

Project Name:

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**Department Name:  
Climate Change and Energy Group**

**Programme Name:  
Caspian and Central Asia Adviser  
Terms of Reference**

## TERMS OF REFERENCE

### 1 Background

The 2007 Energy White Paper set out two main challenges: tackling climate change through cutting greenhouse gas emissions; and ensuring we have reliable sources of energy. International energy security is therefore an increasingly important strategic priority for the UK and the Foreign and Commonwealth Office (FCO). The Climate Change and Energy Group (CCEG) is therefore working to promote a low carbon, high growth global economy as part of Departmental Strategic Objective 7 (DSO7).

One of the current focuses of CCEGs work in pursuit of this objective is to help HMG meet its international energy objectives in the Caspian and Central Asia region.

### 2 Stream

The Climate Change and Energy Group is part of the Global and Economic Issues Directorate (GEID).

CCEG is responsible for three key performance indicators to help deliver the FCOs DSO7:

- A visible and accelerated shift in investment initiated in the major economies towards low carbon
- Political conditions created for an equitable post-2012 agreement as the United Nations Framework Convention on Climate Change (UNFCCC) COP in Copenhagen 2009 (30<sup>th</sup> November to 11 December) of sufficient ambition to avoid dangerous climate change
- Risks to the UK and EU energy security manager through more diverse and reliable external sources of supply and more efficient global consumption.

### 3 Objectives

Delivery of our International Energy Strategy, working with FCO posts and other govt depts to deliver our priorities in the Caspian and Central Asia region (concentrating on Turkey, Georgia, Azerbaijan, Turkmenistan, Kazakhstan and Uzbekistan). Working closely with overseas governments, British oil and gas companies in the UK and the region, Whitehall contacts in FCO, DTI, Defra, DfID, with overseas posts and with international organisations such as the European Commission and IEA.

## 4 Scope

### 4.1 Timescale

The successful applicant must be able to start work as soon as possible and ideally by Mid November 2009. The position will be full-time, lasting for 2 years, with the possibility of a further 2 year extension, subject to review.

### 4.2 Location

The successful applicant will be based primarily at the FCO's main campus, which is King Charles Street in central London. In addition there is a requirement to travel to Central Asian and Caspian priority countries (Turkey, Georgia, Azerbaijan, Turkmenistan, Kazakhstan and Uzbekistan) when necessary. Travel and subsistence costs will be covered according to the terms set out in Condition 41

### 4.3 Boundaries

The responsibilities of the role are set out in this document.

### 4.4 Constraints

Government security clearance of SC is required as a minimum on arrival for this role (DV clearance is desirable). Candidates who either do not hold clearance, or are only cleared to SC level must be prepared to go through the vetting procedure to DV level if successful.

The process for SC clearance usually takes approx. 6-10 weeks. Please consider this in relation to the urgency of this requirement when submitting your bid.

## 5 Deliverables

- Part of the Whitehall team working on EU external energy issues and diversification, and the impact the increased supply of gas in particular from Caspian and Central Asian countries would have on security of supply.
- Working on the "hard security" agenda: issues relating to the physical infrastructure surrounding the supply of oil and gas on to global and regional markets.
- Energy sector governance in key Caspian and Central Asian producer countries, and its impact on transparency and investment. Help develop more transparent and competitive Caspian and Central Asian oil and gas markets, with better data to assist commercial decision-making. Work with IEA and International Energy Forum (IEF) on these policy areas.
- Direct engagement with British oil and gas companies on this agenda.
- Identifying energy security projects in developing countries that could qualify for Strategic Priority Funding.

- The consultant will primarily address energy security but engagement with the key producers on climate change and low carbon issues is becoming increasingly important. This might include collaboration in the region on low-carbon technologies such as carbon capture and storage.

**6 Success Criteria**

Success will be assessed based on:

- All agreed deliverables completed on time and to the standard defined at the start of the engagement

**7 Organisation**

The successful applicant will work in the FCO’s Climate Change and Energy Group.

**8 Skills/Experience Required**

Requirements	Mandatory / Desirable
<p>Equivalent FCO Grade Competencies covering;</p> <p><u>Managing &amp; Developing Staff</u>: Provides the management context and skill to enable staff to perform well and to develop. Values diversity, treating staff with fairness and equity. Embraces different ways of thinking and acting; encourages everyone to fulfil their potential.</p> <p>Management at this level may also involve giving direction to the team and setting the tone for more junior managers within the team in addition to hands on line management</p> <p><u>Delivering Results</u>: Takes the initiative, decisive and accountable. Consistently drives to deliver high quality outcomes. Takes well judged risks. Makes the most effective use of budgets and other resources to maximise outcomes. Responds to changing priorities and new challenges with professionalism, focusing on speed and delivery. At this level, objectives are likely to be achieved through others. Project Management skills should be applied. Should be competent in financial and resource management issues.</p> <p><u>Managing External Relationships</u>: Develops effective relationships with customers, stakeholders (internal and external) and other external contacts to achieve FCO objectives. Provides high quality, professional services. Anticipates future needs and responds to feedback.</p> <p><u>Problem Solving &amp; Judgement</u>: Systematically gathers evidence from different sources, analyses and evaluates it and</p>	M

reaches logical and timely conclusions, including when under pressure. Produces well argued recommendations, which are set in relevant contexts and can be defended convincingly. This competence underpins most of what individuals do and links with every other competence. It applies both to classic analytical work and to the judgements, both immediate and far-reaching, which are made about every aspect of work including people management.

At this level the issues may be more sensitive or wider ranging, the information dealt with more complex and the range of sources more diverse than at more junior levels.

Strategic Thinking: Relates work to FCO and HMG strategic aims and the wider social, economic, political and business context in which we work. Provides strategic analysis; creative, generating options to meet new challenges. Translates ideas into implementation.

At this level, there is a need not only to understand the big picture but also the ability to anticipate and prepare for longer term changes, threats and opportunities.

Working with Others: Self-aware and considerate of others. Values difference. Respected and valued member of wider teams. Focuses on team's success. Supports corporate agenda, including teams working in other areas that may benefit from additional knowledge or support.

This competence is about interpersonal effectiveness and focus on team success. Many of the effective behaviours will be the same for staff at all levels. The difference lies in the context of these interactions, in the variety and status of contacts and in the degree of potential sensitivity.

Line managers should consider the context when evaluating this competence; some behaviours may be less appropriate when working with others in a more adversarial context where objectives conflict.

Communicating & Influencing: Presents a professional image of self and FCO. Conveys information clearly and concisely, adjusting style according to purpose and audience. Uses a range of communication skills to influence others in support of FCO/UK objectives. Negotiates effectively and creatively with others to achieve objectives.

As in the case of Working with Others, some of the effective behaviours will be common to staff in all Bands, with the step change coming in the level of contacts and in the range and complexity of the interaction.

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<u>Learning &amp; Developing:</u> Open and curious. Welcomes new ideas, drawing on them and on experience to improve performance and results. Self-aware. Committed to personal development and leads by example. Contributes to and supports corporate agenda.	
Direct experience of the oil and gas industry	M
Direct experience of the Caspian and Central Asian region	D

**9 Reporting**

The Successful applicant will report directly to the Deputy Head of CCEG, working alongside the Head of the Energy Security team. S/he will be expected to provide oral and written reports on progress as and when required, and after each overseas business visit.

Terms and Conditions are documented below



# Foreign & Commonwealth Office

**CONTRACT NUMBER**

**CPG01447**

**BETWEEN**

**FOREIGN AND COMMONWEALTH OFFICE**

**AND**

***[INSERT]***

**FOR**

**CASPIAN AND CENTRAL ASIA ADVISER**

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Version Number: 1.0

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SECTION I – FORM OF CONTRACT

CONTRACT NUMBER: CPG01447
CONTRACT FOR: CASPIAN AND CENTRAL ASIA ADVISER

This Contract is made on..... 2009..... between:

The Secretary of State for Foreign and Commonwealth Affairs of the Foreign and Commonwealth Office, London, SW1A 2AH (hereinafter referred to as the "Authority")

And ..... having its registered office at ..... (hereinafter referred to as the "Contractor").

It is hereby agreed as follows:

The Contract shall incorporate:

- Section I - Form of Contract
Section II - Terms of Contract
Section III - Price Schedule
Section IV - Services Scope

All of which shall be read as one document.

The Contract constitutes the entire agreement between the parties hereto, and supersedes all negotiations, representation or agreements either written or oral preceding the Contract, without prejudice to the Authority's rights and remedies at law or otherwise.

Signed for Contractor by: Signed for Authority by:

.....

(Name and Title) (Name and Title)

Date: ..... Date: .....

**SECTION II – TERMS OF CONTRACT**

1. DEFINITIONS
2. DURATION
3. REPRESENTATIVES
4. SERVICES
5. CHARGES
6. INSPECTION
7. AUDIT
8. AUTHORITY POLICIES AND SECURITY
9. DISCRIMINATION
10. SECRECY
11. CONFIDENTIALITY
12. INTELLECTUAL PROPERTY RIGHTS
13. PUBLICITY
14. CONTRACTOR WARRANTIES
15. CONTRACTOR'S PERSONNEL
16. RECOVERY OF SUMS DUE
17. LIMITATION OF LIABILITY
18. INSURANCE
19. TERMINATION
20. LOSS OF DATA
21. ENVIRONMENTAL REQUIREMENTS
22. CORRUPT GIFTS AND PAYMENT OF COMMISSION
23. DATA PROTECTION
24. FREEDOM OF INFORMATION
25. HEALTH AND SAFETY HAZARDS
26. DAMAGE TO PLANT, TACKLE AND TOOLS
27. NOTICES

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- 28. THIRD PARTIES
- 29. WAIVER
- 30. SEVERABILITY
- 31. ASSIGNMENT
- 32. VARIATION
- 33. FORCE MAJEURE
- 34. CONFLICT OF INTEREST
- 35. AUTHORITY'S PROPERTY
- 36. RESPONSIBILITY FOR EQUIPMENT
- 37. EVALUATION
- 38. CONTRACTOR'S STATUS
- 39. DISPUTE RESOLUTION
- 40. LAW
- 41. TRAVEL AND SUBSISTANCE

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Version Number: 1.0

**UNCLASSIFIED**

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**SECTION II – TERMS OF CONTRACT**

**1. DEFINITIONS**

**1.1.** The expressions set out below shall have the following meanings:

**“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 from time to time;

**“Authority’s Data”** means all (a) data, information, 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 medium, and which are: (i) supplied or in respect of which access is granted to the Contractor by the Authority under this Contract, or (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Authority is the Data Controller;

**“Authority’s Property”** means any physical property, other than land and buildings, issued or made available to the Contractor or paid for by the Authority in connection with the Contract

**“Authority Proprietary Material”** means all Intellectual Property Rights which were created or used by the Authority prior to the Commencement Date or which are created independently of the delivery of the Services and Deliverables;

**“Authority’s Representative”** means the person appointed by the Authority and listed in Clause 3.2 or otherwise notified in writing by the Authority to the Contractor from time to time;

**“Change Control Procedures”** means the change control procedures specified in Section IV – Services Scope;

**“Charges”** means the charges for the Services set out in Section III;

**“Commencement Date”** means the date of this Contract or the actual date of commencement of the Services, whichever is the earliest;

**“Completion Date”** means .....

**“Confidential Information”** means information, the disclosure of which would constitute an actionable breach of confidence, which has either been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including commercially sensitive information, information which relates to the business, affairs, properties, assets, trading practices, products/services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 including the Authority’s Data;

**“Contract”** means the contract between the Authority and the Contractor consisting of Section I - Form of Contract; Section II - Articles of Contract; Section III - Price Schedule; Section IV - Services Scope;

**“Contractor Proprietary Material”** means all Intellectual Property Rights which were created or used by the Contractor prior to the Commencement Date or which are created independently of the delivery of the Services and Deliverables;

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**“Contractor’s Representative”** means the person appointed by the Contractor and listed in Clause 3.1 or otherwise notified in writing by the Contractor to the Authority from time to time;

**“Crown Body”** means any department, office or agency of the Crown;

**“Data Protection Legislation”** means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

**“Default”** means any breach of the obligations of either party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, contractors, agents or Sub-Contractors in connection with or in relation to the subject matter of this Contract and in respect of which such party is liable to the other;

**“Deliverables”** means any and all literature, manuals, reports, research papers, data, flow charts, drawings, designs, diagrams, tables, software or other information or goods or materials (in whatever form and on whatever media) developed, designed or otherwise provided during the course of this Contract, to be provided as part of the Services;

**“Environmental Information Regulations”** means the Environmental Information Regulations 2004 as the same may be amended or updated 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 regulations;

**“ Equality Enactments”** means the enactments defined in section 33(1) Equality Act 2006;

**“Equipment”** means any equipment, material, goods, vehicles and associated services financed by and purchased on behalf of, or provided by, the Authority, necessarily required for use in providing the Services. Equipment may only be used in providing the Services. Unauthorised personal use is not permitted. The Equipment shall be the property of the Authority and shall remain the property of the FCO on completion of the Contract.

**“FOI Act”** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

**“Intellectual Property Rights”** means any patents, trade marks, design rights (registered or unregistered), applications for any of the foregoing, copyright, (including future copyright), database right, know-how, trade names, brand names, logos and business names and any other similar or equivalent rights arising or subsisting in any country in the world;

**“Information”** means all records and information obtained, created, collected or held by the Contractor in relation to this Contract, and which has the meaning given under section 84 of the Freedom of Information Act 2000;

**“Law”** means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

**“Party”** means a party to this Contract;

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“**Premises**” means any premises of the Authority at which the Contractor performs the Services;

“**Regulatory Bodies**” means those government departments and regulatory, statutory and other entities, committees 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 this Contract or any other affairs of the Authority and “**Regulatory Body**” shall be construed accordingly.

“**Requests for Information**” shall have the meaning set out in the FOI Act or any apparent request for information under the FOI Act, the Environmental Information Regulations or the Code of Practice on Access to Government Information (2<sup>nd</sup> Edition), as the same may be amended or replaced from time to time;

“**Services**” means the services to be performed by the Contractor under this Contract as specified in Section IV – Services Scope including, where applicable, the provision of Deliverables;

“**Staff Vetting Procedures**” means the Authority's procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989;

“**Sub-Contract**” means any contract or proposed contract between the Contractor and any third party in respect of any material part of this Contract. The terms “Sub-Contractor” and “Sub-Contracting” shall be similarly construed; and.

“**Working Day**” means a day other than a bank holiday, a Saturday or a Sunday in England and Wales.

1.2. As used in this Contract:

1.2.1. the masculine includes the feminine and the neuter; and

1.2.2. the singular includes the plural and vice versa.

1.3. A reference 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 statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

1.4. A reference to any document other than as specified in Clause 1.3 shall be construed as a reference to the document as at the date of execution of this Contract.

1.5. Each party shall comply with any express obligation in this Contract to comply with any document statute, enactment, order, regulation or other similar instrument that is referenced in this Contract.

1.6. Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

1.7. In the event and to the extent only of any conflict between the Clauses together with the Price Schedule or the Services Scope, the Clauses shall prevail.

1.8. Except as otherwise expressly provided in this Contract, all remedies available to the Contractor or to the Authority under this Contract are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

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Version Number: 1.0

UNCLASSIFIED

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**2. DURATION**

- 2.1 The terms and conditions of the Contract shall commence on the.....2009 and expire on the.....2011, unless it is otherwise terminated in accordance with the provisions of these Conditions, or otherwise lawfully terminated.
- 2.2 The Authority may extend the Contract Period by up to a further two years in total by issuing a covering Variation no later than one month before the Contract would otherwise expire

**3. REPRESENTATIVES**

- 3.1. The Contractor's Representative means the following person who shall be the agent of the Contractor for all purposes in connection with the Contract:

Name .....

Telephone Number .....

Facsimile Number .....

Address .....

E-Mail Address .....

- 3.2. The Authority's Representative means the following person who shall be the agent of the Authority for all purposes in connection with the Contract:

Name .....

Telephone Number .....

Facsimile Number .....

Address .....

E-Mail Address .....

**4. SERVICES**

- 4.1. In consideration of the payment of the Charges, the Contractor shall perform the Services and provide the Deliverables from the Commencement Date.
- 4.2. The Services shall only be varied by application of the Change Control Procedure.

**5. CHARGES**

- 5.1. In consideration of the performance of the Services in accordance with the terms of this Contract, the Authority shall pay the Charges set out in the Price Schedule.
- 5.2. Unless otherwise stated in the Price Schedule, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears for work under a Services Scope completed to the satisfaction of the Authority. For the avoidance of doubt, all costs and expenses for services performed by the Contractor and not agreed to by the Authority will be borne by the Contractor and not included in any invoice. The sums due under this Contract may be calculated on either a fixed price basis or a time and materials basis and the provisions of Clauses 5.3 and 5.4 will apply.
- 5.3. Where the parties have agreed in the Price Schedule that the Services will be provided on a fixed price basis, then the fixed price shall be paid according to the schedule of payments as detailed in the Price Schedule which may relate to the achievement of specific predefined milestones, dates or acceptance and shall be inclusive of all Contractor costs.
- 5.4. Where the parties have agreed in the Price Schedule that the Services will be provided on a time and materials basis then:
- 5.4.1. the Services shall be provided in accordance with the rate card set out in the Price Schedule;
- 5.4.2. the Parties shall agree an original estimate which shall include but not be limited to a resource profile, a fixed date to start and to complete and a set of deliverables, further details of which shall be agreed by the Parties in the Price Schedule ("**Original Estimate**");
- 5.4.3. the Contractor shall attach to each invoice records of the time spent and materially used in providing the Services, together with all supporting documentation including but not limited to any relevant timesheets, receipts (if applicable), a list of Services to which the invoice relates and a reference to the Contract and Price Schedule details, as well as any other information as reasonably requested by the Authority from time to time; and
- 5.4.4. the Contractor must notify the Authority as soon as it becomes apparent that the cost to complete the Services is likely to be in excess of the Original Estimate, and shall only proceed with and be paid for work in excess of the Original Estimate with the prior written consent of the Authority.
- 5.5. Payment by the Authority shall be without prejudice to any Clauses or rights which the Authority may have against the Contractor and shall not constitute any admission by the Authority as to the performance of the Contractor of its obligations hereunder.

## UNCLASSIFIED

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- 5.6. Value Added Tax, where applicable, will be shown separately on all invoices as a strictly net extra charge. All other taxes, imposts and expenses will be borne by the Contractor and must not be included in any invoice.
  - 5.7. The Contractor will submit invoices to the Authority denominated in Sterling, save where otherwise agreed.
  - 5.8. If the Authority, acting in good faith, has a dispute in respect of any invoice, the Authority shall be entitled to withhold payment of the disputed amount, provided that it has notified the Contractor of the disputed amount and the nature of the dispute prior to the due date for payment of the invoice, and has paid any undisputed portion of the invoice to the Contractor. The parties will negotiate in good faith to resolve the dispute, and, failing resolution within five working days after receipt by the Contractor of the Authority's notification, the dispute will be referred to dispute resolution in accordance with Clause 39.
  - 5.9. In the event that the United Kingdom joins the Euro Monetary Union (and conversion between Sterling and Euro has been fixed), the Authority may, at any time thereafter, be entitled to require the Contractor at no additional charge to the Authority to convert the charges relating to the Services from Sterling into Euros (in accordance with EC Regulation 1103/97).
  - 5.10. Payments which are not received by the Contractor when due will be considered overdue and remain payable by the Authority together with interest for late payment from the date payable both at the rate of 2% per annum above the base rate for the time being of the Bank of England. This interest will accrue daily and be payable on demand.

## 6. INSPECTION

The Services shall be subject to inspection at all times by the Authority's Representative and shall be done to a standard considered reasonable by it. The Contractor warrants that it has the experience and capability to execute the Services in a manner satisfactory to the Authority and in accordance with the conditions of this Contract.

## 7. AUDIT

- 7.1. The Authority shall have the right upon giving reasonable notice to the Contractor to audit and take copies of extracts from all books, accounts, records and original documents relating to the Contract. The Contractor shall preserve such books, accounts, records and documents for two years after the termination of the Contract.
- 7.2. Except where an audit is imposed on the Authority by a Regulatory Body (in which case the Authority may carry out the audit required without prejudice to its other rights) the Authority may conduct an audit:
- 7.3. to review the integrity, confidentiality and security of the Authority Data;
- 7.4. to review the Contractor's compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 in accordance with Clauses 23 (Protection of Personal Data) and 24 (Freedom of Information) and any other legislation applicable to the Services.
- 7.5. Subject to the Authority's obligations of confidentiality, the Contractor shall on demand provide the Authority (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

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Version Number: 1.0

UNCLASSIFIED

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- 7.5.1. all information requested by the Authority within the permitted scope of the audit;
- 7.5.2. reasonable access to any sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
- 7.5.3. access to the Contractor's system; and
- 7.5.4. access to any person employed or engaged by the Contractor, or by a Sub-contractor and providing the Services.

### 8. AUTHORITY POLICIES AND SECURITY

#### Policies

- 8.1. Where the Services or part of it is to be performed within the Foreign and Commonwealth Office, or any other Government establishment, the Contractor must comply with any applicable policies, rules and regulations as to conduct, etiquette and working conditions or practices.
- 8.2. Any land or Premises (including temporary buildings) made available to the Contractor by the Authority in connection with this Contract shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purpose of performing this Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same upon the termination or expiry of this Contract or at such earlier date as the Authority may determine.
- 8.3. The Authority shall be responsible for maintaining the security of such land or Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Authority while on the Premises, and shall procure that all of its employees, agents and subcontractors shall likewise comply with such requirements. The Authority shall provide the Contractor upon request with copies of its written security procedures and shall afford the Contractor upon request with an opportunity to inspect its relevant physical security arrangements as applicable.

#### Security

- 8.4. The Contractor shall comply, and shall procure the compliance of the Contractor Personnel, with the Security Policy and the Security Plan and the Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.
- 8.5. The Authority shall notify the Contractor of any changes or proposed changes to the Security Policy.
- 8.6. If the Contractor believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may ask for a variation to the Contract. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any variation to the Charges shall then be agreed in accordance with the Clause 32.
- 8.7. Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 8.6 the Contractor shall continue to perform the Services in accordance with its existing obligations.

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### Malicious Software

- 8.8 The Contractor shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available [from an industry accepted anti-virus software vendor] to check for and delete Malicious Software from the Authority's and the Contractor's ICT systems.
- 8.9 Notwithstanding Clause 8.8, 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 the Authority's Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 8.10 Any cost arising out of the actions of the parties taken in compliance with the provisions of Clause 8.9 shall be borne by the parties as follows:
- 8.11 by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Authority's Data (whilst the Authority's Data was under the control of the Contractor); and
- 8.12 by the Authority if the Malicious Software originates from the Authority Software or the Authority's Data (whilst the Authority Data was under the control of the Authority).

## 9 DISCRIMINATION

- 9.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of relevant legislation including the Race Relations Act 1976 as amended in 2003, the Sex Discrimination Act 1975 as amended in 1986, the Sex Discrimination (Gender Re-assignment) Regulations 1999, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Disability Discrimination Act 1995 as amended in 2005, Equal Pay Act 1970, Human Rights Act 1998, the Equality Act 2006, the Fair Employment and Treatment (Northern Ireland) Order 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 9.2 The Contractor shall adhere to the current relevant codes of practice or recommendations published by the Equality and Human Rights Commission, and the codes of the three legacy commissions, the Commission for Racial Equality, Disability Rights Commission and the Equal Opportunities Commission and any Codes of Practice introduced by the Equality and Human Rights Commission to replace or supplement the above Codes of Practice. The Contractor shall take all reasonable steps to secure the observance of these provisions and codes of conduct by all contractors, employees or agents of the Contractor and all suppliers and Sub-contractors employed in the execution of this Contract.
- 9.3 The Contractor will in providing the Services comply with the provisions of:
- 9.3.1 section 71(1) of the Race Relations Act 1976 as if the Contractor were a body within the meaning of Schedule 1A to that act;
- 9.3.2 section 76A of the Sex Discrimination Act 1975 whether or not the body is a public authority for the purposes of that section and this Agreement;

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Version Number: 1.0

UNCLASSIFIED

## UNCLASSIFIED

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- 9.3.3 section 49A of the Disability Discrimination Act 1995 whether or not the body is a public authority for the purposes of that section and this Agreement; and
- 9.3.4 any equivalent legislation introduced in relation to the promotion of equality on the grounds of sexual orientation, religion or belief and age.
- 9.4 The Contractor will comply with any request by the Authority to assist the Authority in meeting its obligations under the Equality Enactments and to allow the Authority to assess the Contractor's compliance with its obligations under the Equality Enactments.
- 9.5 Where any investigation is concluded or proceedings are brought under the Equality Enactments which arise directly or indirectly out of any act or omission of the Contractor, its agents or sub contractors, or Staff, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor will indemnify the Authority with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Authority may have been ordered or required to pay to a third party.

## 10 SECURITY

- 10.1 The Contractor:
  - 10.1.1 must not pass on any information obtained during or in connection with the performance of the Contract, except where necessary for the performance of the Contract or where authorised;
  - 10.1.2 must not contravene the Official Secrets Acts 1911 to 1989;
  - 10.1.3 must familiarise itself with these Acts and take all reasonable steps to ensure that its suppliers and its and their employees and agents are familiar with them; and
  - 10.1.4 must take all reasonable steps to ensure that these people comply with sub-Clauses 10.1.1 and 10.1.2 above.

## 11 CONFIDENTIALITY

- 11.1 Without prejudice to Clause 10, except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall:
  - 11.1.1 treat the other party's Confidential Information as confidential[ and safeguard it accordingly]; and
  - 11.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 11.2 Clause 11.1 shall not apply to the extent that:
  - 11.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 24 (Freedom of Information);
  - 11.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

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Version Number: 1.0

UNCLASSIFIED

## UNCLASSIFIED

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- 11.2.3 such information was obtained from a third party without obligation of confidentiality;
  - 11.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
  - 11.2.5 it is independently developed without access to the other party's Confidential Information.
- 11.3 The Contractor may only disclose the Authority's Confidential Information to the persons it has employed or engaged who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such persons are aware of and shall comply with these obligations as to confidentiality.
- 11.4 The Contractor shall not, and shall procure that the persons it has employed or engaged do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- 11.5 Nothing in this Contract shall prevent the Authority from disclosing the Contractor's Confidential Information:
- 11.5.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies 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 Authority;
  - 11.5.2 to any consultant, contractor or other person engaged by the Authority or any person conducting an Office of Government Commerce gateway review;
  - 11.5.3 for the purpose of the examination and certification of the Authority's accounts; or
  - 11.5.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 11.6 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to Clause 11.6 is made aware of the Authority's obligations of confidentiality.
- 11.7 Nothing in this Clause 11 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this 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 Intellectual Property Rights.
- 11.8 In the event that the Contractor fails to comply with this Clause 11, the Authority reserves the right to terminate the Contract by notice in writing with immediate effect.
- 11.9 The provisions under this Clause 11 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

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Version Number: 1.0

UNCLASSIFIED

**12 INTELLECTUAL PROPERTY RIGHTS**

- 12.1 Intellectual Property Rights in the Services and any Deliverables that are specifically developed or created for the Authority will be vested in the Authority (save that the Contractor will retain ownership of any Contractor Proprietary Materials which become imbedded in such Deliverables, which will be licensed in accordance with the provisions of Clause 12.4.
- 12.2 The Contractor agrees to (and will procure that its personnel acting as contractors will) assign and hereby assigns (including by way of future assignment in the case of copyrights) to the Authority with full title guarantee all of its worldwide rights, title and interest (whether present, future, vested or contingent) in and to such Intellectual Property Rights, including moral rights, for the full term thereof.
- 12.3 The Contractor will execute all such documents and undertake any and all such acts, including but not limited to obtaining assignments of Intellectual Property Rights from personnel of the Contractor to the Contractor) as may from time to time be required in order to vest the rights assigned pursuant to Clause 12.1 above properly in the Authority.
- 12.4 The Authority will be granted a perpetual, non-exclusive, transferable, worldwide, royalty free licence in respect of Intellectual Property Rights subsisting in any Contractor Proprietary Material which is embedded in the Deliverables, to the extent necessary to use such Deliverables (including for the purposes of their adaptation, modification and/or reproduction) for the purposes of providing services to the Authority.
- 12.5 The Contractor warrants, represents and undertakes that its provision of the Services and Deliverables under this Contract will not infringe any Intellectual Property Rights of which a third party is the proprietor and that the Contractor is free to grant the licence set out in Clause 12.4. The Contractor agrees to indemnify and hold harmless the Authority against any and all liability, loss, damage, costs and expenses (including legal costs) which the Authority may incur or suffer as a result of any claim of alleged or actual infringement of a third party's Intellectual Property Rights by reason of either its or the Contractor's possession or use in any manner of any Deliverables or the Services.

**13 PUBLICITY**

- 13.1 Except with the written consent of the other party neither party shall make any press announcements or publicize this Contract in any way.
- 13.2 Both parties shall take all reasonable steps to ensure the observance of the provisions of Clause by all their servants, employees, agents, and contractors. The Contractor shall take all reasonable steps to ensure the observance of the provisions of Clause 13.1 by its Sub-Contractors.
- 13.3 Notwithstanding the provisions of Clause 13.1, the Authority shall be entitled to publicise this Contract in accordance with any legal obligation upon the Authority, including any examination of this Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

**14 CONTRACTOR WARRANTIES**

- 14.1 The Contractor warrants, represents and undertakes that, throughout the Term:
- 14.1.1 the Contractor has and will continue to hold full capacity and authority and all necessary consents and regulatory approvals to enter into and to perform this Contract and that this Contract is executed by a duly authorised representative of the Contractor;
  - 14.1.2 all components of the Services shall operate in accordance with the technical specifications and the standards in the Services Scope;
  - 14.1.3 the Contractor has the full capacity and authority to perform the Services;
  - 14.1.4 the Services and Deliverables shall be supplied and rendered with all due skill, care and diligence by appropriately experienced, qualified and trained personnel;
  - 14.1.5 all persons employed or engaged by the Contractor, or by a Sub-contractor and providing the Services are and will be vetted in accordance with Good Industry Practice, the Staff Vetting Procedure
  - 14.1.6 the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause 14) in accordance with its own established internal procedures;
  - 14.1.7 it has and will continue to have all necessary rights in and to the Intellectual Property Rights in all materials used by the Contractor for the purpose of providing the Services and/or delivered to the Authority.
  - 14.1.8 as at the Commencement Date all statements and representations in the Contractor's application form are to the best of its knowledge, information and belief, true and accurate and that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading;
  - 14.1.9 the contract will contain all necessary information and explanation required for the purpose of executing the exit plan and for suitably qualified employees of the Authority or of the Successor Supplier to be able to use the software and receive the Services and to perform the replacement Services on termination or expiry; and
  - 14.1.10 it shall, and the person employed or engaged by the Contractor and involved in providing the Services shall, at all times comply with the Law in carrying out their obligations under this Contract.
  - 14.1.11 the Contractor shall comply with all applicable laws in its provision of the Services; and
  - 14.1.12 except as expressly stated in this Contract, all warranties and conditions, whether express or implied by statute, common-law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.

## UNCLASSIFIED

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### 15 CONTRACTOR'S PERSONNEL

- 15.1 The Contractor shall comply with the Staff Vetting Procedures in respect of all persons employed or engaged by the Contractor, or by a Sub-Contractor and providing the Services. The Contractor confirms that all such persons were vetted at the Commencement Date and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 15.2 The Contractor shall:
- 15.2.1 provide training on a continuing basis for all Contractor's Staff employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan;
  - 15.2.2 give the Contractor's Staff involved in the provision of the Services:
  - 15.2.3 access to general advice on their working lives and rights at work; and
  - 15.2.4 inform its Staff on Trade Unions, what they do and how they can help Staff, in a timely and appropriate manner.
- 15.3 The Authority reserves the right under this Contract to refuse to admit to any premises occupied by or on behalf of the Authority any person employed or engaged by the Contractor, or by a Sub-Contractor, whose admission would be, in the opinion of the Authority, undesirable.
- 15.4 If and when directed by the Authority, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the performance of this Contract to any premises occupied by or on behalf of the Authority, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Authority may reasonably require.
- 15.5 If and when directed by the Authority, the Contractor shall secure that any person employed or engaged by the Contractor or by a Sub-Contractor, who is specified in the direction or is one of a class of persons who may be so specified, shall sign a statement that he understands that the Official Secrets Acts 1911 to 1989 apply to him both during the term of and after the expiry or termination of this Contract.
- 15.6 The Contractor's representatives, engaged within the boundaries of a Government establishment, 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 that establishment and when outside that establishment.
- 15.7 If the Contractor shall fail to comply with Clause 15.2 and if the Authority (whose decision shall be final and conclusive) shall decide that such failure is prejudicial to the interests of the Authority and if the Contractor does not comply with the provisions of Clause 15.2 within a reasonable time of written notice so to do then the Authority may terminate this Contract in accordance with Clause 19 provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 15.8 The decision of the Authority as to whether any person is to be refused admission to any premises occupied by or on behalf of the Authority and as to whether the Contractor has failed to comply with Clause 15.2 shall be final and conclusive.

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Version Number: 1.0

UNCLASSIFIED

**16 RECOVERY OF SUMS DUE**

Any sum which is recoverable from or payable by the Contractor may be deducted from or reduced by any sum or sums then due or which may thereafter become due to the Contractor under or in respect of the Contract or any other contract with the Authority or any other government department or the Crown.

**17 LIMITATION OF LIABILITY**

17.1 Neither party excludes or limits liability to the other party for:

17.1.1 death or personal injury;

17.1.2 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;

17.1.3 fraudulent misrepresentation;

17.1.4 breach of Clause 11 (Confidentiality);

17.1.4 breach of Clause 12 (Intellectual Property Rights); and

17.1.5 breach of Clause 35 (Data Protection).

17.2 Subject always to Clause 17.1, the liability of each party for Defaults shall be subject to the financial limits set out in this Clause 17.2 as follows:

17.2.1 the aggregate liability for all Defaults resulting in direct loss of or damage to the tangible property of the other shall in no event exceed one million pounds (£1,000,000) and

17.2.2 the aggregate liability for all Defaults arising in each year of this Contract (except any liability to which Clause 17.2.1 applies) shall in no event exceed the greater of two million pounds (£2,000,000).

17.3 Subject always to Clause 17.1, in no event shall either party be liable to the other for:

17.3.1 indirect, special or consequential loss or damage of any nature and howsoever caused, even if the losses were reasonably foreseeable or the party has been advised of the possibility of such losses occurring; and/or

17.3.2 any direct or indirect loss of profits, business, revenue, goodwill or anticipated savings.

17.4 The provisions of Clause 17.3 shall not be taken as limiting the right of either party to claim from the other party for:

17.4.1 additional operational and administrative costs and expenses; and/or

17.4.2 any costs or expenses rendered nugatory,

17.4.3 resulting directly from the Default of the other party.

## UNCLASSIFIED

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- 17.5 The parties expressly agree that neither party shall be entitled to an order for specific performance to enforce any provision hereunder.
- 17.6 The parties expressly agree that should any limitation or provision contained in this Clause 17 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

### 18 INSURANCE

- 18.1 The Contractor must have in force and will require any sub-contractor to have in force:
- 18.1.1 employer's liability compulsory insurance in the sum of not less than **£5,000,000** or as notified by the Authority from time to time;
  - 18.1.2 public liability insurance for such sum and range of cover as the Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under this Contract in the sum of not less than **£1,000,000** for any one incident and unlimited in total, unless otherwise agreed by the Authority in writing;
  - 18.1.3 professional indemnity insurance in the sum of not less than **£2,000,000** or as notified by the Authority from time to time
- 18.2 The policy or policies of insurance referred to in Clause 18.1, and the copy of the certificate of insurance that the Contractor is required to display in the workplace under the Employers' Liability (Compulsory Insurance) Regulations, will be shown to the Authority whenever it requests, together with satisfactory evidence of payment of premiums.

### 19 TERMINATION

- 19.1 The Authority may terminate the Contract by written notice having immediate effect if:
- 19.1.1 the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, impacting adversely and materially on the performance of the Contract; or
  - 19.1.2 where the Contractor is an individual or a firm, the Contractor or any partner in the firm becomes bankrupt or has a receiving order or administration order made against it; or makes any compromise or arrangement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of Section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom; or
  - 19.1.3 where the Contractor is a company, the Contractor passes a resolution or the Court makes an order that the Contractor be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Contractor's business or any part of it; or the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

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Version Number: 1.0

UNCLASSIFIED

## UNCLASSIFIED

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- 19.2 The Authority may terminate the Contract, or terminate the provision of any part of the Services, by written notice to the Contractor with immediate effect if the Contractor is in default of any obligation under the Contract and:
- 19.2.1 the Contractor has not remedied the default to the satisfaction of the Authority within 30 days after service of written notice specifying the default and requiring it to be remedied; or
  - 19.2.2 the default is not capable of remedy; or
  - 19.2.3 the default is a fundamental breach of the contract.
- 19.3 The Authority will have the right to terminate the Contract, or to terminate the provision of any part of the Services, at any time by giving 1 months' written notice to the Contractor. Termination under this provision will not affect the rights of the parties that have accrued up to the date of termination.
- 19.4 If the Authority terminates the Contract under Clause 19.2 or terminates the provision of any part of the Services under that Clause, and then makes other arrangements for the provision of the Services, the Authority will be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Term. Where the Contract is terminated under Clause 19.2 no further payments will be payable by the Authority to the Contractor until the Authority has established the final cost of making those other arrangements.
- 19.5 If the Authority terminates the Contract, or terminates the provision of any part of the Services, under Clause 19.3, the Authority will reimburse the Contractor in respect of any loss, not including loss of profit, actually and reasonably incurred by the Contractor as a result of the termination, provided that the Contractor immediately uses its best endeavours, consistent with the obligation to provide the Services during the period of notice, to terminate all contracts with Sub-Contractors on the best available terms, to cancel all capital and recurring cost commitments, to reduce equipment and labour costs as appropriate, and to do any other thing reasonably required to mitigate such loss.
- 19.6 For the purposes of Clause 19.5 the Contractor will submit within 20 working days after service of the termination notice, a fully itemised and costed list, with supporting evidence, of all losses incurred by the Contractor as a result of the termination of the Contract, or the termination of any part of the Services, to be updated only in respect of ongoing costs each week until the Contract is terminated.
- 19.7 The Authority will not be liable under Clause 19.5 to pay any sum which, when added to any sums paid or due to the Contractor under the Contract, exceeds the total such that would have been payable to the Contractor if the provision of the Services had been completed in accordance with the Contract.
- 19.8 The termination or expiry of this Contract will not prejudice or affect any right of action or remedy which has accrued or may thereafter accrue to either party.
- 19.9 In the event of termination of this Contract, the provisions of Clauses 7, 10 to 13, 17, 19.4 to 19.8, 23, 24, 33, 34, 35, 37, 38, 39, 40 and this Clause 19.9 will survive termination.

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Version Number: 1.0

UNCLASSIFIED

## UNCLASSIFIED

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### 20 LOSS OF DATA

- 20.2 The Contractor acknowledges that the Authority's Data is the property of the Authority and the Authority hereby reserves all Intellectual Property Rights which may subsist in the Authority's Data. The Contractor shall not delete or remove any notices contained within or relating to the Authority's Data.
- 20.3 The Contractor shall not store, copy, disclose, or use the Authority's Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- 20.4 To the extent that Authority's Data is held and/or processed by the Contractor, the Contractor shall supply that Authority's Data to the Authority as requested by the Authority in the format specified in the Services Scope.
- 20.5 The Contractor shall take responsibility for preserving the integrity of the Authority's Data and preventing the corruption or loss of the Authority's Data.
- 20.6 The Contractor shall perform secure back-ups of all Authority's Data and shall ensure that up-to-date back-ups are stored off-site. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than 3 monthly intervals.
- 20.7 In the event that the Authority's Data is corrupted, lost or sufficiently degraded as a result of any Default by the Contractor the Authority may, in addition to any other remedies that may be available to it either under this Contract or otherwise:
- 20.7.3 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so as soon as practicable but not later than 1 month; and/or
  - 20.7.4 the Authority may itself restore or procure restoration of the Authority's Data and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- 20.8 If at any time the Contractor suspects or has reason to believe that the Authority's Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

### 21 ENVIRONMENTAL REQUIREMENTS

- 21.2 The Contractor shall provide the Services and Deliverables required under the Contract in accordance with the Authority's environmental policy, which includes conserving energy, water and other resources, reducing waste and phasing out the use of ozone depleting

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Version Number: 1.0

UNCLASSIFIED

## UNCLASSIFIED

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substances and minimising the release of greenhouse gases, Volatile Organic Compounds and other substances damaging to health and the environment.

- 21.3 All written outputs, including reports, produced in connection with the Contract shall (unless otherwise specified) be produced on recycled paper containing at least 80% post consumer waste and used on both sides where appropriate.

## 22 CORRUPT GIFTS AND PAYMENT OF COMMISSION

- 22.2 The Contractor shall neither:

22.2.3 offer or give or agree to give any person employed, engaged or otherwise contracted to provide goods or services, by the Crown, any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not done any act in relation to the obtaining or performance of this Contract or any other agreement with the Crown or for showing or forbearing to show favour or disfavour to any person in relation to this Contract; nor

22.2.4 enter into this Contract if in connection with it commission has been paid or agreed to be paid by the Contractor or on the Contractor's behalf or to the Contractor's knowledge to any person employed, engaged or otherwise contracted to provide goods or services, by the Crown, unless before this Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Authority.

- 22.3 In the event of any breach of this Clause 22 by the Contractor or by anyone employed by the Contractor or acting on the Contractor's behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by the Contractor or acting on behalf of the Contractor under the Prevention of Corruption Acts, 1889 to 1916 in relation to this or any other contract with the Crown, the Authority may summarily terminate this Contract by notice in writing to the Contractor. Provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and provided always that the Authority may recover from the Contractor the amount or value of any such gift, consideration or commission.

- 22.4 The decision of the Authority shall be final and conclusive in any dispute, difference or question arising in respect of:

22.4.3 the interpretation of this Clause (except so far as the same may relate to the amount recoverable from the Contractor under Clause 22.2 in respect of any loss resulting from such termination of this Contract); or

22.4.4 the right of the Authority under this Clause 22 to terminate this Contract; or

22.4.5 the amount or value of any such gift, consideration or commission.

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**23 DATA PROTECTION**

- 23.2 With respect to the parties' rights and obligations under this Contract, the parties agree that the Authority is the Data Controller and that the Contractor is the Data Processor. "Data Controller", "Data Processor", "Data Subject" and "Personal Data" shall have the meaning as set out in the Data Protection Act 1998. "Process" shall also have the meaning given to it under the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing.
- 23.3 The Contractor shall:
- 23.3.3 Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Authority to the Contractor during the Term);
  - 23.3.4 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
  - 23.3.5 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
  - 23.3.6 take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;
  - 23.3.7 obtain prior written consent from the Authority in order to transfer the Personal Data to any sub-contractors or Affiliates for the provision of the Services;
  - 23.3.8 ensure that all Contractor's Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 23;
  - 23.3.9 ensure that none of Contractor's personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
  - 23.3.10 notify the Authority (within [five] Working Days) if it receives:
    - i. a request from a Data Subject to have access to that person's Personal Data; or

## UNCLASSIFIED

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- ii. a complaint or request relating to the Authority's obligations under the Data Protection Legislation;
  
- 23.3.11 provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
  - i. providing the Authority with full details of the complaint or request;
  
  - ii. complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;
  
  - iii. providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
  
  - iv. providing the Authority with any information requested by the Authority;
  
- 23.3.12 permit the Authority or the Authority's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Clause 7 (Audit), the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;
  
- 23.3.13 provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Authority); and
  
- 23.3.14 not Process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:
  - i. the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and

## UNCLASSIFIED

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- ii. any reasonable instructions notified to it by the Authority.

- 23.4 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.
- 23.5 The Contractor shall indemnify and keep indemnified, the Authority fully against any financial penalties arising from or in connection with any breach by the Contractor or its Staff of any of the provisions of this Clause 23 (Data Protection), or any misuse, loss or unauthorised use or disclosure by the Contractor or its Staff of any Personal Data or sensitive personal data (as defined by the Data Protection Act 1998) relating to any person, where such misuse arises in connection with the Contractor's provision of the Services or the performance of its obligations under this Contract.

### 24. FREEDOM OF INFORMATION

- 24.1. The Contractor acknowledges that the Authority is subject to the requirements of the Code of Practice on Access to Government Information, the FOI Act and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with these Information disclosure obligations.
- 24.2. The Contractor shall and shall procure that its sub-contractors shall:
  - 24.2.1 transfer the Request for Information to the other Party as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
  - 24.2.2 (provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within [five] Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
  - 24.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOI Act or regulation 5 of the Environmental Information Regulations.
- 24.3. The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other contract whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
- 24.4. In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 24.5. The Contractor acknowledges that (notwithstanding the provisions of Clause 24) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "**Code**"), be obliged under the FOI Act, or the Environmental Information Regulations or the Services to disclose Information:-

## UNCLASSIFIED

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24.5.1. in certain circumstances without consulting with the Contractor, or

24.5.2. following consultation with the Contractor and having taken its views into account,

provided always that where Clause 24.5.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure

24.5 The Contractor shall ensure that all information s retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

24.6 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information or commercially sensitive information are of indicative value only and that the Authority may nevertheless be obliged to disclose such Confidential Information or commercially sensitive information.

### 25. HEALTH AND SAFETY HAZARDS

25.1. The Contractor shall notify the Authority of any health and safety hazards which may arise in connection with the performance of this Contract.

25.2. The Authority shall notify the Contractor of any health and safety hazards of which it is aware and which may exist or arise at the Premises and which may affect the Contractor. The Contractor shall draw these hazards to the attention of its employees and Sub-Contractors or any persons engaged by the Contractor in the performance of this Contract at the Premises.

25.3. The Contractor shall inform all persons engaged in the performance of this Contract at the Premises of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

25.4. Both parties shall comply with their respective obligations under The Construction (Design and Management) Regulations 1994.

### 26. DAMAGE TO PLANT, TACKLE AND TOOLS

26.1. All plant, tackle and tools at the Premises provided by or on behalf of the Contractor shall stand at the risk and be in the sole charge of the Contractor.

26.2. The Contractor shall be required to remove all such plant, tackle and tools which it brings to the Premises on termination or expiry of this Contract, or at any time at the request of the Authority.

26.3. The Contractor shall ensure that all such plant, tackle and tools shall meet minimum safety standards required by law.

### 27. NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by fax or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the Party's representative as specified in Clause 3, or to such other address as the party may by notice to the other have submitted therefore, will be deemed effectively given on the day

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Version Number: 1.0

UNCLASSIFIED

## UNCLASSIFIED

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when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

### 28. THIRD PARTIES

This Contract is enforceable by the original Parties to it and by their successors in title and permitted assignees. No provision of this Contract will be enforceable by any person who is not a Party to it pursuant to the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of a third party which exists or is available independently of that Act.

### 29. WAIVER

- 29.1. The failure of either party to insist upon strict performance of any provision of this Contract, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Contract.
- 29.2. A waiver of any Default shall not constitute a waiver of any subsequent Default.
- 29.3. No waiver of any of the provisions of this Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of Clause 27.

### 30. SEVERABILITY

If any provision of this Contract 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 Contract had been executed with the invalid illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Contract, the Authority and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

### 31. ASSIGNMENT

- 31.1. The Contractor must not assign, sub-contract or transfer the Contract or any part share or interest in it without the Authority's prior written permission
- 31.2. Notwithstanding Clause 31.2, the Contractor may assign to a third party ("the Assignee") the right to receive payment of the Charges or any part thereof due to the Contractor under the Contract. Any assignment under this Clause 31.2 shall be subject to:
- 31.2.1. deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 16 (Recovery of Sums Due); and
- 31.2.2. all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid.

### 32. VARIATION

The Contract will not be varied unless such variation is agreed by the duly authorized representatives of the parties. The Authority shall have the right to order any variations to the Services that are within the capability and resources of the Contractor. Any increase or decrease in the cost of the Services resulting from such order shall be determined by the Authority in conjunction with the Contractor.

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Version Number: 1.0

UNCLASSIFIED

**33. FORCE MAJEURE**

- 33.1. For the purposes of this Contract the expression "Force Majeure" shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its contractors, agents or employees.
- 33.2. For the avoidance of doubt, both parties agree that any acts, events, omissions, happenings or non-happenings resulting from the adoption of the euro by the United Kingdom government shall not be considered to constitute Force Majeure under this Contract.
- 33.3. Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.
- 33.4. If either of the parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 33.5. It is expressly agreed that any failure by the Contractor to perform or any delay by the Contractor in performing its obligations under this Contract which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Contractor shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.
- 33.6. For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

**34. CONFLICT OF INTEREST**

- 34.1 The Contractor shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between Services undertaken for the Authority and that undertaken for other clients. The Contractor shall avoid knowingly committing any acts which are likely to result in any allegation of impropriety against the Authority, including conflicts of interest which are likely to prejudice his independence and objectivity in performing the Contract, howsoever arising.
- 34.2 The Contractor shall notify the Authority immediately of any circumstances of which it becomes aware which give rise or potentially give rise to a conflict with the Services and shall advise the Authority of how they intend to avoid such a conflict arising or remedy such situation. The Contractor shall subject to any obligations of confidentiality it may have to third parties provide all information and assistance reasonably necessary (at the Contractor's cost) that the Authority may request of the Contractor in order to avoid or resolve a conflict of

## UNCLASSIFIED

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interest and shall ensure that at all times they work together with the Authority with the aim of avoiding a conflict or remedy a conflict.

- 34.3 Pursuant to 34.2, the Authority shall have the right to require that the Contractor puts in place "Ethical Walls" and will ensure and satisfy the Authority that all information relating to the Contract and to the Services and Deliverables completed pursuant to it (to include all working papers, draft reports in both tangible and intangible form) are not shared or made available to other employees, contractors or agents of the Contractor and that such matters are not discussed by the relevant staff with other employees, contractors or agents of the Contractor.
- 34.4 In the event of a failure to maintain the "Ethical Walls" as described above arising during the course of this Contract, the Authority reserves the right to immediately terminate the Contract on giving written notice to the Contractor and to pursue the Contractor for damages.
- 34.5 To the extent that any of the Contractor's staff breach this Conflict of Interest Clause, the Contractor undertakes to keep the Authority fully and effectively indemnified in respect of all costs, losses and liabilities arising from any wrongful disclosure or misuse of the Confidential Information by the Contractor's staff. This indemnity shall be without prejudice to any other rights or remedies, including injunctive or other equitable relief, which the Authority may be entitled to, but for the avoidance of doubt shall be subject to the limitations of liability (including without limitation the cap on liability) set out in this Contract.

### 35. AUTHORITY'S PROPERTY

- 35.1 All Authority's Property shall remain the property of the Authority and shall be used in the performance of the Contract and for no other purpose without prior approval from the Authority.
- 35.2 The Contractor shall be liable for any loss of or damage to any Authority's Property unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the act, neglect or default of the Authority.
- 35.3 The Contractor shall not in any circumstances have a lien on any Authority's Property and shall take all steps necessary to ensure that the title of the Authority and the exclusion of any lien are brought to the attention of any third party dealing with any Authority's Property.
- 35.4 The Contractor shall be responsible for his own costs resulting from any failure of the Authority's Property, unless he can demonstrate that the Authority had caused undue delay in its replacement or repair.
- 35.5 The Contractor shall maintain all items of Authority's Property in good and serviceable condition, fair wear and tear, in accordance with the manufacturer's recommendations.

### 36. RESPONSIBILITY FOR EQUIPMENT

- 36.1 The Contractor shall use all reasonable endeavours to ensure that Equipment is kept and treated in a proper and workmanlike manner and shall maintain an inventory of the Equipment throughout the Contract. At the conclusion of the Contract, the Contractor shall apply for instructions from the Authority for the disposal of the Equipment and shall arrange disposal in accordance with such instructions. At such time the Equipment shall be in good condition after making due allowance for fair wear and tear. Equipment lost or damaged must be reported at the time of such loss or damage and the reasons immediately explained in writing to the Authority. Where it is concluded that such loss has occurred as a result of the Contractor's breach of contract or negligence, the Contractor shall be responsible for the costs

## UNCLASSIFIED

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of reinstatement and the amount of such costs shall be repaid to the Authority or deducted from sums otherwise due to be paid to the Contractor at the discretion of the Authority.

- 36.2 From the time of purchase to the time of disposal of Equipment the Contractor shall indemnify and keep indemnified the Authority in respect of any and all claims in respect of the use or operation of the Equipment including but not limited to any claims by or on behalf of third parties.

### 37 EVALUATION

The Authority may undertake post project evaluation of the impact and cost-effectiveness of contracts, projects or programmes, which it funds. The Contractor shall, if required, assist the Authority in connection with the Contract and shall give all reasonable cooperation to the evaluators appointed by the Authority.

### 38 CONTRACTOR'S STATUS

- 38.1 Nothing in the Contract shall be construed to create a partnership, joint venture, agency or employer/employee relationship between the parties.

- 38.2 In carrying out the Services the Contractor will be acting as principal and not as the agent to the Authority. Accordingly:

38.2.1 the Contractor will not (and will procure that its agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority, and

38.2.2 nothing in this Contract will impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this will not be taken to exclude or limit any liability of the Authority to the Contractor that might arise by virtue of either a breach of this Contract or any negligence on the part of the Authority, its staff or agents.

- 38.3 For the avoidance of doubt, the Contractor shall:

38.3.1 ensure that it, its employees, sub-contractors and any other person engaged by them have adequate and appropriate medical insurance cover before commencing work overseas under this Contract. It is not the responsibility of the British Embassy, High Commission or local Authority office to meet the costs of the medical care nor to make arrangements for the evacuation or care of the Contractor's personnel in a medical emergency, although they will endeavour to provide UK citizens with assistance. The Contractor shall ensure that their personnel are aware of the procedures to be followed should a medical emergency arise whilst such personnel are overseas

38.3.2 The Contractor's personnel must also be medically cleared by an Authority approved doctor before deployment overseas. In case of a medical emergency, the Contractor's personnel should contact the local Authority medical staff/contractor in the first instance. If after this consultation, sick leave is granted for more than 7 days, the Contractor's personnel should notify their local and UK line management. If the nature of the illness requires repatriation, the Authority approved doctor should be immediately contacted for a further consultation. The Contractor's personnel will not be deployed overseas again until cleared medically fit by the Authority approved doctor. The Doctors details are as follows:

Name:

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Version Number: 1.0

UNCLASSIFIED

## UNCLASSIFIED

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Address:  
Tel/Fax/E-mail:

- 38.3.3 be personally responsible for the payment of any income tax, earnings related National Insurance contributions applicable to the Contractor and the Contractor's employees sub-contractors and any other person engaged by them, and where applicable the payments of VAT and any other statutory instrument for which the Contractor may be held liable.

### 39 DISPUTE RESOLUTION

- 39.1 The parties will attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.
- 39.2 If the dispute cannot be resolved by the parties pursuant to Clause 39.1 the dispute may, by agreement between the parties, be referred to mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (the "**ADR Notice**") to the other party to the notice requesting a mediation. A copy of the ADR Notice should be sent to CEDR. The mediation will start no later than 14 days after the date of the ADR Notice.
- 39.3 The performance of the Services will not cease or be delayed by the reference of a dispute to mediation pursuant to Clause 39.2.

### 40 LAW

This Contract will be governed by and construed in accordance with English law and the Contractor hereby irrevocably submits to the jurisdiction of the English courts. The submission to such jurisdiction will not (and will not be construed so as to) limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction, nor will the taking of proceedings by the Authority in any one or more jurisdictions preclude the taking of proceedings by the Authority in any other jurisdiction, whether concurrently or not.

### 41 TRAVEL AND SUBSISTENCE

- 41.1 The Contractor's staff will be entitled to travel and subsistence expenses up to the Civil Service standard rates applicable to the Authority's equivalent grade of staff for visits outside of the central Milton Keynes and London boundary. The Contractor shall bear all costs for travel to and from all destinations within the central Milton Keynes and London boundary.
- 41.2 When travelling overseas, the Contractor's staff will be provided by the Authority with air tickets and subsistence expenses which will cover all hotel bills and provide for all meals, etc. It should be noted that many of the Authority's Premises overseas now pay for visitor's hotel bills in advance. The Authority's Representative will in most cases provide details of overseas subsistence rates directly to the Contractor's staff during the planning for individual trips. Details of travel and subsistence expenses are described below.
- 41.3 All travel and subsistence expenses are paid directly to the Contractor's staff or, in the case of incidental expenses, claimed directly back from the Authority by the Contractor's staff. The Authority will not accept subsistence claims made on the Contractor's monthly invoices.

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Version Number: 1.0

UNCLASSIFIED

## UNCLASSIFIED

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- 41.4 Travel time to and from or between overseas premises, and at weekends or bank holidays, is chargeable at the normal working time rate but using the following formula:

$$\text{scheduled flying time} + 5 \text{ hrs} \div 2$$

The 5 hrs is intended to cover the journey to and from the airport, etc.

- 41.5 With the Approval of the Authority's Representative, incidental expenses, e.g. taxis to and from airports, etc, will be recoverable on an individual basis in line with the Authority's standard rules and regulations.