

SCHEDULE 1

This is Schedule 1 comprising Definitions and Interpretation referred to in the Public Private Partnership Agreement for a twenty five year concession for

a sustainable experience delivery programme

between

The Department of Trade and Industry

and

Rainprop (Proprietary) Limited

SCHEDULE 1

Part 1: Definitions

In this Agreement unless the context otherwise requires:

"Acceptance"	Means: 1) in respect of each Block or item of Further Works, that the relevant Block or item has been certified as completed (barring Snagging Matters) by the Independent Tester, (as shown by the issuance of a Certificate of Completion in relation to that Block or item, pursuant to such of Clauses 19, 20 and 21.12 – 21.17 and Schedule 15 as are applicable in each individual circumstance); or 2) in respect of each Block or item of Further Campus Works, that the Independent Tester has not issued a Certificate of Completion in respect of the relevant Block or item, but the dti and the Concessionaire have agreed, pursuant to Clause 21.13, that the Block in question is capable of occupation or (as the case may be) the item is capable of use;
"Account Bank"	Means The Standard Bank of South Africa Limited;
"Actual Costs"	Has the meaning given in Clause 35.27 [<i>Increase in Premia</i>];
"Actual Liability"	Has the meaning given in Clause 47.7.3(a) [<i>Compensation on Termination</i>];
"Additional De Minimis Amount"	Has the meaning given in Clause 38.6.1 [<i>Changes in Law</i>];
"Agent Bank"	Means Standard Corporate and Merchant Bank, a division of The Standard Bank of South Africa Limited or its successors in title, under the Funding Agreements;
"Allowable Expenses"	Has the meaning given in Clause 38.7.2 [<i>Change in Law</i>];
"Ancillary Documents"	Means the Design and Construction Agreement, the Facility Management Agreement and the Performance Guarantees, all as the same may be amended or replaced from time to time;
"Ancillary Rights"	Means such rights of passage over, access to and egress from the Site in the manner previously agreed with the dti and/or Tshwane as the same may be varied with the approval of the dti and/or Tshwane such approval not to be unreasonably withheld (but only insofar as these rights are vested in Tshwane and are capable of being assigned or granted by Tshwane to the Concessionaire, whether as a result of any restriction in the Title Deeds or otherwise);

"Approved Purposes"	Has the meaning given in Clause 50.1 [<i>Project Data</i>];
"Approved RDD Item"	Means an item of Reviewable Design Data which has been returned or has been deemed to have been returned endorsed either "Level A – no comment" or "Level B – proceed subject to amendment as noted" by the dti's Representative pursuant to the provisions of Clause 16.5 [<i>Design, Construction and Commissioning Process</i>] and Schedule 10 [<i>Review Procedure</i>] (provided that in the case of any item of Reviewable Design Data which has been returned or has been deemed to have been returned endorsed "Level B – proceed subject to amendment as noted" the Concessionaire has taken account of the dti's Representative's comments), as such item of Reviewable Design Data may be varied or amended from time to time in accordance with Schedule 22 [<i>Variation Procedure</i>];
"Associated Companies"	Means, in respect of a relevant company, a company which is a Subsidiary, a Holding Company or a company that is a Subsidiary of the ultimate Holding Company of that relevant company, and in the case of the Concessionaire shall include each of the Shareholders, and the term "Associate" shall be interpreted accordingly;
"Authority"	Has the meaning given in Clause 52.3 [<i>VAT</i>];
"Baseline Pollution Report"	Means the pollution reports prepared by Geo Pollution Technologies attached as Schedule 32 [<i>Baseline Pollution Report</i>];
"Benchmarking Commencement Date"	Means the date falling 5 years after the Execution Date;
"Benchmarking Report"	Has the meaning given in Schedule 17 [<i>Benchmarking and Market Testing</i>];
"Beneficiary"	Has the meaning given in Clause 8.3 [<i>Conduct of claims</i>];
"Block"	Means any one of Block A, Block B, Block C, Block D, Block E, Block F, or Block H as identified in the book of plans in Part 4 of Schedule 8 [<i>Construction Matters</i>];
"Block A"	Means that part of the Works as identified in the book of plans in Part 4 of Schedule 8 [<i>Construction Matters</i>];
"Block B"	Means that part of the Works as identified in the book of plans in Part 4 of Schedule 8 [<i>Construction Matters</i>];
"Block C"	Means that part of the Works as identified in the book of plans in Part 4 of Schedule 8 [<i>Construction Matters</i>];
"Block D"	Means that part of the Works as identified in the book of plans in Part 4 of Schedule 8 [<i>Construction Matters</i>];



"Block E"	Means that part of the Works as identified in the book of plans in Part 4 of Schedule 8 [<i>Construction Matters</i>];
"Block F"	Means that part of the Works as identified in the book of plans in Part 4 of Schedule 8 [<i>Construction Matters</i>];
"Block H"	Means that part of the Works as identified in the book of plans in Part 4 of Schedule 8 [<i>Construction Matters</i>];
"Business Day"	Means a day other than a Saturday, Sunday or a public holiday in the Republic of South Africa;
"Campus"	Means the collaborative working environment to be developed by the Concessionaire for the dti to deliver unified services of an improved quality and greater efficiency at the Site in Tshwane, the subject of this PPP project;
"Campus Comparative Evaluation Report"	Has the meaning given in paragraph 1A.2 of Schedule 17 [<i>Benchmarking and Market Testing</i>];
"Campus Completion Date"	Means the date indicated in Schedule 9 [<i>The Programme</i>] as the Target Completion Date for the Block which is scheduled to be the last to achieve Completion;
"Capital Expenditure"	Has the meaning given in Schedule 22 [<i>Variation Procedure</i>];
"Capital Cost of the Facilities"	Has the meaning given in Clause 38.7.1 [<i>Change in Law</i>];
"Certificate of Completion"	Means a certificate to be issued by the Independent Tester in accordance with Clause 21.12 [<i>Pre-Completion Commissioning and Completion</i>] in the form set out in Schedule 2 to the Independent Tester Contract (Schedule 15 to this Agreement) denoting acceptance by the Independent Tester that the Works in relation to a particular Block of the Facilities or item of Further Works, are complete (barring Snagging Matters);
"Change in Control"	Means any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation (including the control over the exercise of voting rights conferred on that equity share capital or the control over the right to appoint or remove directors);
"Change in Law"	Means the coming into effect or repeal (without re-enactment or consolidation) in the Republic of South Africa of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in the Republic of South Africa in each case after the date of this Agreement;
"Collateral Agreements"	Means the DC Contractor's Collateral Agreement, and the FM Contractors' Collateral Agreement;

"Commissioning End Date"	Means the date by which the parties' commissioning activities on each Block or with regard to an item of Further Works are to be completed in accordance with the Final Commissioning Programme;
"Compensation Event"	Has the meaning given in Clause 40.10 [<i>Delay Events</i>];
"Compensation Payment"	Has the meaning given in Clause 47.6 [<i>Compensation on Termination</i>];
"Completion"	Means, in respect of each Block or item of Further Works, that the relevant Block or item has been certified as completed (barring Snagging Matters) by the Independent Tester, (as shown by the issuance of a Certificate of Completion in relation to that Block or item of Further Works, pursuant to such of Clauses 19, 20 and 21.12 – 21.17 and Schedule 15 as are applicable in each individual circumstance);
"Compliant Tender"	Means a tender received from a Tenderer invited to bid, as part of a Market Testing Exercise that complies with the invitation to tender requirements;
"Concessionaire Event of Default"	Has the meaning given in Clause 43 [<i>Concessionaire Events of Default</i>];
"Concessionaire Party"	Means the Concessionaire's agents and Sub-Contractors (including without limitation the DC Contractor and the FM Contractors) and its or their sub-contractors of any tier and its or their directors, officers, employees and workmen in relation to the Project and "Concessionaire Parties" shall be construed accordingly;
"Concessionaire's Post-Completion Commissioning"	Means the Concessionaire's commissioning activities in relation to each Block or item of Further Works, to be carried out in accordance with Clause 22 [<i>Post-Completion Commissioning</i>];
"Concessionaire's Pre-Completion Commissioning"	Means the Concessionaire's commissioning activities in relation to each Block or item of Further Works, to be carried out in accordance with Clause 21 [<i>Pre-Completion Commissioning and Completion</i>];
"Concessionaire's Proposals"	Means the documents at Part 4 of Schedule 8 [<i>Construction Matters</i>] as amended from time to time in accordance with Clause 39 [<i>Variation Procedure</i>] and the terms of Schedule 10 [<i>Review Procedure</i>] and Clause 20 and as developed in accordance with Schedule 10 [<i>Review Procedure</i>];
"Concessionaire's Representative"	Means the person appointed by the Concessionaire pursuant to Clause 11 [<i>Representatives</i>];
"Concessionaire's Site Manager"	Means the manager to be appointed by the Concessionaire for

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purposes of supervision of all day-to-day activities on Site;

"Concessionaire's Site Rules"

Means the Concessionaire's operating rules, applicable on Site to the dti, the Concessionaire, the DC Contractor and their respective sub-contractors and suppliers of every tier during the construction of the Facilities;

"Confidential Information"

Has the meaning given in Clause 51.1;

"Consents"

Means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorisations required by Law, and all necessary consents and agreements from any third parties (including, without limitation, any planning permission), needed to carry out the Project Operations in accordance with this Agreement;

"Consortium Member"

Means those persons identified as such in Schedule 27 [*Concessionaire Information*] and includes persons to whom shares in the Concessionaire have been issued or transferred (otherwise than by way of a transfer by way of security for the benefit of the Funders) in accordance with Clause 49 [*Assignment, Sub-Contracting and Changes in Control*];

"Construction Quality Plan"

Means the document designated as such at Part 7 of Schedule 8 [*Construction Matters*] as amended pursuant to this Agreement from time to time;

"Construction Requirements"

Means the requirements as specified in Schedule 8 [*Construction Matters*] as amended pursuant to this Agreement from time to time;

"Contamination"

Means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour);

"Contracting Associate"

Means the DC Contractor, any FM Contractor and any other entity which performs on behalf of the Concessionaire any material function in connection with this Agreement or the Project Operations;

"Contract Month"

Means a calendar month;

"Contract Year"

Means the period commencing on the *Execution Date* and ending on the immediately succeeding 30 June and each subsequent period of twelve (12) calendar months commencing on 1 July and ending on 30 June, provided that the final Contract Year shall be such period as commences on 1 July and ends on the date of expiry or earlier termination of this Agreement (as the case may be);



"CPIX"	Means the consumer price inflation index, excluding mortgage costs for all expenditure groups: metropolitan and other urban areas (base 2000 = 100) as published from time to time by Statistics South Africa;
"Cumulative Allowable Expenses"	Has the meaning given in Clause 38.7.3 [<i>Changes in Law</i>];
"Custodian"	Means Standard Chartered Merchant Bank or any new custodian appointed by the Concessionaire and the dti pursuant to this Agreement from time to time;
"DC Contractor"	Means, collectively, Atterbury Property Holdings (Pty) Limited; Parkdev SA (Proprietary) Limited; WBHO Construction (Proprietary) Limited; Rainbow Construction (Proprietary) Limited and Zwelinzima Holdings (Proprietary) Limited, with joint and several liability and engaged by the Concessionaire to carry out the Works, and any substitute design and/or design and construction contractor engaged by the Concessionaire as may be permitted by this Agreement;
"DC Contractor's Collateral Agreement"	Means the collateral agreement between the dti, the Concessionaire and the DC Contractor in the form set out in Schedule 11 [<i>Collateral Agreements</i>];
"Decant"	Has the meaning set out in Clause 26.6 [<i>Decant Arrangements</i>];
"Deduction"	Means a Performance Deduction, a Reporting Deduction, a Repeated Failure Deduction, an Acknowledgment Deduction and/or a Disputed Deduction (each as defined in the Experience Delivery Standards and Payment Mechanism);
"Deemed Liability"	Has the meaning given in Clause 47.7.3(b) [<i>Compensation on Termination</i>];
"Default Interest Rate"	Means 2% over the Prime Rate;
"Defects"	Means any defect or fault in the Works and/or the Facilities (not being a Snagging Matter) which occurs due to a failure by the Concessionaire to meet the dti's Construction Requirements and/or the Concessionaire's Proposals or otherwise to comply with its obligations under this Agreement;
"Delay Event"	Has the meaning given in Clause 40.3 [<i>Delay Events</i>];
"De Minimis Amount"	Has the meaning given in Clause 38.6.1 [<i>Changes in Law</i>];
"Design and Construction Agreement"	Means the design and build contract dated the same date as this Agreement between the Concessionaire and the DC Contractor as amended from time to time in accordance with this Agreement;

- "Design Data"** Means all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing and/or operation of the Facilities;
- "Design Quality Plan"** Means the document designated as such at Part 7 of Schedule 8 [*Construction Matters*] as amended pursuant to this Agreement from time to time;
- "Direct Losses"** Means, subject to the provisions of Clause 9.1 [*Limits on Liability - Exclusions*], all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;
- "Disclosed Data"** Means any Design Data and any other written information, data and documents (including, to avoid doubt, data and documents concerning the Title Deeds and any rights of any person in respect of the Site) made available or issued to the Concessionaire or any Concessionaire Party in connection with the Project by or on behalf of the dti (or any dti Party) whether before or after the execution of this Agreement;
- "Discriminatory Change"** Means MAGA or any Change in Law the effect of which is to discriminate directly against:
- (a) facilities and/or projects whose design, construction, financing and operation are procured by a contract under the PPP (or any similar successor programme) in relation to other similar accommodation projects; or
 - (b) persons undertaking projects procured by contracts under the PPP (or any similar successor programme) in relation to other persons undertaking similar projects; or
 - (c) the Campus (as compared to other office accommodation facilities); or
 - (d) the Concessionaire in relation to other persons,
- save that:
- (i) such action shall not be a Discriminatory Change where it is in response to any act or omission on the part of the Concessionaire which is illegal (other than an act or omission rendered illegal by virtue of the Discriminatory Change itself);
 - (ii) such action shall not be deemed to be

discriminatory solely on the basis that its effect on the Concessionaire is greater than its effect on other persons; and

- (iii) a change in taxes or the introduction of a tax affecting companies generally or a change in VAT shall be deemed not to be discriminatory in any circumstances (to avoid doubt, such changes being given effect in accordance with Clause 52 [*Taxation*]);

"Dispute"	Has the meaning given in paragraph 1 of Schedule 26 [<i>Dispute Resolution Procedure</i>];
"Dispute Resolution Procedure"	Means the procedure set out in Schedule 26 [<i>Dispute Resolution Procedure</i>];
"Distributions"	Means any payment, repayment, redemption, discharge by way of set-off, counterclaim or otherwise, management or other fees or other distribution, whether in cash or in kind paid whether by or on behalf of the Concessionaire or otherwise to any of the Shareholders or any connected equity of the Concessionaire or any such Shareholder in respect of dividends or return or retirement of any class of Equity of the Concessionaire the repayment or retirement of debt where any such Shareholder itself finances the Project, the Concessionaire or the Funding Agreements directly or indirectly (including the payment of interest including, without limitation, deferred and capitalised interest) and other costs howsoever arising and whether pursuant to the terms of an agreement or otherwise;
"dti Additional Works Confirmation"	Has the meaning given in Schedule 22 [<i>Variation Procedure</i>];
"dti Additional Works Enquiry"	Has the meaning given in Schedule 22 [<i>Variation Procedure</i>];
"dti Additional Works Item"	Has the meaning given in Schedule 22 [<i>Variation Procedure</i>];
"dti Additional Works Variation"	Has the meaning given in Schedule 22 [<i>Variation Procedure</i>];
"dti Events of Default"	Has the meaning given in clause 44.1 [<i>dti Events of Default</i>];
"dti Family"	Means the dti and all government departments and agencies using the Site from time to time during the Project Term;
"dti Party"	Means: (a) for all purposes other than Clauses 8.1 – 8.3, the dti Family, any of the dti's agents, contractors and sub contractors of any tier and its or their directors, officers and employees having access to the Facilities with the authority of the dti

but excluding the Concessionaire, any Concessionaire Party and statutory undertakers and utilities; and

(b) for the purposes of Clauses 8.1 – 8.3, (i) the dti Family, and (ii) any of the dti's agents, contractors and sub contractors of any tier, and in each case its or their directors, officers and employees having access to the Facilities with the authority of the dti, which, by virtue of the services provided for in a direct contract between it and the dti, could reasonably interfere with or cause a failure of the Project Operations, but excluding in each case the Concessionaire, any Concessionaire Party and statutory undertakers and utilities and the ICT service provider,

and "dti Parties" shall be construed accordingly;

"dti Policies"	Means, subject to Clause 31.4 [<i>dti Policies</i>], the policies of the dti relevant to the use of offices or dti premises, as shall be applicable to other users of the Facilities (including without limitation the dti personnel), and being of such a nature that they are typically applicable in an office use environment, and/or public access to government or similar administration services or operations;
"dti Service Variation"	Has the meaning given in Schedule 22 [<i>Variation Procedure</i>];
"dti Service Variation Enquiry"	Has the meaning given in Schedule 22 [<i>Variation Procedure</i>];
"dti Works Variation"	Has the meaning given in Schedule 22 [<i>Variation Procedure</i>];
"dti Works Variation Confirmation"	Has the meaning given in Schedule 22 [<i>Variation Procedure</i>];
"dti Works Variation Enquiry"	Has the meaning given in Schedule 22 [<i>Variation Procedure</i>];
"dti's Commissioning"	Means the dti's pre-completion commissioning activities in relation to each Block or item of Further Works, to be carried out by the dti in accordance with Clause 21 [<i>Pre-Completion Commissioning and Completion</i>];
"dti's Construction Requirements"	Means the requirements of the dti set out or identified in Part 3 of Schedule 8 [<i>Construction Matters</i>] as amended from time to time in accordance with the terms of this Agreement;
"dti's Cost Share"	Has the meaning given in Clause 38.7.4 [<i>Changes in Law</i>];
"dti's Post Completion Commissioning"	Means the dti's post-completion commissioning activities in relation to each Block or item of Further Works, to be carried out by the dti in accordance with Clause 22 [<i>Post Completion Commissioning</i>];
"dti's Representative"	Means the person so appointed by the dti pursuant to Clause 11 [<i>Representatives</i>];

"Early Works"	Means that part of the Works which has been undertaken on the Site and financed by the dti prior to the Execution Date;
"Economic Reinstatement Test"	Means the Economic Reinstatement Test set out in Clause 35.23;
"Emergency Reaction Plan"	Means the plan set out in Schedule 5 [<i>Emergency Reaction Plan</i>];
"Equity"	Means the ordinary and preference share capital (which shall include any shareholder loans), subordinated, mezzanine and junior debt in the Concessionaire;
"Estimated Increased Maintenance Costs"	Has the meaning given in Clause 27.7.2 [<i>Maintenance</i>];
"Evaluation Criteria"	Means the criteria which are to be applied in evaluating a tender received from a Prospective Tenderer in respect of a Tested Service or Services as part of a Market Testing Exercise;
"Excluded Amounts"	Means the following: <ul style="list-style-type: none"> (i) indemnity payments due and payable from the Concessionaire to the dti under Clause 8 to the extent that such payments are covered by sums available or claimable to the Concessionaire and/or the Senior Funders from third parties, insurance proceeds or pursuant to the terms of the performance bond relating to the Facility Management Agreement or the Technical and Financial Support Agreement; (ii) indemnity payments not covered by insurance proceeds directly as a result of acts or omissions by the Senior Funders which cause a vitiation of the applicable insurance policy; (iii) the amount of insurance deductibles applicable to a insured loss the subject of such indemnity;
"Excusing Cause"	Has the meaning given in Clause 8.7 [<i>Excusing Causes</i>];
"Execution Date"	Means the date on which this Agreement is executed;
"Experience Delivery Standards and Payment Mechanism"	Means the documents annexed hereto as Schedule 16;
"Expert"	Means the individual(s) appointed in accordance with Schedule 26 [<i>Dispute Resolution Procedure</i>];
"Expiry Date"	Means the date on which this Agreement will terminate in accordance with Clause 45.3 [<i>Non-Default Termination</i>];



"Facilities"	Means the buildings and other facilities, together with all supporting infrastructure (including the Plant) and amenities located on the Site excluding the Future Expansion Building as required to enable the Concessionaire to comply with its obligations under this Agreement, all as the same may be varied, amended or supplemented from time to time in accordance with this Agreement;
"Facility Management Agreement"	Means the contract dated the same date as this Agreement between the Concessionaire and the FM Contractor, by which the Concessionaire will procure the performance of the Services (as amended or replaced from time to time in accordance with this Agreement);
"Fast Track Dispute Resolution Procedure"	Means the procedure referred to in paragraph 6 of Schedule 26 [<i>Dispute Resolution Procedure</i>];
"FF&E"	Means the fixtures, furniture and equipment to be installed at the Campus and/or at the shared service centre at 15 Esselen Street and which form part of the Reviewable Design Data;
"Final Commissioning Programme"	Means the programme to be jointly developed and agreed by the dti and the Concessionaire in accordance with the provisions of Clause 21 [<i>Pre-Completion Commissioning and Completion</i>] in relation to the Works, but subdivided into sections relating to each Block or item of Further Works;
"Financial Model"	Means the most recent financial model contained on a read only compact disk which is used by, and shall be held until the Facilities Discharge Date by or on behalf of the Lenders and the dti, which is based on the Lender's Financial Base Case Model as updated for historical data and projections or for any other purpose specified in this Agreement as agreed between the parties pursuant to clause 36;
"FM Contractor"	Means each of Experience Delivery Company (Proprietary) Limited and/or any other person engaged by the Concessionaire from time to time as may be permitted by this Agreement to procure the provision of the Services (or any of them);
"FM Contractors' Collateral Agreement"	Means the collateral agreements between the dti, the Concessionaire and the FM Contractor in the form set out in Schedule 11 [<i>Collateral Agreements</i>];
"Force Majeure"	Has the meaning given in Clause 42 [<i>Force Majeure</i>];
"Forecast Cost"	Has the meaning given in Clause 35.26 [<i>Increase in Premia</i>];
"Full Payment Commencement Date"	Means the date on which the last Block (excluding the Future Expansion Building) is issued with a Certificate of Completion;

"Funders"	Means all or any of the persons who provide financing or funding in respect of the Project Operations under the Funding Agreements including Standard Corporate and Merchant Bank (a division of The Standard Bank of South Africa Limited) and, where the context so permits, prospective financiers or funders;
"Funders' Direct Agreement"	Means the agreement to be entered into between the dti, the Senior Funders and the Concessionaire in the form set out in Schedule 30 [<i>Funders' Direct Agreement</i>];
"Funding Agreements"	Means all or any of the agreements or instruments to be entered into by the Concessionaire relating to the financing of the Project Operations (including the Initial Funding Agreements and to the extent approved by the dti in accordance with this Agreement, any agreements or instruments to be entered into by the Concessionaire relating to the rescheduling of their indebtedness or the refinancing of the Project Operations);
"Funding Shortfall"	Has the meaning given in Schedule 22 [<i>Variation Procedure</i>];
"Further Works"	Means, together, the Further Campus Works and the Further ICT Works;
"Further Campus Works"	Means the items specified, with their output specification and related provisional sum, in Section 1 of Schedule 8 Part 5 and (save for the purposes of Clauses 20.1) as such items have been approved by the dti;
"Further ICT Works"	Means the items specified, with their output specification and related provisional sum, in Section 2 of Schedule 8 Part 5 and (save for the purposes of Clauses 20.3) as such items have been approved by the dti;
"Future Expansion Building"	Means the building which is to be constructed adjacent to the Site at the location outlined in blue on the plan annexed at Schedule 13 [<i>Future Expansion Building Plan</i>];
"General Procedure"	Has the meaning given in Schedule 22 [<i>Variation Procedure</i>];
"Good Industry Practice"	Means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;
"Government"	Means the government of the Republic of South Africa;
"Handback"	Means the return of the Facilities by the Concessionaire to the dti or any successor of the dti on the Expiry Date in accordance with this Agreement;

"Handback Amount"	Has the meaning given in Schedule 24 [<i>Handback Procedure</i>];
"Handback Bond"	Has the meaning given in Schedule 24 [<i>Handback Procedure</i>];
"Handback Certificate"	Means the certificate of confirmation that the Facilities comply with the Handback Requirements to be issued by the dti in accordance with Schedule 24 [<i>Handback Procedure</i>];
"Handback Procedure"	Means the procedure for Handback described in Schedule 24 [<i>Handback Procedure</i>];
"Handback Programme"	Has the meaning given in Schedule 24 [<i>Handback Procedure</i>];
"Handback Requirements"	Has the meaning given in Schedule 24 [<i>Handback Procedure</i>];
"Handback Works"	Has the meaning given in Schedule 24 [<i>Handback Procedure</i>];
"HDI"	Means persons or categories of persons historically disadvantaged by unfair discrimination on the basis of race, gender or disability and who qualify as such in terms of the Preferential Procurement Policy Framework Act 5 of 2000;
"Health and Safety Regime"	any Law relating to health, safety or the environment in force from time to time;
"H&S Conviction"	Has the meaning given in Clause 43.1.5 [<i>Concessionaire Events of Default</i>];
"Indemnifier"	Has the meaning given in Clause 8.3 [<i>Conduct of Claims</i>];
"Independent Tester"	Means either: <ul style="list-style-type: none"> (a) the independent tester to be appointed in accordance with Clause 19 of this Agreement; or (b) the independent tester to be appointed in accordance with Clause 20.3.8 of this Agreement, (as appropriate);
"Independent Tester Contract"	Means the contract to be concluded between the Concessionaire and the Independent Tester no later than six (6) months before the first Target Completion Date specified in the Programme and in the form set out in Schedule 15 [<i>Independent Tester Contract</i>];
"Indirect Losses"	Has the meaning given in Clause 9.1 [<i>Limits on Liability</i>];
"Initial FF&E Budget"	Means R 44,100,000 (forty four million one hundred thousand South African Rand);

"Initial Funding Agreements"	Means the Common Terms Agreement, Senior Facility Agreement, the Mezzanine Facility Agreement, the Security Documents (as defined in the Common Terms Agreement), and the Inter Creditor Agreement;
"Initial Project Term"	Means, subject to the terms of Clause 35.23.1, the period commencing at midnight on the Execution Date and expiring at midnight on the date that is twenty five (25) years thereafter;
"Insurance Proceeds Account"	Means the account designated as such and held in the joint names of the Concessionaire and the dti with the <i>Account Bank</i> ;
"Insurances"	Means, as the context requires, all or any of the insurances required to be maintained by the Concessionaire pursuant to this Agreement;
"Intellectual Property"	Means all registered or unregistered trade marks, service marks, patents, registered designs, utility models, applications for any of the foregoing, copyrights, unregistered designs, the sui generis rights of extraction relating to databases, trade secrets and other confidential information or know-how;
"Intellectual Property Rights"	Means the Intellectual Property which (or the subject matter of which) is created, brought into existence, acquired, used or intended to be used by the Concessionaire, any Concessionaire Party or by other third parties (for the use by or on behalf of or for the benefit of the Concessionaire) for the purposes of the design or construction of the Facilities, the operation, maintenance, improvement and/or testing of the Facilities or the conduct of any other Project Operation or otherwise for the purposes of this Agreement;
"Invoice Report"	Has the meaning given in paragraph 16 of the Experience Delivery Standards and Payment Mechanism;
"IRR"	Has the meaning given in Schedule 22 [<i>Variation Procedure</i>];
"ICT"	Means information and communications technology systems, hardware and software;
"ICT Project"	Means the provision of ICT to the dti on the terms set out in the relevant agreement(s) between the dti and the ICT service provider;
"ICT service provider"	Means the entity or entities selected to provide the services for the ICT Project;
"Key Works Personnel"	Means those persons who are identified as the Concessionaire's key works personnel in Schedule 4 [<i>Key Works Personnel</i>];

"Law"

Means:

- (a) any applicable statute or proclamation or any delegated or subordinate legislation;
- (b) Any applicable guidance, direction or determination with which the dti and/or the Concessionaire is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Concessionaire by the dti;
- (c) Any applicable judgement of a relevant court of law which is a binding precedent in the Republic of South Africa; and
- (d) The South African common law as applied and decided upon by a court of law which is binding in the Republic of South Africa,

and in each case in force in the Republic of South Africa;

"Lease Agreement"

Means the lease dated on or about 8 August 2003 between the Concessionaire and Tshwane, which is annexed hereto as Schedule 7 [*Lease Agreement*];

"Lender's Financial Base Case Model"

Means the audited computer model in Microsoft Excel™ (which, when printed out gives the Lenders' Financial Base Case), which computer model is contained on a read only compact disk held by the Custodian and the dti and is marked with the legend "Lenders' Financial Base Case Model for the dti Head Office Project" and initialled by the Concessionaire and the Custodian for the purpose of identification;

"MAGA"

Means any applicable actions by Government authority/ies (excluding the dti) or any failure by Governing authority/ies to apply Law:-

- (a) not falling under (a), (b), or (c) of the definition of Law; and
- (b) which is of adverse impact to the Concessionaire's carrying out of the Project Operations;
- (c) which is unavoidable by the Concessionaire taking all reasonable steps to prevent material impact of such action on the provision of Services or implementation of the Project Operations by the Concessionaire; and
- (d) in respect of which the Concessionaire has no other legal recourse to, within a reasonable period of time and at a reasonable cost, to either prevent or redress (by restitution or otherwise) the action concerned or failure by Government authority/ies to apply Law or to recover compensation outside the PPP Agreement;



"Maintenance Schedule Submission Date"	Has the meaning given in Clause 27.1 [<i>Programmed Maintenance Works</i>];
"Maintenance Works"	Means any works for maintenance or repair of the Facilities that are necessary to ensure that the Facilities are maintained in accordance with Service Levels and Method Statements (including, without limitation, the renewal or replacement of any Plant or equipment) throughout the Project Term;
"Major Contingency"	Means an emergency or substantial incident requiring the Concessionaire to instigate contingency plans for the provision of the Services as set out in Schedule 5;
"Market Testing Exercise"	Has the meaning given to it in Schedule 17 [<i>Benchmarking and Market Testing</i>];
"Method Statements"	Means the method used for providing Services annexed to Annexure 3 to the Experience Delivery Standards and Payment Mechanism and as amended from time to time in accordance with Clause 39 [<i>Variation Procedure</i>] and Clause 26 [<i>The Services</i>] and Clause 20;
"Monthly Incentive Bonuses"	Has the meaning given in the Experience Delivery Standards and Payment Mechanism;
"Non-Default Interest Rate"	Means the Prime Rate;
"Outline Commissioning Programme"	Means the programme setting out the standards, specifications, procedures and other requirements for the carrying out and completion of the commissioning activities of the parties in relation to the Works, but subdivided into sections relating to each Block set out in outline in Schedule 12 [<i>Outline Commissioning Programme</i>];
"Pass-through Costs"	Means the pass-through costs set out in Annexure 2 to the Experience Delivery Standards and Payment Mechanism which are paid by the Concessionaire and then passed through the to the dti in accordance with the Experience Delivery Standards and Payment Mechanism;
"Payment Date"	Has the meaning given in the Experience Delivery Standards and Payment Mechanism;
"Performance Guarantees"	Means the guarantees to the Concessionaire in respect of the Design and Construction Agreement, the Facility Management Agreement and in the case of the Facilities Management Agreement, guarantees, bonds, funding shortfall and support arrangements relating thereto;
"Performance Period Report"	Has the meaning given to it in paragraph 16.6 of the Experience Delivery Standards and Payment Mechanism;

"Plant"	Means the plant and equipment to be provided and/or maintained by the Concessionaire pursuant to this Agreement;
"PPP"	Means the Public Private Partnership programme as described in the Regulations passed in terms of the Public Finance Management Act 1 of 1999 or any similar replacement initiative;
"Pre-Existing Contamination"	Means hydrocarbon contamination of and at or surrounding the Site prior to the handover of the Site for the Early Works, on 10 February 2003, as referred to or recorded in the Baseline Pollution Report;
"Prime Rate"	Means the publicly quoted basic rate of interest per annum at which Standard Bank of South Africa Limited will lend on overdraft, from time to time;
"Procurement Law"	Means any Law or rules which may from time to time regulate the procurement activities of the dti;
"Programme"	Means the programme set out in Schedule 9 [<i>The Programme</i>] as revised and issued by the Concessionaire (or on its behalf) from time to time pursuant to Clause 18 [<i>Programme and Dates for Completion</i>];
"Programmed Maintenance"	Means the maintenance work which the Concessionaire is to carry out in accordance with the Schedule of Programmed Maintenance;
"Programmed Maintenance Information"	Has the meaning given in Clause 27.3 [<i>Maintenance</i>];
"Prohibited Act"	Has the meaning given in Clause 53 [<i>Corrupt Gifts</i>];
"Project"	Means the twenty five (25) year concession for the carrying out of the Works and the provision of the Services; the financing thereof and the provision of the Early Occupation Services at or in respect of the Site and all other obligations of the Concessionaire under this Agreement from time to time;
"Project Data"	Means: <ul style="list-style-type: none"> (i) all Design Data; (ii) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the provision of the Services; and (iii) any other materials, documents and or data acquired, brought into existence or used in relation to the Project Operations or this Agreement;



"Project Documents"	Means the Ancillary Documents and the Funding Agreements;
"Project Operations"	Means the carrying out of the Works, the carrying out of Concessionaire's Pre-Completion Commissioning and Concessionaire's Post-Completion Commissioning, the maintenance of the Facilities (including the renewal or replacement of Plant), the management and provision of the Services and the performance of all other obligations of the Concessionaire under this Agreement from time to time;
"Project Term"	Means the Initial Project Term and any further period which extends the Initial Project Term in accordance with Clause 3.2 of this Agreement;
"Prospective Tenderers"	Means Tested Services providers proposed by the Concessionaire as part of a Market Testing Exercise;
"Qualifying Variation"	Has the meaning given in Schedule 22 [<i>Variation Procedure</i>];
"Quality Manager"	Means the quality manager appointed pursuant to Clause 24 [<i>Quality Assurance</i>];
"Quality Plans"	Means the Design Quality Plan and Construction Quality Plan, prepared in accordance with Part 9 of Schedule 8 [<i>Construction Matters</i>], and the Services Quality Plan, prepared in accordance with Experience Delivery Standards and Payment Mechanism, as required to be implemented by the Concessionaire in accordance with Clause 24 [<i>Quality Assurance</i>] each as amended from time to time in accordance with this Agreement;
"Range of Finishes"	Has the meaning given in Schedule 10 [<i>Review Procedure</i>];
"Rectified"	Has the meaning given in paragraph 12.1.3 of the Experience Delivery Standards and Payment Mechanism;
"Refinancing"	Has the meaning given in Schedule 29 [<i>Refinancing</i>];
"Reinstatement Plan"	Has the meaning given in Clause 35.21.1 [<i>Reinstatement</i>];
"Reinstatement Works"	Has the meaning given in Clause 35.21.1 [<i>Reinstatement</i>];
"Relevant Change in Law"	Has the meaning given in Clause 38 [<i>Change in Law</i>];
"Relevant Incident"	Has the meaning given in Clause 35.21 [<i>Reinstatement</i>];
"Relevant Proceeds"	Has the meaning given in Clause 35.21.2(c) [<i>Reinstatement</i>];
"Relevant Tax Liability"	Has the meaning given in Clause 47.7.3 [<i>Compensation on Termination</i>];



"Relevant Works Change in Law"	Has the meaning given in Clause 38.6 [<i>Change in Law</i>];
"Relief"	Has the meaning given in Clause 47.7.1 [<i>Compensation on Termination</i>];
"Relief Events"	Has the meaning given to it in Clause 41 [<i>Relief Events</i>];
"Removal Notice"	Has the meaning given in paragraph 12 of the Experience Delivery Standards and Payment Mechanism;
"Repeated Failure"	Has the meaning given in paragraph 1.1.33 of the Experience Delivery Standards and Payment Mechanism;
"Repeated Failure Deductions"	Has the meaning given to it in paragraph 10 of the Experience Delivery Standards and Payment Mechanism;
"Reporting Failure"	Has the meaning given to it in paragraph 1.1.36 of the Experience Delivery Standards and Payment Mechanism;
"Reporting Deductions"	Has the meaning given to in paragraph 12 of the Experience Delivery Standards and Payment Mechanism;
"Review Date"	Means the Benchmarking Commencement Date and thereafter the date falling every 12 months after it for the duration of the Project Term;
"Review Procedure"	Means the procedure set out in Schedule 10 [<i>Review Procedure</i>];
"Reviewable Design Data"	Means any (a) Design Data which is either not contained in the Concessionaire Proposals (in the form as at the date hereof) or in a specification for Further Campus Works incorporated into the Concessionaire's Proposals pursuant to Clause 20 and (b) any other Design Data constituting a development of the Design Data contained in such the Concessionaire's Proposals (in the form as at the date hereof) or and (c) fixtures, furniture and equipment to be installed at the Campus and at the shared service centre at 15 Esselen Street ("FF&E");
"Revised Baseline Programme"	Has the meaning given in paragraph 2.1 of Schedule 10 [<i>Review Procedure</i>];
"Room Data Sheets"	Has the meaning given in Part 6 of Schedule 8 [<i>Construction Matters</i>];
"Schedule of Programmed Maintenance"	Means the programme referred to in Clause 27.1 [<i>Maintenance</i>] to be submitted to the dti's Representative by the Concessionaire in accordance with Schedule 10 [<i>Review Procedure</i>];



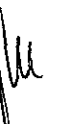
"Selection Period"	Has the meaning given in Schedule 10 [<i>Review Procedure</i>];
"Senior Debt Amount"	Has the meaning given in Part F of Schedule 23;
"Senior Debt LLCR"	Has the meaning given in the Common Terms Agreement;
"Senior Funders"	Means Standard Corporate and Merchant Bank, a division of the Standard Bank of South Africa Limited and any further Financial Institutions as may be included as such in terms of the Common Terms Agreement in their capacity as parties to the Senior Facility Agreement (as defined in the Common Terms Agreement);
"Service Levels"	Has the meaning set out in the Experience Delivery Standards and Payment Mechanism and Method Statements;
"Service Variation"	Has the meaning given in Schedule 22 [<i>Variation Procedure</i>];
"Services"	Means the services to be provided and/or procured by the Concessionaire for the dti in accordance with Experience Delivery Standards and Payment Mechanism and each as subsequently amended or adjusted in accordance with this Agreement;
"Services Quality Plan"	Means the document prepared in accordance with the Experience Delivery Standards and Payment Mechanism, as required to be implemented by the Concessionaire pursuant to Clause 24 [<i>Quality Assurance</i>];
"Shared Risk Insurances"	Has the meaning given in Clause 35.26 [<i>Increase in Premia</i>];
"Shareholder(s)"	Means a party listed in Schedule 27 [<i>Concessionaire Information</i>] as changed from time to time in accordance with this Agreement;
"Shareholders Agreements"	Means the agreement or agreements between the Shareholders relating to the Concessionaire, including any agreement relating to the subscription of equity (or other shareholder funding) by the Shareholders in the Concessionaire;
"Site"	Means the land leased to the Concessionaire and outlined in red on the plan which is attached to the Lease Agreement;
"Site Conditions"	Means the condition of the Site including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions;
"Small Works"	Has the meaning given in Part 1A of Schedule 22 [<i>Variation Procedure</i>];
"Snagging Matters"	Means minor items of outstanding work (including in relation to

landscaping) which would not materially impair the dti's use and enjoyment of the Facilities or the performance of the Services by the Concessionaire;

"Snagging Notice"	Means the notice to be issued by the Independent Tester in accordance with Clause 21.13 [<i>Completion Certificate</i>];
"Specific Change in Law"	Means any Change in Law which principally affects or principally relates only to the provision or operation of governmental accommodation premises;
"Sub-Contracts"	Means the contracts entered into by or between the Concessionaire, the DC Contractor and/or an FM Contractor and other third parties in relation to any aspect of the Project Operations;
"Sub-Contractors"	Means any third party (including the DC Contractor and the FM Contractor(s)) who enters into any Sub-Contract;
"Subsidiary"	Has the meaning given to it in the Companies Act 61 of 1973;
"Target Completion Date"	Means, in relation to each Block, or each item of Further Works, the date indicated in Schedule 9 [<i>Programme</i>], (as such may be amended in accordance with this Agreement), as the date on which such Block or item is scheduled to reach Completion;
"Tenderer"	Means a tenderer requested by the parties to prepare and submit a tender for a Tested Service;
"Tender Requirements"	Means the form and requirements of the tender documents to be delivered to Tenderers, including: <ul style="list-style-type: none">(a) the terms and conditions under which the Services will be contracted;(b) a statement of the Tender Validity Period;(c) where more than one Tested Service is to be Market Tested on the relevant Testing Date, requirements in respect of any grouping those Tested Services;(d) the submission of tender prices;(e) details of the Evaluation Criteria;(f) information relating to employees and their conditions of employment; and(g) the information that a tenderer is required to provide.
"Tender Validity Period"	Means a reasonable period within which tenders from



		Prospective Tenderers must be received if they are to be valid in accordance with the Tender Requirements;
"Termination Date"		Means the date on which termination of this Agreement takes effect in accordance with Clause 46.6 [<i>Termination</i>];
"Tested Services"		Has the meaning given to it in paragraph 1.1.3 of Schedule 17 [<i>Benchmarking and Market Testing</i>];
"Third Party Shareholder"		Means [<i>definition of non-sponsor equity providers</i>];
"Title Deeds"		Means the certified copies of the title deeds to the Site which have been supplied to (and examined by) the Concessionaire and with which the Concessionaire is deemed by its execution of this Agreement to be satisfied with regard to their content, validity and completeness;
"Treasury"		Means the National Treasury of the Government of the Republic of South Africa;
"Trevenna City Partnership"		Means the partnership set up by means of a Partnership Deed signed on 20 September 2001 between the dti and Tshwane;
"Tshwane"		Means the City of Tshwane in the Province of Gauteng in the Republic of South Africa;
"Uninsurable Risk"		Means a risk against which the Concessionaire is required to insure by Clause 35.1 or 35.2 [<i>Insurance</i>] (other than any risks insured under any professional indemnity insurances) and for which: <ul style="list-style-type: none"> (a) insurance is not available within the worldwide insurance market with reputable insurers of good standing in respect of that risk; or (b) the terms offered in respect of that risk are such that the risk is not generally being insured against in the worldwide insurance market; to the extent that the Concessionaire and other prudent contractors in the same or substantially similar businesses would cease to operate such businesses in order to mitigate or manage the effect of that risk becoming uninsured and the Concessionaire has demonstrated this to the dti;
"Unitary Payments"		Has the meaning given in paragraph 2 of the Experience Delivery Standards and Payment Mechanism;
"Unprogrammed Works"	Maintenance	Has the meaning given in Clause 27.8 [<i>Maintenance</i>];
"Unreasonable Act"		Means any act or omission which is contrary to any



reasonable instruction, guidance or rules for the operation or management of the Facilities (other than any such act or omission required specifically in terms of the Experience Delivery Standards or other specific provisions of this Agreement which must be complied with) or is otherwise unreasonable having regard to the nature of the activities of the dti and the Concessionaire at the Campus;

"Variation"	Has the meaning given in Schedule 22 [<i>Variation Procedure</i>];
"Variation Confirmation"	Has the meaning given in Schedule 22 [<i>Variation Procedure</i>];
"Variation Enquiry"	Has the meaning given in Schedule 22 [<i>Variation Procedure</i>];
"Variation Procedure"	Means the procedures set out in Schedule 22 [<i>Variation Procedure</i>];
"VAT"	Means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act No. 89 of 1991'
"VAT Sum"	Has the meaning given in Clause 52.5 [VA7];
"Viability Statement"	Means the notice issued by the dti stating that the Facilities are no longer needed;
"Warning Notice"	Has the meaning given in paragraph 13 of the Experience Delivery Standards and Payment Mechanism;
"Works"	Means the design (including the preparation of all Design Data), construction, testing, commissioning and completion of the Facilities (including any temporary works) to be performed by the Concessionaire in accordance with this Agreement (as varied, amended or supplemented from time to time in accordance with this Agreement);
"Works Variation"	Has the meaning given in Schedule 22 [<i>Variation Procedure</i>];
"Works Variation Capital Limit"	Has the meaning given in Part 1A of Schedule 22 [<i>Variation Procedure</i>]; and
"Works Variation Delay Limit"	Has the meaning given in Part 1A of Schedule 22 [<i>Variation Procedure</i>].

SCHEDULE 1

Part 2: Interpretation

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

1. The headings and marginal notes and references to them in this Agreement shall be deemed not to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement.
2. Except where the context expressly requires otherwise, references to Clauses, Sub-clauses, paragraphs, sub-paragraphs, parts and Schedules are references to Clauses, Sub-clauses, paragraphs, sub-paragraphs and parts of and Schedules to this Agreement and references to Sections, Appendices and Attachments (if any) are references to Sections, Appendices and Attachments to or contained in this Agreement.
3. The Schedules to this Agreement are an integral part of this Agreement and a reference to this Agreement includes a reference to the Schedules.
4. Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity.
5. Where the context so requires words importing the singular only also include the plural and vice versa and words importing the feminine shall be construed as including the masculine or the neuter or vice versa.
6. The language of this Agreement is English. All correspondence, notices, drawings, Design Data, test reports, certificates, specifications and information shall be in English. All operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Agreement shall be in English.
7. References to any agreement or document include (subject to all relevant approvals and any other provisions of this Agreement concerning amendments to agreements or documents) a reference to that agreement or document as amended, supplemented, substituted, novated or assigned.
8. References to any Law are to be construed as references to that Law as from time to time amended or to any Law from time to time replacing, extending, consolidating or amending the same provided that the provisions of this paragraph shall be without prejudice to the operation of Clause 38 [*Changes in Law*] and Schedule 22 [*Variation Procedure*] which shall operate in relation to a Change in Law on the basis set out in this Agreement.
9. References to a public organisation (other than the dti) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than the dti) shall include their successors and assignees.

10. References to a deliberate act or omission of the dti or any dti Party shall be construed having regard to the interactive nature of the activities of the dti and of the Concessionaire and the expression shall exclude acts or omissions carried out in the ordinary course of the dti's activities or which were within the contemplation of the parties or which were otherwise provided for in this Agreement.
11. The words in this Agreement shall bear their natural meaning. The parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentem.
12. Reference to "parties" means the parties to this Agreement and references to "a party" mean one of the parties to this Agreement.
13. In construing this Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
14. All of the Concessionaire's obligations, duties and responsibilities shall be construed as separate obligations, duties and responsibilities owed to the dti and to be performed at the Concessionaire's own cost and expense.
15. References to amounts or sums expressed to be "index linked" are references to amounts or sums in April 2002 prices which require to be adjusted whenever the provision containing the amount or sum is given effect in accordance with this Agreement to reflect the effects of inflation after that date. The adjustment shall be measured by changes in the relevant index published for that Contract Year as calculated in accordance with the following formula:

$$\text{Amount or sum in April 2002 prices} \times \frac{\text{CPIX}_d}{\text{CPIX}_0}$$

Where CPIX_d is the value of the CPIX published or determined with respect to the month of May most recently preceding the date when the provision in question is to be given effect and CPIX_0 is the value of the consumer price index as indicated in the CPIX in respect of April 2002.

16. Reference to a document being in the Agreed Form is a reference to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf.
17. Where this Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of Business Days after a stipulated date or event the latest time for performance shall be 15h00 on the last Business Day for performance of the obligations concerned.
18. Where this Agreement states that an obligation shall be performed "no later than" or "by" a prescribed number of Business Days before a certain date or "by" a date which is a prescribed number of Business Days before a base date, the latest time for performance shall be 15h00 on the last Business Day for performance of the obligations concerned.