



Department
for Environment
Food & Rural Affairs

Conditions of Contracts

Provision of Goods

33231 – Provision of Official Seed Certification Labels

December 2021



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SECTION 1

FORM OF CONTRACT

PARTIES:

(1) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS of Nobel House, 17 Smith Square, London, SW1P 3JR (the “**Authority**”);

AND

(2) Integrity Print Limited (registered in England and Wales under number 06596913) whose registered office is First Avenue, Westfield Trading Estate, Midsomer Norton, Bath, BA3 4BS (the “**Concessionaire**”)

(each a “**Party**” and together the “**Parties**”).

WHEREAS

The Authority wishes to appoint the Concessionaire to provide certain Goods and the Concessionaire agrees to provide those Goods in accordance with these terms and conditions.

NOW IT IS HEREBY AGREED as follows:

1. TERMS OF CONTRACT

1.1 The “**Contract**” comprises the following:

Section 1: Form of Contract

Section 2: Terms and Conditions

Schedule 1: Specification

Schedule 2: Performance Management Framework

Schedule 3: Contract Governance

Schedule 4: Pricing

Schedule 5: Change Control

Schedule 6: Commercially Sensitive Information

Schedule 7: Non-disclosure Agreement

Schedule 8: Concessionaire and Third Party Software

Schedule 9: Business Continuity and Disaster Recovery

1.2 Execution of the Contract is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract is formed on the date on which both Parties communicate acceptance of its terms on the Authority’s electronic contract management system (“**Bravo**”).

- 1.3 The Contract starts on 01/01/2022 (the “**Commencement Date**”) and ends on 31/12/2026 (the “**End Date**”) unless it is terminated early or extended in accordance with the Contract.
- 1.4 The Authority may extend the term of the Contract until 31/12/2028 (“Extension”). The terms of the Contract will apply throughout the period of any Extension.

SECTION 2

TERMS AND CONDITIONS

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A GENERAL PROVISIONS

A1 Definitions and Interpretation

Unless the context otherwise requires the following terms shall have the meanings given to them below:

“Affected Party” means the Party seeking to claim relief in respect of a Force Majeure Event.

“Affiliate” means in relation to a body corporate, any other entity which directly or indirectly Controls is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.

“Approval” and “Approved” means the prior written consent of the Authority.

“Authorised Representative” means the Authority representative named in the CCN as authorised to approve agreed Variations.

“Authority Data” means:

(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Concessionaire by or on behalf of the Authority; or (ii) which the Concessionaire is required to generate, process, store or transmit pursuant to the Contract; or

(b) any Personal Data for which the Authority is the Data Controller.

“Authority Premises” means any premises owned, occupied or controlled by the Authority or any other Crown Body which are made available for use by the Concessionaire or its Sub-Contractors for provision of the Goods.

“Authority Software” means software which is owned by or licensed to the Authority (other than under or pursuant to the Contract) and which is or will be used by the Concessionaire for the purposes of providing the Goods.

“Authority System” means the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Concessionaire in connection with the Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Concessionaire System or which is necessary for the Authority to receive the Goods.

“BPSS” means the HMG Baseline Personnel Security Standard for Government employees.

“Bravo” has the meaning given in paragraph 1.2 of the Form of Contract.

“CCN” means a change control notice in the form set out in Schedule 5.

“Commencement Date” means the date set out in paragraph 1.3 of the Form of Contract.

“Commercially Sensitive Information” means the information listed in Schedule 6 comprising the information of a commercially sensitive nature relating to:

(a) the Price;

- (b) details of the Concessionaire's Intellectual Property Rights; and
- (c) the Concessionaire's business and investment plans which the Concessionaire has indicated to the Authority that, if disclosed by the Authority, would cause the Concessionaire significant commercial disadvantage or material financial loss.

"Confidential Information" means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure otherwise than by breach of clause E4;
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

"Contract" has the meaning given in paragraph 1.1 of the Form of Contract.

"Contract Period" means the period from the Commencement Date to:

- (a) the End Date; or
- (b) following an Extension, the end date of the Extension

or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

"Contracting Authority" means any contracting authority (other than the Authority) as defined in regulation 3 of the Regulations.

"Concessionaire" means the party named as the Concessionaire in the Form of Contract

"Concessionaire Software" means software which is proprietary to the Concessionaire, including software which is or will be used by the Concessionaire for the purposes of providing the Goods and which is set out in Schedule 8.

"Concessionaire System" means the information and communications technology system used by the Concessionaire in providing the Goods including the Software, the Concessionaire Equipment and related cabling (but excluding the Authority System).

"Control" means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly.

"Copyright" means as defined in s.1 of Part 1 of Chapter 1 of the Copyright, Designs and Patents Act 1988.

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and “Crown Body” is an emanation of the foregoing.

“Database Rights” means rights in databases as defined in s.3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

“Default” means any breach of the obligations of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to NICs by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

“DPA” means the Data Protection Act 1998 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“EIR” means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“End Date” means the date set out in paragraph 1.3 of the Form of Contract.

“Equipment” means the Concessionaire’s equipment, consumables, plant, materials and such other items supplied and used by the Concessionaire in the provision of the Goods.

“Extension” has the meaning given in paragraph 1.4 of the Form of Contract.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“Force Majeure Event” means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Concessionaire or the Staff or any other failure in the Concessionaire’s supply chain.

“Form of Contract” means Section 1 of the Contract.

“General Anti-Abuse Rule” means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs;

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“Goods” means any goods supplied by the Concessionaire (or by a Sub-Contractor) under the Contract as specified in Schedule 1 including any modified or alternative goods.

“Halifax Abuse Principle” means the principle explained in the CJEU Case C-255/02 Halifax and others.

“Security Policy Framework” means the HMG Security Policy Framework (available from the Cabinet Office’s Government Security Secretariat) as updated from time to time.

“HMRC” means HM Revenue & Customs.

“ICT Environment” means the Authority System and the Concessionaire System.

“Information” has the meaning given under section 84 of the FOIA.

“Initial Contract Period” means the period from the Commencement Date to the End Date.

“Intellectual Property Rights” means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“ITEPA” means the Income Tax (Earnings and Pensions) Act 2003.

“Know-How” means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods).

“Law” means law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Concessionaire is bound to comply.

“Malicious Software” means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

“Material Breach” means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses A6, D1, E1, E2, E3, E4, E7, E8 or E10.

“Month” means calendar month.

“NICs” means National Insurance Contributions.

“Occasion of Tax Non-Compliance” means:

- (a) any tax return of the Concessionaire submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
 - i) a Relevant Tax Authority successfully challenging the Concessionaire under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - ii) the failure of an avoidance scheme which the Concessionaire was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Concessionaire submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

“Premises” means the location where the Goods are to be supplied as set out in the Specification.

“Price” means the price (excluding any applicable VAT) payable to the Concessionaire by the Authority under the Contract, as set out in Schedule 4 for the full and proper performance by the Concessionaire of its obligations under the Contract.

“Prohibited Act” means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - i) induce that person to perform improperly a relevant function or activity; or
 - ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) an offence:
 - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;

- ii) under legislation or common law concerning fraudulent acts; or
- iii) the defrauding, attempting to defraud or conspiring to defraud the Authority;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

“Property” means the property, other than real property, issued or made available to the Concessionaire by the Authority in connection with the Contract.

“Purchase Order” means the document in which the Authority specifies the Goods which are to be supplied by the Concessionaire under the Contract.

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Concessionaire would reasonably and ordinarily be expected to comply with, and as may be further detailed in Schedule 1.

“Receipt” means the physical or electronic arrival of the invoice at the address specified in clause A4.4 or at any other address given by the Authority to the Concessionaire for the submission of invoices from time to time.

“Regulations” means the Public Contract Regulations 2015 (SI 2015/102).

“Regulatory Body” means a government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority.

“Relevant Conviction” means a conviction that is relevant to the nature of the Goods or as listed by the Authority and/or relevant to the work of the Authority.

“Relevant Requirements” means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

“Relevant Tax Authority” means HMRC or, if applicable, a tax authority in the jurisdiction in which the Concessionaire is established.

“Replacement Concessionaire” means any third party supplier appointed by the Authority to supply any goods which are substantially similar to any of the Goods in substitution for any of the Goods following the expiry, termination or partial termination of the Contract.

“Request for Information” means a request for information under the FOIA or the EIR.

“Results” means any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:

- a) prepared by or for the Concessionaire for use in relation to the performance of its obligations under the Contract; or

b) the result of any work done by the Concessionaire, the Staff or any Sub-Contractor in relation to the provision of the Goods.

“Specification” means the description of the Goods to be supplied under the Contract as set out in Schedule 1 including, where appropriate, the Premises and the Quality Standards.

“SSCBA” means the Social Security Contributions and Benefits Act 1992.

“Staff” means all persons employed by the Concessionaire to perform its obligations under the Contract together with the Concessionaire’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

“Sub-Contract” means a contract between 2 or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract and “Sub-Contractor” shall be construed accordingly.

“Tender” means the document submitted by the Concessionaire to the Authority in response to the Authority’s invitation to suppliers for formal offers to supply the Goods.

“TFEU” means the Treaty on the Functioning of the European Union.

“Third Party IP Claim” has the meaning given to it in clause E8.7 (Intellectual Property Rights).

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Concessionaire to provide the Goods including the software and which is specified as such in Schedule 8.

“Treaties” means the Treaty on European Union and the TFEU.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“TUPE Information” means the information set out in clause B17.1.

“Valid Invoice” means an invoice containing the information set out in clause C2.5.

“Variation” means a change in the Specification, the Price or any of the terms or conditions of the Contract.

“VAT” means value added tax charged or regulated in accordance with the provisions of the Value Added Tax Act 1994.

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

In the Contract, unless the context implies otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;

- (d) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (g) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time; and
- (h) references to the Contract are references to the Contract as amended from time to time.

A2 The Authority’s Obligations

A2.1 Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, and the exercise by the Authority of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of the Authority to the Concessionaire.

A3 Concessionaire’s Status

A3.1 The Concessionaire shall be an independent Concessionaire and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

A3.2 The Concessionaire shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Concessionaire is acting as the agent or employee of the Authority.

A4 Notices and Communications

A4.1 Subject to clause A4.3, where the Contract states that a notice or communication between the Parties must be “written” or “in writing” it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Bravo.

A4.2 If it is not returned as undelivered a notice served:

- (a) in a letter is deemed to have been received 2 Working Days after the day it was sent; and
- (b) in an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day

or when the other Party acknowledges receipt, whichever is the earlier.

A4.3 Notices pursuant to clauses G3 (Force Majeure), I2 (Dispute Resolution) or to terminate the Contract or any part of the Goods are valid only if served in a letter by hand, recorded delivery or special delivery.

A4.4 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Contract:

(a) For the Authority:

[REDACTED]
[REDACTED]
[REDACTED]

(b) For the Concessionaire:

[REDACTED]
[REDACTED]
[REDACTED]

A5 Mistakes in Information

A5.1 The Concessionaire is responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Concessionaire in connection with the Goods and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

A6 Conflicts of Interest

A6.1 The Concessionaire shall take appropriate steps to ensure that neither the Concessionaire nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Concessionaire and the duties owed to the Authority under the provisions of the Contract. The Concessionaire will notify the Authority without delay giving full particulars of any such conflict of interest which may arise.

A6.2 The Authority may terminate the Contract immediately by notice and/or take or require the Concessionaire to take such other steps it deems necessary if, in the Authority's reasonable opinion, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Concessionaire and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause A6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

B THE CONCESSION

B1 Grant of Concession

B1.1 In consideration for the performance of its obligations under this Agreement, the Authority hereby grants to the Concessionaire the exclusive right to operate the Concession in the Territory.

B1.2 The Concessionaire shall operate the Concession
(a) in a timely and professional manner;

(b) in accordance with the Specification and the Concessionaire's Solution (subject to clause B1.3); and

(c) in accordance with any timescales and service levels or KPIs agreed with the Authority.

B1.3 If there is any inconsistency between the Specification and the Concessionaire's Solution in respect of the Goods and Services to be provided by the Concessionaire, the provision of the Specification shall prevail.

B1.4 The Concessionaire shall perform its obligations under the Contract:

(d) with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;

(e) in accordance with Good Industry Practice; and

(f) in compliance with all applicable Laws.

B1.5 The Concessionaire shall ensure that any Goods provided to Customers via the Concession:

(a) conform in all respects with the Specification and, where applicable, with any sample approved by the Authority;

(b) operate in accordance with the relevant technical specifications and correspond with the requirements of the Specification;

(c) conform in all respects with all applicable Laws; and

(d) are free from defects in design, materials and workmanship and are fit and sufficient for all the purposes for which such goods are ordinarily used and for any particular purpose made known to the Concessionaire by the Authority.

B1.6 The Concessionaire shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that no Quality Standards have been specified in the Contract, the Concessionaire shall agree the relevant quality standard with the Authority prior to the commencement of supply of the Goods and Services, and, in any event, the Concessionaire shall operate the Concession in accordance with the Law and Good Industry Practice.

B1.7 The Concessionaire shall ensure that all Staff supplying the Goods and Services do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Goods and Services. The Concessionaire shall ensure that those Staff are properly managed and supervised.

B1.8 During the Contract Period, the Concessionaire shall:

(a) at all times have all licences, approvals and consents necessary to enable the Concessionaire and Staff to operate the Concession in accordance with this Contract;

(b) provide all premises, tools, equipment, facilities and resources (or procure the provision of the same) necessary for the operation of the Concession; and

(c) not, in operating the Concession, in any manner endanger the safety or convenience of the public.

B2 Samples

- B2.1 If requested by the Authority, the Concessionaire shall provide the Authority with samples of Goods for evaluation and Approval, at the Concessionaire's cost and expense.
- B2.2 The Concessionaire shall ensure that the Goods are fully compatible with any equipment, to the extent specified in the Specification.
- B2.3 The Concessionaire acknowledges that the Authority relies on the skill and judgment of the Concessionaire in the supply of the Goods and the performance of the Concessionaire's obligations under the Contract.

B3 Packaging

- B3.1 The Concessionaire shall comply with the Packaging & Packaging Waste Directive (94/62/EC), implemented in the UK by the Packaging (Essential Requirements) Regulations 2003.
- B3.2 The Concessionaire shall:
 - (a) use packaging capable of easy recovery for further use or recycling. Packaging materials shall be easily separable by hand into recyclable parts consisting of one material (e.g. cardboard, paper, plastic, textile);
 - (b) reuse the packaging and, where reuse is not practicable, recycle the materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packaging, where these fulfil other packaging specifications;
 - (c) make maximum use of materials taken from renewable sources, if recycled materials are not suitable or not readily available;
 - (d) if using wooden pallets or timber derived products for the packaging and supply of Goods, comply with the UK timber procurement policy and the provisions in clause D5;
 - (e) review packaging specifications periodically to ensure that no unnecessary limitations on the use of recycled materials exist; and
 - (f) if requested to do so, provide the Authority with a description of the product packaging and evidence to satisfy the Authority that it is reusing, recycling and reviewing its use of packaging. The evidence should provide proof of compliance with BS EN 13430 on recyclability or BS EN 13429 on reusability, or equivalent.

C PAYMENT

C1 Pricing

- C1.1 The Concessionaire shall provide Goods and Services via the Concession at its own cost and expense and the Authority shall have no obligation under this Contract in respect of any payment for Goods or Services, or for any liability in the event that the Concessionaire is unable to recover its costs in operating the Concession including supplying Goods and Services. Risk in the operation of the Concession vests in the Concessionaire.

- C1.2 The amounts charged to Customers for the provision of Goods and Services by the Concessionaire shall not exceed the prices set out in the pricing table in Schedule 4 of this Contract.
- C1.3 Any revenue received from the operation of the Concession may be retained by the Concessionaire. The Concessionaire shall be responsible for the payment of any taxes, including VAT if applicable, and shall comply with the provision of clause E9.

D STATUTORY OBLIGATIONS

D1 Prevention of Fraud and Bribery

D1.1 The Concessionaire represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

D1.2 The Concessionaire shall not during the Contract Period:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of its employees, consultants, Concessionaires, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

D1.3 The Concessionaire shall, during the Contract Period:

- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under clause D1.3(a) and make such records available to the Authority on request.

D1.4 The Concessionaire shall immediately notify the Authority in writing if it becomes aware of any breach of clauses D1.1 and/or D1.2, or has reason to believe that it has or any of the Staff have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.

D1.5 If the Concessionaire notifies the Authority pursuant to clause D1.4, the Concessionaire shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, records and/or any other relevant documentation.

D1.6 If the Concessionaire is in Default under clauses D1.1 and/or D1.2, the Authority may by notice:

- (a) require the Concessionaire to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
- (b) immediately terminate the Contract.

D1.7 Any notice served by the Authority under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract shall terminate).

D2 Discrimination

D2.1 The Concessionaire shall:

- (a) perform its obligations under the Contract in accordance with:
 - i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
 - ii) the Authority's equality and diversity policy as given to the Concessionaire from time to time;
 - iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (b) take all necessary steps and inform the Authority of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

D3 Rights of Third Parties

D3.1 The provisions of clause E7.3 confer benefits on persons named in such provisions (together "Third Party Provisions") other than the Parties (each person a "Third Party Beneficiary") and are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 ("CRTPA").

D3.2 Subject to clause D3.1, a person who is not a Party has no right under the CRTPA to enforce any provisions of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.

D3.3 No Third Party Beneficiary may enforce or take steps to enforce any Third Party Provision without Approval.

D3.4 Any amendments to the Contract may be made by the Parties without the consent of any Third Party Beneficiary.

D4 Health and Safety

D4.1 The Concessionaire shall perform its obligations under the Contract in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Authority's health and safety policy while at the Authority's Premises.

D4.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority's Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Concessionaire shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

D5 Environmental Requirements

D5.1 The Concessionaire shall in the performance of the Contract have due regard to the Authority's environmental, sustainable and ethical procurement policies ("Environmental Policies") which require the Authority through its procurement and management of suppliers to:

- (a) conserve energy, water, wood, paper and other resources and reduce waste;
- (b) phase out the use of ozone depleting substances;
- (c) minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;
- (d) minimise the use of products harmful to health and the environment such as hazardous substances and solvents, replacing them with more benign substances where feasible and, where such substances are necessary, to ensure that they are stored in properly labelled containers, used and disposed of in compliance with legal and regulatory requirements and any instructions from the Authority;
- (e) reduce fuel emissions wherever possible;
- (f) maximise the use of recovered materials and, if recycled materials are not suitable or not readily available, to maximise the use of materials taken from renewable sources; and
- (g) promote the design of products that are capable of reuse or remanufacture or easily separable into recyclable parts consisting of one material (e.g. steel, plastic, textile).

D5.2 The Concessionaire shall ensure that any equipment and materials used in the supply of the Goods do not contain:

- (a) ozone depleting substances such as hydrochlorofluorocarbons (HCFCs), halons, carbon tetrachloride, 111 trichloroethane, bromochloromethane or any other damaging substances; and/or
- (b) HFCs and other gaseous and non-gaseous substances with a high global warming potential;

unless given written permission by the Authority to do so.

D5.3 The Concessionaire shall conserve energy and water; reduce carbon emissions and other greenhouse gases; minimise the use of substances damaging or hazardous to health and the environment and reduce waste by, for example, using resources more efficiently and reusing, recycling and composting and respecting biodiversity.

D5.4 If required by the Authority the Concessionaire shall provide the Authority with information about its compliance with its obligations under clause D5.3.

D5.5 The Concessionaire shall ensure that its Staff are aware of the Authority's Environmental Policies.

D5.6 The Concessionaire shall comply with the minimum environmental mandatory standards in the "Government Buying Standards" and in addition where required by the Authority, comply with any relevant "Best Practice" and "Class Leader" standards in relation to any goods on that list which are supplied to the Authority by or on behalf of the Concessionaire under the Contract.

D5.7 The Concessionaire shall:

- (a) identify any risks arising from climate change and variable weather such as higher temperatures, droughts, flooding, sea and river level rises, coastal and riparian erosion, water scarcity, and loss of water quality which may disrupt and/or affect the supply of the Goods; and
- (b) if such risks have been identified, enhance the resilience of its organisation to enable it to adapt and deal with the effects of such extreme events, including by having the necessary awareness-raising, evaluation, preventive, preparatory, recovery measures and support systems in place in order to minimise any disruption to the supply of the Goods.

D6 Timber and Wood Derived Products

D6.1 For the purposes of clauses D6.1 to D6.8 the following terms shall have the following meanings:

- (a) "Timber" means any product that contains wood or wood fibre, with the exception of "recycled" materials (see below). Such products range from solid wood to those where the manufacturing processes obscure the wood element, for example, paper. Timber and wood-derived products supplied or used in performance of the Services that have been recycled or reclaimed are referred to as "recycled" timber, which is defined below. Timber and wood-derived products supplied or used in providing the Goods that are not recycled are referred to as "virgin" timber when the distinction needs to be made for clarity. Short-rotation coppice is exempt from the requirements for timber and wood-derived products and falls under agricultural regulation and supervision rather than forestry;
- (b) "Legal and Sustainable" means production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions (only), as defined by the document titled "UK Government timber procurement policy: Definition of Legal and Sustainable for timber procurement" (available at www.gov.uk/government/publications/timber-definition-of-legal-and-sustainable or CPET). The edition current on the day the Contract is awarded shall apply;
- (c) "FLEGT" means Forest Law Enforcement, Governance and Trade, and is a reference to the EU scheme to address the problem of illegally logged timber;

(d) “FLEGT-licensed” means production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions only, as defined by a bilateral Voluntary Partnership Agreement (“VPA”) between the European Union and a timber-producing country under the FLEGT scheme, where both Parties have agreed to establish a system under which timber that has been produced in accordance with the relevant laws of the producing country, and other criteria stipulated by the VPA, are licensed for export by the producing country government;

(e) “Recycled” means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. The term "recycled" is used to cover the following categories: pre-consumer recycled wood and wood fibre or industrial by products but excluding sawmill co-products (sawmill co-products are deemed to fall within the category of virgin timber), post-consumer recycled wood and wood fibre, and drift wood. It also covers reclaimed timber which was abandoned or confiscated at least ten years previously. Documentary evidence and independent verification also apply to recycled materials, but will focus on the use to which the timber was previously put rather than the forest source;

(f) “Short-rotation coppice” means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK government timber procurement policy requirements and falls under agricultural regulation and supervision rather than forestry. The exemption only refers to short-rotation coppice, and not 'conventional' coppice which is forest management and therefore subject to the timber policy; and

(g) “CPET” means the UK Government’s Central Point of Expertise on Timber.

D6.2 All Timber supplied or used by the Concessionaire in providing Goods (including all Timber supplied or used by Sub-Contractors) shall comply with Schedule 1 and shall originate from a forest source where management of the forest has full regard for:

(a) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;

(b) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and

(c) safeguarding the basic labour rights and health and safety of forest workers

(the “Social Criteria”).

D6.3 If requested by the Authority and not already provided in its Tender, the Concessionaire shall give the Authority evidence that the Timber supplied or used in providing the Goods complies with the requirements of Schedule 1 and with the requirements of the Social Criteria.

D6.4 The Authority may at any time during the Contract Period and for 6 years after final delivery under the Contract require the Concessionaire to produce the evidence required for the Authority's inspection within 14 days of the Authority's written request.

D6.5 The Concessionaire shall maintain records of all Timber delivered to and accepted by the Authority for 6 years from final delivery under the Contract.

D6.6 The Authority shall decide whether the evidence submitted to it demonstrates legality and sustainability, or FLEGT-licence or equivalent, and is adequate to satisfy the Authority that the Timber complies with Schedule 1 and complies with the requirements of the Social Criteria. If

the Authority is not satisfied, the Concessionaire shall commission and meet the costs of an "independent verification" and resulting report that will: (a) verify the forest source of the timber or wood; and (b) assess whether the source meets the relevant criteria.

D6.7 In the Contract "Independent Verification" means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems (as amended from time to time) or equivalent, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies (as amended from time to time) or equivalent.

D6.8 The Authority may reject Timber that does not comply with Schedule 1 or with the Social Criteria. If the Authority rejects any Timber the Concessionaire shall supply alternative Timber which does comply at no additional cost to the Authority and without causing delay to delivery of the Goods.

E PROTECTION OF INFORMATION

E1 Authority Data

E1.1 The Concessionaire shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

E1.2 The Concessionaire shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Concessionaire of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.

E1.3 To the extent that Authority Data is held and/or processed by the Concessionaire, the Concessionaire shall supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification.

E1.4 The Concessionaire shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data.

E1.5 The Concessionaire shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored securely off-site. The Concessionaire shall ensure that such back-ups are made available to the Authority immediately upon request.

E1.6 The Concessionaire shall ensure that any system on which the Concessionaire holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy Framework.

E1.7 If Authority Data is corrupted, lost or sufficiently degraded as a result of the Concessionaire's Default so as to be unusable, the Authority may:

(a) require the Concessionaire (at the Concessionaire's expense) to restore or procure the restoration of Authority Data and the Concessionaire shall do so promptly; and/or

(b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Concessionaire any reasonable expenses incurred in doing so.

E1.8 If at any time the Concessionaire suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the

Concessionaire shall notify the Authority immediately and inform the Authority of the remedial action the Concessionaire proposes to take.

E2 Official Secrets Acts and Finance Act

E2.1 The Concessionaire shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

E3 Confidential Information

E3.1 Except to the extent set out in this clause E3 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.

E3.2 The Concessionaire hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information belonging to the Authority redacted) including from time to time agreed changes to the Contract, to the general public.

E3.3 If required by the Authority, the Concessionaire shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in substantially the form attached in Schedule 7. The Concessionaire shall maintain a list of the non-disclosure agreements completed in accordance with this clause E3.3.

E3.4 If requested by the Authority, the Concessionaire shall give the Authority a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Concessionaire shall ensure that its Staff, professional advisors and consultants are aware of the Concessionaire's confidentiality obligations under the Contract.

E3.5 The Concessionaire may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

E3.6 The Concessionaire shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.

E3.7 Clause E3.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;

- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

E3.8 Nothing in clause E3.1 shall prevent the Authority disclosing any Confidential Information obtained from the Concessionaire:

- (a) for the purpose of the examination and certification of the Authority's accounts;
- (b) for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (c) to any Crown Body or any Contracting Authority and the Concessionaire hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority;
- (d) to any consultant, Concessionaire or other person engaged by the Authority

provided that in disclosing information under clauses E3.8 (c) and (d) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

E3.9 Nothing in clauses E3.1 to E3.6 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

E3.10 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Concessionaire's Confidential Information is disclosed pursuant to clause E3.6 is made aware of the Authority's obligations of confidentiality.

E3.11 If the Concessionaire does not comply with clauses E3.1 to E3.6 the Authority may terminate the Contract immediately on written notice to the Concessionaire.

E3.12 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Goods, the Concessionaire shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.

E3.13 The Concessionaire will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Goods and will keep a record of such breaches. The Concessionaire will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Concessionaire will co-operate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data.

E3.14 The Concessionaire shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Concessionaire has failed to comply with clause E3.12.

E4 Freedom of Information

E4.1 The Concessionaire acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.

E4.2 The Concessionaire shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt:

- (a) give the Authority a copy of all Information in its possession or control relating to the Contract in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
- (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR; and
- (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Authority.

E4.3 The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

E5 Publicity, Media and Official Enquiries

E5.1 Without prejudice to the Authority's obligations under the FOIA, the EIR or any obligations under the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

E5.2 The Concessionaire shall use its reasonable endeavours to ensure that its Staff, professional advisors and consultants comply with clause E5.1.

E6 Security

E6.1 The Authority is responsible for maintaining the security of the Authority's Premises in accordance with its standard security requirements. The Concessionaire shall comply with all security requirements of the Authority while on the Authority's Premises, and shall ensure that all Staff comply with such requirements.

E6.2 The Authority shall give the Concessionaire upon request copies of its written security procedures.

E6.3 The Concessionaire shall, as an enduring obligation during the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

E6.4 Notwithstanding clause E6.3, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss

of operational efficiency or loss or corruption of the Authority Data, assist each other to mitigate any losses and to restore the supply of Goods.

E6.5 Any cost arising out of the actions of the Parties taken in compliance with clause E6.4 shall be borne by the Parties as follows:

- (a) by the Concessionaire where the Malicious Software originates from the Concessionaire Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Concessionaire); and
- (b) by the Authority if the Malicious Software originates from the Authority Software or Authority Data (whilst the Authority Data was under the control of the Authority).

E7 Intellectual Property Rights

E7.1 All Intellectual Property Rights in:

- (a) the Results; or
- (b) any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is furnished to or made available to the Concessionaire by or on behalf of the Authority (together with the Results, the "IP Materials")

shall vest in the Authority (save for Copyright and Database Rights which shall vest in Her Majesty the Queen) and the Concessionaire shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Concessionaire of its obligations under the Contract.

E7.2 The Concessionaire hereby assigns:

- (a) to the Authority, with full title guarantee, all Intellectual Property Rights (save for Copyright and Database Rights) which may subsist in the IP Materials prepared in accordance with clause E7.1(b) and (c). This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Concessionaire; and
- (b) to Her Majesty the Queen, with full title guarantee, all Copyright and Database Rights which may subsist in the IP Materials prepared in accordance with clauses E7.1 (a) and (b)

and shall execute all documents and do all acts as are necessary to execute these assignments.

E7.3 The Concessionaire shall:

- (a) waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract;
- (b) ensure that the third party owner of any Intellectual Property Rights that are or which may be used to supply the Goods grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such

licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Concessionaire or to any other third party supplying goods to the Authority ("Indemnified Persons");

(c) not infringe any Intellectual Property Rights of any third party in supplying the Goods; and

(d) during and after the Contract Period, indemnify and keep indemnified the Authority and Indemnified Parties from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause E7.3, except to the extent that any such claim results directly from:

i) items or materials based upon designs supplied by the Authority; or

ii) the use of data supplied by the Authority which is not required to be verified by the Concessionaire under any provision of the Contract.

E7.4 The Authority shall notify the Concessionaire in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Concessionaire to the Authority.

E7.5 The Concessionaire shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority, the Concessionaire or any Indemnified Person) arising from the performance of the Concessionaire's obligations under the Contract ("Third Party IP Claim"), provided that the Concessionaire shall at all times:

(a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;

(b) take due and proper account of the interests of the Authority; and

(c) not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).

E7.6 The Authority shall at the request of the Concessionaire afford to the Concessionaire all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Concessionaire shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Concessionaire shall not be required to indemnify the Authority under this clause E7.6 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E7.3(d) i) and ii).

E7.7 The Authority shall not, without the Concessionaire's consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.

E7.8 If any Third Party IP Claim is made or in the reasonable opinion of the Concessionaire is likely to be made, the Concessionaire shall notify the Authority and any relevant Indemnified Person and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses E7.3 (b) and G2.1(g)) use its best endeavours to:

(a) modify any or all of the Goods without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or

(b) procure a licence to use the Intellectual Property Rights and supply the Goods which are the subject of the alleged infringement, on terms which are acceptable to the Authority

and if the Concessionaire is unable to comply with clauses E7.8 (a) or (b) within 20 Working Days of receipt by the Authority of the Concessionaire's notification the Authority may terminate the Contract immediately by notice to the Concessionaire.

E7.9 The Concessionaire grants to the Authority and, if requested by the Authority, to a Replacement Concessionaire, a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Concessionaire owned or developed prior to the Commencement Date and which the Authority (or the Replacement Concessionaire) reasonably requires in order for the Authority to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Goods).

E9 Audit

E9.1 The Concessionaire shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Goods supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Concessionaire shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract.

E9.2 The Concessionaire agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Concessionaire in relation to the Goods.

E9.3 The Concessionaire shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Concessionaire's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.

E9.4 The Concessionaire (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Concessionaire shall provide such explanations as are reasonably required for these purposes.

E10 Tax Compliance

E10.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Concessionaire shall:

(a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and

(b) promptly give the Authority:

- i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
- ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

E10.2 If the Concessionaire or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Concessionaire shall:

- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to NICs, in respect of that consideration; and
- (b) indemnify the Authority against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the supply of the Goods by the Concessionaire or any Staff.

F CONTROL OF THE CONTRACT

F1 Failure to meet Requirements

F1.1 If the Authority informs the Concessionaire in writing that the Authority reasonably believes that any part of the Goods do not meet the requirements of the Contract or differs in any way from those requirements, and this is not as a result of a default by the Authority, the Concessionaire shall at its own expense re-schedule and supply the Goods in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

F1.2 The Authority may by notice to the Concessionaire reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Authority of such Goods. If the Authority rejects any of the Goods pursuant to this clause the Authority may (without prejudice to its other rights and remedies) either:

- (a) have such Goods promptly, free of charge and in any event within 5 Working Days, either repaired by the Concessionaire or replaced by the Concessionaire with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
- (b) treat the Contract as discharged by the Concessionaire's breach and obtain a refund (if payment for the Goods has already been made) from the Concessionaire in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining other goods in replacement.

F1.3 The Authority will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with clause F1.2.

F1.4 The issue by the Authority of a receipt note for delivery of the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Authority's acceptance of them.

F1.5 The Concessionaire hereby guarantees the Goods against faulty materials or workmanship for such period as may be specified in the Specification or, if no period is specified, for a period of 18 months from the date of delivery. If the Authority shall within such

period or within 25 Working Days thereafter give notice to the Concessionaire of any defect in any of the Goods as may have arisen during such period under proper and normal use, the Concessionaire shall (without prejudice to any other rights and remedies which the Authority may have) promptly remedy such defects (whether by repair or replacement as the Authority shall elect) free of charge.

F1.6 Any Goods rejected or returned by the Authority as described in clause F1.2 shall be returned to the Concessionaire at the Concessionaire's risk and expense.

F2 Monitoring of Contract Performance

F2.1 The Concessionaire shall immediately inform the Authority if any of the Goods are not being or are unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.

F2.2 At or around 6 Months from the Commencement Date and each anniversary of the Commencement Date thereafter (each being a "Review Date"), the Authority shall carry out a review of the performance of the Concessionaire ("Checkpoint Review"). Without prejudice to the generality of the foregoing, the Authority may in respect of the period under review consider such items as (but not limited to): the Concessionaire's delivery of the Goods; the Concessionaire's contribution to innovation in the Authority; whether the Goods provide the Authority with best value for money; consideration of any changes which may need to be made to the Goods; a review of future requirements in relation to the Goods and progress against key milestones.

F2.3 The Concessionaire shall provide at its own cost any assistance reasonably required by the Authority to perform such Checkpoint Review including the provision of data and information.

F2.4 The Authority may produce a report (a "Checkpoint Review Report") of the results of each Checkpoint Review stating any areas of exceptional performance and areas for improvement in the provision of the Goods and where there is any shortfall in any aspect of performance reviewed as against the Authority's expectations and the Concessionaire's obligations under this Contract.

F2.5 The Authority shall give the Concessionaire a copy of the Checkpoint Review Report (if applicable). The Authority shall consider any Concessionaire comments and may produce a revised Checkpoint Review Report.

F2.6 The Concessionaire shall, within 10 Working Days of receipt of the Checkpoint Review Report (revised as appropriate) provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified by the Checkpoint Review Report.

F2.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Concessionaire's failure to meet its obligations under this Contract identified by the Checkpoint Review Report, or those which result from the Concessionaire's failure to meet the Authority's expectations notified to the Concessionaire or of which the Concessionaire ought reasonably to have been aware) shall be implemented at no extra charge to the Authority.

F3 Remedies for inadequate performance

F3.1 If the Authority reasonably believes the Concessionaire has committed a Material Breach it may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:

- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Goods until such time as the Concessionaire has demonstrated to the Authority's reasonable satisfaction that the Concessionaire will be able to supply the Goods in accordance with the Specification;
- (b) without terminating the whole of the Contract, terminate the Contract in respect of some of the Goods only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods;
- (c) withhold or reduce payments to the Concessionaire in such amount as the Authority reasonably deems appropriate in each particular case; and/or
- (d) terminate the Contract in accordance with clause H2.

F3.2 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Authority may charge the Concessionaire for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Goods by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Concessionaire for such of the Goods.

F3.3 If the Authority reasonably believes the Concessionaire has failed to supply all or any part of the Goods in accordance with the Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Concessionaire notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.

F3.4 If the Concessionaire has been notified of a failure in accordance with clause F3.3 the Authority may:

- (a) direct the Concessionaire to identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or
- (b) withhold or reduce payments to the Concessionaire in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.

F3.5 If the Concessionaire has been notified of a failure in accordance with clause F3.3, it shall:

- (a) use all reasonable endeavours to immediately minimise the impact of such failure to the Authority and to prevent such failure from recurring; and
- (b) immediately give the Authority such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause F3.5 and the progress of those measures until resolved to the satisfaction of the Authority.

F3.6 If, having been notified of any failure, the Concessionaire fails to remedy it in accordance with clause F3.5 within the time specified by the Authority, the Authority may treat the continuing

failure as a Material Breach and may terminate the Contract immediately on notice to the Concessionaire.

F4 Transfer and Sub-Contracting

F4.1 Except where clauses F4.5 and F4.6 both apply, the Concessionaire shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such documents shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract shall not relieve the Concessionaire of any of its obligations or duties under the Contract.

F4.2 The Concessionaire shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Concessionaire shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.

F4.3 The Concessionaire shall ensure that its Sub-Contractors and suppliers retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with the provisions of clause E9 (Audit). If any Sub-Contractor or supplier does not allow the Authority access to the records then the Authority shall have no obligation to pay any claim or invoice made by the Concessionaire on the basis of such documents or work carried out by the Sub-Contractor or supplier.

F4.4 If the Authority has consented to the award of a Sub-Contract, the Concessionaire shall ensure that:

- (a) the Sub-Contract contains a right for the Concessionaire to terminate the Sub-Contract if the relevant Sub-Contractor does not comply in the performance of its contract with legal obligations in environmental, social or labour law;
- (b) the Sub-Contractor includes a provision having the same effect as set out in clause F4.4 (a) in any Sub-Contract which it awards; and
- (c) copies of each Sub-Contract shall, at the request of the Authority, be sent by the Concessionaire to the Authority immediately.

F4.5 If the Authority believes there are:

- (a) compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Concessionaire shall replace or not appoint the Sub-Contractor; or
- (b) non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Authority may require the Concessionaire to replace or not appoint the Sub-Contractor and the Concessionaire shall comply with such requirement.

F4.6 Notwithstanding clause F4.1, the Concessionaire may assign to a third party (the "Assignee") the right to receive payment of the Price or any part thereof due to the Concessionaire (including any interest which the Authority incurs under clause C2 (Payment and VAT)). Any assignment under this clause F4.6 shall be subject to:

- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
- (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and

(c) the Authority receiving notification under both clauses F4.7 and F4.8.

F4.7 If the Concessionaire assigns the right to receive the Price under clause F4.6, the Concessionaire or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

F4.8 The Concessionaire shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment.

F4.9 The provisions of clause C2 shall continue to apply in all other respects after the assignment and shall not be amended without Approval.

F4.10 Subject to clause F4.11, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

(a) any Contracting Authority;

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

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

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

F4.11 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F4.12, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.

F4.12 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F4.10 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "Transferee"):

(a) the rights of termination of the Authority in clauses H1 and H2 shall be available to the Concessionaire in respect of the Transferee; and

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

F4.13 The Authority may disclose to any Transferee any Confidential Information of the Concessionaire which relates to the performance of the Concessionaire's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Concessionaire's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F4.14 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further

documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

F5 Waiver

F5.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

F5.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A4 (Notices and Communications).

F5.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

F6 Variation

F6.1 If, at any time after the Commencement Date, the Authority's requirements change the Authority may request a Variation subject to the terms of this Clause F6.

F6.2 The Authority may request a Variation by notifying the Concessionaire in writing of the Variation and giving the Concessionaire sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement the Variation within a reasonable time limit specified by the Authority. If the Concessionaire accepts the Variation it shall confirm it in writing.

F6.3 If the Concessionaire is unable to accept the Variation or where the Parties are unable to agree a change to the Price, the Authority may:

- (a) allow the Concessionaire to fulfil its obligations under the Contract without the Variation to the Specification; or
- (b) terminate the Contract immediately except where the Concessionaire has already delivered all or part of the Services or where the Concessionaire can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).

F6.4 No Variation will take effect unless and until it is recorded in a validly executed CCN. Execution of a CCN is made via electronic signature as described in clause 1.2 of Section 1 of the Contract.

F6.5 A CCN takes effect on the date on which the Parties communicate acceptance of the CCN via Bravo and, on the date it communicates its acceptance of the CCN in this way, the Concessionaire is deemed to warrant and represent that the CCN has been executed by a duly authorised representative of the Concessionaire in addition to the warranties and representations set out in clause G2.

F6.6 The provisions of clauses F6.4 and F6.5 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Variation in order to address the emergency. In an emergency, Variations may be

approved by a different representative of the Authority. However, the Authorised Representative shall have the right to review such a Variation and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Variation.

F7 Severability

F7.1 If any provision of the Contract which is not of a fundamental nature is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F8 Remedies Cumulative

F8.1 Except as expressly provided in the Contract all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

F9 Entire Agreement

F9.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

F10 Counterparts

F10.1 The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

G LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- (c) any breach of clauses D1, E1 or E3;
- (d) any liability to the extent it cannot be limited or excluded by Law.

G1.2 Subject to clauses G1.3 and G1.4, the Concessionaire shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out

of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Concessionaire of its obligations under the Contract or the presence of the Concessionaire or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Concessionaire, or any other loss which is caused directly by any act or omission of the Concessionaire.

G1.3 Subject to clause G1.1 the Concessionaire's aggregate liability in respect of the Contract shall not exceed [insert sum].

G1.4 The Concessionaire shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

G1.5 The Authority may recover from the Concessionaire the following losses incurred by the Authority to the extent they arise as a result of a Default by the Concessionaire:

- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional costs of procuring a Replacement Concessionaire for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Concessionaire and/or replacement deliverables above those which would have been payable under the Contract;
- (d) any compensation or interest paid to a third party by the Authority; and
- (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

G1.6 Subject to clauses G1.1 and G1.5, neither Party shall be liable to the other for any:

- (a) loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect); or
- (b) indirect, special or consequential loss.

G1.7 Unless otherwise specified by the Authority, the Concessionaire shall, with effect from the Commencement Date for such period as necessary to enable the Concessionaire to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Concessionaire, arising out of the Concessionaire's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Concessionaire. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 years following the end of the Contract.

G1.8 The Concessionaire shall hold employer's liability insurance in respect of Staff and such insurance shall be in accordance with any legal requirement from time to time in force.

G1.9 The Concessionaire shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.10 If the Concessionaire does not give effect to and maintain the insurances required by the provisions of the Contract, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Concessionaire.

G1.11 The provisions of any insurance or the amount of cover shall not relieve the Concessionaire of any liabilities under the Contract.

G1.12 The Concessionaire shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Concessionaire, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Concessionaire is an insured, a co-insured or additional insured person.

G2 Warranties and Representations

G2.1 The Concessionaire warrants and represents on the Commencement Date and for the Contract Period that:

- (a) it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Concessionaire;
- (b) in entering the Contract it has not committed any fraud;
- (c) as at the Commencement Date, all information contained in the Tender or other offer made by the Concessionaire to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Concessionaire or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Concessionaire's assets or revenue;
- (g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) any person engaged by the Concessionaire shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;

- (i) in the 3 years (or period of existence where the Concessionaire has not been in existence for 3 years) prior to the date of the Contract:
- i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- (k) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

G3 Force Majeure

G3.1 Subject to the remaining provisions of this clause G3, a Party may claim relief under this clause G3 from liability for failure to meet its obligations under the Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Concessionaire in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Concessionaire.

G3.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

G3.3 If the Concessionaire is the Affected Party, it shall not be entitled to claim relief under this clause G3 to the extent that consequences of the relevant Force Majeure Event:

- (a) are capable of being mitigated, but the Concessionaire has failed to do so; and/or
- (b) should have been foreseen and prevented or avoided by a prudent provider of goods similar to the Goods, operating to the standards required by the Contract.

G3.4 Subject to clause G3.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

G3.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Concessionaire is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

G3.6 If, as a result of a Force Majeure Event:

- (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
 - i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
 - ii) neither Party shall be liable for any Default arising as a result of such failure;
- (b) the Concessionaire fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Goods (or some of the Goods) continue to be supplied in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.

G3.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract.

G3.8 Relief from liability for the Affected Party under this clause G3 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and shall not be dependent on the serving of notice under clause G3.7.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Concessionaire where the Concessionaire is a company and in respect of the Concessionaire:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;

(g) being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

(h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Concessionaire where the Concessionaire is an individual and:

(a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Concessionaire’s creditors;

(b) a petition is presented and not dismissed within 14 days or order made for the Concessionaire’s bankruptcy;

(c) a receiver, or similar officer is appointed over the whole or any part of the Concessionaire’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;

(d) the Concessionaire is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;

(e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Concessionaire’s assets and such attachment or process is not discharged within 14 days;

(f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;

(g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or

(h) any event similar to those listed in clauses H1.2(a) to (g) occurs under the law of any other jurisdiction.

H1.3 The Concessionaire shall notify the Authority immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including where the Concessionaire undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 (“Change of Control”). The Authority may terminate the Contract with immediate effect by notice and without compensation to the Concessionaire within 6 Months of:

(a) being notified that a Change of Control has occurred; or

(b) where no notification has been made, the date that the Authority becomes aware of the Change of Control,

but shall not be permitted to terminate where Approval was granted prior to the Change of Control.

H1.4 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Concessionaire where the Concessionaire is a partnership and:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
- (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (f) any of the following occurs in relation to any of its partners:
 - (i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
 - (ii) a petition is presented for his bankruptcy; or
 - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets;
- (g) any event similar to those listed in clauses H1.4(a) to (f) occurs under the law of any other jurisdiction .

H1.5 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Concessionaire where the Concessionaire is a limited liability partnership and:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) it is for any reason dissolved;
- (c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
- (d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
- (e) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
- (f) a receiver, or similar officer is appointed over the whole or any part of its assets; or

(g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

(h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

(i) any event similar to those listed in clauses H1.5 (a) to (h) occurs under the law of any other jurisdiction.

H1.6 References to the Insolvency Act 1986 in clause H1.5(a) shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

H2 Termination on Default

H2.1 The Authority may terminate the Contract with immediate effect by notice if the Concessionaire commits a Default and:

(a) the Concessionaire has not remedied the Default to the satisfaction of the Authority within 25 Working Days or such other period as may be specified by the Authority, after issue of a notice specifying the Default and requesting it to be remedied;

(b) the Default is not, in the opinion of the Authority, capable of remedy; or

(c) the Default is a Material Breach.

H2.2 If, through any Default of the Concessionaire, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Concessionaire shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.3 If the Authority fails to pay the Concessionaire undisputed sums of money when due, the Concessionaire shall give notice to the Authority of its failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such notice, the Concessionaire may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3.1 (Recovery of Sums Due) or to a Force Majeure Event.

H3 Termination on Notice

H3.1 The Authority may terminate the Contract at any time by giving [[30] OR [insert another period] days'] notice to the Concessionaire.

H4 Other Termination Grounds

H4.1 The Authority may terminate the Contract on written notice to the Concessionaire if:

(a) the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;

(b) the Concessionaire was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract;

(c) the Contract should not have been awarded to the Concessionaire in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU; or

(d) the Concessionaire has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.

H5 Consequences of Expiry or Termination

H5.1 If the Authority terminates the Contract under clauses H2 or H4 and makes other arrangements for the supply of the Goods the Authority may recover from the Concessionaire the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period.

H5.2 If Contract is terminated under clauses H2 or H4 the Authority shall make no further payments to the Concessionaire (for Goods supplied by the Concessionaire prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.

H5.3 If the Authority terminates the Contract under clause H3 the Authority shall make no further payments to the Concessionaire except for Goods supplied by the Concessionaire prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.

H5.4 Save as otherwise expressly provided in the Contract:

(a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

(b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Concessionaire under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Data Protection Act Compliance), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit), F9 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H6 Disruption

H6.1 The Concessionaire shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other Concessionaire employed by the Authority.

H6.2 The Concessionaire shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

H6.3 If there is industrial action by the Staff, the Concessionaire shall seek Approval to its proposals to continue to perform its obligations under the Contract.

H6.4 If the Concessionaire's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice.

H6.5 If the Concessionaire is unable to deliver the Goods owing to disruption of the Authority's normal business, the Concessionaire may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Concessionaire as a direct result of such disruption.

H7 Recovery upon Termination

H7.1 On termination of the Contract for any reason, the Concessionaire shall at its cost:

- (a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Goods;
- (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Concessionaire in good working order;
- (c) immediately vacate any Authority Premises occupied by the Concessionaire;
- (d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Goods to the Replacement Concessionaire and/or the completion of any work in progress; and
- (e) promptly provide all information concerning the supply of the Goods which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Goods have been supplied and/or for the purpose of allowing the Authority and/or the Replacement Concessionaire to conduct due diligence.

H7.2 If the Concessionaire does not comply with clauses H7.1(a) and (b), the Authority may recover possession thereof and the Concessionaire grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Concessionaire or its permitted suppliers or Sub-Contractors where any such items may be held.

H8 Retendering and Handover

H8.1 Within 21 days of being requested by the Authority, the Concessionaire shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future supply of the Goods.

H8.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause H8.1 is given only to potential providers who have qualified to tender for the future supply of the Goods.

H8.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.

H8.4 The Concessionaire shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising

from any deficiency or inaccuracy in information which the Concessionaire is required to provide under clause H8.1.

H8.5 The Concessionaire shall allow access to the Premises in the presence of the Authorised Representative, to any person representing any potential provider whom the Authority has selected to tender for the future supply of the Goods.

H8.6 If access is required to the Concessionaire's Premises for the purposes of clause H8.5, the Authority shall give the Concessionaire 7 days' notice of a proposed visit together with a list showing the names of all persons who will be visiting. Their attendance shall be subject to compliance with the Concessionaire's security procedures, subject to such compliance not being in conflict with the objectives of the visit.

H8.7 The Concessionaire shall co-operate fully with the Authority during any handover at the end of the Contract. This co-operation shall include allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

H8.8 Within 10 Working Days of being requested by the Authority, the Concessionaire shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

H9 Exit Management

H9.1 Upon termination the Concessionaire shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Concessionaire in accordance with the procedure set out in clause H10.

H10 Exit Procedures

H10.1 Where the Authority requires a continuation of all or any of the supply of Goods on expiry or termination of this Contract by engaging a third party to supply them, the Concessionaire shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the supply of the Goods without disruption to routine operational requirements.

H10.2 The following commercial approach shall apply to the transfer of the supply of the Goods if the Concessionaire:

- (a) does not have to use resources in addition to those normally used to supply the Goods prior to termination or expiry, there shall be no change to the Price; or
- (b) reasonably incurs additional costs, the Parties shall agree a Variation to the Price based on the Concessionaire's rates either set out in Schedule 4 or forming the basis for the Price.

H10.3 When requested to do so by the Authority, the Concessionaire shall deliver to the Authority details of all licences for software used in the supply of the Goods including the software licence agreements.

H10.4 Within one Month of receiving the software licence information described above, the Authority shall notify the Concessionaire of the licences it wishes to be transferred, and the Concessionaire shall provide for the approval of the Authority a plan for licence transfer.

H11 Knowledge Retention

H11.1 The Concessionaire shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Concessionaire to the Authority on the completion or earlier termination of the Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Concessionaire shall provide the Authority free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Authority. The Concessionaire shall comply with the Authority's request for information no later than 15 Working Days from the date that that request was made.

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

I1.1 Subject to the provisions of clause I2 the Contract, including shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not limit the right of the Authority to take proceedings against the Concessionaire in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

I2 Dispute Resolution

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Concessionaire and the commercial director of the Authority.

I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 either Party may refer it to mediation pursuant to the procedure set out in clause I2.5.

I2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Concessionaire and the Staff shall comply fully with the requirements of the Contract at all times.

I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) a neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;

- (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
- (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- (f) if the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 12.6.

12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:

- (a) The Authority may at any time before court proceedings are commenced, serve a notice on the Concessionaire requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7;
- (b) if the Concessionaire intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority shall have 21 days following receipt of such notice to serve a reply on the Concessionaire requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7; and
- (c) the Concessionaire may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 12.7, to which the Authority may consent as it sees fit.

12.7 If any arbitration proceedings are commenced pursuant to clause 12.6,

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Concessionaire (the "Arbitration Notice") stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (b) the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause 12.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language; and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

SCHEDULE 1 - SPECIFICATION

This Section sets out the Authority's requirements.

DEFINITIONS

"APHA" - Animal and Plant Health Agency, an Executive Agency of the Dept for Environment, Food and Rural Affairs. Any reference throughout this specification to the 'APHA' also refers to 'the Authority' as defined in the contract and vice versa.

"Certifying Authority" – Government Body recognised by the Devolved Authorities to certify seed

"Devolved Authorities" (or DA): means the Welsh and Scottish Governments and the Northern Ireland Executive Committee and Northern Ireland Departments and reference to a Devolved Authority (or DA) shall refer to each such devolved authority as the context requires.

"DAERA" - Department of Agriculture, Environment and Rural Affairs

"DEFRA" - Department of Environment, Food and Rural Affairs

"Label Categories":

Pre-Basic Seed

Basic Seed

Certified Seed

Certified Seed of the 1st generation

Certified Seed of the generation

Mixture

Herbage Seed Mixture

Commercial Seed (Not Certified to Variety)

Not Finally Certified Seed

Variety Not Yet Officially Listed Test and Trial Only

"Licensed Seed Company" – a seed company or person licensed by the Certifying Authority to market seed covered by the Legislation and the users of this Contract

"National Listing" - a statutory pre-requisite for marketing involving tests and trials to establish distinctness, uniformity and stability (DUS) and, for agricultural crops, value for cultivation and use (VCU).

"OECD" - Organisation for Economic Co-operation and Development

"Plant Breeders' Rights" – intellectual property rights offering legal protection to plant breeders which enable them to charge royalties for protected varieties. This covers agricultural, vegetable and ornamental species.

"Seed Certification" - statutory quality assurance process which ensures seed and propagating material is pure, healthy, viable, correctly labelled and traceable.

"SASA" - Science and Advice for Scottish Agriculture

"SG" - Scottish Government

"WG" - Welsh Government

1. BACKGROUND

- 1.1 The Animal and Plant Health Agency (APHA) is an executive Agency of the Department of Environment, Food and Rural affairs (Defra). The Plant Varieties and Seeds team is currently a part of the Operational Delivery Directorate within APHA with responsibility for delivering Plant Breeders' Rights, National Listing and the Seed Certification schemes.
- 1.2 Seed Certification is a requirement in the United Kingdom (UK) under Devolved Authority (DA) Legislation. It is a consumer protection measure designed to assure the quality of seed of Agricultural and Horticultural species covered by the seed marketing regulations when seeds are marketed to seed companies, growers and farmers. APHA is responsible for seed certification in England and also acts on behalf of the Welsh Government in certifying seed crops and seed marketed in Wales. The Scottish Government (SG) is responsible in Scotland and Department of Environment, Food and Rural Affairs (DAERA) in Northern Ireland. The official seed certification label is the means by which the Certifying Authority can guarantee that seed has been tested and passed the standards set out in the Seed Marketing Regulations. The label is also a quality control document as it allows traceability of the seed marketed, through the unique sequential number, to the company who marketed the seed and seed lot and crop from which the seed was grown and harvested.
- 1.3 When seed covered by the OECD Seed Schemes is marketed internationally Defra is the OECD Certifying Authority acting on behalf of the DA's. APHA control the issue of OECD labels issued under the OECD Certification Scheme.
- 1.4 The Contract will grant a concession to the Concessionaire to supply official labels for use in England and Wales, Scotland and Northern Ireland.
- 1.5 APHA will act as the administrative contact on all aspects of the Contract and will liaise with the DAs as and when necessary.

1.6 Protocols and Legislation

- 1.6.1 The Licensed Seed Companies must comply with the below legislation;
- Plant Varieties and Seeds Act 1964
 - Seeds Marketing Regulations For
 - England
 - Wales
 - Scotland
 - Northern Ireland

2. SCOPE OF CONTRACT

- 2.1 The Concessionaire shall be responsible for the provision of official seed labels to Licensed Seed Companies. These labels will be used by the Licensed Seed Companies on varying sizes of packages, ranging from 2.5kg to 1 tonne tote bags of certified seed in England, Scotland, Northern Ireland and Wales.
- 2.2 The Authority makes no representation or warranty in respect of volume of orders under this Contract and the Concessionaire agrees and acknowledges that it has not relied on this information in entering into this Contract.

3. MINIMUM REQUIREMENTS FOR OFFICIAL SEED LABELS

- 3.1 The Concessionaire shall offer a range of official labels all of which must be supplied as both a 'tear resistant material' and as 'self-adhesive' (on glassine backing or similar).
- 3.2 Different labels are required depending on the category of seed and each category will have a required colour, see column 1 and 2 of table A below.

- 3.3 Different labels are required depending on the certification scheme the seed is entered into which will either be UK or OECD.
- 3.4 OECD labels are required in 2 sizes; standard (ST) and small (SM).
- 3.5 UK labels for the category “Mixture” are required in 2 sizes; standard (S) and long (L). All other UK labels are just required in standard (S) size.

3.6 Label Colour Reference

Labels must be produced in the colours specified by the below Pantone reference (<https://www.pantone.com/uk/en/color-finder>):

- Blue 311
- Red 185
- Green 368
- Violet 2573 U
- Grey 444 C
- Brown 479 C
- Orange 021

3.7 Label Format and Size

3.7.1 Labels must be available in four (4) different formats with the dimensions (Width X Length) being:

- UK standard format label which is 110mm x 110mm (**UKS**)
- UK double length format which is 220mm x 110mm (**UKDL**)
- OECD standard format label which is 110mm x 110mm (**OECDST**)
- OECD small format label which is 60mm x 30mm (**OECDSM**)

3.7.2 The below Table A details the portfolio of labels required including the corresponding category and colour and different formats in each category. There are 11 different wording formats indicated by numbers 1 – 11 which are detailed in Annex A.

3.7.3 Predicted Sales Volumes – As indicated in Table A:

Table A. Indicative Sales Volumes

Volume Category	Anticipated Order Volumes	Mid-point for the purposes of commercial evaluation
A	0 – 10,000	5,000
B	10,001 – 50,000	30,000
C	50,001 – 100,000	75,000
D	100,001 – 250,000	175,000
E	250,001 – 500,000	375,000
F	500,001 – 1,000,000	750,000
G	1,000,001 and above	1,000,000

These are anticipated volumes of orders per annum based on historic records. The actual volume of orders may vary from those indicated here.

Table B - Labels to be available and their predicted volume of sales per annum.

<u>Category & Header Wording</u> The wording in each cell must be printed as the top line/header on the label	<u>Colour</u> The label must be coloured as detailed in each cell below and must be used in conjunction with the wording in column 1	<u>Label Body Wording</u> The reference number in each cell refers to the text to be pre-printed in the body of the label. Each cell represents a different label. No label is required if the cell is greyed out.							
		UK Standard (UKS)		UK Double Length (UKDL)		OECD Standard (OECDST)		OECD Small (OECDSM)	
		Self-Adhesive	Tear Resistant	Self-Adhesive	Tear Resistant	Self-Adhesive	Tear Resistant	Self-Adhesive	Tear Resistant
PRE-BASIC SEED	White with Violet stripe	1 A	1 B			7 A	7 A	7 A	7 A
						8 A	8 A	8 A	8 A
BASIC SEED	White	1 A	1 B			9 A	9 A	9 A	9 A
						10 A	10 A	10 A	10 A
CERTIFIED SEED (CS)	Blue	1 B	1 D						
CERTIFIED SEED OF 1ST GENERATION	Blue	1 D	1 E			9 A	9 A	9 A	9 A
						10 A	10 A	10 A	10 A
CERTIFIED SEED (CS)	Blue with Green stripe	2 A	2 A						
CERTIFIED SEED OF ... GENERATION	Red	1 C	1 A			9 A	9 A	9 A	9 A
						10 A	10 A	10 A	10 A
HERBAGE SEED MIXTURE	Green					11 A	11 A	11 A	11 A
MIXTURE	Green	3 B	3 C	3 F	3 G				
COMMERCIAL SEED (NOT CERTIFIED AS TO VARIETY)	Brown	4 A	4 A						
NOT FINALLY CERTIFIED SEED	Grey	5 A	5 A			9 A	9 A	9 A	9 A
						10 A	10 A	10 A	10 A
VARIETY NOT YET OFFICIALLY LISTED TEST AND TRIAL ONLY	Orange	6 A	6 A						

3.8 Label format and pre-printed requirement

See examples below of four(4) formats for the pre-printed information required on labels, one for each group of formats; all other label formats (referenced in Table B) will be similar but with variations to the wording as detailed in Annex A.

3.8.1 “CERTIFIED SEED OF GENERATION” – Red - UKS– Wording 1

3.8.1.1 There must be a line immediately below the blank space at the top of the label going completely across the label

3.8.1.2 Labels must be produced with the following information pre-printed on the left-hand side of the label and with sufficient space to allow for additional printing by the Licensed Seed Companies.

3.8.1.3 The following wording must be printed on the label:

- Label Category – This is the wording in the first column of table B
- ‘Label Number’ – This wording should be followed by a number which is unique to each and every individual label produced. i.e. one single label will be printed with the unique number (e.g. A 123456), the next label will be printed with the next number (e.g. A123457).
- ‘Species:’
- ‘Variety’
- ‘Ref No:’
- ‘Month and year sealed’
- ‘Weight’
- ‘Country of Production’
- Label-type reference number (see section 3.9.1)

3.8.1.4 There must be blank space left at the bottom of the label to allow at least 3 additional lines of information to be printed on by the end users.



3.8.2 OECDST – “PRE-BASIC SEED” – Wording 7

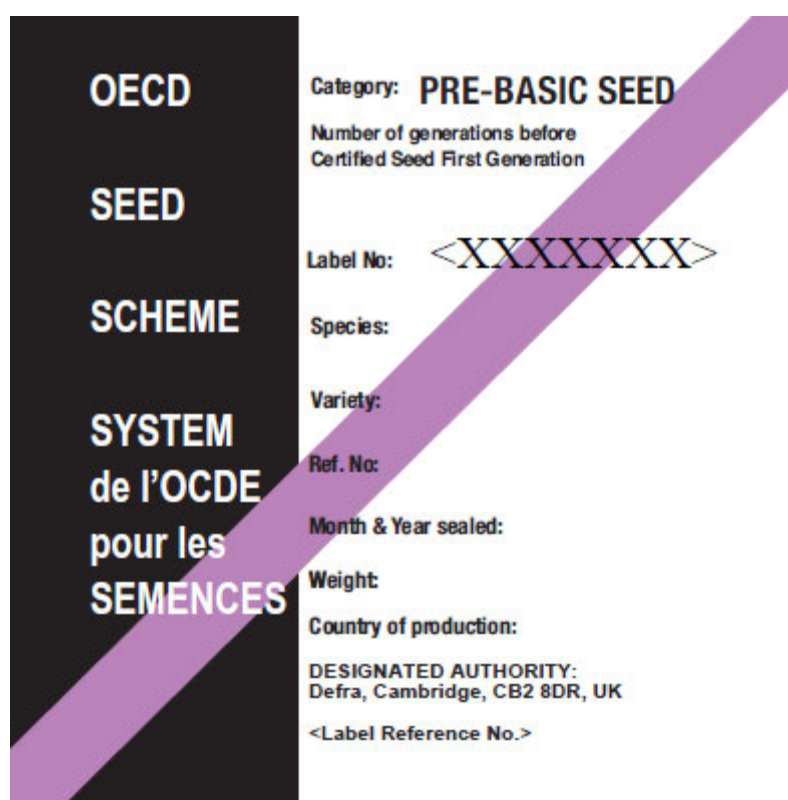
3.8.2.1 One end of the label shall be overprinted black for a minimum distance of 3 cm, leaving the rest of the label coloured.

3.8.2.2 Reference to the OECD Scheme shall be printed in English and in French within the black portion of the label. This shall read: "OECD Seed Scheme" and "Système de l'OCDE pour les Semences".

3.8.2.3 All labels must be produced with the following information pre-printed on the left-hand side of the non-black area of label and with sufficient space to allow for additional printing by the Licensed Seed Companies:

- Label Category – This is the wording in the first column of table B
- 'Number of generations before Certified Seed First Generation'
- 'Label Number' – This wording should be followed by a number which is unique to each and every individual label produced. i.e. one single label will be printed with the unique number (e.g. A 123456), the next label will be printed with the next number (e.g. A123457).
- 'Species'
- 'Variety'
- 'Ref No:'
- 'Month and year sealed'
- 'Weight'
- 'Country of production'
- 'DESIGNATED AUTHORITY: Defra, Cambridge, CB2 8DR, UK'

3.8.2.4 There must be blank space left at the bottom of the label to allow at least 3 additional lines of information to be printed on by the end users.



3.8.3 OECD SM "CERTIFIED SEED OF 1ST GENERATION" – Wording 8

3.8.3.1 One end of the label shall be overprinted black for a minimum distance of 1.25 cm, leaving the rest of the label coloured.

3.8.3.2 Reference to the OECD Scheme shall be printed in English and in French within the black portion of the label. This shall read: "OECD Seed Scheme" and "Système de l'OCDE pour les Semences".

3.8.3.3 All labels must be produced with the following information pre-printed on the left-hand side of the nonblack area of label and with sufficient space to allow for additional printing by the Licensed Seed Companies:

- Label Category – This is the wording in the first column of table B
- 'Label Number' – This wording should be followed by a number which is unique to each and

every individual label produced. i.e. one single label will be printed with the unique number (e.g. A 123456), the next label will be printed with the next number (e.g. A123457).

- 'Species'
- 'Variety'
- 'Ref No.'
- 'Month and year sealed'
- 'Weight'
- 'Country of production'
- 'Designated Authority: Defra, Cambridge, CB2 8DR, UK'

3.8.3.4 There must be blank space left at the bottom of the label to allow 1 additional line of information to be printed on by the end users



3.8.4 UKDL - "MIXTURE" – Wording 3

3.8.4.1 There must be a line immediately below the blank space at the top of the label going completely across the label

3.8.4.2 Labels must be produced with the following information pre-printed on the left-hand side of the label and with sufficient space to allow for additional printing by the Licensed Seed Companies.

3.8.4.3 The following wording must be printed on the label:

- Label Category – This is the wording in the first column of table B
- 'Label Number' – This wording should be followed by a number which is unique to each and every individual label produced. i.e. one single label will be printed with the unique number (e.g. A 123456), the next label will be printed with the next number (e.g. A123457).
- 'Seed Mixture For:'
- 'List of Species and varieties'
- 'Ref No.'
- 'Month and year sealed'
- 'Weight'
- Label-type reference number (see section 3.9.1)
- 'List of Species and varieties'

3.8.4.4 There must be blank space left at the bottom of the label to allow at least 3 additional lines of information to be printed on by the end users.

MIXTURE

Label No: <XXXXXXXX>

Seed Mixture of / for

Ref No:

Month & Year sealed:

Weight:

<Label Reference No.>

List of Species and Varieties:

3.9 Label Identification

- 3.9.1 As noted above, each label must contain the following identifications:
- **Label-type reference number** (e.g. UK Tear Resistant 'PRE BASIC SEED' = 'DEF 123'), the supplier may determine what the reference numbers are.
 - **Unique sequential number** - a number which is unique to each and every individual label produced. i.e. one single label will be printed with the unique number (e.g. A 123456), the next label will be printed with the next number (e.g. A123457).
- 3.9.2 The Concessionaire shall be responsible for recording details of who the labels are issued to, the information must include:
- Licensed Seed Company name
 - Tear Resistant or Self Adhesive
 - Certification Scheme UK or OECD
 - Label Category – e.g. Pre-basic
 - Label type reference number – e.g. DEF123
 - Label number (s) – unique sequential number
- 3.9.3 The Concessionaire shall be responsible for recording details of any labels that they have destroyed; this information must include the following:
- Category – e.g. Pre-basic
 - Label type reference number – e.g. DEF123
 - Label number (s) – unique sequential number
 - Reason for destruction

3.10 Label Material and Characteristics

3.10.1 APHA require all labels to be available in the following materials;

- **Tear Resistant Material** (such as Polyart or Tyvek (or other suitable alternatives) OR
- **Self-Adhesive** on glassine backing (or other suitable alternative)

3.10.2 The labels must possess the following characteristics:

- Printable surface - capable of 'overprinting' by the Licensed Seed Company. Please note companies will have different types of printers so labels must be printable on by different printer types.
- Pre-printed as per 3.5 above.
- Printing does not smudge / run off under dusty / wet conditions.
- A trigger to move the label on when overprinting by the Licensed Seed Company.
- Labels will be packed to ensure they are presented to seed companies in a way that enables them to be easily put onto an overprinting machine. e.g. 'two to view, fan-folded).
- All labels must also be capable of being 'sprocketfed'.
- For the Tear Resistant label only - must have a 5mm hole (top left) punched clear to allow the label to be attached to a bag.

3.10.3 APHA would be happy to consider any materials which fulfil the above required characteristics. Any changes in material will need to be agreed with APHA before changes are made.

3.11 Bespoke Labels

3.11.1 The Concessionaire must have the capability and capacity to produce official labels which have additional trade information or a variance in size.

3.11.2 Bespoke labels will be quoted for separately by the Concessionaire on a case-by-case basis. The format must be approved by APHA.

4 ORDERING, PAYMENT AND DELIVERY

4.1 **Official labels are only supplied to Licensed Seed Companies in the UK and on the 'List of Companies Licensed to Market Seed'**. Access to this register will be provided to the Concessionaire.

4.2 **Ordering** - The Concessionaire shall provide a service which allows Licensed Seed Companies to order labels via post or an online web system. The Concessionaire shall produce a standard order form, details of the form will be provided to the Concessionaire.

4.3 **Payment** - The Concessionaire will be paid directly by the Licensed Seed Companies for the labels. Labels are currently invoiced and paid in arrears by the Licensed Seed Companies, this is the preferred method of payment.

4.4 **Delivery** – Delivery shall be required across the UK, in accordance with the following timescales:

- England, Wales and Scotland - The Concessionaire shall ensure that the labels are supplied within 10 working days of the order being placed for companies based in England, Wales and Scotland.
- Northern Ireland - The Concessionaire shall ensure that the labels are supplied within 12 working days of the order being placed for companies based in Northern Ireland.

4.5 In the event of the Concessionaire experiencing supply issues, delivery shall be made as soon as practical. The Concessionaire will inform the customer and APHA within 48 hours if an order is to be delayed beyond 10 and 12 working days.

4.6 **For information only:** Licensed Seed Companies who have placed orders previously in England and Wales are approximately as follows:

- England - 80 locations are across the whole country
- Scotland - 10 locations (mainland only)

- Northern Ireland - 10 locations

4.7 The Authority makes no representation or warranty in respect of volume of orders under this Contract and the Concessionaire agrees and acknowledges that it has not relied on this information in entering into this Contract.

5 FAULTY LABELS

5.1 The Concessionaire shall be responsible for replacing any faulty labels. This shall be at the Concessionaire's own cost.

6 MANAGEMENT OF THE SERVICE

6.1 The Concessionaire shall be responsible for the management and administration of the contract which includes receiving and processing orders, printing, supply, distribution and delivery of the labels and a complaint handling service.

6.2 The Concessionaire shall be responsible for delivering continuous improvement throughout the life of contract and shall have a robust complaint handling procedure.

6.3 The Concessionaire shall provide a single point of contact to APHA who will be responsible for dealing with the Contract on a day to day basis.

7 STOCK LEVELS

7.1 The Concessionaire may wish to maintain a minimum shelf stock for labels with high call off volumes. To assist with this, information on anticipated order volumes can be found in Table A. The Authority makes no representation or warranty in respect of volume of orders under this Contract and the Concessionaire agrees and acknowledges that it has not relied on this information in entering into this Contract.

7.2 The Concessionaire shall inform APHA within 48 hours if they encounter any stock supply issues which has resulted or will result in the Concessionaire being unable to meet demand within the required timescales.

7.3 Where applicable, the Concessionaire shall purchase unused stocks from the previous supplier at the contract rates in order to avoid wastage.

8 BUSINESS CONTINUITY

8.1 The Concessionaire shall ensure a continuous supply of labels to Licensed Seed Companies and shall have suitable contingency measures in place to make sure there is no disruption in supply. A full and complete 'Business Continuity and Disaster Recovery Plan' will need to be produced by the Concessionaire within two (2) months of the Contract commencement date.

9 RECORDS AND REPORTS

9.1 The Concessionaire shall maintain records throughout the life of the Contract of all label sales. APHA may, at any time, request access to the Concessionaire's order history records.

9.2 The Concessionaire shall provide a monthly report to the Authority. The monthly report must be provided within 5 working days of the start of the following month. As a minimum, the report shall contain the following information:

- i) Details of each order placed within the month, including;
 - UK Licensed Company name
 - License number
 - Delivery/Invoice address
 - The date the order was placed
 - The date the order was dispatched

- The types of labels ordered
- The quantity of labels ordered
- The unique sequential reference numbers for the labels supplied in each order
- ii) The % of orders placed that needed to be replaced due to a fault;
- iii) Labels destroyed
- iv) The report shall provide the Authority with sufficient information to enable it to assess the Concessionaire's performance against the KPI's.
- v) The Concessionaire shall provide data on complaints received within each month. The data should include the following:
 - Type of complaint (inc brief description)
 - Date complaint received
 - Date complaint resolved
 - Name of complainant

10 ALTERNATIVE LABEL MATERIALS AND FORMATS

- 10.1 APHA will consider any alternative formats, designs and materials. Throughout the life of the Contract the Concessionaire will be expected to suggest alternative more cost-effective methods of delivering the Service. Material must not be changed without prior written agreement from APHA.

SCHEDULE 2: PERFORMANCE MANAGEMENT FRAMEWORK (including Key Performance Indicators)

1 Performance Management

- 1.1 As part of APHA's continuous drive to improve the performance of all Contracts, this Performance Management Framework (PMF) will be used to monitor, measure and control all aspects of the Concessionaire's performance of contract responsibilities.
- 1.2 The purpose of the PMF is to set out the obligations on the Concessionaire, to outline how the Concessionaire's performance will be evaluated and to detail the sanctions for performance failure. The Concessionaire is responsible for the performance of any sub- Concessionaires.
- 1.3 Key Performance Indicators (KPIs) are essential to align Concessionaire performance with the requirements of APHA and to do so in a fair and practical way. KPIs must be realistic, achievable, and set to indicate where the service is failing if they are not achieved. Without the additional use of service credits, failure to meet KPIs will strain the relationship as delivery falls short of agreed performance standards. As a result, the only recourse would be to terminate the contract and seek an alternative Concessionaire.
- 1.4 The use of a strong service credit regime accompanied by a proactive approach to correcting failures and addressing their cause improves the relationship and enables a partnership rather than a confrontational style of working. Its focus is on managing and improving service. It is not about taking cost out of the service.
- 1.5 KPIs are set out at Table C below. They will be monitored on a monthly, quarterly or annual basis as appropriate to the service and will form part of the contract performance review.
- 1.6 APHA will be entitled to refine, vary or modify the KPIs, performance standards and service credits from time to time during the Contract Period through a variation to be agreed with the Concessionaire using a Contract Change Note (CCN).
- 1.7 Where a KPI has a percentage measure, the Concessionaire's performance will be rounded to the nearest whole number.
- 1.8 APHA will produce a monthly and quarterly Performance Management report, to be sent to the Concessionaire, detailing the Concessionaire's performance against KPIs.
- 1.9 The Concessionaire shall maintain their own management reports, including Issues Log, which will include detail on periodic checks to ensure quality.
- 1.10 Any performance issues highlighted in the monthly reports will be addressed by the Concessionaire, who will be required to provide an improvement plan to address all issues highlighted within a week of receipt of the report. Monthly performance management reports and KPI performance will be a key feature of 6-monthly Contract Review meetings.
- 1.11 Where performance failure attributable to the Concessionaire is identified in the Performance Management report and relates to the KPIs then the service credit regime may apply, at the sole discretion of APHA.

2 Service Credits

- 2.1 The use of service credits is governed by the following principles:
- 2.2 Service credits sit within the wider service management approach being pursued by the Concessionaire and APHA. Use of service credits does not preclude any other remedy for failure of performance available to APHA under the terms and conditions of the contract.
- 2.3 The service credit regime will be instigated on each occasion when there is a service failure (i.e.

where a KPI is identified as having a 'Red status') within the performance monitoring period. Failure to meet a KPI may also give rise to a remediation plan.

- KPIs with a service credit rating of 0 will have no associated service credit
- KPIs with a service credit rating of 1 will have a service credit of 3% of the invoice amount for the monitoring period, applied for each KPI failure
- KPIs with a service credit rating of 2 will have a service credit of 5% of the invoice amount for the monitoring period, applied for each KPI failure
- The maximum annual service credit to be applied will be no more than 10% of the total annual contract value.

- 2.4 The Concessionaire will provide APHA with the information listed in the Specification of Requirements and such other supporting information as APHA may reasonably request in order to determine the proper application of any service credits due.
- 2.5 For services where the Concessionaire is paid by APHA, service credits will be paid to APHA as a credit note to the next invoice.
- 2.6 For services where the Concessionaire recovers costs directly, service credits will be paid to individual users of the service as a credit note to their next invoice. The Concessionaire will propose how the service credit amounts will be applied to each user of the service.
- 2.7 The full, agreed service credit regime will operate from the initial delivery date until the end of the Contract Period. At the end of the first complete performance monitoring period, APHA and the Concessionaire will enter into good faith discussions to review the KPIs and assess their effectiveness. The KPIs may be adjusted to ensure that they are appropriate and achievable.

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SCHEDULE 3: CONTRACT GOVERNANCE

- 1 APHA will manage the contracts for services resulting from this procurement on behalf of APHA. APHA will appoint:
 - Supplier Liaison Officers (SLO)
 - Deputy SLOs (DSLO)
 - Contract Manager (CM)
- 2 APHA will appoint an SLO and DSLO as appropriate to act as the principal point of contact. A single CM will be appointed whom the SLOs and DLSOs will liaise for contract management purposes.
- 3 The Concessionaire shall appoint a corresponding Service Manager (SM) and Deputy Service Manager (DSM).
- 4 6-monthly meetings will be held with the Concessionaire, principally to review progress and operational delivery of the Concessionaire, but also including key performance indicators (KPIs), invoicing, risks and issues.
- 5 A strategic review meeting will be held annually. The meeting will review performance over the past year and look ahead to the next year, including strategic and financial issues. The risk, issues and actions register will be reviewed.
- 6 Issues which cannot be resolved by the SLO and SM (and/or their respective Deputies) through routine contact or in the monthly meetings will be referred to the CM, who may either mediate a solution or raise the matter at the next 6-monthly and/or Annual Review Meeting as appropriate, involving APHA as necessary.
- 7 Other ad-hoc meetings may be held, at the discretion of APHA or APHA, or at the request of the Concessionaire, throughout the life of the contract to discuss specific issues.
- 8 The Concessionaire will be responsible for travel and subsistence costs incurred as a result of attendance at any meeting. They may also be held by teleconference with the agreement of all parties.
- 9 6-monthly and Annual meetings will be held at the most mutually convenient location, usually face-to-face, but with teleconference facilities available.
- 10 6-monthly and Annual meetings will be minuted, with secretariat support and actions provided by APHA, with agreed dates for completion. APHA will maintain a joint register of risks, issues and actions. The CM should ensure that all meeting minutes, risk registers and any other contractual documentation is recorded against APHA's contract records.
- 11 Table D gives the purpose of each of these meetings with the Concessionaire, and the required attendees.

Table D. Contract Management Meeting Schedule

Meeting	Attendance	Content
Specific Issues, ad hoc	<p>APHA:</p> <ul style="list-style-type: none"> • SLO (Chair) and/or DSLO • Secretariat support <p>Concessionaire:</p> <ul style="list-style-type: none"> • SM and/or DSM <p>Any other APHA, Authority or Concessionaire staff needed to progress the issue</p> <p>NB - The CM may alternatively Chair the meeting if facilitation is required.</p>	<ul style="list-style-type: none"> • Urgent issues • Specific technical or contractual issues requiring detailed discussion
Quarterly Contract Review Meeting	<p>APHA:</p> <ul style="list-style-type: none"> • SLO (Chair) and DSLO • CM <p>Secretariat support</p> <p>Concessionaire:</p> <ul style="list-style-type: none"> • SM and/or DSM 	<ul style="list-style-type: none"> • Performance in previous quarter • Risks, issues and actions register • Specific service issues • Quality Management • Detailed performance review against KPIs • Continuous Improvement
Annual Review Meeting	<p>APHA:</p> <ul style="list-style-type: none"> • SLO (Chair) and DSLO • CM • Head of Contract Management (<i>optional</i>) • Secretariat support <p>Concessionaire:</p> <ul style="list-style-type: none"> • SM and/or DSM • Departmental Lead or equivalent as appropriate for the organisation 	<ul style="list-style-type: none"> • Annual Service Review • Performance in previous year • Risks, issues and actions register • Specific service issues (including any escalated issues) • Quality management • Detailed review against KPIs, including Service Credits • Continuous improvement

Annex A: Label Body Wording

Label Format 1

<The first 10mm at the top of the label must be left blank>
<Immediately below the blank space a black line must go across the label>
<Label Category>
'Label Number' <XXXXXXX>
'Species'
'Variety'
'Ref No.'
'Month and year sealed'
'Weight'
<Label Reference No.>
<There must be space to allow 3 lines of print at the bottom of the label>

Label Format 2

<The first 10mm at the top of the label must be left blank>
<Immediately below the blank space a black line must go across the label>
<Label Category>
'Label Number' <XXXXXXX>
'Species'
'Varietal Association'
'Ref No.'
'Month and year sealed'
'Weight'
'Country of Production'
<Label Reference No.>
<There must be space to allow 3 lines of print at the bottom of the label>

Label Format 3

<The first 10mm at the top of the label must be left blank>
<Immediately below the blank space a black line must go across the label>
<Label Category>
'Label Number' <XXXXXXX>
Seed Mixture For:
'Ref No.'
'Month and year sealed'
'Weight'
<Label Reference No.>
'List of Species and Varieties'
<There must be space to allow 3 lines of print at the bottom of the label>

Label Format 4

<The first 10mm at the top of the label must be left blank>

<Immediately below the blank space a black line must go across the label>

<Label Category>

Label Number' <XXXXXXXX>

'Species'

'Ref No.'

'Month and year sealed'

'Weight'

Country of Production'

<Label Reference No.>

<There must be space to allow 3 lines of print at the bottom of the label>

Label Format 5

<The first 10mm at the top of the label must be left blank>

<Immediately below the blank space a black line must go across the label>

<Label Category>

Label Number' <XXXXXXXX>

'Species'

Variety'

'Category:'

'Month and year sealed'

Field or Lot ref no.:'

'Weight'

<Label Reference No.>

<There must be space to allow 3 lines of print at the bottom of the label>

Label Format 6

<The first 10mm at the top of the label must be left blank>

<Immediately below the blank space a black line must go across the label>

<Label Category>

Label Number' <XXXXXXXX>

'Species'

'Variety:'

Lot ref. No.

'Month and year sealed'

'Weight'

<Label Reference No.>

<There must be space to allow 3 lines of print at the bottom of the label>

Label Format 7

<Label Category>

'Number of generations before Certified Seed First Generation'

'Label Number' <XXXXXXX>

'Species'

'Variety'

'Ref No:'

'Month and year sealed'

'Weight'

'Country of Production'

Designated Authority: Defra, Cambridge, CB2 8DR, UK

<Label Reference No.>

<There must be space to allow 2 lines of print at the bottom of the label>

Label Format 8

<Label Category>

'Number of generations before Certified Seed First Generation'

'Label Number' <XXXXXXX>

<leave a blank line here>

'Variety'

Seed description'

'Ref No:'

'Month and year sealed'

'Weight or Number of Seeds'

'Country of Production'

Designated Authority: Defra, Cambridge, CB2 8DR, UK

<Label Reference No.>

<There must be space to allow 2 lines of print at the bottom of the label>

Label Format 9

<Label Category>

'Label Number' <XXXXXXX>

'Species'

'Variety'

'Ref No:'

'Month and year sealed'

'Weight'

'Country of Production'

Designated Authority: Defra, Cambridge, CB2 8DR, UK

<Label Reference No.>

<There must be space to allow 2 lines of print at the bottom of the label>

Label Format 10

<Label Category>

'Label Number' <XXXXXXX>

<leave a blank line here>

'Variety'

'Seed description'

'Ref No.'

'Month and year sealed'

'Weight or Number of Seeds'

'Country of Production'

'Designated Authority: Defra, Cambridge, CB2 8DR, UK

<Label Reference No.>

<There must be space to allow 2 lines of print at the bottom of the label>

Label format 11

<Label Category>

'Label Number' <XXXXXXX>

Name of mixture of constituent species'

<Leave 2 blank lines here>

'Seed Mixture for'

'Month and year sealed'

'Weight'

Ref No,'

'Designated Authority: Defra, Cambridge, CB2 8DR, UK

<Label Reference No.>

<There must be space to allow 2 lines of print at the bottom of the label>

SCHEDULE 4 - PRICING

1. The Concessionaire shall supply the labels at the fixed price per batch of 1000 for each of the label categories listed in Table B in Schedule 1: Specification of Requirements.
2. The price shall be fully inclusive of all production and delivery costs.
3. The amounts charged to Customers for the provision of Goods and Services by the Concessionaire shall not exceed the prices set out in Table E below. Any labels required which are not listed in Table E shall be priced on demand by the Concessionaire.
4. After the first 12 months of the Contract, prices may be varied on an annual basis in accordance with the Consumer Prices Index (all items) (United Kingdom) subject to the Authority's Approval (not to be unreasonably withheld or delayed).
5. Any such price variation shall be calculated based on changes to the index during the one year prior to the date the variation is agreed and calculated using the most recent published figures at such time. Any agreed variation to the pricing must be documented in a Contract Change Note (CCN) in accordance with clause F6.4 of the Contract.
6. The Concessionaire shall be responsible for replacing any faulty labels. This shall be at the Concessionaire's own cost.
7. After the first 12 months of the Contract, the Authority may revise the indicative order volume category in Table B on an annual basis, for labels where the actual order volumes are significantly different to the anticipated volumes at the point of tender.
8. Where labels move to a higher-volume category, the Concessionaire shall reduce the price per batch such that it does not exceed the price of any other label in that category, subject to approval from the Authority.
9. Where labels move to a lower-volume category, the Concessionaire may increase the price per batch such that it does not exceed the price of any other label in that category subject to approval from the Authority.

SCHEDULE 5 - CHANGE CONTROL

Contract Change Note	
CCN Number	
Contract Reference Number and Title	
Variation Title	
Number of Pages	

WHEREAS the Concessionaire and the Authority entered into a Contract for the supply of [project name] dated [dd/mm/yyyy] (the "Original Contract") and now wish to amend the Original Contract

IT IS AGREED as follows

1. The Original Contract shall be amended as set out in this Change Control Notice:

Contract Change Details		
Change Requestor/Originator	[x]	
Summary of Change	[x]	
Reason for Change	[x]	
Revised Contract Value	Original contract value	[£x]
	Previous contract change values	[£x]
	Contract Change Note [x] value	[£x]
	New revised contract value	[£x]
Revised Payment Schedule	[x]	
Revised Specification	[x]	
Revised Contract Period	[x]	
Change in Contract Manager	[x]	
Other Changes	[x]	

2. Save as amended all other terms of the Original Contract shall remain effective.
3. This CCN takes effect from the date on which both Parties communicate acceptance of its terms via Bravo.

SCHEDULE 6 - COMMERCIALLY SENSITIVE INFORMATION

[insert commercially sensitive information as appropriate and if known the dates that the information will remain commercially sensitive]

1.1 Without prejudice to the Authority's general obligation of confidentiality, the Parties acknowledge that the Authority may have to disclose Information in or relating to the Contract following a Request for Information pursuant to clause E5 (Freedom of Information).

1.2 In this Schedule the Parties have sought to identify the Concessionaire's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.

1.3 Where possible the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies.

1.4 Without prejudice to the Authority's obligation to disclose Information in accordance with the FOIA and the EIR, the Authority will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the FOIA to the Information listed below.

Commercially Sensitive Information		
CONCESSIONAIRE'S COMMERCIALLY SENSITIVE INFORMATION	DATE	DURATION OF CONFIDENTIALITY

SCHEDULE 7 - NON DISCLOSURE AGREEMENT

THIS NON DISCLOSURE AGREEMENT is made the [insert day] day of [insert date] (the "Commencement Date"

BETWEEN:

[Insert full name of Concessionaire] of [insert full address but if registered company please insert the following - (registered in England and Wales under number [insert company number]) whose registered office is situated at [] (the "Concessionaire");

and

[Insert name and address of the Staff member, professional advisor or consultant of the Concessionaire] (the "Disclosee")

(each a "Party" and together the "Parties").

WHEREAS:

(a) The Concessionaire has contracted with the Secretary of State for Environment, Food and Rural Affairs (the "Authority") to provide services to the Authority in an agreement dated [insert date] (the "Contract").

(b) The Contract places an obligation of confidentiality on the Concessionaire. The Disclosee is an [insert employee, professional advisor or consultant] of the Concessionaire engaged in the provision of services to the Authority in support of or in connection with the services to be provided by the Concessionaire under the Contract.

(c) The Disclosee may therefore, have communicated to it, certain Confidential Information belonging to the Authority which is proprietary and must be held in confidence. Accordingly, the Contract requires the Concessionaire to ensure that the Disclosee enters into a non-disclosure agreement with the Concessionaire on the terms set out herein.

(d) Any Confidential Information disclosed by the Authority or the Concessionaire to the Disclosee, whether contained in original or copy documents, will at all times remain the property of the Authority together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

NOW IT IS AGREED as follows:

Definition and Interpretation

1. In this Agreement:

a) “Confidential Information” means: any information which has been designated as confidential by the Authority in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) whether commercial, financial, technical or otherwise including (without limitation) information belonging to or in respect of the Authority which relates to research, development, trade secrets, formulae, processes, designs, specifications, the Authority data, internal management, information technology and infrastructure and requirements, price lists and lists of, and information about, customers and employees, all materials and information belonging to third parties in respect of which the Disclosee owes obligations of confidence; information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, intellectual property rights or know-how of the Authority and all personal data within the meaning of the General Data Protection Regulation (Regulation (EU) 2016/679), whether or not that information is marked or designated as confidential or proprietary; whether arising prior to, on or after the Commencement Date;

b) “Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Concessionaire is bound to comply.

2. In construing this Agreement the general words introduced or followed by the word include(s) 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.

3. Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.

4. Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.

5. References to any person shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, government department, agency, or any association or partnership (whether or not having a separate legal personality).

CONFIDENTIALITY

6. The Disclosee undertakes to: keep confidential all Confidential Information and safeguard it accordingly; and that any Confidential Information supplied will not be used by it for any purpose other than in connection with the Concessionaire's delivery of the services under the Contract without the prior written permission of the Authority.

7. The Disclosee will take all necessary precautions to ensure that the Confidential Information is held in confidence and will provide proper and secure storage for all information and any papers, drawings or other materials which relate to or are compiled from such information.
8. The Disclosee shall, with respect to any Confidential Information it receives directly from or on behalf of the Authority or from the Concessionaire, comply, with all instructions and/or guidelines produced and supplied by or on behalf of the Authority from time to time for the handling and storage of Confidential Information, generally or for specific items.
9. The Disclosee will not disclose any Confidential Information or any part thereof to any third party.
10. Where the Disclosee is an employee, breach of the obligations set out herein in this Agreement shall be a cause of disciplinary proceedings, and the Concessionaire shall institute and enforce such disciplinary proceedings as against the Disclosee in relation to such breach.
11. Where the Disclosee is a professional advisor or consultant, breach of the obligation set out herein shall entitle the Concessionaire to terminate the contract of engagement with the Disclosee immediately, and the Concessionaire shall enforce such right of termination as against the Disclosee in relation to such breach.
12. All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Concessionaire or where so required by the Authority and notified to the Disclosee, to the Authority, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
13. The Confidential Information will not be used by the Disclosee for any purpose or in any way other than under this Agreement.
14. The following circumstances shall not constitute a breach of the obligations of confidentiality contained in this Agreement:
- 14.1 Disclosure of Confidential Information by the Disclosee when required to do so by Law or pursuant to the rules or any order having the force of Law of any court, of competent jurisdiction;
- 14.2 Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure;

14.3 Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information is already lawfully in the possession of a recipient or lawfully known to it prior to such disclosure;

14.4 Possession of Confidential Information by the Disclosee where it has been acquired from a third party who is not in breach of any obligation of confidence in providing that Confidential Information;

provided that, in no event shall information relating to the affairs of any identifiable person be disclosed or released from the obligations herein without the prior written consent of the Authority.

15. The Disclosee shall: notify the Concessionaire and the Authority promptly of the date and circumstances of the loss or unauthorised disclosure, if any, of the Confidential Information or any part of the Confidential Information and in addition, the action being taken to rectify that loss or unauthorised disclosure.

16. The obligations contained in this Agreement shall continue until notified in writing by the Authority or the Confidential Information becomes public knowledge (other than by breach of the terms of this Agreement).

17. No licence of any intellectual property rights (including but not limited to patent rights, copyrights, trademarks and rights in proprietary information and/or know-how and whether registrable or unregistrable) is granted hereby, beyond that necessary to enable use of the Confidential Information for the purpose for which the Confidential Information was released.

18. Nothing in this Agreement shall be construed as compelling any of the Parties to disclose any Confidential Information or to enter into any further contractual relationship with any other party.

19. No representation or warranties are given regarding the accuracy, completeness or freedom from defects of the Confidential Information or with respect to infringement of any rights including intellectual property rights of others.

20. Without affecting any other rights or remedies that the other Parties may have, the Disclosee acknowledges and agrees that damages alone would not be an adequate remedy for any breach of any of the provisions of this Agreement.

GENERAL

21. No failure or delay by any Party to this Agreement in exercising any of its rights hereunder shall operate as a waiver of such rights, nor shall any single or partial exercise preclude any further exercise of such rights. Any waiver by a Party of any breach or non-compliance with any term of this Agreement shall not constitute a waiver of any subsequent breach of non-compliance with the same or any other term of this Agreement.

22. No Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the Authority.

23. Any notice under this Agreement shall be in writing and shall be delivered by post, fax or e-mail to the address of the Party in question set out at the beginning of this Agreement or such other address (or e-mail address or fax number) as the Parties may notify one another from time to time.

24. No term of this Agreement shall be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement other than the Authority. The Parties shall only with the prior written consent of the Authority be entitled to vary any of the provisions of this Agreement without notifying or seeking the consent of any third party and the rights conferred by section 2 of the Contracts (Rights of Third Parties) Act 1999 are excluded.

25. This Agreement shall be governed by and shall be interpreted in accordance with the laws of England.

26. The courts of England have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly that any proceedings, suit or action arising out of or in connection therewith shall be brought in such courts.

This Agreement has been entered into on the date first written above.

SIGNED by the authorised signatory for and on behalf of the Concessionaire:

SIGNED by the Disclosee:

SCHEDULE 8 - CONCESSIONAIRE AND THIRD PARTY SOFTWARE

CONCESSIONAIRE SOFTWARE

For the purposes of this Schedule 8, "Concessionaire Software" means software which is proprietary to the Concessionaire, including software which is or will be used by the Concessionaire for the purposes of providing the Services. The Concessionaire Software comprises the following items:

THIRD PARTY SOFTWARE

For the purposes of this Schedule 8, "Third Party Software" means software which is proprietary to any third party which is or will be used by the Concessionaire for the purposes of providing the Services including the software specified in this Schedule 8. The Third Party Software shall consist of the following items:

Third Party Software	Supplier	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?

SCHEDULE 9 BUSINESS CONTINUITY AND DISASTER RECOVERY

1. The Concessionaire is accredited to ISO27001 and this standard embraces their “Business Continuity Plan” (BCP). This is a thorough and comprehensive BCP and is available for review and audit.
2. The BCP covers all aspects of the Concessionaire’s business and naturally includes Staff skills and training programmes, machine maintenance, IT Systems, supply chain of materials, power supply, telecoms and many other aspects.
3. The Concessionaire’s full BCP is located in the Attachments area of the Bravo contract record .