



Project Memorandum
Gas Transmission Benchmarking Initiative (GTBI)
3 Year Study Program January 2019 – December 2021

1. Introduction to GTBI

- 1.1 The vision of the GTBI is: "Using reliable, validated benchmarking data methods and collaborative working to compare and contrast participant performance in order to learn, continually improve and refine recognized best practices in gas transmission".
- 1.2 GTBI is currently made up of two working groups governed by a Steering Group:
 - 1.2.1 Working Group 1 (WG1) is focused on the gas transmission business, including transmission system operational & network activities, compressor stations, dispatching, General & Administration (G&A) and Business & Development (B&D), adopting a performance comparison approach, with a strong emphasis on sharing of working practices and understanding leading practices.
 - 1.2.2 Working Group 2 (WG2) is focused on further detailed technical and asset management practice sharing, project by project, with participation on a voluntary basis.
 - 1.2.3 The proposed Juran Benchmarking service detailed in this Project Memorandum includes the activities of the Steering Group, WG1 and WG2.
- 1.3 The scope of this document is an outline of the governance framework, the study objectives, reporting requirements and Intellectual Property associated with WG1, WG2 and the Steering Group.

2. Governance

2.1 Steering Group, WG1 & WG2

- 2.1.1 The Steering Group controls the direction of the study by reviewing WG1 and WG2 output and revising the vision and strategy as proposed by the participants. The group will usually meet 3 times a year as detailed in section 6.2.
- 2.1.2 The Steering Group is made from existing participants of the study; new participants can nominate a member of the SG to represent their views according to the rules determined by the Steering Group. Juran Benchmarking is required to attend Steering Group meetings, being responsible for recording decisions and actions, but has no voting right.
- 2.1.3 In the case of a stalemate Juran Benchmarking will mediate the situation to allow the participants to reach an agreement.
- 2.1.4 Juran Benchmarking is responsible for ensuring that the benchmarking programme is delivered on time and to quality. WG1 is made up of participant representatives being responsible for data collection on time and to quality for their own company.
- 2.1.5 Working Group 1 is able to make changes to the study limited to the development of new Key Performance Indicators (KPIs) and modification of existing ones. WG1 approves the results and makes recommendations to the Steering Group for any

subsequent changes. The Steering Group should approve changes and additions to the scope of the study in line with the agreed vision and strategy of the study.

- 2.1.6 Participation in the activities of WG2 is voluntary. A proposed WG2 activity will only proceed if a sufficient number of companies agree to participate. WG2 activities can be proposed by individual companies, WG1 or the Steering Group. Juran Benchmarking coordinates the activities of WG2 and can carry out further analyses if required, but any such analyses are not included in the current workscope and would be subject to additional charge.

2.2 Outline Steering Group, WG1 & WG2 Meetings Schedule:

Steering Group

SG Study Review Meeting	February/March
Optional Progress Review Meeting	Ad-hoc
SG Study Results Meeting	October/December

WG1

WG1 Kick-off Meeting	January/February
WG1 Data Review Meeting	September
WG1 Report Review Meeting	October/November
WG1 Best Practice Forum	January/February

WG2

WG2 meet on an ad-hoc basis as required. Meetings are conducted via teleconference/internet meetings wherever possible.

2.3 Study Operating Rules

- 2.3.1 Potential new participants to the WG1 study will be identified by the Steering Group and Juran Benchmarking, and invited to join the study.
- 2.3.2 New participants to the WG1 study are required to bring data for the current year and are also obliged to take part in the study for a period of not less than 3 years.
- 2.3.3 A study year will run for 12 months from January to December.
- 2.3.4 Any existing participant who has been a participant for less than three years who resigns from the study will be subject to payment of all fees for the contracted study period from which they have resigned.
- 2.3.5 Any existing participant who has been a participant for three years or more who resigns from the study will be subject to payment of 25% of all fees for the contracted study period from which they have resigned.
- 2.3.6 Any existing participant proposing to resign from the study can only resign during November or December of the preceding year to minimise the disruption to the compilation of the study results.
- 2.3.7 The resignation of one participant from the study will not result in the end of the study, which will continue with the remaining participants.

3. Study Objectives

- 3.1 The benchmarking objectives of WG1 are to compare efficiency and effectiveness performance data in order that the participants can exchange information, learn from each other and improve their own performance through implementation of best practices for the benefit of their customers and stakeholders.
- 3.2 The GTBI have recognised that it will be beneficial to grow the size of the study. Juran Benchmarking will be required to participate in the solicitation of new participants in coordination with the Steering Group.
- 3.3 The WG1 is governed by the Steering Group who provide the top down guidance and the drive behind changes to the study design and review final output.

4. Study Output Reporting

- 4.1 A number of outputs may result from the activities of WG1 and WG2, depending upon priorities established by the Steering Group in any given benchmarking year:
 - 4.1.1 The key output is the main annual report, where an analysis of all participants KPI data, is conducted with recommendations for participants to use internally. This report will also be enhanced to include output from the other activities of the GTBI. This is the primary deliverable of Juran Benchmarking.
 - 4.1.2 Additional outputs may include:
 - Any WG2 studies conducted, including in-depth studies and development of working practices sharing mechanisms
 - On-site survey report
 - Managers' conference
 - Organisational outlook presentations
 - Ad-hoc surveys
 - Best practice presentations
 - 4.1.3 Any participant can request from Juran Benchmarking a "Blind" copy of selected results for use with its Regulatory bodies, subject to a separate agreement on rates and resources. All charts must be anonymised and reduced sufficiently so as not to allow any individual participant results to be identified. All GTBI participants should be notified that a "Blind" copy is being produced and permission sought from them to be named or not as participants in GTBI.

5. Intellectual Property

5.1 Intellectual Property ownership principles:

- 5.1.1 The participant will remain the sole owner of their source data and submissions to Juran Benchmarking.
- 5.1.2 Juran Benchmarking will own their processing, validation and analysis tools and techniques, and with the exception of the Juran Complexity Factor[®] and the Juran Performance Index[®] (should it be adopted by the GTBI), which are protected by copyright and Trade Mark in Europe and the United States of America, shall grant or procure a non-exclusive, perpetual, irrevocable license for the participants to use such tools and techniques to investigate, use and enjoy the deliverables produced by Juran Benchmarking.

- 5.1.3 Data that is passed through the processing, validation and analysis will remain the property of the participant.
- 5.1.4 All participants will jointly own the reports and analysis that are produced by Juran Benchmarking.
- 5.1.5 Juran Benchmarking will have no rights of ownership of the Intellectual Property, vesting in the reports, analysis and any other deliverables provided to the participants
- 5.1.6 If a participant leaves the study, they can request that their data is removed and deleted from the programme to ensure that no future use is made of the data.

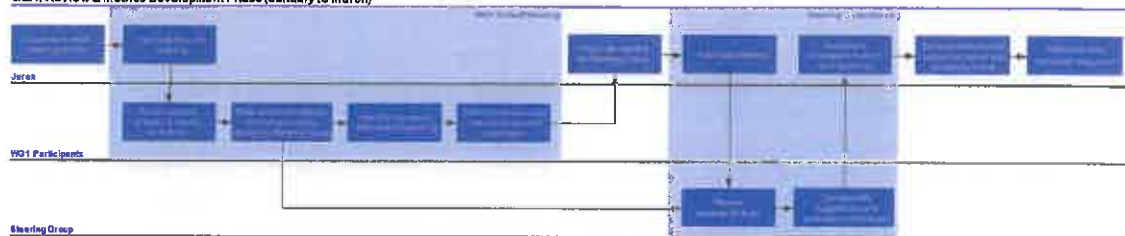
6. Study Operating Process

6.1 Study Operating Timetable

- 6.1.1 The priority activities for each study year will be identified by the WG1 and WG2 and approved by the Steering Group.
- 6.1.2 An indicative study-operating timetable shown in 6.2 is an overview of the minimum number of activities to be carried out by the WG1 and the Steering Group over a study year. The precise study timetable will be developed by the WG1 and approved by the Steering Group at the beginning of each study year. WG2 activities will be scheduled on an ad-hoc basis as required.
- 6.1.3 Continuous improvement and development of the study can be initiated at any time throughout the study, through meetings of the WG1 and the Steering Group.

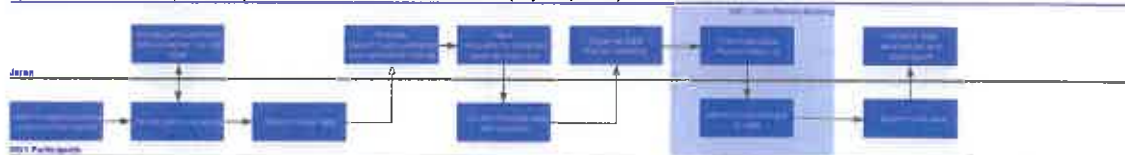
6.2 Gas Transmission Benchmarking Initiative (GTBI) - Study Operating Process

6.2.1. Review & Metrics Development Phase (January to March)



6.2.2. Data Collection Phase (April to July)

6.2.3. Data Validation Phase (July to September)



6.2.4. Results Analysis & Reporting (September to November)

6.2.5. Learning from Best Practices (January - March)



Appendix A - Scope of Work

1.0 Scope of Work

Below is a description of the scope of work for the following 6 key activities:

- Facilitation, consultation and administration support
- Data collection and validation
- Data analysis, report compilation and results reporting
- Complexity Factor assessment
- On-site Survey & Managers' Conference
- Facilitation of WG2 activities

1.1 Facilitation, Consultation and Administration Support

1.1.1 Steering Group, WG1 and WG2 Meetings

1.1.1.1 Juran Benchmarking will attend all Steering Group meetings (up to a maximum of 3 per annum) and all WG1 Meetings (up to a maximum 4 per annum). Meetings will be held in such a way to optimise time and cost efficiency (e.g. by means of WebEx, teleconference or other web-based virtual meeting). It is assumed that in most instances, attendance would be by a single Consultant, who would attend all meetings, in order to maintain continuity and consistency and maximise the benefits of a team approach. However, there may be occasions where additional input from Juran Benchmarking is appropriate, depending upon the meeting topic. In such instances, with the formal agreement of either the Steering Group or WG1 (as appropriate), additional consultant resources may also be asked to participate, for which Juran Benchmarking may charge an additional fee.

1.1.1.2 Juran Benchmarking will support the Chairperson through facilitation of these meetings and, where appropriate, contribute through the provision of best practice advice and guidance to assist in the development of metrics, data collection, data normalisation, analysis, results reporting and best practice identification. Ongoing support in this respect will also be provided via email / telephone.

1.1.1.3 In addition, Juran Benchmarking will prepare and circulate (via email or secure website) all meeting agendas and associated agenda reports / attachments and will prepare and circulate all meeting notes. All administration will be conducted from Juran Benchmarkings' offices.

1.1.1.4 WG2 meetings will be scheduled according to the activities of the working group in any given year, with the prior approval of the Steering Group. Wherever feasible, meetings will be held remotely via teleconference or internet meeting.

1.1.1.5 Juran Benchmarking will support continuous improvement and development throughout the study and will manage the collection of suggestions and changes to the study for discussion mainly during the study review stage.

1.1.2 Solicitation of New Participants

1.1.2.1 If agreed by the members of the Steering Group, Juran Benchmarking will assist the Steering Group in the solicitation of new participants through the identification of potential new participants, developing appropriate documentation to support the solicitation process, delivering presentations to interested parties and administering the subsequent enrolment of new participants. There will be no additional charge for these services.

1.2 Data Collection and Validation

1.2.1 Data Collection

- 1.2.1.1 Juran Benchmarking will develop a revised draft of the Data Collection Document (DCD), incorporating any changes agreed at the Kick-off Meeting. The document will also be reviewed by Juran Benchmarking to identify areas where automated checks can be made an integral part of the document, which can be designed in such a way that it is easy to populate and has a number of in-built validation checks, thereby maximising data quality and minimising errors. The in-built automated error checks aim to prevent the input of spurious data and enable the user to conduct their own first-pass manual check of the data prior to submission. Thorough initial checking by the users themselves significantly reduces the time and effort required for subsequent validation.
- 1.2.1.2 Juran Benchmarking will issue the DCD to appointed focal points in all participants by email or by uploading it to the Juran Benchmarking Secure Members Website. Routine documents will be issued by email and reports will be uploaded to the Juran Benchmarking Secure Members Website. Wherever appropriate, documents will be uploaded to the Juran Benchmarking Secure Members Website.
- 1.2.1.3 Prior to the agreed data submission deadline, Juran Benchmarking will approach all participants to ensure that they are on course to submit their data on time. Those participants who may be at risk of missing the deadline will be identified and actions taken in concert with the Steering Group to proactively drive out any emerging issues in order to minimise the impact on the project schedule.

1.2.2 Data Validation

- 1.2.2.1 Upon receipt, all data will be validated by Juran Benchmarking according to a 3-step data validation process:
- Data Completeness
 - Data Integrity
 - Data Consistency
- 1.2.2.2 Submissions will be first checked to ensure that the data is complete, that is to say that all data cells in the document which should have been completed, have indeed been completed. Validation will include consistency checks against previous year's data submissions. Where possible additional validation of the integrity of the data will be carried out by comparing KPI submissions made against the results expected for corresponding Network and Compressor Station Technical Metrics submitted. Finally, a range of intelligent triangulation checks will be conducted on cost and non-cost data to ensure that there is consistency between data provided and with previous year's submissions.
- 1.2.2.3 Any discrepancies identified will be raised with the relevant participant to determine the accuracy of the data and, where appropriate, ascertain the reason for significant changes from previous results. Upon completion, validated data will be returned by the participant focal point for data analysis, with an accompanying written report providing a commentary on the reasons for any discrepancies from previous submissions.
- ### **1.2.3 Help Desk Support**
- 1.2.3.1 To facilitate the data submission and validation process, Juran Benchmarking will set up a help desk that is available for the entire project duration. The desk will provide professional advice on how to fill the data collection document, answers questions related to specific programme related matters (e.g. interpretation of definitions used)

and send queries for validation. This support will be in the form of email and telephone correspondence with a dedicated resource to address any emerging issues or answer any queries participants may have. The objective is to provide a swift response to participants so not to delay them in the data collection process and Juran Benchmarking guarantees to respond within one working day to all queries received. A list of "Frequently Asked Questions" will also be developed and forwarded to all participants as new issues arise

1.3 Data Analysis, Report Compilation and Results Reporting

1.3.1 Data Analysis

1.3.1.1 Following validation, KPI data from each participant will be analysed and results presented in a normalised graphical format, comparing performance between each participant wherever appropriate.

1.3.2 Report

1.3.2.1 A report will be compiled in each benchmarking year that will:

- Provide an analysis of efficiency and effectiveness performance and associated best practices
- Integrate all GTBI activities into a single enhanced report, including:
 - Member questions & answers relating to observed changes in participant performance
 - Overviews of best practice presentations
 - Summaries and learning points of ad-hoc surveys
 - Summary of output from WG2 working practices activities
 - Key information from the organisational outlook presentations
 - Relevant output from the on-site survey (if conducted)
 - Key messages from the Managers' Conference (if conducted)

1.3.2.2 The report will show the graphical representation of the results, including comparisons with previous year's results. The report will include a commentary of the results, indicating key interpretations as well as an overview of the analysis techniques used and an indication of the best performing participants in each of the key performance-driver areas examined.

1.3.2.3 The final report structure and content will be developed following the data analysis and agreed with the WG1.

1.3.2.4 The table below provides an indication of the main content of the report:

Report Section	Indicative Content
Executive Summary	Overview of key findings and recommendations including radar chart analyses of key performance driver areas
Introduction	<ul style="list-style-type: none"> ◦ Preface ◦ Leading Performers ◦ The Juran Complexity Factor ◦ Metrics Models ◦ Report Overview
Data Analysis and Results	<ul style="list-style-type: none"> ◦ Data will be analysed for each of the key performance areas of the study: <ul style="list-style-type: none"> ◦ Efficiency <ul style="list-style-type: none"> ◦ Spending ◦ Staffing ◦ Effectiveness <ul style="list-style-type: none"> ◦ Network & Compressor Performance ◦ Health & Safety ◦ Quality of Service ◦ Environment & Incidents ◦ Findings will be presented as charts and tables and supported by a commentary describing results ◦ Trends for the current and previous years will be conducted.

Report Section	Indicative Content
	<ul style="list-style-type: none"> Where possible more detailed analyses of the relationship between KPIs should also be carried out to provide better insight.
Performance Gap Analysis	<p>This section of the report will be unique for each participant. The gaps between each participant and the leading performers will be identified as far as possible for each performance area. A variety of analytical methods will be employed including Pareto analyses. Performance trends for each participant will be considered and strengths and weaknesses identified within the context of the business environment of each participant, with high level recommendations for improvement.</p>
Integrated Content	<p>The output from other GTBI activities will be integrated into the annual report where most appropriate (to be determined) in order to provide an enhanced report. This content is expected to include:</p> <ul style="list-style-type: none"> Summary of any WG2 studies completed Key messages from the Managers' Conference (if conducted) Incorporation of relevant findings from the on-site survey (if conducted) Consideration of differences in working practices Inclusion of differences in organisational structures and processes Summaries and key learning points of any ad-hoc surveys conducted Overview of best practice forum presentations with summary of business impact Incorporation of participant Questions & Answers to explain findings where relevant
Appendices	<ul style="list-style-type: none"> Participant Information Extraordinary Expenditure Metric Definitions Charts Other supplementary information as required

1.3.2.5 The GTBI Steering Group will determine the extent to which data is anonymised in the reports.

1.3.2.6 Overall results will also be summarised and presented to the WG1 and Steering Group by Juran Benchmarking at one of the meetings referred to above.

1.4 Complexity Factor Assessment

1.4.1 The Juran Complexity Factor[®] (CF) has been established as the primary method for data normalisation by the GTBI. The CF is calculated for each part of the transmission system (network, compressors etc.) and as a whole network.

1.4.2 The CF will be calculated for each new participant when they join the GTBI.

1.4.3 Each participant has the option of having the CF for their system review by Juran Benchmarking every 3 years. This is highly recommended to ensure any changes to the system are captured in the CF calculation.

1.4.4 If in the intervening period between scheduled full reviews of the CF, changes are made to a participant's gas transmission system that may impact significantly on the CF of the system, then the participant may request Juran Benchmarking to update the CF calculation (see Clause 1.7.1.2).

1.4.5 Complexity Factor Calculation

1.4.5.1 A CF questionnaire will be issued to and completed by each participant and returned to Juran Benchmarking for validation. Juran Benchmarking will then develop an inventory of modules of equipment which make up the transmission system. Each item in the inventory will be assigned a Weight Factor taken from the Library and the CF of the system will be calculated as the sum of the Weight Factors of its individual items. Once the CF has been calculated, it will be reviewed and agreed by the relevant participant and then form the basis for subsequent normalisation of performance data.

1.4.5.2 No changes will be made to the CF methodology as it is applied to the GTBI without the prior agreement of the Steering Group.

1.5 On-site Survey

- 1.5.1 In 2019 Juran Benchmarking will conduct a survey of all participants pertaining to a subject area identified by the Steering Group as being important to the GTBI. The purpose of the survey will be to gain an in-depth insight into how each participant addresses the subject being surveyed and provide an objective analysis of learning points to be shared amongst all participants.
- 1.5.2 Juran Benchmarking will work in conjunction with the Steering Group to develop an outline scope for the survey and prepare a survey question set. Juran Benchmarking will visit each participant and over a 2 day period conduct structured interviews with staff (selected by each participant) who are key stakeholders in the subject area being survey. Findings will be compiled by Juran Benchmarking into a report which will be shared with all participants.

1.5.3 Managers' Conference

- 1.5.3.1 In 2019 the normal annual best practice forum will be modified to transform it into a Managers' Conference. The detailed scope, will be determined by the Steering Group but it will be a one-day event, based upon the subject matter of the on-site survey. The intention is to engage relevant managers from all participants in the activities of the GTBI, allowing them to network, share their knowledge and experiences and help form the strategic focus of the GTBI going forward.

1.6 Facilitation of WG2 Activities

- 1.6.1 Juran Benchmarking will administer and program-manage the activities of WG2. This will include:
- Managing the program and reporting progress to the Steering Group
 - Liaising with project sponsors to ensure project progress is on track
 - Circulating meetings minutes / communications via email / secure website to participants
 - If required, facilitation support to the WG2 project sponsor at any WG2 project meetings but this support falls outside of the current workscope and would be subject to terms negotiated separately.

1.7 Costs per Participant

- 1.7.1 The annual fee (in British Pounds Sterling) for AB Amber Grid in each year is shown in the table below:

Support Service	2019	2020	2021
WG1 and Steering Group Support	£37,150	£37,150	£37,150
WG2 Support	£2,450	£2,450	£2,450
Complexity Factor Assessment	£7,400	-	-
On-Site Survey and Senior Management Conference	£8,900	-	-
Introductory Training Workshop	£4,000	-	-
Total Standard Fee	£59,900	£39,600	£39,600
<u>Estimate</u> of Expenses	£3,000	£1,500	£1,500
Fee Reduction for AB Amber Grid	£20,300	-	-
Total Discounted Fee	£42,600	£41,100	£41,100

- 1.7.1.1 A participant may request Juran Benchmarking deliver a debrief presentation of the findings of the benchmarking to their senior management team. The fee for this service will be £4,000.
- 1.7.1.2 If a participant requests a CF update during the intervening period between scheduled full reviews of the CF, these will be charged for at a standard rate of £2,000 per diem.
- 1.7.1.3 New participants joining the GTBI will have their Complexity Factor Assessment conducted in the year of joining and will be charged the fees for this service in that year.
- 1.7.1.4 New participants are subject to a revised fee set by Juran Benchmarking for their first year which will include a £4,000 fee for the provision of an introductory training workshop.
- 1.7.1.5 Any additional support required that falls outside the work scope described above will be charged for at the standard rate of £2,000 per diem.

1.7.2 Fee Rebates

- 1.7.2.1 Members may be entitled to a fee rebate according to the criteria set out below.
 - 1.7.2.1.1 The total number of GTBI participants participating under this contract exceeds 10 (i.e. 11 or more).
 - 1.7.2.1.2 A participant will be entitled to a rebate only if they have participated in the GTBI for the immediately preceding 3 year period.
 - 1.7.2.1.3 The total fee rebate will be divided equally between all participants that meet the above criteria and deducted from their annual fees (one third of the total rebate per annum).
 - 1.7.2.1.4 The rebate is based upon and applies only to the fees for WG1 and Steering Group support and WG2 support activities.
 - 1.7.2.1.5 The total fee rebate will be capped at £18,000 (see Clause 1.7.2.2).
- 1.7.2.2 The applicable fees rebates are outlined in the table below:

Total Number of GTBI Participants	Total Fee Rebate (£) to be divided between eligible Participants
11	£6,000
12	£12,000
13	£18,000

1.7.3 Exclusions

- 1.7.3.1 All travel and subsistence costs are excluded and will be charged in line with the invoicing schedule. All efforts will be made to keep expenses to a minimum by optimal planning of site visits (with the co-operation of the participants). Juran Benchmarking will submit itemised expenses.
- 1.7.3.2 All above fees are exclusive of VAT.

2.0 Payment

2.1 Payment and invoicing principles are outlined below:

- 2.1.1 Participants will be invoiced individually by Juran Benchmarking.
- 2.1.2 Each invoice will equate to 50% of the total fee payable (less any rebate due) by the participant and sent out in line with the invoicing schedule.
- 2.1.3 All invoices will summarise work carried out to date.
- 2.1.4 Payment will be due within 30 days of the date of invoicing.
- 2.1.5 Invoices will be submitted to the named Invoicing Contact for each participant
- 2.1.6 Travel and subsistence costs will be invoiced as a supplement to the main invoice on the Invoicing Schedule and a full break down of costs and will be issued in line with the schedule.
- 2.1.7 Juran Benchmarking will ensure all invoices are valid for VAT or any other local tax requirements.

2.2 Invoicing Schedule

- 2.2.1 The first invoice will be issued following the release and acceptance of the metrics data collection document. This is expected to occur during March of each year.
- 2.2.2 The second invoice will be issued following the release and acceptance of the study analysis and reporting. This is expected to occur between November and December of each year.

**CONDITIONS OF CONTRACT
FOR BENCHMARKING CONSULTANCY**

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1. DEFINITIONS AND INTERPRETATIONS

- (a) For the purposes of the Contract except where expressly stated to the contrary, the following words in capitals shall have the following meanings:-

“ADDITIONAL CHARGES” shall mean compensation for additional support by the CONSULTANT outside the scope of SERVICES, which will be charged at DAILY RATES;

“ADDITIONAL PERIOD” shall mean an extension to the INITIAL PERIOD specified in the Form of Agreement as determined by the PARTICIPANT;

“AFFILIATE” shall mean any entity which from time to time controls, is controlled by or is under common control with the relevant party, where control means having the ability (including without limitation by means of a majority of voting rights or the right to appoint or remove a majority of the board of directors) to control the management and policies of an entity;

“APPENDIX A” shall mean the document entitled “Scope of Services” which is attached as Appendix A to the PROJECT MEMORANDUM and forms an integral part thereof;

“ASSISTANT REPRESENTATIVE” shall mean an assistant representative of the PARTICIPANT as the case may be or the CONSULTANT appointed by a REPRESENTATIVE pursuant to condition 2(c);

“CHANGE REQUEST” shall mean a written request by the PARTICIPANT for a MODIFICATION;

“CHARGES” shall mean FIXED PRICE payable by the PARTICIPANT in respect of PROJECT as set out in APPENDIX A or SERVICES undertaken by CONSULTANT PERSONNEL on behalf of the PARTICIPANT under the CONTRACT;

“CONDITIONS OF CONTRACT” shall mean these present Conditions of Contract for Benchmarking Consultancy which are to be incorporated into and form part of the CONTRACT;

“CONFIDENTIAL INFORMATION” shall mean all information howsoever communicated by one party to the other which is identified as being confidential or commercial-in-confidence at the time of disclosure or is reasonably understood to be confidential by the parties due to the nature, type or presentation of the information and without limitation, may include any information, and knowledge whether in written, electronic, machine readable, visual, audio-visual or any other tangible or intangible form and all copies and reproductions thereof and whether disclosed in writing, orally, by demonstration or otherwise;

“CONSEQUENTIAL LOSS” shall mean any indirect or consequential loss including without limitation, loss of savings, loss of profit, loss of use, loss of contract, loss of production, business interference or increased loss of working howsoever caused, arising out of or in connection with the CONTRACT other than losses arising from theft, dishonesty, fraud or misappropriation;

“CONSULTANT” shall mean the Phillip Townsend Associates Ltd., and includes the CONSULTANT'S successors and permitted assignees;

“CONSULTANT PERSONNEL” shall mean all persons involved in the management and performance of the SERVICES whether employed or engaged by the CONSULTANT, any sub-contractor or otherwise;

“the CONTRACT” means the set of contractual documents consisting of (i) the Form of Agreement, (ii) these CONDITIONS OF CONTRACT and the (iii) PROJECT MEMORANDUM (including APPENDIX A and B) which forms an integral part in their entity;

“DAILY RATES” shall mean the daily rates set out in the APPENDIX A which is to be used to calculate ADDITIONAL CHARGES as amended from time to time in accordance with Condition 10 of these CONDITIONS OF CONTRACT;

“DATA” shall mean all designs, models, drawings, prints, samples, transparencies, specifications, reports, manuscripts, working notes, documentation, manuals, photographs, negatives, tapes, discs, software or any other similar items;

“DELIVERABLES” shall mean any DATA or other tangible results specifically prepared by the CONSULTANT for the PARTICIPANT under the PROJECT or the SERVICES together with any working documents and tools solely required for implementation of the DELIVERABLES as specified in the PROJECT MEMORANDUM;

“FIXED PRICES” shall mean the fixed price for a PROJECT which is agreed between the PARTICIPANT and the CONSULTANT in APPENDIX A;

“GTBI” shall mean the Gas Transmission Benchmarking Initiative described in the PROJECT MEMORANDUM;

“INDIVIDUAL SHARE OF CHARGES” shall mean the portion of the CHARGES to be paid by the individual PARTICIPANT in accordance with APPENDIX A;

“INITIAL PERIOD” shall mean the initial duration of the contract as defined in the Form of Agreement;

“INTELLECTUAL PROPERTY” shall mean all patents, registered designs, design rights, copyright, database rights, trade marks, know-how (including any applications for registration of the foregoing) or any other intellectual property rights whatsoever and wheresoever in the world existing, and whether registered or unregistered;

“JOINTLY OWED” shall mean that the obligations and liabilities of each PARTICIPANT are owed on a pro rata basis ,

“LEGISLATION” shall mean all applicable statutes, statutory instruments, codes of practice, guidance notes, by-laws, including without limitation competition law EU regulations, directives, decisions, notices and regulations of any local, statutory, governing or public authority or body, or any other lawfully constituted regulatory body having authority and reference to LEGISLATION may be construed as any one of the foregoing;

“MANAGEMENT INFORMATION” shall mean the information to be provided by the CONSULTANT to the PARTICIPANT as required under the CONTRACT and specified in the PROJECT MEMORANDUM and any MODIFICATIONS thereto;

“MANAGEMENT MEETINGS” shall mean those meetings between the REPRESENTATIVES of each party pursuant to condition 8(c) which meetings shall be held to review the CONTRACT progress on an agreed basis or upon the request in WRITING of one party to the other;

“MATERIALS” shall mean any items, materials or other property, including any DATA provided or made available by one party to the other for the purpose of the CONTRACT;

“MODIFICATION” shall mean an addition, modification or amendment to the SERVICES, PROJECT, DELIVERABLES, or performance required under PROJECT or the DELIVERABLES;

“NEWCO” shall mean any (new) company which may join GTBI and become a party to the CONTRACT;

“PARTICIPANT” shall mean the companies named in APPENDIX B of the PROJECT MEMORANDUM and includes its successors and permitted assignees and NEWCO;

“PARTICIPANT PROPERTY” shall mean any DATA or other items, materials or property provided or made available by the PARTICIPANT or any AFFILIATE thereof to the CONSULTANT (excluding premises) for the purposes of the CONSULTANT providing the SERVICES;

“PARTY” shall mean either any participant, or the company or the consultant as the context may require;

“PROGRESS REPORTS” shall mean the information to be provided by the CONSULTANT to the PARTICIPANT in respect of the PROJECT required under the CONTRACT and specified in the PROJECT MEMORANDUM and any MODIFICATIONS thereto;

“PROJECT” shall mean a package of SERVICES for which the CONSULTANT is engaged (including the period during which the PROJECT shall be delivered), set out in APPENDIX A and any MODIFICATION thereto;

“PROJECT MEMORANDUM” shall mean the document entitled “Gas Transmission Benchmarking Initiative (GTBI)” including APPENDIX A describing the basic structure and parameters of the GTBI;

“REPRESENTATIVE” shall mean a representative of the PARTICIPANT or the CONSULTANT appointed pursuant to condition 2;

“SERVICES” shall mean the consulting SERVICES needed to carry out the PROJECT as required under the CONTRACT and as specified in APPENDIX A, such as (i) Facilitation, Consultation and Administration Support; (ii) Data Collection and Validation; (iii) Data Analysis, Report Compilation and Results Reporting; and any MODIFICATION thereto including, but not limited to, the provision by the CONSULTANT of all necessary personnel;

“SERVICE PROVIDER” shall mean any replacement service provider nominated by the PARTICIPANT to provide any of the SERVICES or any other similar services following the expiry or termination of the CONTRACT or a PROJECT or termination of any one or more of the SERVICES;

“SITE” shall mean the place where the SERVICES or any part thereof are to be performed;

“SWISS LAW” shall mean all LEGISLATION of Switzerland;

“WORKING DAY” shall mean weekday (Saturdays, Sundays and public holidays accepted in the United Kingdom);

“WORKING HOURS” shall mean unless otherwise stated particularly in WRITING 7.00am – 7.00pm in the United Kingdom on any WORKING DAY;

“WRITING” includes facsimile transmissions, electronic transmissions and all compatible means of communication.

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- (b) The terms defined under condition 1 (a) shall include the singular and the plural as the context requires.
 - (c) References to LEGISLATION include that LEGISLATION as amended or re-enacted.
 - (d) The CONTRACT supercedes all previous agreements and undertakings between the parties concerning the subject matter of the CONTRACT. In the event of any conflict between the provisions of the CONDITIONS OF CONTRACT and the PROJECT MEMORANDUM then the PROJECT MEMORANDUM shall prevail.

2. DESIGNATED REPRESENTATIVES

- (a) Each PARTY shall by notice in WRITING to the other party appoint a representative from within its staff who shall have authority to act on behalf of that party on such matters in connection with the CONTRACT as shall be specified in such notice.
- (b) Each PARTY may by further notice in WRITING to the other party revoke or amend the authority of the representative or appoint a new representative. The parties shall bear their own costs relating thereto.
- (c) Subject to any limitations specified by a party in the notices referred to in conditions 2(a) and (b) the REPRESENTATIVE may from time to time by notice to the other party, delegate all or any part of his authority to an assistant from within the staff of the relevant party.
- (d) The REPRESENTATIVE may by further notice in WRITING to the other party revoke or amend the delegated authority of any ASSISTANT REPRESENTATIVE or appoint a new ASSISTANT REPRESENTATIVE. The parties shall bear their own costs relating thereto.

3. ASSIGNMENT AND SUB-CONTRACTING

- (a) (aa) The CONSULTANT shall not assign the CONTRACT in whole or in part or any benefit or interest therein to any third party without the prior consent in WRITING of the PARTICIPANT such consent not to be unreasonably withheld or delayed. For the avoidance of doubt, the PARTICIPANT shall not be considered to be unreasonably

withholding its consent if in the PARTICIPANT's opinion such third party lacks the technical capability or financial standing to perform the SERVICES

- (bb) The PARTICIPANT may assign, novate or otherwise transfer the CONTRACT in whole or in part or any benefit or interest therein to any AFFILIATE of the PARTICIPANT by giving notice in WRITING to the CONSULTANT. In such an event the CONSULTANT agrees that it shall co-operate fully with the PARTICIPANT and any AFFILIATE and will execute all necessary documentation to complete the assignment, novation or transfer. All parties shall agree that (unless otherwise agreed in WRITING) any new contract arising pursuant to this condition 3(a)(bb) shall be on the same terms and conditions as the CONTRACT.
- (b) The CONSULTANT shall not sub-contract the whole or any part of the SERVICES without the prior consent in WRITING of the PARTICIPANT such consent not to be unreasonably withheld or delayed. For the avoidance of doubt, the PARTICIPANT shall not be considered to be unreasonably withholding its consent if in the PARTICIPANT'S opinion such third party lacks the technical capability or financial standing to perform the SERVICES. If such consent is given it shall not relieve the CONSULTANT from any liability or obligation under the CONTRACT and to the extent that SERVICES are provided by sub-contractors the CONSULTANT shall be responsible for the acts, omissions, defaults or negligence of its agents or servants or sub-contractors as fully as if they were the acts, omissions, defaults or negligence of the CONSULTANT.

4. RELATIONSHIP OF PARTIES

- (a) The CONSULTANT'S status shall be that of an independent contractor and the relationship of the parties shall not be that of principal and agent or employer and employee.

This CONTRACT shall not create a partnership or joint venture between the parties thereto, and CONSULTANT has no power to act on behalf of PARTICIPANT, unless explicitly authorized in WRITING.

5. SERVICES

- (a) Except as otherwise provided in APPENDIX A, the PARTICIPANT shall determine the level and volume of SERVICES to be provided by the CONSULTANT in WRITING. Notwithstanding anything to the contrary in the CONTRACT nothing shall give or confer any guarantee by the PARTICIPANT to the CONSULTANT as to the minimum level of SERVICES that may be required by the PARTICIPANT.
- (b) The SERVICES shall be carried out to the reasonable satisfaction of the PARTICIPANT and in accordance with the PROJECT MEMORANDUM (including APPENDIX A) and the CONSULTANT shall use the highest standard of skill and care which is ordinarily exercised by experienced and competent consultants carrying out services of a similar nature to the SERVICES.
- (c) The CONSULTANT shall provide any electronic files in the format of the PARTICIPANT'S choice as specified in PROJECT MEMORANDUM or at the time of PROJECT start. The CONSULTANT agrees that should the format specified at PROJECT start be superseded or otherwise defined during PROJECT by the PARTICIPANT, the CONSULTANT will reproduce the electronic files in a compatible format as determined by the PARTICIPANT.
- (d) The CONSULTANT undertakes throughout the CONTRACT:
 - (aa) to comply with and to ensure that all CONSULTANT PERSONNEL comply with:
 - (i) all relevant LEGISLATION, recommendations and other requirements of any relevant government or governmental agency and, to the extent that such regulations are advisory, compliance with which is advisable but not mandatory, the minimum compliance to be achieved by the CONSULTANT should be the Best Practice in the relevant industry;
 - (ii) the safety and security standards, environmental standards and site procedures of the PARTICIPANT; and

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- (iii) if relevant, any codes of practice of the PARTICIPANT and any reasonable instructions and guidelines issued by the PARTICIPANT from time to time;
- (bb) to ensure that all of the CONSULTANT PERSONNEL carry out their duties and conduct themselves and behave while on the SITE, or any third parties' premises while performing the SERVICES in an orderly and appropriate manner, having regard to the nature of their duties;
- (cc) to establish and maintain such security measures and procedures as are reasonably practicable to provide for the safe custody of any CONFIDENTIAL INFORMATION and DATA of the PARTICIPANT in its possession and to prevent unauthorised access thereto or use thereof. In particular the CONSULTANT shall ensure that any such CONFIDENTIAL INFORMATION and DATA is only disclosed to those of the CONSULTANT PERSONNEL who need to know the same;
- (dd) to inform the PARTICIPANT promptly, giving details of the circumstances, reasons and likely duration, in the event it becomes aware of anything of whatever nature whether or not the result of any act or omission on the part of the CONSULTANT or the CONSULTANT PERSONNEL which may prevent the CONSULTANT fulfilling its obligations in accordance with the CONTRACT;
- (ee) to have at all times during the CONTRACT all licences, approvals and consents necessary to enable the CONSULTANT to provide the SERVICES;
- (ff) not to (and to procure that the CONSULTANT PERSONNEL shall not), through any act or omission cause the PARTICIPANT to infringe the terms of any licence or any other agreement relating to the provision of the SERVICES;
- (gg) to ensure that all DELIVERABLES and information and matters of fact communicated (whether in WRITING or otherwise) to the PARTICIPANT by the CONSULTANT or the CONSULTANT PERSONNEL during the course of the CONTRACT will be true, complete and accurate in all material respects;

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- (hh) to provide all tools and equipment or procure the provision of all tools and equipment necessary for the provision of SERVICES;
 - (ii) promptly to supply to the PARTICIPANT such information relating to the SERVICES as the PARTICIPANT may reasonably request from time to time;
 - (jj) to continually review and advise the PARTICIPANT as to reducing costs and improving efficiency wherever opportunities exist;
- (e) The PARTICIPANT may from time to time request the CONSULTANT to provide additional services over and above the provision of the SERVICES and the CONSULTANT shall, subject to the CONSULTANT and the PARTICIPANT agreeing in WRITING any ADDITIONAL CHARGES for such SERVICES, so far as it may lawfully do so and to the extent of its available resources, agree to provide such additional SERVICES on the terms and the conditions of the CONTRACT.
- (f) All DELIVERABLES shall:
- (aa) conform with the PROJECT MEMORANDUM (including particularly APPENDIX A);
 - (bb) be free of any material inaccuracies or discrepancies;
 - (cc) have been prepared with all due care and diligence.; and
 - (dd) be fit for the purpose set out in the PROJECT.
- (i) Notwithstanding that the SERVICES or any part thereof have been the subject of any review and approval other than any written form of acceptance in accordance with any acceptance test or procedure described in the PROJECT, the CONSULTANT shall not be relieved from any liability or obligation under the CONTRACT.
- (g) If the PARTICIPANT notifies the CONSULTANT of any deficiency in the SERVICES, the CONSULTANT shall, without prejudice to the PARTICIPANT'S other rights, promptly

remedy the deficiency or failure as required by the PARTICIPANT within a period of thirty (30) WORKING DAYS from receipt of such notification by the PARTICIPANT. All costs of such remedy shall be borne by the CONSULTANT. If the CONSULTANT fails to remedy the deficiency or failure to the PARTICIPANT'S reasonable satisfaction within thirty (30) WORKING DAYS as aforesaid without prejudice to the PARTICIPANT 'S rights under this CONTRACT, the PARTICIPANT may remedy or cause to be remedied any deficiency at the CONSULTANT's cost.

6. PARTICIPANT PROPERTY

- (a) The CONSULTANT shall promptly notify the PARTICIPANT if it considers that DATA supplied by the PARTICIPANT is grossly insufficient in any material respect for the purposes of the provision of the SERVICES or if there are any important inconsistencies in any DATA supplied by the PARTICIPANT. The PARTICIPANT will use its reasonable endeavours to supply all DATA as reasonably requested and required by the CONSULTANT for the purpose of the provision of the SERVICES.
- (b) Title to and property in PARTICIPANT PROPERTY shall remain with the PARTICIPANT and shall at no time pass to the CONSULTANT unless the PARTICIPANT specifically agrees in WRITING.
- (c) Risk in PARTICIPANT PROPERTY shall pass to and remain with the CONSULTANT all times whilst in its possession or control. If any PARTICIPANT PROPERTY is damaged or destroyed whilst in the CONSULTANT's possession or control then the CONSULTANT shall replace the same or restore it to good order and condition at its own cost. If the CONSULTANT fails to do so then the PARTICIPANT may withhold payment of such part of any sums due to the CONSULTANT as may be required to replace it or to restore it to good order and condition.
- (d) The CONSULTANT shall store PARTICIPANT PROPERTY in its premises in a proper manner in conditions which adequately protect, preserve and insure them without any charge to the PARTICIPANT and shall not tamper with any identification upon PARTICIPANT PROPERTY or any packaging and shall ensure that PARTICIPANT PROPERTY is stored

separately from any other property and is clearly identified as belonging to the PARTICIPANT and the PARTICIPANT shall be entitled to examine PARTICIPANT PROPERTY in storage at any time during WORKING HOURS upon giving the CONSULTANT reasonable notice of its intention to do so.

- (e) The CONSULTANT shall establish and maintain such security measures and procedures to provide for the safe custody of PARTICIPANT PROPERTY in its possession and to prevent unauthorised access or use thereof.
- (f) The CONSULTANT shall deliver the PARTICIPANT PROPERTY to the PARTICIPANT at any time on reasonable notice. For the purposes of this condition, the PARTICIPANT, its employees and agents will be entitled to free and unrestricted access to any premises where any PARTICIPANT PROPERTY is situated at any time on reasonable notice.

7. RATE OF PROGRESS/COMPLETION

The CONSULTANT shall carry out and complete the SERVICES within the period specified in the PROJECT MEMORANDUM. Time shall be of the essence and the CONSULTANT shall, if required by the PARTICIPANT, take such steps as may be necessary and as the PARTICIPANT may approve to remedy or mitigate any delay, including revision of the PROJECT MEMORANDUM.

8. INFORMATION AND MEETINGS

- (a) Except as set out otherwise in the PROJECT MEMORANDUM the MANAGEMENT INFORMATION and PROGRESS REPORTS shall be provided by Consultant in accordance with subclause lit. (b)-(d).
- (b) The CONSULTANT undertakes at its sole cost and expense to provide the PARTICIPANT at agreed intervals with MANAGEMENT INFORMATION and PROGRESS REPORTS in relation to the SERVICES and the performance by the CONSULTANT. The parties may agree at MANAGEMENT MEETINGS to amend, modify, replace or supplement the MANAGEMENT INFORMATION and/or PROGRESS REPORTS from time to time and in such event, such amendment, modification, replacement or supplement shall thereafter be

deemed to form part of the MANAGEMENT INFORMATION and the PROGRESS REPORTS.

- (c) The PARTICIPANT shall be entitled to request the CONSULTANT to provide the PARTICIPANT with certain additional information in connection with the CONTRACT other than the MANAGEMENT INFORMATION and the PROGRESS REPORTS from time to time, and the CONSULTANT agrees to comply with such request, provided that it shall be entitled to make a reasonable charge therefore, to the PARTICIPANT. The amount of such charge shall be agreed between the parties prior to the CONSULTANT providing the additional information to the PARTICIPANT.
- (d) The CONSULTANT and the PARTICIPANT agree with each other to form a management team comprising REPRESENTATIVES who shall attend the MANAGEMENT MEETINGS the purpose of which shall be:
 - (aa) to actively monitor the CONSULTANT's performance of the SERVICES;
 - (bb) any other matter which the parties agree in writing shall be included within the MANAGEMENT MEETINGS

9. HUMAN RESOURCES

- (a) The CONSULTANT shall provide all personnel necessary to carry out the SERVICES. On completion of the part or parts of the PROJECT assigned to each member of the CONSULTANT PERSONNEL, the CONSULTANT shall immediately remove such person from the PROJECT unless otherwise requested by the PARTICIPANT.
- (b) The CONSULTANT shall ensure that all CONSULTANT PERSONNEL assigned to carry out the SERVICES shall be appropriately qualified, competent and experienced. The CONSULTANT shall ensure that all statutory and other legal obligations are observed in respect of the CONSULTANT PERSONNEL and any other persons engaged in the provision of the SERVICES and shall indemnify and keep the PARTICIPANT indemnified against any costs (including legal costs), losses, damages, penalties, orders, awards, expenses or other payments incurred as a result of any claim brought against the PARTICIPANT by any of the

CONSULTANT PERSONNEL or any other persons engaged in the provision of the SERVICES as a result of any breach of this condition.

- (c) The REPRESENTATIVE may, having stated his reasons, instruct the CONSULTANT to remove any of the CONSULTANT PERSONNEL from the PROJECT. The CONSULTANT shall then procure that, as soon as is reasonably practicable, the CONSULTANT PERSONNEL in question have no further connection with the work included in the PROJECT or contract with the PARTICIPANT. The CONSULTANT shall indemnify and keep the PARTICIPANT fully and effectively indemnified against any costs (including legal costs), losses, damages, penalties, orders, awards, expenses or other payments incurred as a result of any claim brought against the PARTICIPANT by any of the CONSULTANT PERSONNEL as a result of the PARTICIPANT'S exercise of its rights under this condition.
- (d) The CONSULTANT or a PARTICIPANT shall indemnify the PARTICIPANT and keep the PARTICIPANT fully and effectively indemnified from and against any costs arising out of or connected with any claim by any of the CONSULTANT PERSONNEL that, during the period in which the CONSULTANT provides the SERVICES to the PARTICIPANT or during any handover period, any such CONSULTANT PERSONNEL were or became employees of a PARTICIPANT or any AFFILIATE, other than in circumstances where a PARTICIPANT or any AFFILIATE offers to employ and does employ any such CONSULTANT PERSONNEL and should any of the CONSULTANT PERSONNEL successfully claim during the term of the CONTRACT they are or became employees of a PARTICIPANT then in such circumstances a PARTICIPANT shall have the right to terminate any such employment forthwith and the CONSULTANT shall indemnify the PARTICIPANT and keep the PARTICIPANT fully and effectively indemnified against any termination payment and in respect of any other payments, whether by way of remuneration or otherwise, payable to any such CONSULTANT PERSONNEL (including but not limited to notice pay, arrears of wages, accrued holiday pay and redundancy pay), and in respect of any claim arising out of any such termination.
- (e) The CONSULTANT undertakes that either as soon as it receives notice of termination of the CONTRACT or of the termination of any part of the SERVICES, or in the 6 months immediately prior to the expiry of the CONTRACT (whichever occurs earlier) it shall not

without the prior written consent of the PARTICIPANT (which shall not be unreasonably withheld): -

- (aa) increase or allow to be increased the number of CONSULTANT PERSONNEL assigned to the provision of the SERVICES;
- (bb) change or allow to be changed the identity of the CONSULTANT PERSONNEL assigned to the provision of the SERVICES by transferring or allowing to be transferred any CONSULTANT PERSONNEL to or from the provision of the SERVICES or replacing or allowing to be replaced any CONSULTANT PERSONNEL engaged in the provision of the SERVICES even if this does not increase the overall number of CONSULTANT PERSONNEL;

except where the CONSULTANT is required to do so by law or by force of contract, whereupon the CONSULTANT shall promptly notify the PARTICIPANT in WRITING of the terms of such legal or contractual requirement and shall obtain the consent of the PARTICIPANT in WRITING (which shall not be unreasonably withheld) to any such variation or proposed increase or change. In the event that the CONSULTANT breaches the provisions of this condition, then the PARTICIPANT and/or the SERVICE PROVIDER shall be entitled in their absolute discretion to terminate the employment of any of the CONSULTANT PERSONNEL who transfer to them and the CONSULTANT shall indemnify the PARTICIPANT and/or the SERVICE PROVIDER and keep the PARTICIPANT and/or the SERVICE PROVIDER fully and effectively indemnified against any termination payment and in respect of any other payments whether by way of remuneration or otherwise payable to any such CONSULTANT PERSONNEL (including but not limited to notice pay, arrears of wages, accrued holiday pay and redundancy pay) and against any claim arising out of such termination.

10. **MODIFICATION**

- (a) The CONSULTANT shall within 5 WORKING DAYS of receipt of a CHANGE REQUEST (or other period as agreed by the PARTICIPANT) supply to the PARTICIPANT:

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- (aa) full details of all consequential changes which will be required to the SERVICES, PROJECT, or the CHARGES and all other effects of the proposed change; or
 - (bb) confirmation in WRITING that there will be no such consequential changes or effects; or
 - (cc) a date when the details will be available.
- (b) If the CONSULTANT can demonstrate to the PARTICIPANT's reasonable satisfaction that a CHANGE REQUEST would require consequential changes as set out in condition 10(a)(aa), the PARTICIPANT shall be entitled to require the CONSULTANT to comply with the CHANGE REQUEST subject to the PARTICIPANT agreeing to such consequential changes.
- (c) Where a dispute arises in relation to a CHANGE REQUEST including whether any consequential changes are justified, the dispute shall be referred for determination in accordance with condition 26.

11. SUSPENSION

- (a) The CONSULTANT shall on the instruction of the PARTICIPANT in WRITING suspend the whole of the PROJECT or of the SERVICES or any part thereof and shall take all measures necessary to protect and secure the same. The PARTICIPANT shall bear the costs of any suspension (such costs to be reasonable) and the CONSULTANT shall mitigate such costs.
- (b) The PARTICIPANT may at any time by notice to the CONSULTANT in WRITING authorize the CONSULTANT to resume all or any part of the suspended PROJECT or SERVICES and the CONSULTANT shall, on being given such notice, promptly resume performance of the PROJECT or SERVICES or part thereof in accordance with the terms of the notice.

12. TERMINATION

- (a) A PARTY may terminate the whole or any part of the CONTRACT forthwith if:-

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- (aa) notice has been given to the other PARTY of a substantial or persistent breach and the PARTY given such notice has failed to remedy such breach to the other PARTY(s) reasonable satisfaction within a period of thirty (30) WORKING DAYS from the date of receipt of such notice; or
- (bb) a PARTY:-
- (i) either becomes or threatens to become bankrupt or insolvent or is adjudicated bankrupt or insolvent by a court of competent jurisdiction in its country of incorporation; or
 - (ii) has a body or person (including, but not limited to, a liquidator, administrative or other receiver or manager) appointed to manage its affairs or assets or its undertakings on behalf of its creditors, members or a court of competent jurisdiction; or
 - (iii) issues a notice proposing that it be wound up or passes a resolution for its winding up; or
 - (iv) ceases to carry on all or a substantial part of its business or is unable to pay its debts as defined in accordance with relevant LEGISLATION including any amendments and re-enactments thereof.
- (b) Without prejudice to the rights of the PARTICIPANT to terminate the CONTRACT under condition 12 (a), the PARTICIPANT may terminate the CONTRACT at any time:
- (aa) by giving not less than 30 WORKING DAYS notice in WRITING to the CONSULTANT. In such event the PARTICIPANT shall pay to the CONSULTANT any sums due to the CONSULTANT for SERVICES provided up to the effective date of such termination; or
 - (bb) if any event or series of events or any circumstances whether related or not (including but without limitation any adverse change in the business, assets or financial condition of the CONSULTANT) occur or arise which, in the reasonable opinion of the

PARTICIPANT may or would be likely to have a material adverse effect on the CONSULTANT or its ability to perform or comply with any of its obligations under a CONTRACT or may have a detrimental effect on the reputation and goodwill of the PARTICIPANT.

- (c) On termination of the CONTRACT by the PARTICIPANT pursuant to this condition 12, the CONSULTANT will deliver all DELIVERABLES (including any that are incomplete at the effective date of termination which will be provided “as is”) and the PARTICIPANT may withhold payment of any sums due to the CONSULTANT under the CONTRACT until such delivery is made.
- (d) On the termination of the CONTRACT by the PARTICIPANT, the CONSULTANT shall promptly and within 60 WORKING DAYS handover the CONTRACT or the PROJECT as smoothly as possible such as will enable the PARTICIPANT to transfer these to a third party, and in particular the CONSULTANT shall render such assistance and make available such of the CONSULTANT PERSONNEL (subject to the PARTICIPANT paying the CONSULTANT's reasonable costs in providing assistance) and shall ensure that any DATA, DELIVERABLES or MATERIALS and any other supporting documentation created by the CONSULTANT in the provision of the SERVICES shall be returned to the PARTICIPANT in a ordered and comprehensible form such that the PARTICIPANT may be able to present such information to another third party to perform the CONTRACT or the PROJECT.
- (e) On termination of the CONTRACT for whatever reason the following provisions shall apply (in addition to condition 12 (d) (if relevant):-
 - (aa) each party shall cease to use and promptly return in accordance with condition 17 to the other party or dispose of in accordance with the other party's instructions all CONFIDENTIAL INFORMATION, MATERIALS and other DATA and documents and copies thereof disclosed or supplied to the other party pursuant or in relation to the CONTRACT (other than DELIVERABLES) and shall certify in writing to the other party when the same has been completed;

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- (bb) unless otherwise directed by the PARTICIPANT in WRITING, the CONSULTANT shall cease to use and promptly return PARTICIPANT PROPERTY to the PARTICIPANT at the CONSULTANT's sole risk and expense;
 - (cc) the CONSULTANT shall within 60 WORKING DAYS of the termination of the CONTRACT submit its final invoice to the PARTICIPANT setting out the total amount due to the CONSULTANT pursuant to the CONTRACT after taking into account any sums due to the PARTICIPANT in accordance with the CONTRACT and, the PARTICIPANT shall pay the same in accordance with condition 13; and
 - (dd) provided the PARTICIPANT has terminated the CONTRACT for the reasons set out in condition 12(a) above the PARTICIPANT may (without prejudice to any other rights of the PARTICIPANT) recover any additional cost over and above the CHARGES incurred by the PARTICIPANT in completing the CONTRACT or the PROJECT.

13. PAYMENT

- (a) In consideration of the provision of the SERVICES by the CONSULTANT to the PARTICIPANT, the PARTICIPANT shall pay the CHARGES to the CONSULTANT in accordance with this condition 13 and the PROJECT MEMORANDUM (including in particular APPENDIX A).
- (b) The CONSULTANT shall submit to the PARTICIPANT a detailed priced invoice in accordance with the PARTICIPANT. The invoice shall show or have attached all information necessary to support the invoiced amount therein including all relevant time sheets or schedules.
- (c) Except as otherwise provided in the PROJECT MEMORANDUM invoices for executed work are to be submitted monthly for work carried out during the preceding month. The final invoice to be submitted no later than 42 WORKING DAYS from end of a PROJECT.
- (d) Any invoice raised by the CONSULTANT and provided to the PARTICIPANT pursuant to this condition 13 shall be valid for Value Added Tax purposes.

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- (e) The PARTICIPANT shall unless otherwise specified in the CONTRACT make payment in British Pounds Sterling.
- (f) The PARTICIPANT may set-off part or all of payments due to the CONSULTANT under the PROJECT against amounts due from the CONSULTANT to the PARTICIPANT under the CONTRACT or in Swiss law.
- (g) Notwithstanding the receipt of any invoice, the PARTICIPANT shall be entitled (without prejudice to any other rights or remedies it may have) to suspend payment of the CHARGES if the CONSULTANT fails to provide the SERVICES (or any part thereof) in accordance with the PROJECT and the provisions of the CONTRACT until such time as the CONSULTANT recommences the provision of the SERVICES in accordance with the relevant PROJECT and the provisions of the CONTRACT or in the event that the provision of SERVICES (or any part thereof) is disrupted for any reason other than as a result of any act or omission of PARTICIPANT or any event of Force Majeure until such time as that disruption ceases. For the avoidance of doubt, the PARTICIPANT shall be only entitled to suspend payment of the CHARGES in respect of the SERVICES not performed in accordance with the PROJECT, and the provisions of the CONTRACT or disrupted and shall not be entitled to suspend payment of the CHARGES in respect of the SERVICES performed in accordance with the PROJECT and the provisions of the CONTRACT.
- (h) If the PARTICIPANT disputes any item in any invoice in whole or in part the PARTICIPANT shall be entitled to pay only the undisputed portion of such invoice until such time as the PARTICIPANT and the CONSULTANT have reached agreement as to what payment, is to be made by the PARTICIPANT in respect of the disputed amount. The PARTICIPANT shall promptly notify the CONSULTANT of such disputed amount. The PARTICIPANT and the CONSULTANT shall endeavour to settle expeditiously and in good faith at the earliest possible date any such dispute and any amount which is agreed between the parties during the consultation PROJECT period shall be reflected as either a positive or negative adjustment (as applicable) within the next invoice in accordance with condition 13(d). During the period of consultation PROJECT between the parties pursuant to this sub-condition 13(i) the CONSULTANT shall not take any steps to terminate the CONTRACT on the basis of non-payment.

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- (i) If any sum under this CONTRACT which is not the subject of a bona fide dispute is not paid within 20 days after the last due date for its payment then the CONSULTANT shall have the right (provided that it shall first have given to the PARTICIPANT not less than 7 WORKING DAYS' prior written notice of its intention to do so), to charge interest on such sum at the annual interest rate of 2% per annum above Barclays Bank Base Rate. The parties acknowledge and agree that this constitutes adequate compensation for any late payment under or in connection with this CONTRACT.

14. INDEMNITY AND LIABILITY

- (a) The CONSULTANT shall be liable for and shall fully indemnify and defend the PARTICIPANTS, as the case may be, from all losses, costs, damages and expenses arising out of any claim in respect of injury or sickness, disease or death of any person or loss of or damage to any property arising out of any breach of the CONTRACT by or otherwise caused or contributed by the neglect, act or omission of the CONSULTANT, the CONSULTANT PERSONNEL and any other agents or subcontractors of the CONSULTANT and shall, at its own cost at the PARTICIPANT'S request, defend the PARTICIPANT in any proceedings involving the same, except that the CONSULTANT shall not be liable for any losses, costs, damages and expenses, arising out of/or caused or contributed to or by the negligence, act or omission of the PARTICIPANT or its AFFILIATES.
- (b) The CONSULTANT agrees to fully indemnify, defend and hold harmless the PARTICIPANT from and against any and all amounts payable under any judgment, verdict, court order or settlement to the extent resulting from any claim from a third party that the systems or materials provided, if any, or: DELIVERABLES, by the CONSULTANT under the CONTRACT infringe such party's INTELLECTUAL PROPERTY. Should the PARTICIPANT'S use of DELIVERABLES be determined to have infringed, or if, in the PARTICIPANT'S judgement, such use is likely to be infringing, the PARTICIPANT may, at its option but at the CONSULTANT's cost and without prejudice to the PARTICIPANT'S other rights and remedies under the CONTRACT require the CONSULTANT to:
- (aa) procure for the PARTICIPANT the right to continue using such systems, materials or DELIVERABLES; or

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- (bb) replace or modify them to make their use non-infringing while yielding substantially equivalent functionality and compatibility.

If neither of the above options are or would be available on a basis that the PARTICIPANT finds commercially reasonable, then the PARTICIPANT may terminate the CONTRACT whereupon the provisions of condition 12 shall apply.

- (c) The PARTICIPANT shall notify the CONSULTANT in WRITING as soon as practicable after the PARTICIPANT becomes aware of any claim which may give rise to a claim for indemnification hereunder and the PARTICIPANT shall co-operate with all reasonable requests of the CONSULTANT (at its expense) in defending or settling a third party claim.
- (d) Notwithstanding sub-conditions 14(a) and (b) the CONSULTANT and the PARTICIPANT will accept liability without limit for (i) death or personal injury caused by its negligence or the negligence of its employees acting in the course of their employment, and (ii) any liability which by Swiss law cannot be excluded.
- (e) Subject to condition 14(d), both parties entire and collective liability to the other PARTY or parties arising under or in connection with the CONTRACT whether in contract, tort (including without limitation negligence), statute or otherwise, will, to the extent permissible by SWISS LAW, not exceed in aggregate the greater of 200% of the CHARGES or €2,000,000.00 (two million) whichever is the higher and no PARTY to this Agreement will be liable to the PARTIES for any CONSEQUENTIAL LOSS. This condition will not in any way preclude the PARTICIPANT from seeking injunctive relief in the event of a breach of confidence or an infringement of INTELLECTUAL PROPERTY.

In addition, notwithstanding anything to the contrary contained in the preceding sentences of this clause 14 (e), the individual liability of any PARTICIPANT to the CONSULTANT under this CONTRACT will, to the extent permissible by SWISS LAW, not exceed the greater of 200% of the PARTICIPANT'S INDIVIDUAL SHARE OF CHARGES or €1,000,000.00 (one million) whichever is higher.

15. INSURANCE

- (a) The CONSULTANT shall effect and maintain and shall require its sub-contractors to effect and maintain throughout the continuance of the CONTRACT insurance policies which shall include, the types and amounts set out in condition 15 (d). The CONSULTANT shall bear any and all excesses, deductibles or franchises incorporated therein.
- (b) The CONSULTANT may be requested in WRITING to provide the PARTICIPANT with Certificates of Insurance. Certificates shall be provided within fifteen 15 WORKING DAYS of such request. Failure to provide such Certificates may be taken by the PARTICIPANT to indicate that the CONSULTANT has failed to meet its obligations to provide the insurance cover required under the CONTRACT and enable the PARTICIPANT itself to take out such insurance cover and deduct the costs thereof from the CHARGES. The CONSULTANT shall also provide the PARTICIPANT with updated Certificates on the renewal anniversary of any policies required hereunder.
- (c) The CONSULTANT shall give immediate written notice to the PARTICIPANT and all insured parties in the event of cancellation.
- (d) The insurance policies referred to in condition 15 (a) are:-
 - (aa) insurance in accordance with workman's compensation and occupational disease laws and employer's liability insurance for an amount of not less than two million Euros €2,000,000.00 per occurrence or series of occurrences arising from one event, which shall comply with all applicable laws. Such insurance shall cover all CONSULTANT PERSONNEL engaged in the performance of the CONSULTANT's obligations under the CONTRACT and shall contain an indemnity to principals clause;
 - (bb) general third party insurance with a combined bodily injury and property damage limit of not less than two million Euros €2,000,000.00 or such other sum as may be specified by the PARTICIPANT per occurrence or series of occurrences arising from the one event. Such insurance shall contain an indemnity to principals clause; and

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- (cc) professional indemnity insurance for an amount of not less than one million Euros €1,000,000.00 per occurrence or series of occurrence arising out from one event;

(together "the Policies").

The CONSULTANT shall not during the continuance of the CONTRACT and for a period of 6 years thereafter (or such longer period as is required by law) do anything to invalidate the POLICIES

16. INTELLECTUAL PROPERTY

- (a) INTELLECTUAL PROPERTY shall be governed by this condition 16 and the relevant provisions dealing with "Intellectual Property" as set out in the PROJECT MEMORANDUM.
- (b) All INTELLECTUAL PROPERTY owned by each party or an AFFILIATE prior to the commencement date of the CONTRACT or developed outside the scope of the CONTRACT ("BACKGROUND INTELLECTUAL PROPERTY RIGHTS") together with any derivatives or enhancements of, or modifications or improvements to the BACKGROUND INTELLECTUAL PROPERTY RIGHTS created by either party as part of the SERVICES shall continue to be the sole property of such party or AFFILIATE who owned such BACKGROUND INTELLECTUAL PROPERTY RIGHTS.
- (c) The CONSULTANT shall grant (or shall procure the grant of, where such INTELLECTUAL PROPERTY is owned by an AFFILIATE or other third party) to the PARTICIPANT (including any AFFILIATE or agent or subcontractor) a non-exclusive, royalty free right to use the BACKGROUND INTELLECTUAL PROPERTY RIGHTS referred to in condition 16 (a) for any purposes relating to the SERVICES, such licence to be perpetual save where the BACKGROUND INTELLECTUAL PROPERTY RIGHTS do not form part of the DELIVERABLES which will be used on an ongoing basis in which case such licence shall cease upon completion or earlier termination of the SERVICES.
- (d) The CONSULTANT agrees that all INTELLECTUAL PROPERTY contained in any DELIVERABLES together with any working documents and tools solely required for implementation of the SERVICES, excluding in each case those specified in condition 16(a)

shall vest in the PARTICIPANT (as the PARTICIPANT comprises more than one person subject to condition 16 (a) such developed INTELLECTUAL PROPERTY shall vest in the parties equally and each party shall be able to use such INTELLECTUAL PROPERTY for their own internal purposes or those of their AFFILIATES any additional use shall require the unanimous consent of all persons comprising the PARTICIPANT) .

- (e) To the full extent permissible by applicable laws, the CONSULTANT shall procure waivers of moral rights relating to the DELIVERABLES arising as a result of the SERVICES from any CONSULTANT PERSONNEL or other employees or any other party it shall engage in the provision of the SERVICES.
- (f) Each party agrees to (or in the case of any employee or any other party engaged in the provisions of the SERVICES to procure that they shall) execute all further documents, deeds and assignments and do all such further things as may be necessary which may be reasonably required to perfect the licence or vesting of the INTELLECTUAL PROPERTY granted under this condition 16 and which may be required under the laws of any country in which any such INTELLECTUAL PROPERTY may subsist. The parties shall, in any such event, agree an apportionment of costs in relation to any of the above.
- (g) Subject to condition 20 and excluding each party's BACKGROUND INTELLECTUAL PROPERTY RIGHTS, in no event shall the CONSULTANT be precluded from independently developing for itself, or others, materials which are competitive with, or similar to (but not identical to), the DELIVERABLES. In addition, and again subject to condition 20 and excluding each party's BACKGROUND INTELLECTUAL PROPERTY RIGHTS, each party shall be free to use its general knowledge, skills and experience, and its ideas, concepts, know-how, design working papers, methodologies and techniques that are used in the course of providing or receiving the SERVICES.

17. RETURN OF MATERIALS

- (a) Upon completion, termination or suspension of the SERVICES the parties shall return all MATERIALS belonging to each other and:

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- (aa) if the MATERIALS are in physical form, at the owner's option, either send such MATERIALS and all copies to the owner or certify to the owner that they have been destroyed; or
 - (bb) if the MATERIALS are not in physical form or where it is not practical to send the MATERIALS to the owner, unless otherwise notified by the owner, certify to the owner that such MATERIALS have been destroyed or erased; or
 - (cc) where it is not practicable to return MATERIALS in accordance with the provisions as set out at sub conditions 17 (a) (aa) and (bb), the parties shall undertake in writing to be bound by the confidentiality provisions provided for in condition 20 or enter into such other confidentiality agreement as may be appropriate.
- (b) At any time and at its sole discretion the PARTICIPANT may serve notice upon the CONSULTANT requiring return of the PARTICIPANT PROPERTY. In such an event the CONSULTANT shall comply with the obligations as set out in condition 17(a).
 - (c) Notwithstanding the provisions of sub-condition 17(a) and (b), each party may retain a copy of the other party's MATERIALS in the form of documents as may be properly and reasonably required for internal audit purposes. Such documents shall be retained and used subject to the obligations of confidentiality contained in condition 20.
 - (d) The obligation to return and destroy does not apply to a PARTICIPANT that is under a national statutory law obligation to transfer to its archives, including MATERIALS, to the state archives.

18. LIENS

To the extent that the same may be within the reasonable control of the CONSULTANT, it shall protect and hold all PARTICIPANT PROPERTY free from all liens, charges and other encumbrances. Without limitation to the generality of the foregoing the CONSULTANT undertakes that it will not directly or indirectly place or cause to be placed any such lien, charge or encumbrance upon any PARTICIPANT PROPERTY.

19. PUBLICITY

Subject to any obligations (if any) pursuant to any legal, regulatory or statutory authority each party shall obtain approval in WRITING from the other party prior to taking photographs or making publicity releases or announcements including advertisements regarding either the CONTRACT or the activities of the other party related to its participation in the CONTRACT.

20. CONFIDENTIALITY

- (a) Each party shall protect the confidentiality of all CONFIDENTIAL INFORMATION of the other party or which comes to the other party's knowledge under or as a result of the CONTRACT and shall not disclose it to any third party or use it other than for the performance of PROJECT(S) and the SERVICES except:-

(aa) with the prior agreement in WRITING of the other party; or

(bb) where formally required by a court of competent jurisdiction or a governmental or regulatory authority or any recognised stock exchange or in accordance with local laws of the PARTICIPANT where there is a legal duty or requirement to disclose provided that not less than 2 WORKING DAYS prior notice in WRITING shall first be given to the other party where reasonably practicable.

Where disclosure is made to any employee, consultant, or agent, it shall be done subject to obligations equivalent to those set out in this condition and each party agrees to use all reasonable endeavours to procure that any such employee, consultant, or agent is made fully aware of and complies with the party's obligations under this condition 20 and complies with such obligations provided that each party shall continue to be responsible to the other party in respect of any disclosure or use of such CONFIDENTIAL INFORMATION by a person to whom disclosure is made.

- (b) The provisions of condition 20 (a) shall not apply to CONFIDENTIAL INFORMATION if it is:

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- (aa) in the public domain otherwise than by failure of the receiving party to comply with condition 20 (a);
 - (bb) in the possession of the receiving party before these confidentiality obligations came into effect;
 - (cc) obtained from a third party who is free to disclose the same; or
 - (dd) developed independently without reference to or use of the CONFIDENTIAL INFORMATION.

21. CONFLICT OF INTEREST

The CONSULTANT shall reveal without delay any potential or actual conflict of interest which influences any element of the PROJECT as soon as it is aware of the same. The PARTICIPANT shall review the said conflict and require the CONSULTANT to take such action as it shall deem necessary in order to avoid the conflict or in the event that the PARTICIPANT is not satisfied that the conflict may be avoided the PARTICIPANT may terminate the CONTRACT when the provisions of condition 12 shall apply.

22. AUDIT ACCESS

With respect to any SERVICES, the CONSULTANT shall maintain accurate records relevant to the CONTRACT and shall permit the PARTICIPANT or its authorised personnel and/or agents access at all reasonable times during normal WORKING HOURS to such records.

23. COMMISSION:

The CONSULTANT shall not without the prior approval in WRITING of the PARTICIPANT accept any commission or any other payment from tenderers, contractors, vendors or any party (other than the PARTICIPANT) concerned with the SERVICES.

24. WAIVER / SEVERABILITY

The non-enforcement of any of the terms of the CONTRACT by a party shall not be construed as a waiver of any of that party's other rights.

The parties agree that if any provision or part of a provision of the CONTRACT shall under any circumstances be deemed invalid or inoperative, the CONTRACT shall be construed with the invalid or inoperative provision or part of a provision deleted and the rights and obligations of the parties shall be construed and enforced accordingly.

25. NOTICES

All notices shall be given in WRITING and be delivered by hand or sent by facsimile or recorded delivery post to the REPRESENTATIVE designated in the condition 2 hereof or to any subsequently notified address. Any notice sent by facsimile shall be deemed to have been served at the time of confirmed transmission; a notice sent by post shall be deemed to have been served two WORKING DAYS after posting, and a notice delivered personally, shall be deemed to have been served at the time of delivery.

26. FORCE MAJEURE

- (a) For the purposes of the CONTRACT "Force Majeure" shall mean any of the following events and any other events which are beyond the control of the party affected:-

(aa) acts of God

(bb) fire

(cc) explosion

(dd) flood

(ee) acts of terrorism

(ff) war

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- (gg) rebellion
 - (hh) riot
 - (ii) acts of Government
 - (jj) sabotage; or
 - (kk) official strike or similar official labour dispute.

Except as specifically detailed above, shortage of labour, materials or other resources shall not constitute Force Majeure unless caused by circumstances which are themselves Force Majeure.

- (b) If either party is affected by Force Majeure or either party reasonably believes that either party is about to be affected by Force Majeure it shall immediately notify the other party in WRITING of the matters constituting the Force Majeure or anticipated Force Majeure and shall keep that party fully informed of their continuance and of any relevant change of circumstances whilst such Force Majeure continues.
- (c) The party affected by Force Majeure shall take all reasonable steps available to it to minimise the effects of Force Majeure on the performance of its obligations under the CONTRACT.
- (d) Subject to condition 26(f) Force Majeure shall not entitle either party to terminate the CONTRACT or be in breach of contract and, shall be excused provided that the party affected shall promptly give notice to the other party of such occurrence and shall use all reasonable endeavours to prevent, avoid, overcome or mitigate the effects of such occurrence.

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- (e) If an event of Force Majeure results in the suspension of the SERVICES, then if the CONSULTANT is the affected party, the PARTICIPANT shall not be obliged to pay the CHARGES until such time as the event of Force Majeure shall have ceased to have effect. If the SERVICES are partly suspended a pro rata amount of the CHARGES shall be forfeit.
 - (f) If in the PARTICIPANT'S reasonable opinion an event of Force Majeure results in disruption to the SERVICES the parties shall then discuss and make all reasonable endeavours to agree how the SERVICES can be performed, but should the parties fail to reach agreement, then the provisions of condition 26 shall be enacted. If the parties are unable to resolve how the SERVICES can be performed, the PARTICIPANT shall be entitled by giving 7 WORKING DAYS notice in WRITING to the CONSULTANT to terminate the CONTRACT after 6 months with termination taking effect upon the expiry of such notice.
 - (g) Each party shall be liable for and shall bear all its own costs, expenses, losses and charges suffered or incurred as a result of an occurrence of Force Majeure.

27. NON-SOLICITATION OF STAFF

No party will during the period of the CONTRACT or within 6 months of its termination or expiry solicit directly or indirectly any employees of the other who have been involved in providing or receiving SERVICES or otherwise connected with the CONTRACT and/or the PROJECT. This will not restrict a PARTICIPANT or the CONSULTANT from employing staff who apply unsolicited in response to a general advertising or other general recruitment campaign.

28. GOVERNING LAW

- (a) Unless the parties hereto otherwise agree, the CONTRACT shall be governed by and construed in accordance with Swiss Law.
- (b) In respect of any dispute under or arising out of the CONTRACT, the parties hereto agree to submit to the exclusive jurisdiction of Commercial Court of Zurich (Switzerland).

29. ADDITIONAL CLAUSE

The execution of the CONTRACT is secured by penalties, which amount to 0.05% per day from the value of the remaining net fees of CONSULTANT for the service in that year of delayed execution of the obligations within. Any such penalties will only be applied in situations where the fault of the delay can be attributed solely to CONSULTANT.