to it in Clause 32 |
| Variation Form | has the meaning given to it in Clause 32 |
| 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 |

Appendix B

Variation Form

No of Order Form being varied:.....

Variation Form No:.....

Between:

[●insert name of Customer] (the **Customer**)

and

[●insert name of Supplier] (the **Supplier**)

1 The Order is varied as follows and shall take effect on the date signed by both Parties:

[●Guidance Note to Customer: Insert details of the Variation]

2 Words and expressions in this Variation shall have the meanings given to them in the Additional Services Contract.

3 The Additional Services Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Customer

Signature

Date

Name (in Capitals)

Address

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address

Appendix C

Guarantee

[●Insert the name of the Guarantor]

- and -

[●Insert the name of the Customer]

Deed of Guarantee

This Deed of Guarantee is made the [] day of 20[●]

Between:

- (1) [●Insert the name of the Guarantor] [●a company incorporated in England and Wales with number [●] whose registered office is at [●insert address of the Guarantor's registered office]] [●a company incorporated under the laws of [●insert country if not registered in England and Wales], registered in [●insert country where registered if not in England and Wales] with Phone number [●insert number] at [●insert place of registration], whose principal office is at [●insert office address] (**Guarantor**); in favour of
- (2) [●Insert the name of the Customer] whose principal office is at [●insert office address] (**Beneficiary**).

Whereas:

- (A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee the due performance by the Supplier of all of the Supplier's obligations under the Guaranteed Agreement.
- (B) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

1 Definitions and interpretation

- 1.1 In this Deed of Guarantee unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement the words and phrases below shall have the following meanings:

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| Guaranteed Agreement | means the agreement for the provision of the services made between the Supplier and the Customer comprising of an Order Form dated [●the same date as this Deed of Guarantee] and the Call-Off Terms |
| Guaranteed Obligations | means all obligations of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, Additional to or calculated by reference to the Guaranteed Agreement |

- 1.2 In this agreement, unless the context otherwise requires:
- 1.2.1 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, supplemented, substituted or novated from time to time;
 - 1.2.2 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
 - 1.2.3 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;

- 1.2.4 the words **other** and **otherwise** and **including** are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.2.5 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.2.6 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.2.7 unless the context otherwise requires, any phrase introduced by the words **including, includes, in particular, for example** or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.2.8 references to Clauses are, unless otherwise provided, references to clauses of this Deed of Guarantee; and
- 1.2.9 references to liability are to include any liability whether actual, contingent, present or future.

2 Guarantee and indemnity

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier will duly and punctually perform all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under the Guaranteed Agreement or in respect of the Guaranteed Obligations.
- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
 - 2.3.1 fully, punctually and specifically perform (either itself or, with the consent of the Beneficiary which shall not be unreasonably withheld or delayed, and provided that the Guarantor will nonetheless remain fully responsible for the performance of the Guaranteed Obligations, by an Affiliate or other third party) such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
 - 2.3.2 fully indemnify and keep the Beneficiary fully indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.
- 2.4 As a separate and independent obligation, the Guarantor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had

not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3 Obligation to enter into a new contract

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4 Demands and notices

4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

4.1.1 [●insert address of the Guarantor in England and Wales]

4.1.2 Phone Number: [●insert number]

4.1.3 For the Attention of: [●insert name]

[●Guidance Note: Relevant information to be inserted above]

or such other address in England and Wales as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address for the receipt of such demands or notices.

4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

4.2.1 if delivered by hand, at the time of delivery; or

4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post;
or

4.2.3 if sent by, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the message was properly addressed and despatched, as the case may be.

5 Beneficiary's protections

5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether such arrangement is made with or without the assent of the Guarantor) or by any amendment to, variation, novation, supplement or termination of or to the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether such amendment, variation, novation, supplement,

termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- 5.2.1 it shall not be discharged by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
- 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
- 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
- 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non-performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

6 Rights of subrogation

- 6.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:
- 6.1.1 of subrogation and indemnity;
 - 6.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
 - 6.1.3 to prove in the liquidation or insolvency of the Supplier;
- 6.2 only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until the Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

7 Representations and warranties

- 7.1 The Guarantor hereby represents and warrants to the Beneficiary that:
- 7.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
 - 7.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
 - 7.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including without limitation entry into and performance of a contract pursuant to Clause 3 have been duly authorised by all necessary corporate action and do not contravene or conflict with:
 - (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
 - (c) the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets;
 - 7.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
 - 7.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

- 7.2 The Guarantor acknowledges and agrees that:
- 7.2.1 the warranties, representations and undertakings contained in this Deed of Guarantee are material and are designed to induce the Beneficiary into entering into the Guaranteed Agreement; and
 - 7.2.2 the Beneficiary has been induced into entering into the Guaranteed Agreement by, and in doing so has relied upon on the warranties, representations and undertakings contained herein.

8 Payments and set-off

- 8.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 8.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee from the day after the date on which payment was due up to and including the date of payment in full (as well after as before any judgment) calculated from day to day at a rate per annum equal to the latest inter-bank lending rate (LIBOR) plus two percent (2%).
- 8.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

9 Guarantor's acknowledgement

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

10 Assignment

The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

11 Severance

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

12 The Contracts (Rights of Third Parties) Act 1999

It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Deed of Guarantee is not intended to, and does not, give to any person who is not a party to this Deed of Guarantee any rights to enforce any provisions contained in this Deed of Guarantee except for any person to whom the benefit of this Deed of Guarantee is assigned or transferred in accordance with Clause 10.

13 Governing law and jurisdiction

- 13.1 This Deed of Guarantee shall be governed by and construed in all respects in accordance with English law.
- 13.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 13.3 Nothing contained in this Clause 13 shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 13.4 **[●Guidance Note: The following provision can be included to deal with the appointment of an English process agent by a non English incorporated Guarantor]**
[●The Guarantor hereby irrevocably designates, appoints and empowers [●insert name of Supplier] (the Supplier) **[●Guidance Note: A suitable alternative to be agreed if the Supplier's registered office is not in England or Wales]** either at its registered office, or on Phone number [●insert no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]
- [●Guidance Note: This provision is to be completed by the Supplier where the registered office of the Guarantor is not situated in England and Wales.]**

In witness whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

Executed as a Deed by)
[●Insert name of Guarantor] acting by)
[●insert/print names])

.....
Director

.....
Director/Secretary

Alternative and/or additional Clauses

1 Introduction

This Appendix D specifies the Alternative Clauses and Additional Clauses that were requested in the Order Form and that shall apply to the Additional Services Contract.

2 Clauses selected

2.1 The Customer, in the Order Form, requested that the following Alternative Clauses should apply:

2.1.1 Law and Jurisdiction:

- (a) [[●English Law (default)] [●Scots Law]]
- (b) [●Non-Crown Bodies]; and
- (c) [●Private Authorities].

2.2 The Customer, in the Order Form, requested that the following Additional Clauses should apply: [●where TUPE is likely to apply at either the start or the end of the Additional Services, insert Clauses based on those set out in Schedule 10 of the Framework Agreement (together with associated definitions)].

2.3 The Customer, in the Order Form, requested that the following Additional Clauses should apply: [●insert relevant Clauses].

3 Implementation

The appropriate changes have been made in the Additional Services Contract to implement the Alternative Clauses specified in Paragraph 2.1 and the Additional Clauses specified in Paragraph 2.2 shall be deemed to be incorporated into the Additional Services Contract.

4 Alternative Clauses

4.1 Scots Law

For Scots Law, make the following changes:

4.1.1 Delete Clause 41.1 and insert:

"41.1. Scots Law and Jurisdiction

41.1.1 *Subject to the provisions of Clause 41.2, the Additional Services Contract shall be considered as a Additional Services Contract made in Scotland, the Customer and the Supplier accept the exclusive jurisdiction of the Scottish Courts and agree that the Additional Services Contract is to be governed by and construed according to Scots Law.*

41.1.2 *The Additional Services Contract shall be binding upon the Customer and its successors and assignees and the Supplier and the Supplier's successors and permitted assignees."*

- 4.1.2 At Clause 18 **delete** the words "tort" and "tortious" in each sub-clause and **replace** with "delict" and "in delict".
- 4.1.3 At Clause 38 and Clause 27.4.1 **delete** the words "Additional Services Contracts (Rights of Third Parties) Act 1999" and **replace** with Additional Services Contract (Third Party Rights) (Scotland) Act 2017.
- 4.1.4 At the definition of "Law", **replace** the words "England and Wales" with "Scotland".
- 4.1.5 Amend the definition of Working Day to replace "England and Wales" with "Scotland".
- 4.1.6 At Clause 13 of Appendix C **delete** the words "English" and "England" and **replace** with "Scottish" and "Scotland".
- 4.1.7 Use the following execution clause:

"In witness whereof these presents on this and the preceding [●] pages and the following [●] pages (inclusive) in both Part 1 and Part 2 are executed as follows:"

Executed for and on behalf of Customer at [●] on [●] 20[●] by:"

Director/Authorised Signatory",

Signed.....

Witness signature:

Full Name:

Address:

Appendix E

Processing Personal Data

- 1 This Appendix shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Appendix shall be with the Authority at its absolute discretion.
- 2 The contact details of the Supplier's Data Protection Officer are: REDACTED.
- 3 The contact details of the Customer's Data Protection Officer are: REDACTED
- 4 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 5 Any such further instructions shall be incorporated into this Appendix.

| Description | Details |
|---|---|
| Identity of Controller for each Category of Personal Data | The Customer is Controller and the Supplier is Processor The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor of the following Personal Data: Names, personal data, phone and email addresses. |
| Duration of the Processing | 01/02/2025 to 31/12/2025 |
| Nature and purposes of the Processing | The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. |
| Type of Personal Data | Name, address, date of birth, telephone number, email address, images, biometric data. |
| Categories of Data Subject | Staff (including volunteers, agents, and temporary workers). |
| Plan for return and destruction of the data once the Processing is complete Unless requirement under Union or Member State law to preserve that type of data | Data to be retained for the life of the contract, and be returned and or deleted from systems and hard copy within 3 months of the contract completion. |